

**AMENDED AND RESTATED  
COMMERCIAL SOLID WASTE  
NON-EXCLUSIVE FRANCHISE  
AGREEMENT**



**CITY OF BELL GARDENS  
PUBLIC WORKS DEPARTMENT**

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**AMENDED AND RESTATED  
AGREEMENT BETWEEN THE CITY OF BELL GARDENS**

**AND USA Waste of California, DBA Waste Management  
FOR COLLECTION OF COMMERCIAL SOLID WASTE**

This AMENDED AND RESTATED **AGREEMENT** (hereinafter, "**agreement**") is entered into this 1st day of January 2022, by and between the **CITY OF BELL GARDENS** (hereinafter, "**city**") and **USA Waste of California, DBA Waste Management** (hereinafter, "**franchisee**"), a California corporation, for the collection, transportation, recycling, composting and disposal of **commercial premises solid waste** (as defined below).

**RECITALS**

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

WHEREAS, the California Public Resources Code, including § 40059, provides that aspects of solid waste handling which are of local concern include frequency of collection, means of collection and transportation, levels of service, charges and fees, and the nature, location and extent of providing solid waste services, and whether the services are to be provided by means of non-exclusive, partially-exclusive or wholly-exclusive franchise, contract, license or otherwise which may be granted by local government under terms and conditions prescribed by the governing body of the local agency; and

WHEREAS, city is obligated to protect the public health and safety of its residents and must therefore arrange for the collection of solid waste (as defined herein) in a manner consistent with the exercise of its police power; and

WHEREAS, the state of California has found and declared that the amount of solid waste generated in California, coupled with diminishing disposal capacity and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for state and local agencies to enact and implement an aggressive integrated waste management program. The state has, through enactment of AB 939 and subsequent related legislation including, but not limited to: the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible state agency, and all local agencies, to promote a reduction in landfill Disposal and to maximize the use of feasible waste reduction, re-use, recycling, and composting options in order to reduce the amount of material that must be disposed; and,

WHEREAS, SB 1383 establishes regulatory requirements for jurisdictions, generators, haulers, solid waste facilities, and other entities to support achievement of state-wide organic waste disposal reduction targets; and,

## Commercial Solid Waste Non-Exclusive Franchise Agreement

WHEREAS, SB 1383 requires jurisdictions to implement collection programs, meet processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement and fulfill other requirements; and, the city has chosen to delegate some of its responsibilities to franchisee, acting as the city's designee, through this agreement; and,

WHEREAS, city and franchisee desire to leave no doubt as to their respective roles concerning the collection, transport, processing, recycling, composting, retention and disposal of solid waste by entering into this agreement;

WHEREAS, city and franchisee further desire to make it clear that city is not becoming a "generator" or an "arranger" as those terms are used in the context of CERCLA § 107(a)(3) and that it is franchisee, an independent entity, and not city, which is "arranging for" the collection, transport, processing, recycling, composting, retention and disposal of solid wastes (which may contain small amounts of consumer products with the characteristics of hazardous substances); and

WHEREAS, there are no places within the city where landfills are located, or which are suitable for the sighting of a landfill, and therefore solid waste must be exported to other surrounding jurisdictions; and

WHEREAS, franchisee, and not city, will select the disposal facility, organic waste processing facility, source separated recyclable materials processing facility, transfer station, or C&D processing facility which franchisee will arrange to collect, by this agreement; and

WHEREAS, franchisee represents and warrants to city that it has the experience and qualifications to conduct refuse, recyclable materials and organic waste programs, to provide city with information sufficient to meet city's reporting requirements under AB 939 and SB 1383, to assist city in meeting city's other requirements under AB 939 and SB 1383, to arrange for the safe collection, transport and disposal of solid waste in a manner that will minimize the adverse effects of collection vehicles on air quality and traffic and has the ability and intent to indemnify the city against liability under CERCLA; and

WHEREAS, the city council determines and finds pursuant to California Public Resources Code § 40059(a)(1), that the public health, safety and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles, and the protection of city against CERCLA liability, require that non-exclusive franchise agreements be awarded to more than one solid waste entity for collection, transport, processing, recycling, composting, retention and disposal of commercial solid waste (as defined herein) from commercial premises (as defined herein) in the city; and

WHEREAS, in exchange for the award of this non-exclusive commercial franchise in the city, franchisee agrees to fully comply, without exceptions or limitations, with the terms and conditions of the city municipal code, city resolutions/ordinances, city solid waste agreements, and/or other laws enacted by the city from time to time.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

## SECTION 1. GRANT OF NON-EXCLUSIVE FRANCHISE

### 1.1 Binding Agreement

In consideration of the mutual promises and covenants contained herein, city and franchisee enter into this agreement and agree to be bound by and fully comply with the terms and conditions contained therein.

### 1.2 Grant of Non-Exclusive Franchise; Exclusions

This agreement grants to franchisee the non-exclusive right and privilege to arrange for the collection of, and to collect, transport, process, recycle, compost, retain and dispose of solid waste (as defined herein), produced, generated and/or accumulated within the city, except as otherwise provided below. Franchisee shall furnish all personnel, equipment and supplies necessary to provide the collection, transport, processing, recycling, composting, retention and disposal and other services required by this agreement.

- A. Waiver of rights. Franchisee waives any right or claim to serve commercial premises in the city as its boundaries exist as of the date of execution of this agreement under any prior grant of franchise, contract, license or permit issued or granted by city relating to the waste stream covered by this agreement and including whatever, if any, rights franchisee may have under the California Public Resources Code or prior law. The city and franchisee recognize that currently licensed solid waste entities within city shall be entitled to maintain their current business license for the remainder of the un-expired term of such issuance or until such time as determined by the city (in its sole discretion).
- B. Green waste - Exceptions. This agreement shall not prohibit gardeners and landscapers from collecting, composting or transporting green waste (as defined herein), as long as they transport same to a compost facility or other site permitted (or exempt from permitting) by CalRecycle in accordance with all governing laws and regulations and submit timely proof of disposition reports to city. Disposal of green waste produced as a result of city's landscape maintenance operations and contracts is not within the scope of this agreement.
- C. Recyclable and organic waste. Other persons shall maintain the right to: (1) accept source separated recyclable materials and source separated organic waste donated from the service recipient, or (2) to pay the service recipient for source separated recyclable materials and source separated organic waste provided that there is no net payment made by the service recipient to such other person.
- D. Donated or sold materials. Any items which are source separated at any premises by the generator and sold or donated to other persons, including youth, civic, or charitable organizations.
- E. Solid waste, including recyclable materials and/or organic waste, which is removed from any premises by the waste generator, and which is transported personally by such generator (or by his or her full-time employees, but not a subcontractor) to a solid waste facility in a manner consistent with all applicable laws and regulations.
- F. The collection, transfer, transport, recycling, processing, and disposal of animal remains from slaughterhouse or butcher shops for use as tallow.



- G. The collection, transfer, transport, recycling, processing, and disposal of by-products of sewage treatment, including sludge, sludge ash, grit and screenings.
- H. The collection, transfer, transport, recycling, processing, and disposal of hazardous material, household hazardous waste and radioactive waste regardless of its source.
- I. Construction and demolition debris which is removed by a duly licensed construction or demolition company or as part of a total service offered by said licensed company or by the city, where the licensed company utilizes its own equipment.
- J. The collection, transfer, transport, recycling, processing and disposal of automobiles and automobile parts by vehicle dismantlers or Owners of vehicle salvage yards.
- K. The collection, transfer and transport of clean dirt.
- L. Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, section 14500, et. seq. California Public Resources Code.
- M. The collection, transfer, transport, recycling, processing, and disposal of solid waste by city through city officers or employees in the normal course of their city employment.
- N. Solid waste handling services for governmental agencies other than city, which may have facilities in city, but over which city has no jurisdiction in connection with the regulation of solid waste.
- O. Food waste or other organic waste diverted from disposal removed from a premises and delivered to hog farms or to other premises for use as animal feed.
- P. Edible food removed from a premises and recovered for human consumption.
- Q. Other services; niche recycling services. City reserves the right to enter into agreements with other entities for other solid waste and recycling services not provided for in this agreement, including, but not limited to street sweeping (and disposal incident to the conduct of street sweeping operations), composting and disposal of green waste produced by city's landscape maintenance operations, contract services, "niche" recycling services, e.g., collection of toner cartridges or water heaters, and the conduct of household hazardous waste pickups and roundups. In the event another solid waste enterprise proposes to provide niche recycling services, franchisee shall have the right to provide the niche recycling services at the price equal to or lower than the price proposed by the solid waste enterprise which proposed to provide the niche recycling services.
- R. Residential cart collection service. This franchise grants no privilege to franchisee to service residential dwelling units receiving services under a separate franchise agreement with the city. Such dwelling units include residential premises with three or less dwelling units.
- S. Self-haulers. Nothing in this agreement prohibits those generating solid waste at commercial premises from self-hauling such material.

### **1.3 Flow Control - Reservation of Rights**

City reserves whatever, if any, right it might receive from Congress to exercise “flow control” i.e., the right to select disposal facilities and materials recovery facilities to which the solid waste to be collected pursuant to this agreement is to be taken. In the event city directs franchisee to transport solid waste to a particular disposal or other facility, city and franchisee agree to make a good faith effort to obtain indemnification against CERCLA liability and related claims from the operator of the landfill or other destination to which solid waste collected pursuant to this agreement is taken for disposal. In the event city requires franchisee to utilize a landfill or other disposal facility not owned or operated by franchisee or an affiliate of franchisee, and in doing so it adversely affects the ability of the franchisee to meet either or both requirements of sections 5.4 and 18.4 then in this event the city and franchisee shall meet and confer and mutually agree on revised obligations for sections 5.4 and 18.4.

## SECTION 2. TERM/EFFECTIVE DATE

### 2.1 Term

On October 25, 2021, the City Council approved a term expiration date of December 31, 2026. The City may extend the agreement subject to City Council approval.

Collection, transportation, processing, recycling, composting, retention and disposal services (hereinafter, "collection services") under this agreement shall be provided commencing on the **1st day of January, 2022** and ending at midnight on the **31st day of December, 2026**.

## SECTION 3. DEFINITIONS

Whenever any term used in this agreement has been defined by the city municipal code or Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the municipal code or California Public Resources Code shall prevail unless the term is otherwise defined in this agreement.

### 3.1 AB 341

"AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341," as amended, supplemented, superseded, and replaced from time to time.

### 3.2 AB 827

"AB 827" means the Assembly Bill approved by the Governor of the state of California on October 2, 2019, which amended sections 42649.2, 42649.2, 42649.8, and 42649.81 of the Public Resources Code, relating to solid waste, as amended, supplemented, superseded, and replaced from time to time.

### 3.3 AB 939

"AB 939" shall mean the California Integrated Waste Management Act of 1989, as may be amended in the Public Resources Code section 4000 et seq., and implementing regulations of the California Department of Resources Recycling and Recovery (CalRecycle).

### 3.4 Affiliate

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

### 3.5 Agreement

"Agreement" means this non-franchise agreement between city and franchisee for collection, transportation, recycling, processing and/or disposal of recyclable materials, organic waste, and solid waste, and other services, including all exhibits and attachments, and any amendments thereto.

### **3.6 Agreement for solid waste collection, processing, and disposal services**

"Agreement for solid waste collection, processing, and disposal services" means the automated collection from the residential and business sectors of refuse, organics, recyclable, or mixed waste containers with a motorized vehicle designed to mechanically pick up and empty such containers into the vehicle.

### **3.7 Alternative daily cover (ADC)**

"Alternative daily cover" or "ADC" has the same meaning as in 27 CCR section 20690.

### **3.8 Alternative facility**

"Alternative facility" means any facility other than approved facilities approved by city for temporary use.

### **3.9 Applicable law**

"Applicable law" means all statutes, rules, regulations, guidelines, actions, determinations, permits, orders, or requirements of the United States, state, county, city and local and regional government authorities and agencies having applicable jurisdiction, that apply to or govern the facility, the site or the performance of the Parties' respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, prevailing wages if applicable, and the Imperial County Integrated Waste Management Plan. All references herein to applicable law include subsequent amendments or modifications thereof, unless otherwise specifically limited in this agreement.

### **3.10 Approved C&D processing facility**

"Approved C&D processing facility" means the "Looney Bins/Downtown Diversion" located at 2424 E Olympic Blvd, Los Angeles, CA 90021, which is owned and operated by USA Waste of California Inc., which is a C&D processing facility.

### **3.11 Approved disposal facility**

"Approved disposal facility" means the following:

"El Sobrante Landfill" located at 10910 Dawson Canyon Road, Corona, CA 91719, which is owned and operated by USA Waste of California, Inc., which is a disposal facility.

"Antelope Valley Public Landfill" located at 1200 W City Ranch Road, Palmdale, CA 93551, which is owned and operated by Antelope Valley Recycling and Disposal Facility, Inc., which is a disposal facility.

### **3.12 Approved facilities**

"Approved facility(ies)" means any one of or any combination of the: approved C&D processing facility; approved disposal facility; approved organic waste processing facility, approved source separated recyclable materials processing facility; and, approved transfer facility.

### **3.13 Approved organic waste processing facility**

"Approved organic waste processing facility" means the following:

"WM Sun Valley Transfer Station" located at 9227 Tujunga Avenue, Sun Valley, CA 91352, which is owned and operated by Waste Management Recycling and Disposal Services of California, Inc., which is an organic waste processing facility.

"Orange Transfer and MRF" located at 2050 Glassell Street, Orange, CA 92865, which is owned and operated by USA Waste of California, Inc., which is an organic waste processing facility.

"Greenwise Soil Technologies" located at 10120 Miller Way, south Gate, CA 90280, which is owned and operated by Greenwise Soil Technologies, which is an organic waste processing facility.

### **3.14 Approved source separated recyclable materials processing facility**

"Approved source separated recyclable materials processing facility" means the "Azusa Transfer and MRF" located at 1501 W Gladstone Street, Azusa, CA 91701, which is owned and operated by Azusa Land Reclamation, Inc., which is a source separated recyclable materials processing facility.

### **3.15 Approved transfer facility**

"Approved transfer facility" means the following:

"Waste Management South Gate" located at 4489 Ardine Street, South Gate, CA 90280, which is owned and operated by USA Waste of California, Inc., which is a transfer facility.

"Waste Transfer and Recycling" located at 840 S Mission Road, Los Angeles, CA 90023, which is owned and operated by, Waste Management Collection and Recycling, Inc., which is a transfer facility.

"Carson Transfer Station and MRF" located at 321 W Francisco Street, Carson, CA 90745, which is owned and operated by USA Waste of California, Inc., which is a transfer facility.

### **3.16 California Code of Regulations (CCR)**

"California Code of Regulations" or "CCR" means the state of California Code of Regulations. CCR references in this agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR, Division 7, Chapter 12" refers to Title 14, Division 7, Chapter 12 of the California Code of Regulations).

### **3.17 CalRecycle**

"CalRecycle" means California's Department of Resources Recycling and Recovery, which is the department designated with responsibility for developing, implementing, and enforcing SB 1383 regulations on jurisdictions (and others).

### **3.18 City**

"City" means the city of Bell Gardens.

### **3.19 City manager**

“City manager” means the city manager or his or her designee, whichever is applicable.

### **3.20 Collect/collection**

“Collect” or “collection” means the act of taking physical possession of discarded materials at multi-family or commercial premises within the city and from city facilities and transporting the discarded materials to an approved facility for processing, transfer, or disposal.

### **3.21 Commercial edible food generators**

“Commercial edible food generator” includes a tier one or a tier two commercial edible food generator as defined in this section 3 or as otherwise defined in 14 CCR section 18982(a)(73) and (a)(74). For the purposes of this definition, food recovery organizations and food recovery services are not commercial edible food generators pursuant to 14 CCR section 18982(a)(7).

### **3.22 Commercial premises**

“Commercial premises” means all premises including commercial, Industrial, Institutional, multi-family units (as defined herein) within the city, other than residential premises with three or fewer dwelling units, where solid waste is generated or accumulated, and includes industrial zoned property as well.

### **3.23 Community composting**

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

### **3.24 Compliance review**

“Compliance review” means a review of records by a city to determine compliance with this ordinance.

### **3.25 Compostable plastics**

“Compostable plastics” means plastic materials that meet the ASTM D6400 standard for the quality of being compostable, or as otherwise described in 14 CCR section 18984.1(a)(1)(A) or 18984.2(a)(1)(C).

### **3.26 Compost**

“Compost” has the same meaning as in 14 CCR section 17896.2(a)(4), which stated, that “compost” means the product resulting from the controlled biological decomposition of organic solid wastes that are source separated from the municipal solid waste stream, or which are separated at a centralized facility.

### **3.27 Construction and demolition waste (C&D)**

“Construction and demolition waste” means discarded building materials, recyclable construction and demolition materials, packaging, plaster, rock or brick, drywall, cement, and rubble resulting from construction, remodeling, repair and demolition operations.

### **3.28 Containers**

"Containers" means any and all types of solid waste receptacles, including carts, bins, and roll-off boxes.

### **3.29 Customer(s)**

"Customer" means the person who receives the franchisee's collection services and to whom the franchisee submits its billing invoice to and collects payment from for collection services provided to a premise. The customer may be either the occupant, owner, or property manager of the premises, as allowed under the city code.

### **3.30 DBA**

"DBA" means a fictitious name, assumed name, or trade name that is different from franchisee's legal name, which franchisee uses for "doing business as" to provide collection services.

### **3.31 Designee**

"Designee" means an entity that a city contracts with or otherwise arranges to carry out any of the city's responsibilities of this ordinance as authorized in 14 CCR section 18981.2. A designee may be a government entity, a hauler, a private entity, or a combination of those entities.

### **3.32 Discarded materials**

"Discarded materials" means recyclable materials, organic materials, and solid waste placed by a generator in a collection container and/or at a location for the purposes of collection excluding excluded waste.

### **3.33 Disposal**

"Disposal" or "dispose" means the ultimate disposition of solid waste collected by franchisee at a landfill or otherwise in full regulatory compliance.

### **3.34 Disposal site(s)**

"Disposal site(s)" means the solid waste handling facility or facilities utilized for the ultimate disposal of solid waste collected by franchisee.

### **3.35 Divert or diversion**

"Divert" or "diversion" (or any variation thereof) means to prevent discarded materials from disposal at landfill or transformation facilities, (including facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods) through source reduction, reuse, recycling, composting, anaerobic digestion, or other method of processing, subsequent to the provisions of AB 939. Diversion is a broad concept that is to be inclusive of material handling and processing changes that may occur over the term including, but not limited to, changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology that reduce disposal risk, decrease costs and/or are for other reasons deemed desirable by the city.



### **3.36 Edible food**

"Edible Food" means food intended for human consumption. For the purposes of this agreement, edible food is not solid waste if it is recovered and not discarded. Nothing in this agreement requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR section 18982(a)(18) for edible food differs from this definition, the definition in 14 CCR section 18982(a)(18) shall apply to this agreement.

### **3.37 Enforcement action**

"Enforcement action" means an action of the city to address non-compliance with this ordinance including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

### **3.38 Environmental law**

"Environmental law" means any federal and state statute, county, local and city ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions or permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of persons, including employees, to hazardous materials or other products, raw materials, chemicals or other substances, (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

### **3.39 Excluded waste**

"Excluded waste " means hazardous substance, hazardous waste, infectious waste, designated waste (as per CA Water Code section 13173), volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the city and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, state, or federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in city, or its designee's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose city, or its designee, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in residential solid waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with sections 41500 and 41802 of the California Public Resources Code. Excluded waste does not include used motor oil and filters, household batteries, universal wastes, and/or latex paint when such materials are defined as allowable materials for collection through the city's collection programs and the generator or customer has properly placed the materials for collection pursuant to instructions provided by city or its designee for collection services.

### **3.40 Facility(ies)**

"Facility(ies)" means any plant, site, or operation used for the purpose of handling discarded materials, including, but not limited to, disposal, transfer, recycling, composting, and processing facilities or operations.

### **3.41 Food distributor**

“Food distributor” means a company that distributes food to entities including, but not limited to, supermarkets and grocery stores, or as otherwise defined in 14 CCR section 18982(a)(22).

### **3.42 Food facility**

“Food facility” has the same meaning as in section 113789 of the Health and Safety Code.

### **3.43 Food recovery**

“Food recovery” means actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR section 18982(a)(24).

### **3.44 Food recovery organization**

“Food recovery organization” means an entity that engages in the collection or receipt of edible food from commercial edible food generators and distributes that edible food to the public for food recovery either directly or through other entities or as otherwise defined in 14 CCR section 18982(a) (250).

### **3.45 Food recovery service**

“Food recovery service” means a person or entity that collects and transports edible food from a commercial edible food generator to a food recovery organization or other entities for food recovery, or as otherwise defined in 14 CCR section 18982(a)(26). A food recovery service is not a commercial edible food generator for the purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR section 18982(a)(7).

### **3.46 Food scraps**

“Food scraps” means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food scraps excludes fats, oils, and grease when such materials are source separated from other food scraps.

### **3.47 Food-soiled paper**

“Food-soiled paper” is compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

### **3.48 Food waste**

“Food waste” means food scraps, food-soiled paper, and compostable plastics.

### **3.49 Franchise**

“Franchise” means the right and privileges granted by this agreement.

### **3.50 Franchise fee**

“Franchise fee” means the fee paid by franchisee to city for the right to hold the franchise for solid waste services granted by this agreement.

### **3.51 Franchisee**

"Franchisee" means USA Waste of California, DBA Waste Management and its officers, directors, employees, agents, affiliates, DBAs, companies and Subcontractors.

### **3.52 Generator**

"Generator" means a person or entity that is responsible for the initial creation of one or more types of discarded materials.

### **3.53 Green Waste**

"Green waste" means leaves, grass clippings, brush and branches generated from landscapes or gardens, separated from other solid waste. "Green waste" includes holiday trees put out for collection service recipients but does not include stumps or branches exceeding eighteen inches (18") in diameter or four feet (4') in length nor shall it weigh more than forty (40) pounds.

### **3.54 Gross revenues**

"Gross revenues" means any and all revenue or compensation in any form of franchisee or subsidiaries, parent companies or other affiliates of franchisee, for the collection, transportation, processing, disposal and other solid waste-related service provided pursuant to this agreement, in accordance with generally accepted accounting principles, including, but not limited to, monthly customer fees for collection of solid waste, without subtracting franchise fees, disposal costs, or any other cost of doing business. Sales revenue from the sale of recyclable material is excluded from gross revenues for the purpose of calculating franchise fees.

### **3.55 Hauler route**

"Hauler route" means the designated itinerary or sequence of stops for each segment of the city's collection service area, or as otherwise defined in 14 CCR section 18982(a) (31.5).

### **3.56 Hazardous waste**

"Hazardous waste" means any waste or combination of wastes which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious or irreversible illness or incapacity, or any substance which poses a substantial hazardous threat to human health or the environment. Materials or mixture of wastes which have been defined as "hazardous substances" or "hazardous wastes" pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. sections 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. sections 96-1 et seq., as either may be amended from time to time, or any substance which may be defined by CalRecycle. Should a discrepancy arise between two or more entities having jurisdiction in this matter as to the definition set forth herein, the definition having the more encompassing meaning of "hazardous waste" shall prevail.

### **3.57 High diversion organic waste processing facility**

"High diversion organic waste processing facility" means a facility that is in compliance with the reporting requirements of 14 CCR section 18815.5(d) and meets or exceeds an annual average mixed waste organic

content Recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as calculated pursuant to 14 CCR section 18815.5(e) for organic waste received from the “mixed waste organic collection stream” as defined in 14 CCR section 17402(a)(11.5); or, as otherwise defined in 14 CCR section 18982(a)(33).

### **3.58 Incompatible materials**

“Incompatible material” means human-made inert material, including, but not limited to, glass, metal, plastic, and also includes organic waste for which the receiving end-user, facility, operation, property, or activity is not designed, permitted, or authorized to perform organic waste recovery activities as defined in 14 CCR section 18983.1(b), or as otherwise defined by 14 CCR section 17402(a) (7.5).

### **3.59 Inspection**

“Inspection” means a site visit where a city reviews records, containers, and an entity’s collection, handling, recycling, or landfill disposal of recyclable materials, organic waste, solid waste/mixed waste, or edible food handling to determine if the entity is complying with requirements set forth, or as otherwise defined in 14 CCR section 18982(a)(35).

### **3.60 Large event**

“Large event” means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR section 18982(a)(38) differs from this definition, the definition in 14 CCR section 18982(a)(38) shall apply to this agreement.

### **3.61 Large venue**

“Large venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one large venue that is contiguous with other large venues in the site, is a single large venue. If the definition in 14 CCR section 18982(a)(39) differs from this definition, the definition in 14 CCR section 18982(a)(39) shall apply to this agreement.

### **3.62 Liquidated damages**

“Liquidated damages” means the amounts due by franchisee for failure to meet specific quantifiable standards of performance.

### **3.63 Mixed waste organic collection stream or mixed waste**

“Mixed waste organic collection stream” or “mixed waste” means organic waste or solid waste collected in a container that is required by 14 CCR sections 18984.1, 18984.2 or 18984.3 to be taken to a high diversion organic waste processing facility or as otherwise defined in 14 CCR section 17402(a) (11.5).

### **3.64 Mixed waste container**

“Mixed waste container” has the same meaning as in 14 CCR section 18982(a)(28) and shall be used for the purpose of mixed waste.

### **3.65 Multi-family**

“Multi-family” means residential dwellings in buildings with four (4) or more dwelling units. Hotels, motels, nursing homes or convalescent centers, barracks, dormitories, or other similar places are commercial premises covered by this agreement, but not considered multi-family.

### **3.66 Non-compostable paper**

“Non-compostable paper” includes, but is not limited to, paper that is coated in a plastic material that will not breakdown in the composting process, or as otherwise defined in 14 CCR section 18982(a)(41).

### **3.67 Nonseparated solid waste**

“Nonseparated solid waste” means that solid waste which has not been source separated by the customer into individual components, i.e., paper, metals, glass, plastics, organics, inert solids, and other solids.

### **3.68 Organic materials**

“Organic materials” means yard trimmings, food scraps, and food-soiled papers that are set aside, handled, packaged, or offered for collection in a manner different from solid waste for the purpose of processing.

### **3.69 Organic materials container**

“Organic materials container” shall be used for the purpose of storage and collection of source separated organic materials.

### **3.70 Organic waste**

“Organic waste” means solid wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR section 18982(a).

### **3.71 Paper products**

“Paper products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling; or as otherwise defined in 14 CCR section 18982(a)(51).

### 3.72 Party or parties

“Party” or “parties” refers to the city and franchisee, individually or together.

### 3.73 Premises

“Premises” means and includes any land, building and/or structure, or portion thereof, in the city where discarded materials are produced, generated, or accumulated. All structures on the same legal parcel, which are owned by the same person shall be considered as one premises.

### 3.74 Printing and writing papers

“Printing and writing papers” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR section 18982(a)(54).

### 3.75 Processing

“Processing” means the controlled separation, recovery, volume reduction, conversion, or recycling of solid waste including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR section 17402(a)(20).

### 3.76 Prohibited container contaminants

“Prohibited container contaminants”

- A. Three-container or three-plus-container collection service (recyclable materials container, organic materials container, and solid waste containers): “prohibited container contaminants” means the following: (i) discarded materials placed in the recyclable materials container that are not identified as acceptable source separated recyclable materials for the city’s recyclable materials container; (ii) discarded materials placed in the organic materials container that are not identified as acceptable source separated organic materials for the city’s organic materials container; (iii) discarded materials placed in the solid waste container that are acceptable source separated recyclable materials and/or source separated organic materials to be placed in city’s organic materials container and/or recyclable materials container; and, (iv) excluded waste placed in any container.
- B. Two-container collection service for source separated organic materials and mixed materials): “prohibited container contaminants” means the following: (i) discarded materials placed in a organic materials container that are not identified as acceptable source separated organic materials for the city’s organic materials container; (ii) discarded materials placed in the solid waste container that are identified as acceptable source separated organic materials, which are to be separately collected in city’s organic materials container; and, (iii) excluded waste placed in any container.
- C. Two-container collection service for source separated recyclable materials and mixed materials): “prohibited container contaminants” means the following: (i) discarded materials placed in a recyclable materials container that are not identified as acceptable source separated recyclable materials for city’s recyclable materials container; (ii) discarded materials placed in the solid waste

container that are identified as acceptable source separated recyclable materials, which are to be separately collected in city's recyclable materials container; and, (iii) excluded waste placed in any container.

- D. One-container collection service: "prohibited container contaminants" means excluded waste placed in any container.

### **3.77 Recyclable material**

"Recyclable materials" means those discarded materials that: the generators set out in recyclables containers for collection for the purpose of recycling by the franchisee and that exclude excluded waste. No discarded materials shall be considered recyclable materials unless such material is separated from organic waste, and solid waste. Recyclable materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, tabletop beverage containers, cereal, and other similar food boxes yet excluding paper tissues, paper towels, paper with plastic coating, paper contaminated with food, wax paper, foil-lined paper and cartons, Tyvek non-tearing paper envelopes); chipboard; corrugated cardboard; glass containers of any color (including brown, clear, and green glass bottles and jars); aluminum (including beverage containers and small pieces of scrap metal); steel, tin, or bi-metal cans; mixed plastics such as plastic containers (no. one (1) to seven (7)), except expanded polystyrene (EPS); bottles including containers made of HDPE, LDPE, or PET; film plastic (when clean, dry, and contained inside of a plastic bag); dry cell household batteries when placed on the recycling container in a sealed heavy-duty plastic bag; and, those materials added by the franchisee from time to time.

### **3.78 Recyclable materials container**

"Recyclable materials container" shall be used for the purpose of storage and collection of source separated recyclable materials.

### **3.79 Recycle**

"Recycle" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become refuse 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.

### **3.80 Recycling bins or recycling container**

"Recycling bins" or "recycling container" means any container or bin utilized for the temporary accumulation and collection of source separated recyclable material. This shall also include commercial bins, or any other containers designated for the collection and temporary accumulation of recyclable material. Recycling bins and recycling container shall comply with the color and labeling requirements of SB 1383.

### **3.81 Refuse**

"Refuse" means solid waste or debris, except sewage, construction and demolition debris, recyclable materials, and/or organic waste placed in containers for collection.

### **3.82 Refuse container waste**

"Refuse container waste" means solid waste that is collected in a refuse container that is part of a three-container organic waste collection service that prohibits the placement of organic waste in the refuse container.

### **3.83 Residual (or residue)**

"Residual" or "residue" means the solid waste destined for disposal, further transfer/processing as defined in 14 CCR section 17402(a)(30) or 14 CCR section 17402(a)(31), or transformation which remains after processing has taken place and is calculated in percent as the weight of residual divided by the total incoming weight of materials.

### **3.84 Restaurant**

"Restaurant" means an establishment primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption, or as otherwise defined in 14 CCR section 18982(a)(64).

### **3.85 Reusable items**

"Reusable items" means items that are capable of being reused after minimal processing. Reusable items may be collected source separated or recovered through a processing facility. Reusable items may include, but are not limited to, clothing, furniture, and/or sporting equipment.

### **3.86 Reuse**

"Reuse" or any variation thereof, means the use, in the same, or similar, form as it was produced, of a material which might otherwise be discarded, or as otherwise defined in 14 CCR section 17402.5(b)(2).

### **3.87 Route review**

"Route review" means a visual inspection of containers along a hauler route for the purpose of determining container contamination and may include mechanical inspection methods such as the use of cameras, or as otherwise defined in 14 CCR section 18982(a)(65).

### **3.88 SB 1383**

"SB 1383" means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

### **3.89 Scavenging**

"Scavenging" means the unauthorized removal of recyclable material from any container, bin, or receptacle.



### **3.90 Self-hauler**

“Self-hauler” means a person, who hauls refuse, organic waste, or recyclable material they have generated to another person. Self-hauler also includes a landscaper, or a person who back-hauls waste. Back-haul means generating and transporting recyclable materials or organic waste to a destination owned and operated by the generator or party using the generator’s or party’s own employees and equipment, or as otherwise defined in 14 CCR section 18982(a)(66)(A).

### **3.91 Service level**

“Service level” refers to the number and size of a customer’s container(s) and the frequency of collection service, as well as ancillary services such as lock/unlock service, container push/pull service, etc.

### **3.92 Solid waste**

“Solid waste” has the same meaning as defined in State Public Resources Code section 40191, which defines solid waste as all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, recyclable materials, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, organic waste, and other discarded solid and semisolid wastes, with the exception that solid waste does not include any of the following wastes:

- A. Hazardous waste, as defined in the State Public Resources Code section 40141.
- B. Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with section 114960) of Part 9 of Division 104 of the State Health and Safety Code).
- C. Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with section 117600) of Division 104 of the State Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste landfill, as defined in State Public Resources Code section 40195.1. Medical waste that has been treated and deemed to be solid waste shall be regulated pursuant to Division 30 of the State Public Resources Code.
- D. Recyclable materials, organic waste, and construction and demolition debris when such materials are source separated.

### **3.93 Solid waste collection services**

“Solid waste collection services” means the collection, transportation, storage, transfer, or processing of solid waste for residential, multifamily residential, commercial, industrial, or institutional user(s), customers, patrons, or residents.

### **3.94 Solid waste nonexclusive franchise agreement**

“Solid waste nonexclusive franchise agreement” means the nonexclusive right to collect, transport, process, recycle, compost, retain and dispose of solid waste from multifamily residential, commercial, industrial, and institutional establishments. Said service shall be facilitated by the use of a refuse bin, organics, recyclable, or mixed waste bin.

### **3.95 Source separated**

“Source separated” means materials, including commingled recyclable materials, that have been separated or kept separate from the solid waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return 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, or as otherwise defined in 14 CCR section 17402.5(b)(4). For the purposes of the agreement, source separated shall include separation of materials by the generator, property owner, property owner’s employee, property manager, or property manager’s employee into different containers for the purpose of collection such that source separated materials are separated from gray container waste or mixed waste and other solid waste for the purposes of collection and processing.

### **3.96 Source separated organic container waste**

“Source separated organic container waste” means source separated organic waste that can be placed in a source separated organic container that is specifically intended for the separate collection of organic waste by the generator, excluding carpets, non-compostable paper, and textiles.

### **3.97 Source separated organic materials**

“Source separated organic materials” means organic materials that are source separated and placed in an organic materials container.

### **3.98 Source separated recyclable materials**

“Source separated recyclable materials” means recyclable materials that are source separated and placed in a recyclable materials container.

### **3.99 State**

“State” means the state of California.

### **3.100 Subcontractor**

“Subcontractor” means any person, firm, or entity hired by franchisee to carry out any of franchisee’s duties under this agreement.

### **3.101 Term**

“Term” means the duration of this agreement, including extension periods if granted.

### **3.102 Tier one commercial edible food generators**

“Tier one commercial edible food generator” means a commercial edible food generator that is one of the following, each as defined in 14 CCR section 18982:

- A. Supermarket.
- B. Grocery store with a total facility size equal to or greater than 10,000 square feet.

- C. Food service provider.
- D. Food distributor.
- E. Wholesale food vendor.

If the definition in 14 CCR section 18982(a)(73) of tier one commercial edible food generator differs from this definition, the definition in 14 CCR section 18982(a)(73) shall apply to this agreement.

### **3.103 Tier two commercial edible food generators**

“Tier two commercial edible food generator” means a commercial edible food generator that is one of the following, each as defined in 14 CCR section 18982:

- A. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- B. Hotel with an on-site food facility and 200 or more rooms.
- C. Health facility with an on-site food facility and 100 or more beds.
- D. Large venue.
- E. Large event.
- F. A state agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- G. A local education agency with an on-site food facility.

If the definition in 14 CCR section 18982(a)(74) of tier two commercial edible food generator differs from this definition, the definition in 14 CCR section 18982(a)(74) shall apply to this agreement.

### **3.104 Ton**

“Ton” or “tonnage” or “tons” means a unit of weight equal to 2,000 pounds (907.18474 kg).

### **3.105 Transfer**

“Transfer” means the act of transferring discarded materials collected by franchisee from franchisee’s collection vehicles into larger vehicles at a transfer facility for transport to other facilities for processing or disposing of such materials. Transfer allows for removal of materials excluded or prohibited from handling at the transfer facility (e.g., removal of hazardous waste).

### **3.106 Transportation or transport**

“Transportation” or “transport” means the act of conveying collected materials from one location to another.

**3.107 Vehicle**

“Vehicle” shall mean any truck, trailer, or other conveyance or equipment used to collect, haul, or transport solid waste, hazardous waste.

**3.108 Waste stream**

“Waste stream” means any solid waste or other material which has been entered into a process whereby its ultimate disposition results in depository into a certified landfill.

## **SECTION 4. COMPLIANCE WITH LAWS AND REGULATIONS**

Franchisee represents and warrants that it will comply with all applicable laws and regulations (including any amendments thereto), including, but not limited to RCRA, CERCLA, AB 939, SB 1383 and all other applicable laws and regulations of the state of California, the county of Los Angeles, ordinances of the city and requirements of local enforcement agencies and any other agencies with jurisdiction.

## SECTION 5. SCOPE OF SERVICES

### 5.1 Collection Services - General

The work to be done by franchisee pursuant to this agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve franchisee of the duty to furnish all others, as may be required, whether enumerated elsewhere in the agreement or not.

The work to be done by franchisee pursuant to this agreement shall be accomplished in a thorough and professional manner so that the customers within city are provided reliable, courteous, and high-quality solid waste collection at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve franchisee of the duty of accomplishing all other aspects in the manner provided in this Section 5.1, whether such other aspects are enumerated elsewhere in the agreement or not.

All collection systems shall comply with CalRecycle requirements under SB 1383 as described in Exhibit A.

#### 5.1.1 Bin Collection

Franchisee shall provide bin service, sufficient for each customer's volume of solid waste, to residential dwelling unit customers that request this service, multi-family premises customers not receiving cart service, and commercial premises customers. Franchisee shall collect and remove all solid waste that is placed in bins from the property of customers receiving bin service, at least once per week and more frequently if required to handle the waste generated at the premises where the bins are located. Special consideration shall be given when determining the pickup areas to ensure that the flow of traffic is not impeded. Repeated, reasonable public complaints about unreasonable interference with traffic flows may constitute a default or violation of this agreement. Customers may lease from franchisee or third party's compaction equipment that may be attached to bins. The provision of compaction equipment is outside the scope of the agreement. Collection of bins using these devices remains within the scope of this agreement unless otherwise excluded per section 1.2.

#### 5.1.2 Commercial Premises Cart Service

As an alternative to bin service, franchisee shall offer collection in carts to customers at commercial premises that do not have space for, or do not generate enough waste to require the use of bins. If franchisee and customer have a disagreement as to whether a cart is appropriate, or if city determines the collection in a cart causes health and safety or other concerns, city shall make the final determination as to whether collection in a cart may occur. Commercial cart service must comply with the container requirements set forth in Exhibit A.

### 5.2 Holiday Tree Recycling

Franchisee shall collect all holiday trees discarded by multi-family customers on the regularly scheduled weekly collection days for three (3) weeks following December 25 at no additional charge. Holiday trees must be removed from stands; cut into lengths no longer than four (4) feet; and, be free of ornaments,

garlands, tinsel, flocking, or other decorations. The franchisee shall not be required to collect holiday trees that do not meet the above-mentioned criteria. The franchisee shall affix a non-collection notice to any non-collected tree informing the customer of the reason(s) for non-collection. Franchisee may charge to return and collect a previously non-collected holiday tree that has been corrected and set out. Franchisee shall process all holiday trees that are properly set out for collection as organic waste in accordance with Exhibit A.

### **5.3 Education and Public Awareness**

#### **5.3.1 General**

Franchisee acknowledges and agrees that education and public awareness are critical, key, and essential elements of any efforts to achieve AB 939, AB 341, SB 1383, and any future regulatory requirements. Accordingly, franchisee agrees to take direction from city to exploit opportunities to expand public and customer knowledge concerning needs and methods to reduce, reuse and recycle solid waste and to cooperate fully with city in this regard.

Franchisee shall maintain its own program of providing information relevant to billing and solid waste services. All public education materials shall be approved in advance by city.

City may request franchisee to perform mailing services and if so able, provide not less than thirty (30) days' notice to franchisee prior to the mailing date of any proposed mailing to permit franchisee to make appropriate arrangements for inclusion of city's materials. City will provide franchisee the mailers at least fifteen (15) days prior to the mailing date.

#### **5.3.2 Material Distribution Methods**

Franchisee shall use the following methods to provide education information to customers. All materials are to be approved by the city prior to distribution.

- A. Printed materials. Franchisee shall provide printed education materials as described in this section 5.3.2. The franchisee shall be responsible for the design, printing, and distribution of these materials. All franchisee printed public education materials shall, at a minimum, use recycled paper and/or be made of recycled material. The franchisee will use 100% post-consumer paper and procure printed materials from local businesses. Franchisee shall provide electronic copies of all print materials, and printed copies, in amount requested by city, for distribution at city facilities.
- B. Electronic materials and website content. Franchisee shall provide electronic and website content for education and outreach materials, which may include but is not limited to digital graphics, digital versions of print materials, social media posts, and blog posts. The franchisee shall be responsible for the design, posting, and electronic distribution of these materials.

#### **5.3.3 Non-English Language Requirements**

The franchisee shall make all public education and outreach materials required by this Section 5 available in English and Spanish.

Upon city's request, franchisee shall provide materials in additional languages beyond those specified in this Section 5.3.3 in response to shifting demographics within the city; updates to state requirements or applicable law; or any other reason deemed appropriate by the city.

### **5.3.4 Implementation Plan and On-going Education Requirements**

#### **5.3.4.1 Implementation Plan**

- A. Basic plan and schedule. No later than January 1, 2022 and December 1<sup>st</sup> of each following year, franchisee shall provide city a written implementation plan and any amendments to the plan for the regulatory requirements in this agreement, which plan shall be in a form reasonably acceptable to city ("implementation plan"). At a minimum, the implementation plan shall include all the tasks required under AB 341, AB 827, SB 1383, and any future regulatory requirements. In addition, the implementation plan shall include any other task that city reasonably requests. Once the Franchisee submits the Implementation Plan and gains city approval, a copy of the implementation plan will be included in Exhibit C of this agreement.
- B. Evolution of implementation plan. The city and franchisee anticipate that the implementation plan and implementation schedule may change. As a result, the city and franchisee shall meet on a regular basis to discuss the implementation plan, implementation schedule, cooperation of and any other item reasonably requested by either the city or franchisee.
- C. Shortfalls during implementation period, remedial action. City shall use reasonable business efforts to cooperate with franchisee in reaching the milestones set forth in the implementation plan. Notwithstanding the above, franchisee shall be solely responsible for implementing and reaching the milestones set forth in the implementation plan and handling customer complaints. Franchisee shall have sufficient solid waste handling resources (i.e., vehicles, personnel, and Containers). In the event franchisee is unable to meet these service standards, franchisee shall at its sole cost have on stand-by another solid waste collection contractor, which while operating as a subcontractor to franchisee, will assist franchisee in resolving any service shortfalls. Under no circumstances shall city be responsible for the resolution of customer disputes relating to the implementation plan, except to the extent such disputes are directly attributable to city's active negligence or gross misconduct. Nothing herein waives or limits the city's rights and remedies to abate nuisance conditions or service shortfalls during the implementation plan period.

#### **5.3.4.2 Ongoing Education Requirements**

Franchisee will provide a minimum of the following public education items to be developed at franchisee's expense and distributed as indicated below:

- Initial mailing – Franchisee will prepare and mail an initial mailing to customers explaining the transition from the existing program to the new program. The mailing will describe program changes, route changes, dates of program implementation, and other necessary information.
- Instructional packet accompanying franchisee-provided containers – An information packet shall be attached to each set of containers distributed to a customer. Packet should describe



available services, including how to place containers for collection, which materials should be placed in each container, collection holidays, and a customer service phone number.

- Container instruction markings – Franchisee will place stickers on, or hot stamp, recyclable materials, and organic waste containers to demonstrate to customers which materials are and are not acceptable for placement in each container. Stickers shall be replaced when materials change or as labels become worn. Markings shall be written in English and Spanish. Additionally, all containers shall be labeled in accordance with CalRecycle requirements under SB 1383 throughout the term of this agreement.
- How-to brochure – Franchisee will prepare and distribute a brochure packet to new customers when they start service. Packet will contain updated information on how to use the franchisee-provided containers, when, where and how to place solid waste for collection, and who to contact with service or billing questions.
- Annual notice of SB 1383 requirements – Franchisee shall annually prepare and distribute to each of the franchisee’s customers in the city, a mailing that includes information specified in SB 1383 (14 CCR section 18985.1(a)). Such mailer shall be distributed by franchisee to all commercial mailing addresses including individual multi-family dwelling Units.
- Annual brochures/mailings –Franchisee shall annually prepare and distribute to each customer a mailing to update customers regarding program basics, program changes, holiday schedules and other service-related information. Separate brochures shall be developed for multi-family and commercial customers if different services are provided to each group. Mailings should promote and explain: all solid waste programs offered by city and franchisee (such as recyclable materials, organic waste, and holiday tree service) describe in detail; the environmental, regulatory, and other benefits of participating in recycling; how to properly dispose of household hazardous material such as syringes, paint, etc.; collection schedules, including holiday schedules; customers service numbers; and the procedures to begin and terminate services. Franchisee is responsible for all associated costs.
- Corrective action notice – For use in instances where the customer sets out inappropriate materials.

All brochures, mailings, and other educational materials are to be approved by the city in advance of distribution and shall bear the city seal unless otherwise approved by the city. The franchisee may allow customers to request mailings electronically in lieu of hardcopies. Franchisee shall be required to provide an annual report to the city of customers that have requested to receive mailings electronically. Customers will be provided the option to request electronic mailings annually.

#### **5.4 Minimum Recycling Requirements**

Franchisee shall ensure that 50% of all solid waste generated by its customers is diverted from landfilling, and may include recycling performed by franchisee, self-hauled recyclables diverted by customer, or third-party recycling of customers’ recyclables by other recycling companies. Compliance will be measured on an agreement year basis, beginning with agreement year January 1, 2022 to December 31, 2022. Quantification of the 50% requirement shall only include materials that are recycled as defined in this agreement and shall not include source reduction activities performed by franchisee’s customers.

Franchisee shall provide documentation to the city within 30 days of the end of each agreement year stating and supporting that agreement year's diversion rate. This documentation shall include support for the franchisee's reported diversion, and documentation supporting the recycling activities performed by its customers or third-party recyclers. The recycling activities performed by franchisee's customers shall include Recycled tons diverted from landfilling by material type, by customer, and shall be updated annually, franchisee shall visit annually each customer that has not subscribed to the franchisee provided recycling program, and provide documentation of these visits, and the visits' outcome within 30 days of the end of each agreement year.

## 5.5 Food Recovery Assistance

Pursuant to the requirements of SB 1383, 14 CCR, Division 7, Chapter 12, Article 10, the city is responsible for developing and implementing a food recovery program in the city. The franchisee shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of food recovery program efforts in the city.

- A. Franchisee shall identify all commercial customers serviced by franchisee that meet the definition of tier one and tier two commercial edible food generators and provide a list of such customers to the city, which shall include: customer name; service address; contact information; tier one or tier two classification; and, type of business (as it relates to the tier one and tier two commercial edible food generator definitions).
- B. At least annually, franchisee shall assist the city and/or its consultants in conducting inspections of tier one commercial edible food generators serviced by franchisee, food recovery organizations, and food recovery services to assess compliance with the requirements of 14 CCR Chapter 12 Article 10. Commencing January 1, 2024 and at least annually thereafter, franchisee shall expand its assistance to include tier two commercial edible food generators.
- C. At least annually, the franchisee shall provide commercial edible food generators with the following:
  1. Information about the commercial edible food generator requirements under 14 CCR Chapter 12 Article 10;
  2. Information about food recovery organizations and food recovery services operating within the city, and where a list of those food recovery organizations and food recovery services can be found; and,
  3. Information about actions that commercial edible food generators can take to prevent the creation of food waste.
- D. The franchisee may provide the education information required by section 5.3 by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to commercial businesses.
- E. Franchisee shall cooperate with the implementation, expansion, or operation of food recovery efforts in the city, food recovery organizations, and/or food recovery services.

## 5.6 Service Exemptions and Generator Waivers

The city may grant waivers described in this section 5.6 to commercial or multi-family unit generators that impact the scope of franchisee's provision of service for those customers. Waivers issued shall be subject to compliance with SB 1383 requirements, pursuant to 14 CCR section 18984.11, or other requirements specified by the city.

- A. **De Minimis Waivers.** The city may waive a commercial premises or multi-family unit property's obligation to comply with some or all the recyclable materials and organic waste requirements set forth in this agreement, SB 1383, and of the municipal code if the generator provides documentation or the city has evidence demonstrating one of the following de minimis conditions:
1. The commercial or multi-family unit generator's total discarded materials collection service is two (2) cubic yards or more per week, and organic waste subject to collection in a recyclable materials container or organic waste container comprises less than twenty (20) gallons per week, per applicable container, of the commercial business' total waste; or,
  2. The commercial or multi-family unit generator's total discarded materials collection service is less than two (2) cubic yards per week, and organic waste subject to collection in a recyclable materials container or organic waste container comprises less than ten (10) gallons per week, per applicable container, of the commercial business' total waste.
- B. **Physical Space Waivers.** The city may waive a commercial or multi-family unit generator's obligation to comply with some or all of the recyclable materials and organic waste requirements set forth in this agreement, SB 1383, and the municipal code if the commercial or multi-family unit generator provides documentation, or the city has evidence from its staff, the franchisee, licensed architect, engineer, or similarly qualified source demonstrating that the premises lacks adequate space for recyclable materials containers and/or organic waste containers.
- C. **Franchisee Review of Waiver Requests.** Generators may submit requests for de minimis waivers and physical space waivers to the city, and the city may request the franchisee's assistance in reviewing such waivers. Upon the request of the city, franchisee shall within seven (7) days of receipt of the city's request, inspect the generator's premises to verify the accuracy of the application. Franchisee shall provide documentation of the inspection, including the date of the inspection, customer name and address, a description of the premises, evaluation of each criterion of the relevant waiver type, and photographic evidence. The Franchisee shall send this information and documentation to the city in a timely manner, not to exceed three (3) days after the date of inspection. The city ultimately retains the right to approve or deny any application, regardless of the information provided by the franchisee. Franchisee shall report information regarding waivers reviewed within the month, if any, in accordance with Exhibit A.
- D. **Service Level Updates.** When the city grants a waiver to a customer, or the customer's waiver status changes after a re-verification determination, the city shall notify the franchisee within seven (7) days of the waiver approval or status change with information on the customer and any changes to service level or collection service requirements for the customer. Franchisee shall have seven (7) days to modify the customer's service level, customer account data, and billing statement, as needed.
- E. **Waiver Re-verification.** The city shall be responsible for re-verification of waivers. Upon request of the city, the franchisee shall support the city in this re-verification process by providing requested

customer information. In the event that a waiver status changes, franchisee shall update the customer's information and service level.

## 5.7 Franchisee Service Exemptions

- A. Disaster Waivers. In the event of a disaster, the city may grant franchisee a waiver of some or all discarded materials collection requirements under this agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such waiver has been approved by CalRecycle. Any resulting changes in collection requirements shall be addressed as a change in scope.
- B. Quarantined Waste. If approved by the city, the franchisee may dispose of, rather than process, specific types of organic waste and/or recyclable materials that are subject to quarantine and meet the requirements described in 14 CCR section 18984.13(d) for a period of time specified by the city or until the city provides notice that the quarantine has been removed and directs franchisee to transport the materials to the approved facilities for such material.
1. Franchisee shall maintain records and submit reports regarding compliance agreements for quarantined organic waste and recyclable materials that are disposed of pursuant to this subsection 5.7.B.1.

## 5.8 Contamination Monitoring

Franchisee shall review the inspection method options listed below and implement the chosen method, either option 1: physical container inspections or option 2: waste evaluation monitoring by franchisee, in compliance with the requirements of SB 1383 (14 CCR section 18984.5). Franchisee shall provide the chosen contamination inspection method and implementation plan of that method to the city by December 1<sup>st</sup> of each calendar year.

Option 1: Physical container inspections. When franchisee's personnel dismounts from collection vehicles to empty a container, such personnel shall lift the container lid and observe the contents. Upon finding contaminants in a container, Franchisee shall follow the contamination noticing procedures.

Option 2: Waste evaluation monitoring by franchisee. Franchisee shall, at its sole expense, conduct waste composition studies that comply with the requirements of this section 5.8 and meet the requirements of 14 CCR section 18984.5(c). The city maintains the right to observe, or hire a third party to observe, the waste composition studies. Franchisee shall, no later than December 1<sup>st</sup> of each calendar year, provide the city with a proposed waste composition study methodology and a schedule of waste composition studies for the calendar year for review and approval by city. The city may request, and franchisee shall accept modifications to the schedule to permit observation by the city. In addition, franchisee shall provide an email notice to the city no less than ten (10) business days prior to each scheduled waste composition study that includes the specific time(s), which shall be within the city's normal business hours, and location(s) for the waste composition study.

**5.8.1 Actions Upon Identification of Prohibited Container Contaminants**

- A. Record keeping. The driver or other franchisee representative shall record each event of identification of prohibited container contaminants in a written log or in the on-board computer system including date, time, customer's address, type of container; and maintain photographic evidence, if required. Franchisee shall submit this record to the franchisee's customer service department, and franchisee's customer service department shall update the customer's account record to note the event, if the documentation of the on-board computer system did not automatically update the customer's account record.
- B. Identification of excluded waste. If franchisee's personnel observe excluded waste in an uncollected container, the franchisee's personnel shall record that observation and immediately inform their route supervisor. The route supervisor shall investigate and initiate applicable action within one (1) business day or sooner if the hazardous waste may cause immediate danger.
- C. Courtesy pick-up notices. Upon identification of prohibited container contaminants in a customer's container, franchisee shall provide the customer a courtesy pick-up notice. The courtesy pick-up notification shall: (i) inform the customer of the observed presence of prohibited container contaminants; (ii) include the date and time the prohibited container contaminants were observed; (iii) include information on the customer's requirement to properly separate materials into the appropriate containers, and the accepted and prohibited materials for collection in the source separated recyclables container, source separated organics container, and/or refuse or mixed waste container; (iv) inform the customer of the courtesy pick-up of the contaminated materials on this occasion with information that following three (3) instances of contaminated materials; franchisee may assess contamination fees; and, (v) shall include photographic evidence. Franchisee shall leave the courtesy pick-up notice attached to or adhered to the generators' contaminated containers; at the premises' door or gate; or, subject to city's approval, may deliver the notice by mail, e-mail, or text message.

Franchisee shall collect the contaminated recyclable materials and organic waste and transport the material to the appropriate approved facility for processing; or, franchisee may collect the contaminated materials with the refuse container waste or the mixed container waste and Transport the contaminated materials to the appropriate approved facility for disposal/processing.

- D. Notice of assessment of contamination fees. If the franchisee observes prohibited container contaminants in a generator's source separated organics container or source separated recyclables container on more than three (3) occasions and issued courtesy pick-up notices on each of those occasions, the franchisee may impose a contamination fee. Franchisee shall notify the city in its monthly report of customers for which contamination fees were assessed. Franchisee shall leave a contamination fee notice attached to or adhered to the generators' contaminated containers; at the premises' door or gate; or, subject to city's approval, may deliver the notice by mail, e-mail, or text message. The contamination fee notice shall describe the specific material(s) of issue, explain how to correct future set outs, and indicate that the customer will be charged a contamination fee on its next bill.

Franchisee shall collect the contaminated recyclable materials and/or organic waste and transport the material to the appropriate approved facility for processing.

- E. Communications with customer. Whenever a container is not collected because of prohibited container contaminants, a customer service representative shall contact the customer to discuss and encourage the customer to adopt proper discarded materials preparation and separation procedures.
- F. Disposal of contaminated materials. If the franchisee observes visible prohibited container contaminants in a generator's source separated organics container or source separated recyclables container, franchisee may dispose of the container's contents provided franchisee complies with the noticing requirements.

## **5.9 On-Going Contamination Monitoring by Route Personnel**

Franchisee shall assist on an ongoing basis in minimizing contamination by helping to educate customers on acceptable and non-acceptable materials through ongoing education and outreach efforts and through on-going monitoring of the contents of collection containers. The ongoing container monitoring shall be performed by franchisee using the one of the methods. Franchisee may refuse collection of refuse, recyclables, or organic waste from customers under the following circumstances: (i) the material is not source separated from other discarded materials or excluded waste; (ii) access is blocked or inhibited by vehicles or other obstacles; or, (iii) the material is commingled with prohibited container contaminants. In the event does not collect the refuse, recyclable materials, or organic waste from a customer for any of these reasons, franchisee shall leave a non-collection notice for the customer recording at a minimum the date, customer location, and an explanation as to why the materials were not collected. Franchisee is required to retain photographic evidence of all instances of non-collection.

## **5.10 Prescribed Contamination Monitoring**

Franchisee shall provide the chosen contamination response method to the city by December 1<sup>st</sup> of each calendar year. Upon finding prohibited container contaminants in a container, franchisee shall follow the contamination noticing procedures and contaminated container handling protocols.

Option 1: Within fifteen (15) business days of the waste evaluation, notify all generators on the sampled hauler route of their requirement to properly separate materials into the appropriate containers. The franchisee may provide this information by placing a written notice on the generators' containers or the gate or door of the premises; and/or by mailing, emailing, or texting the notice to the generators. The format of the warning notice shall be approved by the city.

Option 2: Within fifteen (15) business days of the waste evaluation, perform a targeted hauler route review of containers on the hauler route sampled for waste composition studies to determine the sources of contamination and notify those generators of their obligation to properly separate materials. The franchisee may provide this information to these generators by placing a written notice on the generators' containers or the gate or door of the premises; and/or by mailing, e-mailing, or texting education notices to the applicable generators. The format of the warning notice shall be approved by the city.

### **5.10.1 Option 1: Physical Container Inspections**

- A. Methodology and frequency. The franchisee shall, annually and at its sole expense, conduct hauler route reviews for prohibited container contaminants in containers in a manner that is deemed safe by the franchisee; is approved by the city; and is conducted in a manner that results in all hauler routes being reviewed annually or more frequently.

The franchisee shall conduct hauler route reviews that include inspection of the contents of each container for prohibited container contaminants in a manner that a minimum of ten percent (10%) of containers on each hauler route are randomly inspected annually.

Franchisee shall develop a hauler route review methodology to accomplish the above container inspection requirements and such methodology shall comply with the requirements of 14 CCR section 18984.5(b). Franchisee shall submit its proposed hauler route review methodology for the coming year to the city no later than December 1<sup>st</sup> of each year describing its proposed methodology for the calendar year and schedule for performance of each hauler route's annual review. Franchisee's proposed hauler route review methodology shall include not only its plan for container inspections and shall also include its plan for prioritizing the inspection of customers that are more likely to be out of compliance. City and/or CalRecycle will review and approve the proposed methodology. Franchisee may commence with the proposed methodology upon approval.

If the city and/or CalRecycle notifies the franchisee that the methodology is inadequate to meet the requirements of 14 CCR section 18984.5(b), franchisee shall, at its sole expense, revise the methodology and, after obtaining city or CalRecycle approval, conduct additional hauler route reviews, increased container inspections, or implement other changes using the revised procedure. If the franchisee's proposed methodology meets the requirements of 14 CCR section 18984.5(b), but has been deemed inadequate by the city, the franchisee shall, at the expense of the city, revise the methodology and implement the necessary changes using the revised procedure.

The city may request, and franchisee shall accept, modifications to the schedule to permit observation of the hauler route reviews by the city. In addition, franchisee shall provide an email notice to the city's contract manager no less than ten (10) business days prior to each scheduled hauler route review that includes the specific time(s), which shall be within the city's normal business hours, and location(s).

- B. Noticing of Generators with Contamination, and Disposal of Materials. Upon finding prohibited container contaminants in a container, franchisee shall follow the contamination noticing procedures and contaminated container handling protocols.
- C. Monthly Reporting Requirements. Franchisee shall maintain records and report to the city monthly on contamination monitoring activities and actions taken.

### **5.10.2 Option 2: Waste Evaluation Monitoring by Franchisee**

Franchisee shall, annually and at its sole expense, conduct waste composition studies that comply with the requirements of this section 5.10.2 and meet the requirements of 14 CCR section 18984.5(c). The city maintains the right to observe, or hire a third party to observe, the waste composition studies. Franchisee shall, no later than December 1<sup>st</sup> of each year, provide the city with a proposed waste composition study methodology and a schedule of waste composition studies for review and approval by city. The city may request, and franchisee shall accept modifications to the schedule to permit observation by the city. In addition, franchisee shall provide an email notice to the city no less than ten (10) business days prior to each scheduled waste composition study that includes the specific time(s), which shall be within the city's normal business hours, and location(s) for the waste composition study.

The franchisee shall conduct waste composition studies at least twice per year and the studies shall occur in two distinct seasons of the year. The franchisee's waste composition studies shall include samples of solid waste, organic waste, and recyclable materials. The waste composition studies shall include samples from each container type served by the franchisee and shall include samples taken from different areas in the city that are representative of the city's waste stream. The study shall include a minimum of forty (40) samples per route.

The franchisee shall transport all of the material collected for sampling to a sorting area at the approved facility, where the presence of prohibited container contaminants for each container type shall be measured to determine the ratio of prohibited container contaminants present in each material stream by weight. To determine the ratio of prohibited container contaminants, the franchisee shall use the following protocol:

1. The franchisee shall take one sample of at least 200 pounds from the material collected from each material stream for sampling. For example, franchisee shall take 200-pound sample taken from the combined contents of the source separated organics container waste container samples.
2. The two hundred- (200) pound sample shall be randomly selected from different areas of the pile of collected material for that material stream.
3. For each two hundred- (200) pound sample, the franchisee shall remove any prohibited container contaminants and determine the weight of prohibited container contaminants.
4. The franchisee shall determine the ratio of prohibited container contaminants in the sample by dividing the total weight of prohibited container contaminants by the total weight of the sample.
5. All weights shall be recorded in pounds.
6. The facility, scales, and weighing process used for the study shall meet the standards of Exhibit A.

#### **5.10.2.1 Contamination Response**

If the sampled weight of prohibited container contaminants exceeds twenty-five percent (25%) of the measured sample for any material stream, the franchisee shall notify the city within fifteen (15) business days of the waste evaluation.

#### **5.10.2.2 Noticing of Generators with Contamination, and Disposal of Materials**

Upon finding prohibited container contaminants in a container, franchisee shall follow the contamination noticing procedures and contaminated container handling protocols.

### **5.10.3 Monthly Reporting Requirements**

Franchisee shall maintain records and report to the city on a monthly basis on contamination monitoring activities and actions taken.



## SECTION 6. STANDARD OF PERFORMANCE

### 6.1 Commercial

Collection of solid waste from commercial premises where noise from collection vehicles may be audible in residential areas shall be made between the hours of 7:00 AM and 7:00 PM. Site and route-specific exceptions may be made to this limitation by the city, if requested by franchisee. If collections are not made on holidays, the collections shall be made on the day following the regularly scheduled day of collection.

### 6.2 Manner

- A. All containers shall be replaced, upright, where found, with the lids in place immediately after collection of solid waste by franchisee. Unless the containers were originally placed on landscaping by the customer, franchisee shall not put the containers on the landscaping. Franchisee shall not in any way break, damage or negligently handle containers owned by any customer. All claims for damage resulting from the manner of collection shall be presented by the customer to franchisee. If franchisee rejects customer's claim, customer may appeal to the city. The city shall consider customer's claim and make a decision as to franchisee's liability, if any, which shall be final and binding on the parties. Franchisee shall make payment for damage within two (2) business days after the claim is made, or, if applicable, the city's decision regarding liability. The city may require replacement or repair in lieu of payment to the customer.
- B. Franchisee shall clean and remove any solid waste that is spilled or deposited on the ground as a result of franchisee's services.
- C. Commercial customers shall be responsible for providing a container location on the commercial premises. Franchisee shall not agree to placement of any container that will be placed in locations that conflict with the city municipal code or any locations that conflict with an area specifically designated for collection by the community development department or other city department.
- D. Franchisee shall report to the city any container that presents an obstruction to any of the city's public rights-of-way or that may present a potential obstruction of emergency vehicles within twenty-four (24) hours of identification of such container.

### 6.3 Transfer of Loads on Public Streets

Franchisee shall not transfer the load from one collection vehicle to another on any public street or road unless such transfer is essential to the method of operation and is approved in writing by the city or is necessary owing to mechanical failure or accidental damage to a vehicle. Franchisee will notify city immediately in the event any loads are transferred as described above.

## SECTION 7. TECHNICAL ASSISTANCE PROGRAM

Franchisee will include an outreach and technical assistance plan in the AB 341, AB 827, and SB 1383 implementation plan located in Exhibit C of this agreement.

### 7.1 Site Visits and Waste Assessments

Franchisee shall provide the initial outreach and technical assistance plan by January 1, 2022. Franchisee will annually provide the city with any updates to the outreach and technical assistance plan by December 1<sup>st</sup> of each calendar year. The plan will include the site visit schedule for which to send a franchisee representative to visit each multi-family and commercial generator's premises for the purpose of assessing how much recyclable material and organic waste is being disposed in order to determine the collection service level needed to meet the requirements of SB 1383. Franchisee shall contact multi-family and commercial customers and provide site visits according to the city-approved schedule. Franchisee shall also notify customers of opportunities to reduce costs by enrolling in recyclable materials and organic waste collection service and reducing refuse container service. Franchisee will also provide a site visit to any multi-family and commercial generator that requests a site visit, even if it is ahead of schedule. Any internal recycling programs or third-party recycling programs that the franchisee encounters while conducting customer site visits shall be documented using a city-approved electronic reporting form and provided in an electronic format such as a cloud-based file-sharing system that can be accessed by the city or its representatives.

Franchisee representative shall annually follow up with multi-family and commercial generators who are required to participate in recyclable materials and organic waste collection service under applicable law, including but not limited to AB 341, AB 827 and SB 1383. The franchisee shall ensure that these generators are participating in the level of service required under SB 1383. If the generator is not in compliance or not participating, the representative shall assist the customers with selecting appropriate containers and container sizing, identifying acceptable discarded materials collection services as set forth, and attempt to resolve any logistical barriers to providing recyclable materials and organic waste collection service. Franchisee shall provide ongoing, on-site training for commercial generators' staff, including, but not limited to management, kitchen staff, service employees, and janitorial staff; and multi-family customers', including but not limited to the property manager, janitorial staff, maintenance, and any other on-site staff members or franchisees that handle discarded materials processes.

For each on-site waste assessment conducted by franchisee, franchisee shall include documentation of the items listed below. City reserves the right to request franchisee's documentation of additional information and shall authorize the format for required information.

- Pictures of material in all containers
- Characteristics of the property, business, and generator type
- Written recommendations for the appropriate service level for each material type
- Provision of outreach and education materials appropriate to the generator type
- Determination of signage placement
- Determination of any on-going training needs
- Determination of any access needs

- Documentation of any special service needs, (such as, but not limited to, seasonal, automated on-call compactor, etc.)
- Documentation of records of communications with the generator

In addition to the site visit requirements stated above, the franchisee shall assist the city in complying with the requirements included in AB 827, and section 18984.9(b) of SB 1383. During the required site visits, franchisee shall provide educational material (to be provided by city) to businesses that meet the requirements of AB 827 and section 18984.9(b) of SB 1383, and make notation of the name of the business, the business address, business contact information, and business compliance or non-compliance.

## SECTION 8. EQUIPMENT

### 8.1 General

Franchisee shall provide all vehicles and equipment necessary for the collection, disposal and transportation services for which it is responsible under this agreement. All equipment shall conform to the highest industry standards, shall be maintained in a clean and efficient condition and shall comply with the provisions established in the city municipal code and all measures and procedures promulgated by all agencies with jurisdiction.

### 8.2 Vehicles

- A. At all times during the term of this agreement, franchisee's collection vehicles shall comply with South Coast Air Quality Management District requirements and the California Air Resource Board requirements as they are currently in force and as they may be approved for refuse removal vehicles, as well as other federal, state and local laws and regulations that may be enacted during the term of this agreement.
- B. Each vehicle shall be constructed and used so that no oil, grease, liquid, or solid waste material will blow, fall, or leak out of the vehicle. All vehicles shall be equipped with watertight bodies and close-fitting metal covers. Any solid waste dropped or spilled during the collection, transfer or disposal of same shall immediately be cleaned up by franchisee. A broom and shovel shall be carried at all times on each vehicle for this purpose. If franchisee fails to clean a spill it causes during the collection, transfer or disposal of solid waste, city may clean or cause the cleaning of same. In such case, franchisee shall be liable for all reasonable expenses incurred by city in providing for the cleaning of the spill, plus an additional twenty-five percent (25%) thereof.
- C. Each vehicle shall bear a distinct identification number or letter and franchisee's name and local telephone number on each side of the vehicle. The numbering and lettering shall be no less than four inches (4") in height and four inches (4") in width and shall be prominently displayed on each side of the vehicle in a color sharply contrasting with the color of the vehicle.
- D. The noise level generated by compaction vehicles using compaction mechanisms during the stationary compaction process shall not exceed a single-event noise level of seventy-five (75) decibels (dB)A at a distance of twenty-five (25) feet from the collection vehicle measured at an elevation of five (5) feet above ground level. Franchisee shall submit to city, upon city's request, a certificate of vehicle noise level testing by an independent testing entity approved by the city.
- E. Each vehicle used for the collection, transfer and disposal of solid waste shall be equipped with an audible warning device that is activated when the vehicle is backing up.
- F. Should the city manager at any time give written notification to franchisee that a vehicle does not comply with the standards set forth herein, it shall immediately be removed from service and shall not be used again until approved in writing by the city manager.
- G. All Collection vehicles used by franchisee under this agreement, excluding spares, roll-off box collection vehicles, scout vehicles, supervisor vehicles, container delivery and other specialty vehicles used on a sporadic basis, shall be powered by Compressed Natural Gas, Liquefied Natural Gas, or

California derived Renewable Natural Gas (CDRNG). If franchisee chooses to use CDRNG, the CDRNG generated by the {insert name of publicly-owned treatment works in-vessel digestion facility} or powered by CDRNG that is purchased through a wheeling agreement with a party(ies), provided that the wheeling agreement is for purchase of gas derived from organic waste that has been diverted from a landfill and processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recycle organic waste and meets SB 1383 requirements. Upon city's request, franchisee shall obtain and provide the city with a written certification by an authorized representative of the publicly owned treatment works or the wheeling agreement service provider certifying that the in-vessel digestion facility produces the CDRNG consistent with the requirements of 14 CCR section 18993.1(h). Franchisee shall maintain records of the amount of CDRNG purchased and shall report this information. Franchisee agrees that the city has the right to report this CDRNG usage toward the city's fulfillment of its annual recovered organic waste product procurement target in accordance with 14 CCR section 18993.1. Spare vehicles, roll-off box collection vehicles, scout vehicles, supervisor vehicles, container delivery and other specialty vehicles used on a sporadic basis, shall be powered by Compressed Natural Gas.

### **8.3 Commercial Containers**

All commercial containers shall be metal and/or plastic and shall be constructed with locking covers so that no liquid shall leak there from. All containers in service for the duration of this agreement shall comply with the container requirements specified by CalRecycle under SB 1383.

### **8.4 Graffiti**

Franchisee agrees to maintain its containers and vehicles free of graffiti or "tagging."

### **8.5 Containers to be Marked**

Franchisee shall mark all of its commercial containers in the city with conspicuous notices warning that the disposal of excluded waste in containers is prohibited.

### **8.6 Uniforms**

All employees of franchisee shall be dressed in clean uniforms which identify the person as an employee of franchisee. Uniform and identification are subject to the approval of the city.

## SECTION 9. FAILURE TO COLLECT

### 9.1 Penalty

If franchisee fails to collect or dispose of any solid waste covered by this agreement within twenty-four (24) hours of being notified of the failure to collect, city may collect or cause the collection and disposal of same. In such case, franchisee shall be liable for all reasonable expenses incurred by city in providing for the collection and disposal of the solid waste, plus an additional twenty-five percent (25%) thereof.

## **SECTION 10. SERVICE EXCEPTIONS; EXCLUDED WASTE NOTIFICATIONS**

### **10.1 Failure to Collect - Reasonable Cause**

When solid waste is not collected from any customer due to the contents thereof, franchisee shall notify its service recipient at the time collection is not made, through the use of a "tag" or otherwise, of the reasons why the collection was not made. Franchisee shall keep a record of each instance that solid waste is not collected, and a written report shall be delivered to the city's public works department within twenty-four (24) hours of non-collection, as well as on a monthly basis, with the name, address and reason for non-collection.

### **10.2 Hazardous Waste Inspection and Reporting**

Franchisee reserves the right and has the duty under law to inspect solid waste put out for collection and to reject solid waste observed to be contaminated with hazardous substances and the right not to collect hazardous waste put out with solid waste. Franchisee shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center, of reportable quantities of hazardous waste, found or observed in commercial solid waste anywhere within the city. In addition to other required notifications, if franchisee observes any substances that it or its employees reasonably believe or suspect to contain hazardous waste unlawfully disposed of or released on any city property, including storm drains, streets or other public rights-of-way, franchisee shall within twenty-four (24) hours notify the city manager in writing.

### **10.3 Hazardous Waste Diversion Records**

Franchisee shall maintain records showing the types and quantities, if any, of hazardous waste found in solid waste, which was inadvertently collected from solid waste service recipients within the city but diverted from landfilling. Records shall be retained and made available to city for review and inspection in accordance with the reporting requirements of SB 1383.

## SECTION 11. CUSTOMER SERVICE

### 11.1 Office Hours

Franchisee shall maintain an office accessible by a local phone number where someone may be reached between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except for holidays. At franchisee's expense, its regular and emergency telephone numbers shall be listed in city's area telephone directories under both franchisee's name and the city's name and be clearly listed on franchisee's website. The phone system shall be capable of accepting at least five (5) incoming calls at one time.

### 11.2 Emergency Telephone Number

Franchisee shall maintain an emergency telephone number for use outside normal business hours. Franchisee shall have a representative, or an answering or call-forwarding service to contact such representative, available at the emergency telephone number during all hours other than normal office hours.

### 11.3 Service Complaints

Franchisee shall investigate and remedy all service complaints within one (1) working day of the time of receipt of the complaint. Franchisee shall maintain a record of all complaints, including date, time, complainant's name and address if the complainant is willing to give this information, and date and manner of resolution of complaint, if any. Franchisee shall create a log of such complaints and it shall be made available to city for review and inspection during franchisee's normal office hours. In addition, franchisee shall provide a monthly report of the complaints it receives on a month-to-month basis to the department head of the Bell Gardens Public Works Department. A record of all complaints received by franchisee during the term of this agreement shall be retained and made available to city for review and inspection. Complaint records shall be maintained for city review for a minimum of five years.



## **SECTION 12. OWNERSHIP OF SOLID WASTE**

Ownership and the right to possession of solid waste shall transfer directly from the service recipient to franchisee, by operation of law, and not as a result of this agreement. At no time shall the city obtain any right of ownership or possession of solid waste or hazardous waste placed for collection and nothing in this agreement shall be construed as giving rise to any inference that city has any such rights.

## SECTION 13. RATES, BILLING AND PAYMENT

### 13.1 Rates

Should the city council determine that the setting of rates is warranted, the city council shall establish rates by resolution and such rates shall be incorporated into this agreement. If so directed this agreement will be amended.

### 13.2 Billing and Payment

A. Commercial premises. Franchisee shall directly bill all customers for services franchisee provides. Bills to commercial solid waste customers shall include service levels and be itemized showing charges for each classification of service, but shall not designate that portion of a bill attributable to the franchise fee as a separate item. Billings may be made monthly, bi-monthly or quarterly, as the customer and franchisee shall agree. [Franchisee may include in its bills any applicable fees imposed by action of the city council, including, but not limited to AB 939 fees, SB 1383 fees, and household hazardous waste program fees, and shall remit such funds collected to city within 30 days.]

#### B. Franchise fee; Payment.

1. General. Franchisee shall pay to city an initial yearly fee in the amount of five thousand dollars (\$5,000) plus the franchise fees set forth in Resolution 2010-09 and/or other applicable resolutions and ordinances relating to fees. Said fees shall be payable to the city within thirty (30) days of the execution of this agreement. The yearly franchise amount shall be reduced to twenty-five hundred dollars (\$2,500) plus the franchise fees set forth in Resolution 2010-09 and/or other applicable resolutions and ordinances relating to fees by January 31st of each ensuing fiscal year, if applicable, depending on length of agreement. After said date, interest shall accrue at the legal rate allowed. Failure to make payment by January 31st, shall be grounds for immediate termination without further notice or such other remedy as the city may elect. This provision is not subject to the notice and remedies set forth in section 22.
2. Commercial. Franchisee shall pay to city a yearly franchise fee of fifteen percent (15%) of gross revenues. The Franchise fee shall be paid to city by 12:00 noon on or before the 25th calendar day of each month following the end of each quarter, or in accordance with the provisions established by resolution of the city council. Accompanying each quarterly payment shall be an accounting of the gross revenues for each month and an invoice showing the services provided. Failure of franchisee to make any payment within the appropriate time period shall result in interest, compounded daily, accruing thereon at the maximum rate permitted under California law, in addition to all other remedies available to city in both law and equity as well as pursuant to this agreement, including termination. City's payment shall be subject to subsequent audit and adjustment in succeeding invoices.

C. Non-liability: City. City shall not be liable for any non-payment of fees by commercial or non-commercial customers.

## **SECTION 16. AB 939 REPORTING REQUIREMENTS**

Franchisee shall cooperate with city and/or its designated consultants in solid waste disposal characterization studies and waste stream audits and shall implement measures necessary and proper to fully achieve the city's source reduction, recycling and waste stream diversion goals and shall compile and retain all documentation relating to the solid waste stream covered by this agreement. During the period during which collection services are provided pursuant to this agreement, franchisee at franchisee's sole expense, shall submit to city information and reports necessary for city to meet its reporting obligations imposed by AB 939, and the regulations implementing AB 939, with respect to solid waste collected within the city by franchisee.

## SECTION 17. REPORTS AND RECORDS

### 17.1 General

In addition to the record retention requirements set forth below, franchisee shall maintain all records relating to the services provided hereunder, including, but not limited to, route maps, customer lists, billing records, weight tickets, maps, AB 939 records, AB 341 records, SB 1383 records, and customer complaints, for the full term during which collection services are to be provided pursuant to this agreement, and an additional period of not less than the time frame incorporated by city ordinance No. 680, city resolutions, other applicable provisions, or any longer period required by law. The city shall have the right, upon reasonable advance notice, to inspect, audit and copy all records relating to this agreement and records which may be relevant in the event of an action under CERCLA or any other related or unrelated claim. In the absence of extraordinary circumstances, two (2) business days' notice shall be considered reasonable. Such records shall be made available to city at franchisee's regular place of business, but in no event outside the county of Los Angeles.

### 17.2 Revenues and Expenses

City may require franchisee to segregate the revenues and expenses and other financial data pertinent to the performance of this agreement from the total revenues and expenses of franchisee. City may conduct an audit of franchisee at any time. The scope of the audit and auditing party will be determined by city, and the scope may include, but is not limited to, compliance with terms of this agreement, fee payments, gross revenues, tonnage and verification of diversion rate. City, or city designated party, shall have the right to examine franchisee's financial books and records at any time during business hours on reasonable notice (two (2) business days) to franchisee.

### 17.3 Payments Due to City

Should any examination or audit of franchisee's records reveal an underpayment to city by franchisee, the amount, plus interest compounded daily from the date upon which such payment originally became due at 10% per annum, shall be paid to city within thirty (30) days.

### 17.4 Report Formats and Schedule

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed, at no additional charge. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- A. Determine and set rates and evaluate the efficiency of operations;
- B. Evaluate past and expected progress toward achieving AB 939 goals and objectives;
- C. Determine needs for adjustment to programs; and,
- D. Evaluate Customer service and complaints. The city will provide report formats that are responsive to the objectives and audiences for each report. The franchisee will be required to submit each individual report in the format required by the city. The franchisee agrees to submit all reports by electronic

means in a format compatible with city's software/computers at no additional charge. Franchisee will provide a certification statement, under penalty of perjury, by an authorized franchisee official, that the report being submitted is true and correct.

Monthly reports shall be submitted within thirty (30) calendar days after the end of each month. If requested, franchisee's complaint summary, shall be sent to the city within five days of request. Annual reports shall be submitted before January 31 following the reporting year.

In the event the city receives any penalties from CalRecycle, or another state agency directly related to late or incomplete reporting by franchisee, as required in this agreement, franchisee shall pay the portion of the penalties associated with the franchisee's negligence in addition to liquidated damages listed in this agreement. In the event that the penalties are wholly due to the negligence of franchisee, franchisee shall pay one hundred percent (100%) of the penalty amount. In the event the penalties are due to negligence caused by more than one franchisee, the portion of franchisee's penalty responsibility shall be determined by the City.

## 17.5 Monthly Reports

The information listed shall be the minimum reported:

### A. Tonnage Report.

1. Franchisee shall report the total quantities in tons of discarded materials collected, transferred, processed, and disposed by the franchisee, all of which shall be based on actual certified scale weights for each load, if available, or similarly accurate methodology pursuant to weighing protocols. Tonnage shall be reported separately by:
  - a. Material type, which shall include, at a minimum, based on the SB 1383 compliant collection system, separate reporting of recyclable materials, organic waste, source separated recyclable container waste, source separated organics container waste, residual solid waste, and any other type of discarded material separately collected by franchisee (including, but not limited to: used oil, mixed C&D, dirt, rock, metals, cardboard, wood waste, reusable items, salvageable materials, etc.);
  - b. Customer/sector type (multi-family, commercial, roll-off, C&D); and,
  - c. Approved facility and facility type.
2. Report residue level and tonnage for all discarded materials processed, listed separately by material type collected and approved facility(ies) used.
3. Source separated recyclable materials tonnage marketed, by commodity, and including average commodity value for each, and processing residue tonnage disposed, listed separately by material type collected and approved facility(ies) used.
4. Documentation of all discarded materials exported out of state, as provided in 14 CCR sections 18800 through 18813.

5. Tonnage collected by month separately for each C&D project site and other data as it relates to the C&D services described in this agreement.

B. Collection and subscription report.

1. Number of containers at each service level by customer type and program, including:
  - a. A summary of the total gallons of container service, cubic yards of bin service, and pulls; and cubic yards or tons of roll-off box and compactor service by customer type.
  - b. Calculation of the average volume of service received per multi-family and commercial customer.
2. A summary of customer subscription data, including the number of accounts; the number of customers subscribing to each container, bin, and roll-off service level listed separately for multi-family and commercial and separately for each type of discarded material.
3. List of all commercial and multi-family customers with a separate refuse waste container or mixed waste container service level of two (2) cubic yards of service capacity per week or more. Such list shall include each such customer's service address, service levels, and each individual waste stream collected from the customer.
4. The total number of de minimis waivers, and physical space constraint waivers submitted to the city for approval in the month, including the generator name and address for each waiver.
5. The number of waiver reverifications performed by the franchisee in the month, if any, including a copy of documentation for each reverification inspection, which shall include, at a minimum: the generator's name, address, and generator type; the type of waiver being verified; any photographic or other evidence collected during the inspection; and the resulting recommended conclusion by the franchisee regarding the validity of the waiver. The franchisee shall provide a summary of recommendations to the city of all waivers which the franchisee concludes to no longer be warranted.
6. Number of collection events by customer type.

C. Contamination Monitoring Report.

**Option 1: Hauler Route Reviews (section 5.10.1)**

The franchisee shall submit the following information regarding contamination monitoring hauler route reviews conducted pursuant to section 5.10.1 of this agreement:

1. The number of hauler route reviews conducted pursuant to section 5.10.1 of this agreement.
2. Description of the franchisee's process for determining the level of contamination.
3. Summary report of non-collection notices and/or contamination processing fee assessment notices issued, which for each notice shall include the date of issuance, customer name, and service address.

4. A record of each inspection and contamination incident, which shall include, at a minimum:
  - a. Name of the customer
  - b. Address of the customer
  - c. The date the contaminated container was observed
  - d. The staff who conducted the inspection
  - e. The total number of violations found, and a description of what action was taken for each
  - f. Copies of all notices, and enforcement orders issued or taken against generator with prohibited container contaminants
  - g. Any photographic documentation or supporting evidence.
5. Documentation of the total number of containers disposed of due to observation of prohibited container contaminants.
6. A list of all customers assessed contamination processing fees reported separately by multi-family and commercial premises customers and including the customer's name, customer address, and reason for the assessment of the contamination processing fee, and the total number of instances contamination processing fees were assessed in the month and the total amount of fees collected in the month.
7. Any other information reasonably requested by the city or specified in contamination monitoring provisions of this agreement.

**Option 2: Waste Composition Studies (section 5.10.2)**

The franchisee shall submit the following information regarding waste composition studies conducted pursuant to section 5.10.2 of this agreement:

1. A description of the franchisee's process for conducting waste evaluations.
2. Documentation of the results of the waste evaluation studies and the number of resulting targeted hauler route reviews. The documentation shall at a minimum include: dates of the studies; the location of the facility where the study was performed; hauler routes from which samples were collected, and number of generators on those hauler routes; the source sector (customer type) of the material (multi-family or commercial); number of samples collected; total sample size (in pounds); weight of prohibited container contaminants (in pounds); ratio of prohibited container contaminants to total sample size; and, any photographic documentation taken or other physical evidence gathered during the process.
3. Copies of all notices, and enforcement actions issued or taken against generators that have prohibited container contaminants.

4. Documentation of the number of loads or containers disposed of due to observation of prohibited container contaminants, including the total weight of material disposed, and proof of consent from the city to dispose of such material if given in a form other than this agreement.
  5. Any other information reasonably requested by the city or specified in contamination monitoring provisions of this agreement.
- D. Customer Service Report. Franchisee shall maintain a record of all SB 1383 non-compliance complaints and responses pursuant to the requirements of this agreement and submit the following information:
1. Total number of complaints received, and total number of complaints investigated.
  2. Copies of documentation recorded for each complaint received, which shall at a minimum include the following information:
    - a. The complaint as received.
    - b. The name and contact information of the complainant if the complaint is not submitted anonymously.
    - c. The identity of the alleged violator, if known.
    - d. A description of the alleged violation; including location(s) and all other relevant facts known to the complainant.
    - e. Any relevant photographic or documentary evidence submitted to support the allegations in the complaint.
    - f. The identity of any witnesses, if known.
  3. Copies of all complaint reports submitted to the city, pursuant to the requirements of this agreement.
  4. Copies of all investigation reports submitted to the city pursuant to the requirements of this agreement, which shall include at a minimum:
    - a. The complaint as received.
    - b. The date the franchisee investigated the complaint.
    - c. Documentation of the findings of the investigation.
    - d. Any photographic or other evidence collected during the investigation.
    - e. Franchisee's recommendation to the city on whether or not the entity investigated is in violation of SB 1383 based on the franchisee's investigation.
- E. Generator Waivers. Franchisee shall be required to provide a report that documents each generator waiver request reviewed by franchisee. Identify in the report the generator name and service address,



the type of waiver requested, the status of the waiver (accepted, denied, pending), and other information reasonably requested by the city.

- F. Education Program Report. The monthly status of activities identified in section 5.3 and the franchisee's implementation plan in Exhibit C.
- G. Discarded Materials Evaluation Reports. Franchisee shall provide reports of evaluations of discarded materials conducted at approved facilities.

## 17.6 Annual Reports

In addition to the monthly reporting requirements in section 17.5, the annual report shall include at a minimum, all data and information described under this agreement. By January 31st of each year, collection services are provided pursuant to this agreement, franchisee shall submit to city a written year-end annual report, in a form approved by the city (hereinafter, "annual report"). City may, from time to time during the term, review, and request changes to franchisee's report formats and content and franchisee shall not unreasonably deny such requests.

Franchisee shall submit all reports to the city electronically via e-mail using software acceptable to the city. The city reserves the right to require the franchisee to maintain records and submit the reports required herein through use of a city-selected web-based software platform, at the franchisee's expense.

City reserves the right to require franchisee to provide additional reports or documents as city reasonably determines to be required for the administration of this agreement or compliance with applicable law. The annual report shall include the following information for the previous year.

### A. Collection and Subscription Report

1. A summary of all data provided in the tonnage report section, including monthly and annual totals and averages.
2. A summary of customer subscription data, including the number of accounts; the total number of generators enrolled with franchisee for service, listed separately by service level and container type (container, bin, and roll-off service), separately by multi-family and commercial premises customers, and separately for each type of discarded material.
3. A detailed list of multi-family and commercial premises customer information, including refuse container waste, mixed waste, source separated recyclable materials, source separated recyclables container waste, source separated organics container waste, and organic waste service levels, customer type, and customer service addresses reflecting customer service levels as of December 31<sup>st</sup> (for the year in which the report is submitted).
4. The number of C&D collection sites served, tonnage collected, tonnage diverted, and diversion level for each C&D collection site.

### B. Processing Facility Report

1. High diversion organic waste processing facility: In accordance with Exhibit A, copies of monthly and annual average mixed waste organic content recovery rates for each high diversion organic

waste processing facility used by the franchisee to demonstrate that the facility(ies) meets or exceeds the organic waste content recovery requirements specified in 14 CCR section 18984.3.

2. Temporary equipment or operations failure: If the franchisee is granted a processing facility temporary equipment or operational failure waiver the franchisee shall include the following documents and information:
  - a. The number of days the processing facility temporary equipment waiver or operation failure waiver was in effect;
  - b. Copies of any notifications sent to the city, and copies of city notices to franchisee pursuant to the requirements of this agreement;
  - c. Documentation setting forth the date of issuance of the waiver, the timeframe for the waiver; and,
  - d. A record of the tons of recyclable materials, organic waste, source separated recyclable container waste, source separated organics container waste, residual solid waste, and any other type of discarded material separately collected by franchisee redirected to an alternative facility or disposed at an approved disposal facility as a result of the waiver, recorded by collection vehicle or transfer vehicle number/load, date, and weight.
3. Quarantined organic waste: A record of all compliance agreements for quarantined organic waste that are disposed of, including the name of generator, date issued, location of final disposition, and the amount of quarantined organic waste that was required to be disposed at a landfill.
4. Compostable plastics in source separated organics containers: Written notification that the approved organic waste processing facility(ies) has and will continue to have the capabilities to process and recover the compostable plastics included with the source separated organics container waste transported to the approved organic waste processing facility.
5. Plastic bags in food waste or source separated organics containers: Written notification to the city that the approved organic waste processing facility has and will continue to have the capabilities to process and recover plastic bags when it recovers source separated organics container waste.

C. Public Education and Outreach Report

1. A copy of all education and outreach materials provided to generators, or otherwise used for education and outreach efforts in accordance with the requirements of this agreement, including, but not limited to flyers, brochures, newsletters, invoice messaging/billing inserts, and website and social media postings.
2. A record of the date and to whom the information was disseminated, or direct contact made, in the form of a list that includes: the generator's name or account name, the type of education or outreach received; the distribution date, and the method of distribution.

3. The number of organic waste generators and commercial edible food generators that received information and the type of education and outreach used.
4. For any mass distribution through mailings or bill inserts, the franchisee shall maintain a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
5. A copy of electronic media, including the dates posted of social media posts, e-mail communications, or other electronic messages.
6. Franchisee shall maintain a record of all technical assistance efforts conducted, including:
  - a. The name and address of the customer/generator receiving technical assistance, and account number, if applicable.
  - b. The date of any technical assistance conducted and the type of technical assistance, including, but not limited to site visits, waste assessments, compliance assessments, direct outreach, workshops, meetings, events, and follow-up communications.
  - c. A copy of any written or electronic educational materials distributed during the technical assistance process.

D. Compliance Monitoring and Enforcement Report

1. A summary of the total number of SB 1383 non-compliance complaints that were received and investigated, and the number of notices of violation issued based on investigation of those complaints.
2. The total number of hauler route reviews conducted pursuant to section 5.10.1 of the agreement.
3. The number of inspections conducted by type for commercial edible food generators, food recovery organizations, and commercial businesses.
4. A copy of written and/or electronic records and documentation for all audits, studies, compliance reviews, and all other inspections conducted pursuant to section 5.10 of the agreement.
5. The number of commercial businesses that were included in a compliance review performed by the franchisee, and the number of violations found and corrected through compliance reviews, if different from the number reported in subsection D.6 of this section 17.6, including a list with each generator's name or account name, address, and generator type.
6. The total number of notices of violation issues, categorized by type of generator.
7. The number of enforcement actions that were resolved, categorized by type of generator.
8. Copies of all written notices, violations, educational materials, or other enforcement mechanisms issued to noncompliant generators.

## E. Food Recovery Program Support

1. The total number of generators classified as tier one and tier two commercial edible food generators located within the city.
2. The number of generators participating in the edible food recovery program, as described in section 5.5 of the agreement.

## F. Vehicle and Equipment Inventory

1. If applicable, the name, physical location, and contact information of each entity, operation, or facility from whom the CDRNG was procured.
2. If applicable, the total amount of CDRNG procured by the franchisee for use in franchisee vehicles, in diesel gallon equivalents (DGE), including copies of any receipts, invoices, or other similar documentation evidencing procurement. In addition to the amount procured, franchisee shall include the total amount actually used in franchisee vehicles in the calendar year, if these values are different.
3. Franchisee shall maintain records of the amount of CDRNG purchased and shall report this information to the city annually. Franchisee agrees to allow the city the right to report this RNG usage toward the city's fulfillment of its annual recovered organic waste product procurement target in accordance with 14 CCR section 18993.1.

## G. Customer Revenue and City Fee Payment Report

1. Provide a statement detailing gross revenue from all operations conducted or permitted pursuant to this agreement and report of all city fees paid in accordance with this agreement.

## H. Additional Reports

1. Upon Incident Reporting. City reserves the right to request additional reports or documents in the case of unforeseen events or additional requirements imposed upon the city. The franchisee shall provide the requested reports, documents, or information within ten (10) business days upon receipt of the request or within a timeframe determined by the city, which shall not to exceed ten (10) days.
2. CALGreen Code Compliance. Franchisee shall maintain records of any information or documentation required to demonstrate compliance with the California Green Building Standards Code (CALGreen Code). City may request that this information be included in the monthly or annual report(s), as it pertains to the services provided under this agreement. City shall notify the franchisee of this request within ten (10) business days prior to the submittal deadline of the monthly and/annual report where the information is to be included.
3. Facility Capacity Planning Information. City may require franchisee to provide city with information of available organic waste processing capacity for any approved processing facilities, where available capacity may include identification of monthly tons of additional organic waste such approved facilities have the ability to receive within permitted limits. Franchisee shall respond to city within sixty (60) days of city's request for information regarding

available new or expanded capacity, and, at city's option, may be required to submit reports on a more regular basis (such as monthly and/or annually). If franchisee uses a subcontractor to perform some or all of the facility-related services required by this agreement, franchisee shall secure any city-requested facility capacity planning information from its subcontractor(s). The annual facility capacity planning report shall comply with the following:

- a. Include reports of current and permitted capacity and available capacity for source separated recyclable container waste and source separated organics container waste processing for any facility in the Jurisdiction that processes source separated recyclable container waste and/or source separated organics container waste. Existing capacity may include identification of monthly tons of additional source separated recyclable materials, source separated organics container waste, source separated recyclable container waste, and/or mixed waste capacity such facility has the ability to receive within permitted limits.
- b. Include description of potential new or expanded processing capacity at those facilities, operations, and activities for processing of source separated organics container and/or organic waste, including information about throughput and permitted capacity necessary for planning purposes.
- c. Be submitted using a form or format approved by the city.
  - i. Customized Reports. City reserves the right to request franchisee to prepare and provide customized reports from records franchisee is required to maintain.

### **17.7 Reporting Adverse Information**

Franchisee shall provide city with a copy of all reports, pleadings, applications, notifications, notices of violation, communications or other material relating specifically to franchisee's performance of services pursuant to this agreement, submitted by franchisee to, or received by franchisee from, the United States or California Environmental Protection Agency, the California Integrated Waste Management Board now CalRecycle, the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court. Copies shall be submitted to city simultaneously with franchisee's filing or submission of such matters with said agencies. Franchisee's routine correspondence to said agencies need not be routinely submitted to city but shall be made available to city promptly (no later than two (2) business days) upon city's written request.

### **17.8 Costs**

All reports and records required under this agreement shall be furnished at the sole expense of franchisee.

### **17.9 Submission of Reports**

Reports shall be submitted to:

Director of Public Works  
City of Bell Gardens

7100 South Garfield Ave.  
Bell Gardens, California 90201

Franchisee shall submit all reports and information required by this agreement on computer discs, or by electronic mail, in a format compatible with city's computers, at no additional charge, if requested by city. The reports and information shall be submitted to city within two (2) business days of its request for same.

### **17.10 Performance Review Meeting**

City may hold a meeting or a public hearing annually to review franchisee's solid waste collection efforts, source reduction, processing and other diversion services and overall performance under this agreement (the "Solid Waste Services and Performance Review Meeting"). The purpose of the solid waste services and performance review meeting is to provide for a discussion and review of technological, economic, and regulatory changes in collection, source reduction, recycling, processing and disposal to achieve a continuing, advanced solid waste collection, source reduction and recycling and disposal system; and to ensure services are being provided by franchisee with adequate quality, effectiveness and economy, and in full compliance with the terms of this agreement. Topics for discussion and review at the solid waste services and performance review meeting shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, customer complaints, amendments to this agreement, developments in the law, new initiatives for meeting or exceeding AB 939 and SB 1383 goals, regulatory constraints, results of route audits, and franchisee performance. City and franchisee may each select additional topics for discussion at any solid waste services and performance review meeting.

City shall notify franchisee of its intent to hold a solid waste services and performance review meeting at least sixty (60) days in advance thereof. Thirty (30) days after receiving notice from city of a solid waste services and performance review meeting, franchisee shall submit a report to city which may contain such information as it wished to have considered, and shall contain the following:

- A. Current Diversion rates and a report on franchisee's outreach activities for the past year.
- B. Recommended changes and/or new services to improve city's ability to meet waste diversion goals and to contain costs. A specific plan for compliance with state diversion goals shall be included.
- C. Any specific plans for provision of new or changed services by franchisee.

The reports required by this agreement regarding customer complaints shall be used as one basis for review of franchisee's performance, and franchisee may submit other relevant performance information and reports for consideration at the solid waste services and performance review meeting. In addition to the above, city may request franchisee to submit any other specific information relating to its performance for consideration at the solid waste services and performance review meeting, and any customer may submit comments or complaints during or before the meeting, either orally or in writing. Franchisee shall be present at and participate in the solid waste services and performance review meeting.

As a result of its findings following any solid waste services and performance review meeting, city may require franchisee to provide expanded or new services within a reasonable time and city may direct or take corrective actions for any performance inadequacies (although nothing contained in this provision should be construed as requiring city to hold a solid waste services and performance review meeting in order to enforce any rights or remedies it has pursuant to the terms hereof.)

### **17.11 City's Right to Request Information**

Franchisee shall provide additional information reasonably and directly pertaining to this agreement on an "as-needed" basis.

### **17.12 Certification**

All reports required by this agreement must be signed under penalty of perjury, by a responsible company official, legally authorized to act on behalf of the franchisee that the report(s) is true and correct,

### **17.13 Record Keeping**

Franchisee shall maintain customer contact data, customer service, accounting, statistical, operational, programmatic, and other records, and associated documentation, related to its performance as shall be necessary to provide detailed and accurate reports under this agreement, and to demonstrate compliance with this agreement and applicable law. Unless otherwise required in this section, franchisee shall retain all records and data required to be maintained by this agreement for the term of this agreement plus five (5) years after its expiration or earlier termination. Records and data shall be in chronological and organized form that is readily and easily interpreted to facilitate the flexible use of data to structure reports. Franchisee's records shall be stored in one central location, physical or electronic, that can be readily accessed by franchisee. Upon request, any such records shall be retrieved in a timely manner, not to exceed five (5) business days of a request by the city, and made available to the city; including any record or documentation that city, in their sole discretion, may deem necessary, for the city to fulfill obligations under applicable law including, but not limited to, AB 939, AB 341, AB 876, AB 901, SB 1383, and other current or future federal, state, or local regulations, as amended.

Franchisee shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an earthquake. Electronically maintained data and records shall be protected and backed-up. The city reserves the right to require the franchisee to maintain the records required herein using a city-selected web-based software platform, at franchisee's expense. To the extent that franchisee utilizes its computer systems to comply with record keeping and reporting requirements under this agreement, franchisee shall, on a monthly basis, save all system-generated reports supporting those record keeping and reporting requirements in a static format in order to provide an audit trail for all data required by city, as requested, under this agreement.

At a mutually agreed upon time during normal business hours, but within five (5) business days of a written request, franchisee shall provide to the city the franchisee's data and records with respect to the matters covered by this agreement and applicable law. Franchisee shall permit the city, or its designee, to audit, examine, and make excerpts or transcripts from such data and records, and make copies of all data relating to all matters covered by this agreement and the applicable law. Franchisee shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years following the city's receipt of final payment under this agreement unless the city agrees in writing to an earlier disposition. Franchisee agrees that all data regarding business operations, customer lists, routing, tonnage, service levels, work orders issued from dispatch, customer service logs and account notes, and work force and bargaining agreements, do not constitute Proprietary Information or Trade Secrets and shall be made available to the city or their designee upon request and within the timelines required by this section 17.13. City is subject to the California Public Records Act (Government Code section 6250, *et*.

*seq.*) and nothing in this agreement is intended to impair city's requirements or obligations under that Act.

City views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, city regards its ability to prove where collected discarded materials are taken for transfer, processing, or disposal. Franchisee shall maintain records which can establish where recyclable materials, organic waste, and solid waste collected were transferred, processed, or disposed. This provision shall survive the expiration or earlier termination of this agreement. Franchisee shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the agreement. Franchisee shall provide these records to city (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.



## SECTION 18 INDEMNIFICATION

### 18.1 General

Franchisee shall indemnify, defend with counsel acceptable to city, and hold harmless (to the full extent permitted by law) city and its officers, officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation, including attorneys' and expert witness fees) (collectively, "damages") of every nature arising out of or in connection with franchisee's performance, and the performance of any subcontractor, or agent of franchisee, under this agreement, or its failure to comply with any of its obligations contained in the Agreement, except to the extent such loss or damage was caused by the negligence or willful misconduct of city. This section 18 shall survive the expiration or termination of this agreement and shall not be construed as a waiver of city's legal and/or equitable rights as defined herein and permitted under applicable law.

### 18.2 Hazardous Substances Indemnification

- A. Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, franchisee specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to city), reimburse, indemnify, and hold Indemnitees harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of franchisee that:
1. Results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnitee is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any hazardous contaminant (as defined herein); or
    - a. Relates to material collected, transported, recycled, processed, treated or disposed of by franchisee.
- B. Franchisee's obligations pursuant to this section shall apply, without limitation, to:
1. Any Claims brought pursuant to or based on the provisions of any environmental law;
  2. Any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation of franchisee of any facility;
  3. Any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, disposal, Processing or use of any materials recovered by franchisee;

4. Any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this agreement.
- C. The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of franchisee or any affiliate of franchisee.
- D. For purposes of this section 18.2, the term "hazardous contaminant" shall mean any hazardous substance any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "hazardous contaminant" shall also include any and all amendments to any referenced statutory or regulatory provisions made before or after the date of execution of this agreement.
- E. THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

### **18.3 CERCLA Defense Records**

Franchisee shall maintain data retention and preservation systems which can establish where solid waste collected in the city was landfilled (and therefore establish where it was not landfilled), along with a copy or summary of the reports for fifty (50) years after the expiration of the term of this agreement. Franchisee agrees to notify city's risk manager and city attorney before destroying such records. This provision shall survive the expiration of the period during which collection services are to be provided under this agreement.

### **18.4 CalRecycle Indemnification and Guarantee**

Franchisee's duty to defend and indemnify herein includes payment of all fines and/or penalties, or a portion thereof as determined by the city as it relates to franchisee's actions, imposed by CalRecycle, subject to the restrictions set forth in Public Resources Code section 40059.1, if the requirements of AB 939, AB 341, and/or SB 1383 and corresponding regulations are not met by the franchisee with respect to the discarded materials collected under this agreement, and such failure is: (i) due to the failure of franchisee to meet its obligations under this agreement, or, (ii) due to franchisee delays in providing information that prevents franchisee or city from submitting reports required by AB 939, AB 341, and/or SB 1383 and corresponding regulations in a timely manner. The provisions of this section 18.4 shall survive the termination or expiration of this agreement. In carrying out the provisions of this section 18.4, franchisee agrees to perform the following obligations at its cost and expense:

- A. Defend, with counsel approved by city, indemnify and hold harmless the city against all fines and/or penalties imposed by CalRecycle, if franchisee fails or refuses to provide information relating to its operations which is required under this agreement and such failure or refusal prevents or delays city from submitting reports required by AB 939, AB 341, and/or SB 1383 in a timely manner;
- B. Assist city in preparing for, and participating in, CalRecycle's biannual review of the city's source reduction and Recycling element pursuant to Public Resources Code section 41825;

- C. Assist city in responding to inquiries from CalRecycle in applying for an extension under Public Resources Code section 41820, if so directed by city; in conducting any hearing conducted by CalRecycle relating to AB 939; or in any other investigative or enforcement manner undertaken by any agency;
- D. Defend, with counsel acceptable to city, and indemnify and hold harmless the city against any fines or penalties levied against it for violation of AB 939, AB 341, and/or SB 1383 requirements, provided that franchisee's obligation to indemnify city shall be subject to the limitations set forth in Public Resources Code section 40059.1(c) as may be amended from time to time;
- E. In cooperating with the city, should it seek to become its own enforcement agency, to the extent it may be permitted under state law.

### **18.5 Excluded Waste**

Franchisee acknowledges that it is responsible for compliance during the entire term of this agreement with all applicable laws. Franchisee shall not store, transport, use, or dispose of any excluded waste except in strict compliance with all applicable laws.

If franchisee negligently or willfully mishandles excluded waste while carrying out its activities under this agreement, franchisee shall at its sole expense promptly take all investigatory and/or remedial action reasonably required for the remediation of such environmental contamination. Prior to undertaking any investigatory or remedial action, however, franchisee shall first obtain city's approval of any proposed investigatory or remedial action. Should franchisee fail at any time to promptly take such action, city may undertake such action at franchisee's sole cost and expense, and franchisee shall reimburse the city for all such expenses within thirty (30) calendar days of being billed for those expenses, and any amount not paid within that thirty (30) calendar day period shall thereafter be deemed delinquent and subject to the delinquent fee payment provision. These obligations are in addition to any defense and indemnity obligations that franchisee may have under this agreement.

Notwithstanding the foregoing, franchisee's duties under this subsection shall not extend to any claims arising from the disposal of solid waste at a disposal facility, including, but not limited to, claims arising under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) unless such claim is a direct result of franchisee's negligence or willful misconduct.

### **18.6 Environmental Indemnity.**

Franchisee shall defend with counsel acceptable to city, indemnify, and hold city harmless against and from any and all claims, suits, losses, penalties, damages, and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, attributable to the negligence or willful misconduct of franchisee in handling excluded waste.

### **18.7 Electronic and Web based Information Indemnity.**

Franchisee shall defend with counsel acceptable to city, indemnify, and hold city harmless against and from any and all related claims, including but not limited to, suits, losses, penalties, damages, responsibility for costs, regulatory fines, penalties, credit monitoring expenses, and liability for damages

of every name, kind and description, including attorneys' fees and costs incurred, attributable to the negligence or willful misconduct of franchisee and any subcontractors used in performance of this agreement in handling or protecting customer information over which franchisee has control, including but not limited to billing details, electronic payment(s), and customer account information that is not readily available to the general public. Franchisee shall maintain electronic files and franchisee's website in accordance with the industry best practices for maintaining such information as safely and securely as possible. Nothing in this section 18.7 shall prevent or restrict franchisee's obligation and responsibility to provide city with information required under this agreement.

## SECTION 19. INSURANCE

During the term of this agreement, franchisee shall, at its sole cost and expense, carry, maintain, and keep in full force and effect insurance of the types and in the minimum, amounts as set forth below:

- A. **General Liability Insurance.** Franchisee shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability, and a \$2,000,000 completed operations aggregate.
- B. **Automobile Liability.** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than \$5,000,000 per accident for bodily injury and property damage and to be endorsed to include pollution liability (written on form CA9948 or its exact equivalent). If such endorsement is not available, then a stand-alone Transportation Pollution Liability policy is required.
- C. **Workers' Compensation.** Insurance as required by the state of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
- D. **Additional Insured Requirements.** The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the city and city's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- E. If the franchisee maintains higher limits than the minimum limits shown above, the city requires and shall be entitled to coverage for the higher limits maintained by the franchisee.
- F. **Required Carrier Rating.** All varieties of insurance required under this agreement shall be procured from insurers admitted in the state of California and authorized to issue policies directly to California insureds. All required insurance shall be procured from insurers who, according to the latest edition of the Best's Insurance Guide, have an A.M. Best's rating of no less than A: VII. City may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition of the Standard & Poor's rating guide.
- G. **Primacy of Franchisee's Insurance.** All policies of insurance provided by franchisee shall be primary to any coverage available to city or city's elected or appointed officials, officers, employees, agents, or volunteers. Any insurance or self-insurance maintained by city or city's elected or appointed officials, officers, employees, agents, or volunteers shall be more than franchisee's insurance and shall not contribute to it.
- H. **Waiver of Subrogation.** All insurance coverage provided pursuant to this agreement shall not prohibit franchisee or franchisee's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. Franchisee hereby waives all rights of subrogation against city and agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies whether or not the city has received a waiver of subrogation endorsement from the insurer.

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Commercial Solid Waste Non-Exclusive Franchise Agreement

- I. Verification of Coverage. Franchisee acknowledges, understands, and agrees that city's ability to verify the procurement and maintenance of the insurance required is critical to safeguarding city's financial well-being and, indirectly, the collective well-being of the residents of the city. Accordingly, franchisee warrants, represents, and agrees to furnish the city with certificates of insurance and endorsements evidencing the coverage required on forms satisfactory to city in its sole and absolute discretion. The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates of insurance and endorsements shall be received and approved by city as a condition precedent to franchisee's commencement of any work. Upon city's written request, franchisee shall also provide city with certified copies of all required insurance policies and endorsements.
- J. Notice of Cancellation.
  1. All insurance policies shall provide that the insurance coverage shall not be cancelled or modified by the insurance carrier without thirty (30) days prior written notice to franchisee, or ten (10) days' notice if cancellation is due to nonpayment of premium. Additionally, franchisee shall provide immediate notice to the city if franchisee receives a cancellation or policy revision notice from the insurer.
  2. Franchisee agrees that it will not cancel or reduce any required insurance coverage. Franchisee agrees that if it does not keep the aforesaid insurance in full force and effect, city may either immediately terminate this agreement or, if insurance is available at a reasonable cost, city may take out the necessary insurance and pay, at franchisee's expense, the premium thereon.
- K. Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

## SECTION 20. PERFORMANCE BOND

### 20.1 General

Upon execution of this agreement, franchisee shall provide the city with a surety in the amount of \$10,000 or another amount as approved by city council. The surety shall be in the form of a Performance Bond, letter of credit, or performance bond at the franchisee's option and shall be referred to as the "performance bond." The Performance Bond must be provided through a financial institution, and on terms, satisfactory to the city, and shall serve as security for the faithful performance by franchisee of all the provisions and obligations of this agreement.

### 20.2 No Substitution

The Performance Bond may not allow the bond surety to substitute another person to perform franchise services. The Performance Bond must provide for payment of moneys to the city upon franchisee's failure to pay the city an amount owing under this agreement. The Performance Bond may be assessed by the city for purposes enumerated under this agreement, including, but not limited to:

- A. Franchise fees.
- B. Reimbursement of costs borne by the city to correct violations of the agreement not corrected by franchisee, after city provides notice in accordance with section 20.4, below.
- C. Reimbursement of costs borne by the city arising out of the enforcement of any provision of this agreement.
- D. Liquidated damages, late penalty payments established under this agreement, and fines or penalties imposed by the California Integrated Waste Management Board now CalRecycle in the event the diversion, source reduction and recycling goals of AB 939, SB 1383, or amendments thereto are not met by city with respect to the waste stream covered by this agreement, or franchisee's delays in providing information prevents city from submitting reports required by AB 939 and SB 1383 in a timely manner.
- E. To provide monetary remedies or to satisfy damages assessed against franchisee due to a material breach of this agreement.

### 20.3 Replacement

Franchisee shall deposit a sum of money or a replacement instrument sufficient to restore the Performance Bond to the original amount within thirty (30) days after notice from the city that any amount has been withdrawn from the Performance Bond. Franchisee shall be relieved of the foregoing requirement to replenish the Performance Bond during the pendency of an appeal from the city's decision to draw on the performance bond.

## **20.4 City Reimbursement**

In the event city draws on the Performance Bond, all of city's costs of collection and enforcement of the provisions relating to the Performance Bond called for by this section, including reasonable attorneys' fees and costs, shall be paid by franchisee.

## **20.5 Appeals**

Any decision or order of city under this section 20 may be appealed by franchisee to the city council as provided by section 22, below.



## **SECTION 21. EMERGENCY SERVICE**

Franchisee shall assist city in the event of a major disaster, such as an earthquake, storm, riot or civil disturbance (hereinafter, "Emergency"), by providing collection vehicles and drivers normally assigned to the city, at rates to be determined by resolution of the city council. In the event that an Emergency prevents the city council from establishing rates for emergency services, rates charged by franchisee shall be subject to the approval of the city council or their designee. The city reserves the right to contract with one or more solid waste haulers during an Emergency if the city manager determines that such services are warranted during such period.

## **SECTION 22. ADMINISTRATIVE REMEDIES; IMPOSITION OF DAMAGES; TERMINATION**

### **22.1 Monitoring of Agreement**

The city (or any independent consultant or agent acting on city's behalf) shall have the right and authority to monitor the provisions hereof and franchisee's performance hereunder to ensure that all of the terms and conditions are adhered to and that all reporting requirements and information are timely and accurately reported to city.

### **22.2 Termination**

All terms and provisions of this agreement are material and binding and failure of franchisee to fully-perform any term or provision hereof or to provide any of the services described herein shall be a breach of this agreement, which may lead to termination.

### **22.3 Notice; Response; Resolution; Appeal**

- A. Notice of Deficiencies: Response. If the city manager (or his or her designee, whichever is applicable) determines that franchisee has breached this agreement, the California Integrated Waste Management Act (including, but not limited to, requirements for diversion, source reduction and recycling as to the waste stream subject to this agreement) or any other applicable federal, state or local law or regulation, including but not limited to, the laws governing collection, transfer, storage or disposal of solid and hazardous waste, the city manager (or his or her designee, whichever is applicable) shall advise franchisee in writing of such suspected deficiencies, specifying the deficiency in reasonable detail and setting forth a reasonable time within which franchisee shall respond. Unless the circumstances necessitate correction and response within a shorter period of time or unless a shorter period of time is required by this agreement, franchisee shall respond to the written notification of deficiencies within twenty (20) days from the receipt by franchisee of such written notice. Franchisee may request additional time to correct deficiencies, but city may (in its sole discretion) refuse to grant such request.
- B. Review by City Manager: Notice of Appeal.
1. The city manager (or his or her designee, whichever is applicable) shall review any written response from franchisee and make a decision on the matter. If the city manager's decision is averse to franchisee, the city manager may order remedial actions to cure any deficiencies, assess the Bond or invoke any other remedy in accordance with this agreement, including termination. In addition, the city manager shall inform franchisee of the specific facts found and evidence relied on, and the legal basis in provisions of the agreement or other laws for the decision and any remedial action taken or ordered. The city manager shall promptly inform franchisee in writing of his decision. An adverse decision by the city shall be final and binding on franchisee unless franchisee files a "Notice of Appeal" with the city clerk within fifteen (15) days of receipt of the notification of the adverse decision.

2. In any "Notice of Appeal" franchisee shall state all its factual contentions and include any relevant evidence franchisee elects to submit. In addition, franchisee shall include all its legal contentions, citing provisions of the agreement or other laws to support its contentions.
- C. **City Council Hearing.** If a matter is appealed to the city council by franchisee, the city council will set the matter for an administrative hearing and act on the matter. The city clerk shall give franchisee a minimum of fourteen (14) days written notice of the time and place of the administrative hearing. At the hearing, the city council shall consider the administrative record. No new legal issues may be raised, or new evidence submitted by franchisee at this or at any further point in the proceedings, absent a showing of good cause. Franchisee's representatives and other interested persons shall have a reasonable opportunity to be heard.
  - D. **City Council Determination.** Based on the administrative record, the city council shall determine by resolution whether the decision or order of the city manager should be upheld. A tie vote of the city council shall be regarded as upholding the decision of the city manager. If, based upon the administrative record, the city council determines that the performance of franchisee is in breach of any term of this agreement or any provision of any applicable federal, state or local statute or regulation, the city council, in the exercise of its discretion, may order franchisee to take remedial actions to cure the breach or impose any other remedy, up to and including termination, in accordance with this agreement. The decision or order of the city council shall be final and binding.
  - E. **Continued Performance.** Franchisee's performance under the agreement is not excused during the period of time prior to a final determination as to whether or not franchisee performance is in breach of this agreement, or the time set by city for franchisee to discontinue a portion or all of its services pursuant to this agreement.

## **22.4 Cumulative Rights**

City's rights of termination are in addition to any other rights of city upon a failure of franchisee to perform its obligations under this agreement.

## **22.5 Continuation of Services**

In accordance with California Public Resources Code section 49523, termination of this agreement for any reason shall constitute a termination of any rights of franchisee for continuation of services under California Public Resources Code section 49520 through 49523.

## **22.6 Liquidated Damages.**

- A. **General.** City finds, and franchisee agrees, that as of the time of the execution of this agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by city as a result of a breach by franchisee of certain specific obligations under this agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the agreement to individual members of the general public for whose benefit this agreement exists, in subjective ways and in varying degrees of intensity which are incapable of

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

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties further acknowledge that consistent, reliable solid waste handling service is of utmost importance to city and that city has considered and relied on franchisee's representations as to its quality-of-service commitment in entering this agreement. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if franchisee fails to achieve the performance standards or fails to submit required documents in a timely manner, city and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which city will suffer. Therefore, without prejudice to city's right to treat such breaches as an event of default under this Section 22, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this agreement, including the relationship of the sums to the range of harm to city that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the agreement was made.

Franchisee

City

Initial Here



Initial Here



Franchisee agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

1. Failure to Submit Reports or Allow Access to Records

For each failure to submit any individual report or provide access to records in compliance with and in the timeframe specified in this agreement. Incomplete and/or inaccurate reports shall be considered a failure to submit until such time as all information in the report has been provided in a complete and accurate form. In the event city determines an errant or incomplete report more than ten (10) business days after submittal by franchisee, franchisee shall be given ten (10) business days to complete and correct and any pending liquidated damages shall be tolled during that period.

a. Monthly Reports: \$50 per day

b. Annual Reports: \$100 per day

2. Public Education and Outreach

a. Failure to Perform Public Education and Outreach. For each failure to perform any individual education and outreach activity as required and in the timeframe specified by

this Agreement.

- 1st violation - \$50 per occurrence
- 2nd violation - \$100 per occurrence
- 3rd and subsequent violations - \$250 per occurrence

### 3. Diversion Efforts

For each contract year in which franchisee fails to provide support to the city within thirty (30) days of year-end, documenting that it diverted at least 50% as required by Section 5.4 of this agreement: \$25 for each ton below tonnage level necessary to meet 50% diversion goal.

### 4. SB 1383 Requirements

a. Use of Unauthorized Facilities. For each individual occurrence of delivering discarded materials to a facility other than an approved facility(ies) for each discarded material type under this agreement.

- 1st violation - \$50 per ton per offence
- 2nd violation - \$100 per ton per offence
- 3rd and subsequent violations - \$250 per ton per offence

b. Failure to Implement three- /three-plus /two- /one-container System. For each occurrence of failing to provide customers with the three- /three-plus /two- /one-container system required by and compliant with Exhibit B excluding generators and customers granted waivers pursuant to this agreement.

Damages are per generator or customer per occurrence:

- \$500 - Minor violation
- \$4,000 – Moderate violation
- \$7,500 – Major violation

c. Failure of the approved high diversion organic waste processing facility to achieve recovery requirements. This liquidated damage only applies if the collection system utilized requires the mixed container waste to be processed. For each ton of mixed waste received at the facility in a monthly reporting period when the monthly average mixed waste organic content recovery rate is lower than required by 14 CCR section 18982(a)(33). Liquidated damages are assessed in the monthly reporting period when the failure occurred.

- 1st violation - \$50 per ton per offence
- 2nd violation - \$100 per ton per offence

- 3rd and subsequent violations - \$250 per ton per offence
- d. Failure of Approved Facility(ies) to Meet Limits on Incompatible Materials (if Applicable). For each ton of mixed waste, source separated recyclable materials source separated recyclable container waste, source separated organics container waste, or organic waste at the facility(ies) in a reporting period when organic waste recovered after processing exceeds incompatible material thresholds defined in Exhibit A if limits on organic waste in materials sent to disposal apply. Liquidated damages are assessed in the monthly reporting period when the failure occurred.
- 1st violation - \$50 per ton per offence
  - 2nd violation - \$100 per ton per offence
  - 3rd and subsequent violations - \$250 per ton per offence
- e. Failure of Approved Facility(ies) to Meet Limits on Organic Waste in Materials Sent to Disposal. For each ton of recyclable materials, organic waste, source separated recyclable container waste, source separated organics container waste, received at the facility(ies) in a reporting period when organic waste in the materials sent to disposal exceeds the thresholds defined in Exhibit A if limits on organic waste in materials sent to disposal apply. Liquidated damages are assessed in the reporting period when the failure occurred.
- 1st violation - \$50 per ton per offence
  - 2nd violation - \$100 per ton per offence
  - 3rd and subsequent violations - \$250 per ton per offence
- f. Failure to Perform Contamination Monitoring Requirements. For each failure to conduct contamination monitoring in accordance with the requirements of this agreement.
- 1st violation - \$50 per route per occurrence or per waste evaluation per occurrence
  - 2nd violation - \$100 per route per occurrence or per waste evaluation per occurrence
  - 3rd and subsequent violations - \$250 per route per occurrence or per waste evaluation per occurrence
- g. Failure to Comply with SB 1383 container requirements. For each occurrence of franchisee's failure to comply with SB 1383 container requirements pursuant to this agreement.
- 1st violation - \$50 per container occurrence
  - 2nd violation - \$100 per container occurrence

- 3rd and subsequent violations - \$250 per container occurrence
- h. Failure to Conduct Compliance Tasks. For each failure to conduct any compliance review, discarded materials evaluations pursuant to Exhibit A, and/or other inspection required by this Agreement.
  - 1st violation - \$50 per occurrence
  - 2nd violation - \$100 per occurrence
  - 3rd and subsequent violations - \$250 per occurrence
- i. Failure to Issue Contamination Notices. For each failure of franchisee collection personnel to issue contamination notices and contaminating processing fee notices and maintain documentation of issuance as required by this agreement.
  - 1st violation - \$50 per route per day
  - 2nd violation - \$100 per route per day
  - 3rd and subsequent violations - \$250 per route per day
- j. Failure to Conduct Follow-Up Inspections. For each failure to conduct a follow-up inspection as required by this agreement.
  - 1st violation - \$50 per occurrence
  - 2nd violation - \$100 per occurrence
  - 3rd and subsequent violations - \$250 per occurrence

5. General Contract Adherence

The city may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of customer complaints.

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

- C. Amount. The city may assess liquidated damages for each calendar day or event, as appropriate, that franchisee is determined to be liable in accordance with this agreement.
- D. Timing of Payment. Franchisee shall pay any liquidated damages assessed by city within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, city may proceed against

the performance bond required by the agreement or find franchisee in default and terminate this agreement.



## **SECTION 23. CITY'S ADDITIONAL REMEDIES**

In addition to the remedies set forth above, city shall have the following rights:

- A. The right to license others to perform the services otherwise to be performed by franchisee; and
- B. The right to obtain damages and/or injunctive relief.

Both parties recognize and agree that in the event of a breach under the terms of this agreement by franchisee, city may suffer irreparable injury and incalculable damages sufficient to support injunctive relief to enforce the provisions of this agreement and to enjoin the breach thereof.

## **SECTION 24. FRANCHISE TRANSFER; CITY CONSENT; FEES**

### **24.1 No Transfer**

Franchisee shall not transfer, sell, hypothecate, sublet or assign (collectively "transfer") the franchise, or any of the rights or privileges of the franchise either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any person, either by act of franchisee or by operation of law, without the prior written consent of city. Any attempt to do any of the foregoing with respect to any of the rights herein without the consent of city shall be grounds for immediate termination of this agreement. For purposes of this agreement, any dissolution, merger, consolidation, change in control or other reorganization of franchisee or transfer of any interest of stock shall be deemed a violation of this section 24.1. A change of corporate name only shall not be deemed to be a violation of this section 24.1.

### **24.2 City Reimbursement**

Any application for a franchise transfer shall be made in a manner prescribed by the city manager. The applicant for the transfer shall demonstrate to the city's satisfaction that it has the operational and financial ability to carry out the obligations of the agreement. Franchisee shall reimburse the city for all reasonable consultants', attorneys' and staff costs directly related to the city's consideration of the application for transfer whether or not the city approves the application for transfer of the franchise. City's request for reimbursement under this section 24.2 shall be supported with evidence of the expense or cost incurred. Franchisee shall reimburse city within thirty (30) days of receipt of city's request for reimbursement.

### **24.3 Conditions of Approval**

If the city approves the transfer, the city may impose reasonable conditions of approval.

### **24.4 Grant of Security Interest**

Notwithstanding the above, franchisee shall be entitled to pledge, encumber, or grant any security interest in the franchise provided that franchisee shall first notify and obtain city's consent to such transaction, subject to the following conditions:

- A. Any consent so granted by city shall not be deemed a consent to the exercise by such pledge, encumbrance, or secured party of any rights of the holder under the franchise, permit, license or other authorization unless so noted by the city.
- B. Any consent so granted by city shall not be deemed a consent to any subsequent transfer or assignment as referred to herein. Any such subsequent transfer or assignment shall be deemed an assignment of the franchise, permit, license or other authorization within the meaning of this section 24.4.
- C. The pledge, encumbrance, or secured party shall have executed and delivered to city an instrument in writing agreeing to be bound by the provisions of the franchise, permit, license or other authorization.

## **SECTION 25. COOPERATION IN PREPARATION FOR TERMINATION OR EXPIRATION OF CONTRACT**

Prior to, and at, the end of the term or in the event this agreement is terminated for cause prior to the end of the term, and if any individual customer notifies it intends to change service providers from franchisee to another company, franchisee shall cooperate fully with city and any subsequent solid waste enterprise it designates to assure a smooth transition of service. The failure to cooperate with city following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Franchisee shall provide a new service provider with all properly labeled keys, security codes and remote controls used to access garages and enclosures. Franchisee shall be responsible for coordinating transfer, including removing franchisee's containers, immediately after franchisee's final pickups, so as not to disrupt service. Franchisee shall provide means of access to the new service provider at least one (1) full business day prior to the first day of collection by another party, and always within sufficient time so as not to impede in any way the new service provider from easily servicing all containers.

## SECTION 26. GENERAL PROVISIONS

### 26.1 Force Majeure

Franchisee shall not be in default of this agreement in the event that the collection, transportation and/or disposal services of franchisee are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting the city; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; pandemics, strikes, lockouts and other labor disturbances; or other catastrophic events which are beyond the reasonable control of franchisee. "Other catastrophic events" does not include the financial inability of franchisee to perform or failure of franchisee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public entity where such failure occurs where franchisee has failed to exercise reasonable diligence. In the event a labor disturbance interrupts the collection, transportation and/or disposal of solid waste by franchisee, as required under this agreement, city may elect to exercise its rights under this agreement. City may allow other haulers to service and bill franchisee's customers in the event the franchisee cannot provide service.

### 26.2 Computer Hardware and Software

All reports and other information required to be maintained pursuant to this agreement shall be maintained in a computer data base.

### 26.3 Independent Status

Franchisee is an independent entity and not an officer, agent, servant or employee of city. Franchisee is solely responsible for the acts and omissions of its officers, agents, employees, franchisees and subcontractors. Nothing in this agreement shall be construed as creating a partnership or joint venture between city and franchisee, nor an arrangement for the disposal of hazardous substances. Neither franchisee nor its officers, agents, employees, franchisees and subcontractors shall obtain any rights to retirement or other benefits that accrue to city employees.

### 26.4 Pavement Damage

Normal wear and tear on city streets resulting from general vehicular traffic excepted, franchisee shall be responsible for damage to city's driving surfaces, whether or not paved, resulting from the operation of franchisee's vehicles providing solid waste collection services within the city. Franchisee understands that the exercise of this franchise may involve operation of its collection vehicles over private roads and streets. Disputes between franchisee and its service recipients as to damage to private pavement are civil matters and therefore, complaints of damage to same shall be referred to franchisee as a matter within its sole responsibility.

### 26.5 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of franchisee (its officers, agents, employees, franchisees and subcontractors) to public or private property shall be repaired or replaced by franchisee at franchisee's sole expense.

### 26.6 Law to Govern; Venue

This agreement shall be governed by the laws of the state of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the county of Los Angeles. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Central District of California.

### 26.7 Fees and Gratuities

Franchisee shall not, nor shall it permit any officer, agent or employee to, request, solicit, demand or accept, either directly or indirectly, any compensation or gratuity for the collection of solid waste required to be collected under this agreement.

### 26.8 Changes in the Law

This agreement is part of city's efforts to comply with the provisions of the California Integrated Waste Management Act of 1989, ("AB 939") and California's Short-Lived Climate Pollutant Reduction Strategy ("SB 1383") as they from time to time may be amended and as implemented by the regulations of the California Integrated Waste Management Board now CalRecycle ("Regulations"), as they from time to time may be amended, and the city's SSRE, as it may be amended from time to time. In the event that AB 939, SB 1383 or other state or federal laws or regulations enacted or amended after this agreement has been executed, prevent or preclude compliance with one or more provisions of this agreement, or significantly increase franchisee's costs, such provisions of this agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations, and franchisee may seek a rate increase to offset the costs directly attributable to the amended or newly enacted provision of law or regulations.

### 26.9 Amendments

Amendments must be in writing, duly executed by the parties hereto.

### 26.10 Notices

All notices required or permitted to be given under this agreement shall be in writing and shall be personally delivered or sent by telecopy or United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To City:	City Manager City of Bell Gardens 7100 South Garfield Ave. Bell Gardens, California 90201 Fax Number (562) 806-7709
To Franchisee:	<u>USA Waste of California, Inc. dba Waste Management</u> <u>407 E El Segundo Blvd</u> <u>Compton, CA 90222</u> <u>        </u> Fax: <u>                                  </u>

Or to such other address as either party may from time to time designate by notice to the other given in accordance with this section 26.10. Notice shall be deemed effective on the date personally served or if mailed, three (3) business days from the date such notice is deposited in the United States mail.

**26.11 Savings Clause and Entirety**

If any non-material provision of this agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this agreement.

**26.12 Political Contributions**

Pursuant to the city municipal code and or other applicable legislation, franchisee is forbidden to make any contribution to a candidate or committee of a candidate for a municipal office of the city until completion of services to be performed under this agreement.

**26.13 Use of City Name**

Franchisee shall not use the words "BELL GARDENS" or "city" or like words in its corporate names, style of business, or on its equipment, nor shall franchisee utilize the stated words in any publication, promotion, program, etc., without the prior expressed written consent of the city.

**WITNESS the execution of this Agreement on the day and year written above.**

CITY OF BELL GARDENS

By: \_\_\_\_\_  
Mayor



ATTEST:

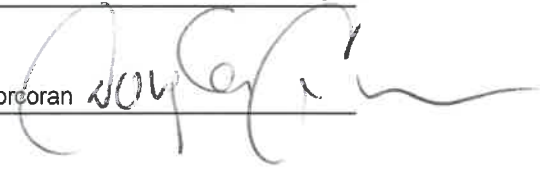
  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Franchisee: USA Waste of California, Inc. dba Waste Management

By: Douglas Corcoran



Title: Vice President

Or to such other address as either party may from time to time designate by notice to the other given in accordance with this section 26.10. Notice shall be deemed effective on the date personally served or if mailed, three (3) business days from the date such notice is deposited in the United States mail.

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**WITNESS the execution of this Agreement on the day and year written above.**


CITY OF BELL GARDENS

By: \_\_\_\_\_  
Mayor


ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

 on behalf of \_\_\_\_\_  
City Attorney

Franchisee: USA Waste of California, Inc. dba Waste Management

By: Douglas Corcoran 

Title: Vice President





**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Los Angeles )  
On Dec 30, 2021 before me, Katy P. Wheeler / Notary,  
Date Here Insert Name and Title of the Officer  
personally appeared Douglas Corcoran  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Katy P. Wheeler  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Amended + Restated Commercial Solid Waste  
Document Date: \_\_\_\_\_ Number of Pages: 80  
Signer(s) Other Than Named Above: None

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Douglas Corcoran  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_

Signer Is Representing: USA Waste of California Inc. dba WasteMgmt

Signer Is Representing: \_\_\_\_\_

100. The number of...

ACKNOWLEDGMENT

STATE OF

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared, personally known to me or proved to be the person who executed the within instrument entitled AGREEMENT BETWEEN THE CITY OF BELL GARDENS AND FOR COLLECTION OF SOLID WASTE, on behalf of \_\_\_\_\_, [a California corporation], and acknowledged to me that such execution was pursuant to its bylaws or resolution of its board of directors.

DATE:

CORPORATE SEAL

*See Attached  
Notary Acknowledgment  
for correct Notary  
Wardis & Seal  
Peter D. White  
Notary*

# **EXHIBIT A: PROCESSING, TRANSFER, AND DISPOSAL SERVICES AND FACILITY STANDARDS**

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Franchisee has selected and arranged for discarded materials to be transported to approved facilities for transfer, source separated recyclable materials Processing, organic waste processing, high diversion organic waste processing, C&D processing, and disposal. The approved facilities shall comply with the standards specified in this Exhibit A. If the franchisee does not own or operate one or more of the approved facilities, franchisee shall enter into a subcontract agreement with the owner or facility operator of such approved facility(ies) and the requirements of the agreement, and this Exhibit A shall pertain to the subcontractor(s).

Note that franchisee, by definition in section 3 of the agreement, includes affiliates, DBAs, and subcontractors. As a result, requirements of this Exhibit A shall pertain to affiliate(s) and subcontractors providing facility-related services.

## **A.1 General Requirements**

A. Overview. Franchisee agrees to transport and deliver discarded materials it collects in the city to the appropriate approved facility(ies) for transfer, processing, or disposal, as applicable for each type of discarded material. The approved facilities, which were selected by franchisee and reviewed and approved by the city, are listed in the table on the following page and in the definitions of this agreement. Franchisee will perform all transfer, processing, and disposal services at approved facilities in accordance with applicable law, standard industry practice, and specifications and other requirements of this agreement.

# EXHIBIT A: PROCESSING, TRANSFER, AND DISPOSAL SERVICES AND FACILITY STANDARDS

## Approved Facilities

Material Type	Approved Transfer Facility (if applicable)	Approved Facility (Processing or Disposal Facility)	Description of Processing Methodology (Material recovery Facility, Composting Facility, anaerobic digestion, etc.)
Source Separated Recyclable Materials	Azusa Transfer and MRF, Azusa Land Reclamation, Inc. , 1501 W Gladstone St, Azusa, CA 91701	Approved Source Separated Recyclable Materials Processing Facility: Azusa Transfer and MRF, Azusa Land Reclamation, Inc. , 1501 W Gladstone St, Azusa, CA 91701	
Green Waste	Greenwise Soil Technologies, 10120 Miller Way, South Gate, CA 90280	Approved Organic Waste Processing Facility: Greenwise Soil Technologies, 10120 Miller Way, South Gate, CA 90280	
Food Waste	WM Sun Valley Transfer Station, Waste Management Recycling and Disposal Services of California, Inc., 9227 Tujunga Ave, Sun Valley, CA 91352	Approved Organic Waste Processing Facility: WM Sun Valley Transfer Station, Waste Management Recycling and Disposal Services of California, Inc., 9227 Tujunga Ave, Sun Valley, CA 91352	
Source Separated Organic Container Waste	Orange Transfer and MRF, USA Waste of California, Inc., 2050 Glassell St, Orange, CA 92865	Approved Organic Waste Processing Facility: Orange Transfer and MRF, USA Waste of California, Inc., 2050 Glassell St, Orange, CA 92865	
Refuse Container Waste	USA Waste of California, Inc., El Sobrante Landfill, 10910 Dawson Canyon Rd, Corona, CA 91719	Approved Disposal Facility: USA Waste of California, Inc., El Sobrante Landfill, 10910 Dawson Canyon Rd, Corona, CA 91719	
Refuse Container Waste	Antelope Valley Public Landfill, Antelope Valley Recycling and Disposal Facility, Inc., 1200 W City Ranch Rd, Palmdale, CA 93551	Approved Disposal Facility: Antelope Valley Public Landfill, Antelope Valley Recycling and Disposal Facility, Inc., 1200 W City Ranch Rd, Palmdale, CA 93551	
C&D	Looney Bins/Downtown Diversion, USA Waste of California Inc., 2424 E Olympic Blvd, Los Angeles, CA 90021	Approved C&D Processing Facility: Looney Bins/Downtown Diversion, USA Waste of California Inc., 2424 E Olympic Blvd, Los Angeles, CA 90021	

## **EXHIBIT A: PROCESSING, TRANSFER, AND DISPOSAL SERVICES AND FACILITY STANDARDS**

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- B. Facility Capacity Guarantee. Franchisee shall guarantee sufficient capacity over the term of this agreement to transfer (if applicable), transport, and process all source separated recyclable materials, green waste, food waste, mixed waste, and C&D collected under this agreement and to transfer (if applicable), transport, and dispose all refuse container waste collected under this agreement. Franchisee shall cause the approved facility(ies) to recycle or process the discarded materials as appropriate; market the organic waste, mixed waste, and C&D recovered from such operations; and dispose of residue. Franchisee shall provide the city, upon request, with documentation demonstrating the availability of such transfer (if applicable), transport, processing, and disposal capacity as described below.
1. Franchisee, subcontractor, affiliate, etc. is owner of approved facilities: City may request that franchisee report aggregate facility capacity committed to other entities through franchisee's contracts. City, or its agent, will have the right to seek verification of franchisee's reported aggregate capacity through inspection of pertinent sections of franchisee's contracts with such entities to determine the duration of franchisee's commitment to accept materials from such entities and the type and volume of materials franchisee is obligated to accept through the contracts. In addition, city, or its agent, will have the right to review tonnage reports documenting the past three (3) years of tonnage accepted at the approved facility(ies) by such entities. To the extent allowed by law, city, or its agent(s), agree to maintain the confidentiality of the information reviewed related to the individual contracts with other contracting entities and agree to review all related material at the franchisee's office and will not retain any copies of reviewed material. Franchisee will fully cooperate with the city's request and provide city and its agent(s) access to franchisee's records.
  2. Franchisee's subcontractor is the owner and/or operator of approved facilities: Upon request, franchisee shall demonstrate that such capacity is available and allocated to the city by provision of its agreement with the approved facility(ies) owner(s)/operator(s) (subcontractor(s)) documenting the subcontractor's guarantee to accept the discarded materials franchisee delivers over the term of this agreement and any extensions to the agreement.
- C. Equipment and Supplies. Franchisee, subcontractor, affiliate, etc. shall equip and operate the approved facilities in a manner to fulfill franchisee's obligations under this agreement, including achieving all applicable standards for landfill disposal reduction, recycling, diversion, residue volume and content, and final product quality standards. Franchisee is solely responsible for the adequacy, safety, and suitability of the approved facilities. Franchisee shall modify, enhance, and/or improve the approved facilities as needed to fulfill service obligations under this agreement at no additional compensation from the city.

## **EXHIBIT A: PROCESSING, TRANSFER, AND DISPOSAL SERVICES AND FACILITY STANDARDS**

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Franchisee, subcontractor, affiliate, etc. shall provide all rolling stock, stationary equipment, material storage containers, spare parts, maintenance supplies, transfer, transport, and processing equipment, and other consumables as appropriate and necessary to operate the approved facilities and provide all services required by this agreement. Franchisee, subcontractor, affiliate, etc. shall place the equipment in the charge of competent equipment operators. Franchisee, subcontractor, affiliate, etc. shall repair and maintain all equipment at its own cost and expense.

- D. Facility Permits. Franchisee, subcontractor, affiliate, etc. or facility operator shall keep all existing permits and approvals necessary for use of the approved facility(ies), in full regulatory compliance. Franchisee, or facility operator, shall, upon request, provide copies of permits and/or permit violation notices to the city.
- E. Transfer facility. At franchisee's option, franchisee may rely on a transfer facility and, in such case, shall transport and deliver some or all discarded materials to the approved transfer facility for pre-processing (if applicable) and transfer. At the transfer facility, discarded materials shall be unloaded from collection vehicles and loaded into large-capacity vehicles and transported to the approved facility(ies) for processing or disposal, in a timely manner and in accordance with applicable law.

If franchisee delivers some or all discarded materials to a transfer facility, it shall receive assurances from facility operator that facility operator will transport or arrange for transport of the discarded materials to appropriate approved facility(ies) for processing or disposal, as applicable for each type of discarded material. In such case, franchisee shall receive written documentation from the facility operator(s) of the facilities used for processing and disposal of discarded materials. Franchisee shall pay all costs associated with transport, transfer, processing, and/or disposal of all discarded materials collected in accordance with this agreement, including marketing of recovered materials and disposal of all residue.

Franchisee shall comply with separate handling requirements in this Exhibit A.

- F. Franchisee-Initiated Change in facility(ies). Franchisee, subcontractor, affiliate, etc. may change its selection of one or more of the approved facility(ies) following the city's written approval, which may be conditioned on various factors including, but not limited to: the performance of the current versus proposed facility, the permitting status of and LEA inspection records related to the proposed facility, the distance of the facility from the city, and any other factor that may reasonably degrade the value received by the city. If franchisee elects to use a facility(ies) that is(are) not listed on the then-current list of approved facility(ies) in this exhibit, it shall submit a written request for approval to the city thirty (30) business days prior to the desired date to use the facility and shall obtain the city's written approval prior to use of the facility.
- G. Notification of Emergency Conditions. Each approved facility shall notify the city of any unforeseen operational restrictions that have been imposed upon the facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent the facility from processing the discarded materials collected under this agreement. Franchisee, subcontractor, affiliate, etc. shall notify the city in accordance with the requirements of this agreement.

## **EXHIBIT A: PROCESSING, TRANSFER, AND DISPOSAL SERVICES AND FACILITY STANDARDS**

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- H. **Approved Facility Unavailable/Use of Alternative Facility.** If franchisee, subcontractor, affiliate, etc. is unable to use the approved facility due to a sudden unforeseen closure of the facility or other emergency condition described in this exhibit, franchisee may use an alternative facility provided that the franchisee provides verbal and written notice to the city and receives written approval from the city at least twenty-four (24) hours prior to the use of an alternative facility to the extent reasonably practical given the nature of the emergency or sudden closure. The franchisee's written notice shall include a description of the reasons the approved facility is not feasible, and the period of time franchisee proposes to use the alternative facility. As appropriate for the type of discarded materials to be delivered to the alternative facility, the alternative facility shall meet the applicable facility standards in this agreement and shall be sent to: (i) an allowable facility, operation, or used for an activity specified by pursuant to 14 CCR section 18983.1(b) and not subsequently sent to landfill disposal; (ii) a high diversion organic waste processing facility (for three-container systems in which organics waste, such as food waste, is allowed for collection in the mixed waste containers); (iii) an "approved source separated organic waste processing facility" pursuant to 14 CCR section 18982(a)(14.5) for organic waste; (iv) a transfer facility; or, (v) a disposal facility. If franchisee is interested in using a facility for mixed waste technology that is not listed above and not currently approved by CalRecycle, franchisee shall be responsible for securing the approvals necessary from CalRecycle prior to the city's final approval of such facility or activity and shall do so in accordance with the procedures specified in 14 CCR section 18983.2.

If any approved facility specified in this exhibit becomes unavailable for use by franchisee for discarded materials collected in the city for a period of more than two (2) days, city may designate an alternative facility. The parties agree that the approved facility shall only be deemed to be "unavailable" if one or more of the following has occurred: (i) a Force Majeure event as described in this agreement has occurred; (ii) a facility has lost one or more permits to operate; (iii) a facility has exhibited a pattern of violation through the receipt of repeated notices of violation from one or more regulatory agencies. Further, the parties agree that a facility shall only be deemed to be "unavailable" if the lack of availability of the facility is not due to franchisee's negligence, illegal activity, neglect, or willful misconduct. At city's request, franchisee shall research and propose alternate facility(ies) for the impacted discarded material(s) and shall submit a written analysis and recommendation to the city within thirty (30) days concerning the cost for use of alternative facility(ies) and any logistical changes that would be required to utilize such alternative facility(ies). City and franchisee will discuss the advantages and disadvantages of use of the potential alternative facility(ies) and city will designate the approved alternative facility(ies). The decision of the city shall be final. The change in facility shall be treated as city-directed change in scope.

In the event an approved facility becomes unavailable due to the negligence, illegal activity, neglect, or willful misconduct of franchisee, franchisee shall bear all additional costs for use of an alternative facility including increased processing costs, disposal Costs, transportation costs, transfer costs, and all other costs.

The table listing approved facilities in this Exhibit A shall be modified accordingly to reflect the new city-approved facility(ies).



# **EXHIBIT A: PROCESSING, TRANSFER, AND DISPOSAL SERVICES AND FACILITY STANDARDS**

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If franchisee is not the owner of the new approved facility, franchisee shall enter into a subcontract agreement with the facility operator of the alternative facility to require compliance with the requirements of this agreement and this exhibit unless city waives one or more requirements.

- I. Discarded Materials Monitoring/Waste Evaluation Requirements. Franchisee shall conduct material sampling, sorting, and waste evaluations of various material streams as further described in this Exhibit A to meet or exceed SB 1383 requirements.
- J. Compliance with Applicable Law. Franchisee (including its affiliates and subcontractors) warrants throughout the term of this agreement and any extensions that the approved facilities are respectively authorized and permitted to accept discarded materials in accordance with applicable law and are in full compliance with applicable law.
- K. Records and Investigations. Franchisee shall maintain accurate records of the quantities of discarded materials transported to and accepted at the approved facility(ies) and shall cooperate with city and any regulatory authority in any audits or investigations of such quantities.
- L. Inspection and Investigations. An authorized city employee or agent shall be allowed to enter each facility during normal working hours in order to conduct inspections and investigations in order to examine facility operations; processing activities; contamination monitoring; material sampling and sorting activities, including inspection of end-of-line materials after sorting; and records pertaining to the facility in order to determine compliance with applicable law, including SB 1383, to understand protocols and results, and conduct investigations, if needed. Franchisee shall permit city or its agent to review or copy, or both, any paper, electronic, or other records required by city.

## **A.2 Processing Standards**

- A. Recovery Required. Franchisee agrees to transport and deliver all source separated recyclable materials, organic waste, mixed waste, and C&D collected under this agreement to an approved facility for processing as applicable for each material type. Franchisee shall conduct processing activities for all source separated recyclable materials, source separated recyclable container waste, source separated organics container waste, organic waste, mixed waste, and C&D to recover recyclable materials and organic waste to reduce disposal. The processing shall be performed in a manner that minimizes disposal to the greatest extent practicable and complies with applicable law, including SB 1383. Franchisee may dispose of organic waste from homeless encampments and illegal disposal sites and quarantined organic waste, which meet the requirements described in 14 CCR section 18984.13(d), rather than process such materials.
- B. Separate Handling Requirements
  - 1. Franchisee shall keep source separated recyclable materials, organic waste, mixed waste, and C&D separate from each other and separate from other solid waste streams and shall process the materials separately from each other and separately from other solid waste streams.

## **EXHIBIT A: PROCESSING, TRANSFER, AND DISPOSAL SERVICES AND FACILITY STANDARDS**

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2. Pursuant to 14 CCR section 17409.5.6(b), organic waste removed from mixed waste for recovery shall be:
  - a. Stored away from other activity areas in specified, clearly identifiable areas as described in the facility plan or transfer/processing report (which are defined in 14 CCR); and,
  - b. Removed from the facility consistent with 14 CCR section 17410.1 and either:
    - i. Transported only to another facility or operation for additional processing, composting, in-vessel digestion, or other recovery as specified in this Exhibit A; or,
    - ii. Used in a manner approved by local, state, and federal agencies having appropriate jurisdiction.
- C. Residue Disposal. Franchisee shall be responsible for disposal of residue from processing activities at its own expense and may select the disposal facility(ies) to be used for such purpose.
- D. Processing Facility Residue Guarantees. Upon request of the city, franchisee shall provide a certified statement from the facility operator documenting its residue level. The residue level shall be calculated separately for each material type and for each approved facility used for recycling and processing. The residue level calculation method shall be reviewed and approved by the city.
- E. Source separated recyclable materials processing standards
  1. Franchisee shall arrange for processing of all source separated recyclable materials at a facility that recovers materials designated for collection in the source separated recyclables container and in a manner deemed not to constitute landfill disposal pursuant to 14 CCR section 18983.1(a) which states that landfill disposal includes final deposition of organic waste at a landfill or use of organic waste as alternative daily cover (ADC).
- F. Source separated organics container waste processing standards
  1. Franchisee shall arrange for processing of all source separated organics container waste at a facility that recovers organic waste and in a manner deemed not to constitute landfill disposal pursuant to 14 CCR section 18983.1(a) which states that landfill disposal includes final deposition of organic waste at a landfill or use of organic waste as alternative daily cover (ADC).
  2. Franchisee shall arrange for source separated organics container waste processing at the approved organic waste processing facility that meets one or more of the following criteria, and such facility or operation is capable of and permitted to accept and recover the types of organic wastes included in the source separated organics container waste:
    - a. A "Compostable Material Handling Operation or Facility" as defined in 14 CCR section

## **EXHIBIT A: PROCESSING, TRANSFER, AND DISPOSAL SERVICES AND FACILITY STANDARDS**

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17852(a)(12); small composting facilities that are otherwise excluded from that definition; or community composting as defined within 14 CCR section 18982(a)(8). The compostable materials handling operation or facility shall, pursuant to 14 CCR section 17867(a) (16), shall comply with the measurement standards included in Section 17409.5.8(c)(2), unless measurement is amended by demonstrating that the percentage of organic waste in the materials sent to disposal is:

- i. On and after January 1, 2022, less than 20 percent (20%); and,
  - ii. On and after January 1, 2024, less than 10 percent (10%).
- b. An “In-vessel Digestion Operation or Facility” as defined in 14 CCR 17896.5. The in-vessel digestion facility or operation shall, pursuant to 14 CCR section 17896.44.1, shall comply with the measurement standards included in Section 17409.5.8(c)(3), unless measurement is amended by Section 17409.5.9, demonstrating, that the percentage of organic waste in the materials sent to disposal is:
  - i. On and after January 1, 2022, less than 20 percent (20%); and,
  - ii. On and after January 1, 2024, less than 10 percent (10%).
- c. A “Biomass Conversion Operation” as defined in section 40106 of the California Public Resources Code.
- d. Soil amendment for erosion control, revegetation, slope stabilization, or landscaping at a landfill, that is defined as a reduction in landfill disposal in accordance with 14 CCR section 18983.1(b).
- e. Land application of compostable materials consistent with 14 CCR section 17852(a) (24.5) and subject to the conditions in 14 CCR section 18983.1(b)(6).
- f. Lawful use as animal feed, as set forth in California Food and Agricultural Code section 14901 et seq. and Title 3, Division 4, Chapter 2, Subchapter 2 commencing with 14 CCR Article 1, section 2675.
- g. Other operations or facilities with processes that reduce short-lived climate pollutants that are approved by the state in accordance with 14 CCR section 18983.2.

If franchisee is interested in using an operation, facility, or activity not expressly identified above for source separated organics container waste processing, franchisee shall be responsible for securing the approvals necessary from CalRecycle prior to the city’s final approval of such operation, facility, or activity, and shall do so in accordance with the procedures specified in 14 CCR section 18983.2.

## **EXHIBIT A: PROCESSING, TRANSFER, AND DISPOSAL SERVICES AND FACILITY STANDARDS**

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3. Preparation of Materials for Processing. The franchisee shall be responsible for preparing materials for processing at the approved organic waste processing facility, which shall include, but is not limited to, removal of visible physical contaminants such as plastic, glass, metal, and chemicals prior to size reduction.
  - a. Limits. Franchisee's transfer/processing facility or operation shall only send offsite that organic waste recovered after processing the source separated organic waste that meets the following requirements or as otherwise specified in 14 CCR section 17409.5.8(a):
    - i. On and after January 1, 2022 with no more than 20 percent (20%) of incompatible material by weight; and,
    - ii. On and after January 1, 2024 with no more than 10 percent (10%) of incompatible material by weight.
  - b. Measurement. Franchisee shall measure the actual levels of incompatible materials in accordance with procedures described in 14 CCR section 17409.5.8(b).
  - c. Exceptions. The limits in this exhibit, shall not apply to the recovered organic waste sent offsite from the transfer/processing facility or operation, if the franchisee sends the recovered organic waste from the transfer/processing facility or operation to one or more of the following types of facilities that will further process the organic waste, or as otherwise specified in 14 CCR section 17409.5.8(c):
    - i. A transfer/processing facility or operation that complies with the requirements listed in this exhibit;
    - ii. A compostable materials handling facility or operation that, pursuant to 14 CCR section 17867(a)(16), demonstrates that the percentage of organic waste in the materials sent to disposal is:
      - (A) On and after January 1, 2022, less than 20 percent (20%); and,
      - (B) On and after January 1, 2024, less than 10 percent (10%).
    - iii. An in-vessel digestion facility or operation that, pursuant to 14 CCR section 17896.44.1, demonstrates that the percentage of organic waste in the materials sent to disposal is:
      - (A) On and after January 1, 2022, less than 20 percent (20%); and,
      - (B) On and after January 1, 2024, less than 10 percent (10%).
    - iv. An activity that meets the definition of a recycling center as described in 14 CCR

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section 17402.5(d).

- G. High diversion organic waste processing facility requirements (three-container systems in which organic waste, such as food waste, is allowed for collection in the mixed waste containers)
1. Franchisee guarantees that the approved high diversion organic waste processing facility shall meet or exceed an annual average mixed waste organic content recovery rate of fifty (50) percent between January 1, 2022 and December 31, 2024, and seventy-five (75) percent after January 1, 2025, or as otherwise defined in 14 CCR section 18982(a)(33), as calculated pursuant to 14 CCR section 18815.5(e) for organic waste received from the mixed waste.
  2. Franchisee guarantees that it will comply with the limits on incompatible materials in the recovered organic waste, which are described in this exhibit.
  3. Franchisee shall conduct measurements on a monthly basis to determine the mixed waste organic content recovery efficiency in accordance with 14 CCR section 17049.5.1(b). Franchisee shall report the organic waste recovery efficiency measurement results to the city in accordance with the requirements of this agreement and shall notify the city within two (2) business days of conducting the monthly measurement if the results are not in compliance with the mixed waste organic content recovery rate standards. If the monthly average mixed waste organic content recovery rate is not in compliance with the standards, the city may assess liquidated damages in accordance with this agreement.
  4. If the approved high diversion organic waste processing facility has an annual average mixed waste organic content recovery rate that is lower than required in 14 CCR section 18982(a)(33) for two (2) consecutive monthly reporting periods or three (3) monthly reporting periods within three (3) years, the facility shall not qualify as a high diversion organic waste processing facility pursuant to 14 CCR section 18984.3(b). Franchisee shall be required to submit a corrective action plan to the city within five (5) business days of determining such non-compliance identifying the steps to improve the mixed waste organic content recovery rate and the duration of time anticipated for the facility to achieve compliance. Franchisee shall immediately commence with corrective actions subject to approval by the city and CalRecycle.
  5. If the city is not satisfied that the franchisee can achieve and sustain the minimum required annual average mixed waste organic content recovery rate, or if the franchisee has implemented its corrective action plan and failed to achieve the minimum required annual average mixed waste organic content recovery rate, the city shall have the right to direct use of an alternative facility, and franchisee shall incur all costs associated with use of the alternative facility including transportation, transfer, processing, and disposal. The city may assess liquidated damages in accordance with this agreement and/or may deem this failure an event of default under this agreement. If an alternative facility is not available within a commercially reasonable distance, franchisee shall be required to implement an organic waste collection system that will provide programmatic compliance with 14 CCR Division 7, Chapter 12, Article 3.

## **EXHIBIT A: PROCESSING, TRANSFER, AND DISPOSAL SERVICES AND FACILITY STANDARDS**

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### H. C&D Program Standards

1. Franchisee shall comply with the CALGreen construction and demolition materials recycling requirements.
  2. Franchisee shall deliver mixed C&D loads to the approved C&D processing facility for recycling.
  3. Franchisee shall deliver source separated C&D such as, but not limited to, dirt, concrete, wood waste, cardboard, or other recyclable C&D materials to the approved C&D processing facility or other facility authorized for recycling C&D and shall deliver salvageable materials to a party for reuse or salvage.
  4. Franchisee shall arrange for processing of organic waste in the C&D at a facility that recovers organic waste from C&D and in a manner deemed not to constitute landfill disposal pursuant to 14 CCR section 18983.1(a), which states that landfill Disposal includes final deposition of organic waste at a landfill or use of organic waste as alternative daily cover (ADC).
- I. Plastic Bags. If franchisee allows organic waste to be placed for collection in plastic bags, franchisee shall annually submit to city written notice from the approved organic waste processing facility confirming said facility can remove plastic bags when processing source separated organics container waste.
- J. Compostable Plastics. Franchisee may accept compostable plastics at the approved organic waste processing facility. Pursuant to section 17 of this agreement, franchisee shall annually submit to city written notice from the approved organic waste processing facility confirming said facility can process and recover these compostable plastics.
- K. Marketing. Franchisee operating the approved facility(ies), shall be responsible for marketing materials recovered from discarded materials collected under this agreement. Franchisee's marketing methods for materials shall be performed in a manner that supports achievement of disposal reductions and in such a manner that complies with state statutes, including, but not limited to, AB 901, AB 939, SB 1016, AB 341, AB 1594, AB 827 and SB 1383, and corresponding regulations. Franchisee shall retain revenues resulting from the sale and marketing of said materials with the exception of the curbside supplemental payments and city/county payments under the California Beverage Container Recycling and Litter Reduction Act, which shall be retained by the city.

Upon request, franchisee shall provide proof to the city that all source separated recyclable materials, source separated organics container waste, mixed waste, and C&D collected by franchisee were processed and recovered materials were marketed for recovery, salvage, or reuse or as organics products in such a manner that materials are not deemed landfill disposal pursuant to pursuant to 14 CCR section 18983.1(a) and in a manner that materials are deemed diversion pursuant to AB 939 and SB 1383. All Residue from the recycling and processing activities that is not marketed shall be reported to the city as residue and accounted for as disposal tonnage at the approved disposal facility. No source separated recyclable materials, source separated organics container waste, mixed waste, or

## **EXHIBIT A: PROCESSING, TRANSFER, AND DISPOSAL SERVICES AND FACILITY STANDARDS**

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C&D shall be transported to a domestic or foreign location if landfill disposal, as defined in 14 CCR section 18983.1(a) of such material is its intended use. If franchisee becomes aware that a broker or buyer has illegally handled, disposed of, or used material generated in the city that is not consistent with applicable law, franchisee shall immediately inform the city and terminate its contract or working relationship with such party. In such case, franchisee shall find an alternative market for the material(s) recovered from the source separated recyclable materials, source separated organics container waste, and/or C&D that is compliant with applicable law.

The performance of commodity markets for materials recovered from source separated recyclable materials shall not be considered a reason for deeming a facility “unavailable” in this Exhibit A nor shall it be considered an acceptable basis for the need to use an alternative facility, nor shall it serve as the basis for any adjustment in franchisee’s compensation under this agreement, other than as specifically contemplated in this agreement.

- L. Disposal of recyclable materials, organic waste, source separated recyclable container waste, source separated organics container waste, mixed waste, and C&D is prohibited. With the exception of processing residue, which shall not exceed the limits established under applicable law, recyclable materials, organic waste, source separated recyclable container waste, source separated organics container waste, and C&D collected under this agreement may not be disposed of in lieu of recycling, processing, or marketing the material, without the expressed written approval of the city.

If for reasons beyond its reasonable control, franchisee believes that it cannot avoid disposal of the recyclable materials, organic waste, source separated recyclable container waste, source separated organics container waste, mixed waste, or C&D collected in the city, then it shall prepare a written request for city approval to dispose of such material. Such request shall contain the basis for franchisee’s belief (including, but not limited to, supporting documentation), describe the franchisee’s efforts to arrange for the processing of such material, the period required for such disposal, and any additional information supporting the franchisee’s request.

In addition, the request shall describe the franchisee’s proposed interim plans for implementation while the city is evaluating its request. If the city objects to the interim plans, the city shall provide written notice to the franchisee and request an alternative arrangement. The city shall consider the franchisee’s request and inform franchisee in writing of its decision within thirty (30) business days. Depending on the nature of the franchisee’s request, city may extend the thirty (30) business day period, at its own discretion, to provide more time for evaluation of the request and negotiation of an acceptable arrangement with the franchisee.

### **Refuse Container Waste Disposal Standards (Three- and Three-plus Container Systems that do not allow Organic Waste, such as Food Waste in refuse Containers)**

- A. Disposal of refuse container waste collected. Franchisee shall transport all refuse container waste Collected under this agreement to the approved disposal facility.

## **EXHIBIT A: PROCESSING, TRANSFER, AND DISPOSAL SERVICES AND FACILITY STANDARDS**

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- B. Disposal at approved facility. Franchisee shall not dispose of refuse container waste or residue by depositing it on any public or private land, in any river, stream, or other waterway, or in any sanitary sewer or storm drainage system or in any other manner which violates applicable laws.
- C. Disposal services. Franchisee shall provide disposal services at the approved disposal facility that include, but are not limited to:
  - 1. Operating, managing, and maintaining the solid waste fill areas, including the placement, burying, and compaction of solid waste in the refuse fill areas; stockpiling, placement, and compaction (if necessary) of alternative intermediate cover, and final cover; management of fill operations with regard to fill sequencing, side slopes configuration, and working face location and configuration;
  - 2. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for operations, closure, post-closure, and environmental monitoring; and,
  - 3. Operating, maintaining, and managing leachate and landfill gas management systems, groundwater monitoring and management systems, storm water drainage and control systems, treatment facilities, buildings, on-site roadways, utilities, and any other required facility elements.

### **Discarded Materials Evaluations at Approved Facilities**

- A. General. Franchisee shall conduct the following “evaluations” at approved facilities:
  - 1. Refuse Container Waste Evaluations. Waste evaluations of refuse container waste at the approved transfer facility (if applicable) in accordance with 14 CCR sections 18998.1(a)(3)(A) and 17409.5.7.
  - 2. Organic Waste Recovery Efficiency Evaluations. Waste evaluations at approved transfer facility (if applicable) or approved processing facility(ies) in accordance with 14 CCR sections 17409.5.1 to 17409.5.5.
  - 3. Evaluation of Organic Waste in Residuals. Compliance evaluations of organic waste to determine the level of organic waste in materials sent for disposal in accordance with 14 CCR sections 17409.5.3, 17409.5.5, 17867 (compost operations and facilities), and 17896.44.1 (In-vessel digestion operations and facilities).
- B. Record Keeping and Reporting. For the evaluations described above, franchisee shall maintain all records and submit reports to CalRecycle as described in 14 CCR Division 7, Chapter 3, Article 6.3, as applicable. Franchisee shall report this information to the city on a monthly basis in accordance with section 17.



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- C. Scheduling of Evaluations. Franchisee shall schedule evaluations during normal working hours. Franchisee shall provide city notice of its intent to conduct evaluations at the approved facility(ies) at least ten (10) business days in advance of the evaluations.
  
- D. Observance of Study by city and/or CalRecycle. Franchisee acknowledges that, upon request, a representative of the city and/or CalRecycle may oversee its next scheduled sampling and evaluation of any of the evaluations described in Exhibit A conducted at the approved facility(ies).

## **EXHIBIT B: COLLECTION SYSTEM OPTIONS**

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### **OPTION 1: Three- or Four-Container System (Source separated Recyclables, Source separated Organics, and Refuse Containers)**

- 1A. General. Upon initiation of services under this agreement, franchisee shall provide a three-container Collection program for the separate collection of source separated recyclable materials, source separated recyclable container waste, source separated organics container waste, and Refuse container waste as specified in this section, using containers that comply with the requirements of SB 1383.
- 1B. Source Separated Recyclable Materials Collection (source separated recyclables container). Franchisee shall provide source separated recyclables containers to customers for collection of source separated recyclable materials. Franchisee shall transport the source separated recyclable materials to (i) the approved source separated recyclable materials processing facility, or (ii) the approved transfer facility for transfer and transport to the approved source separated recyclable materials processing facility, as specified in Exhibit A.

Source separated recyclable materials that are to be accepted for collection in the source separated recyclable materials collection program include the items defined in Section 3.78. The parties agree that the list of accepted types of source separated recyclable materials may be added to or removed from this list from time to time at the sole discretion of the city provided that in all cases source separated recyclable container waste (including paper products and printing and writing papers as defined by SB 1383, 14 CCR section 18982(a)) is included for collection. Franchisee shall not add or remove materials to or from this list without written approval from the city or signed amendment to the agreement, and such approval shall not be unreasonably withheld. Prohibited container contaminants shall not be collected in the source separated recyclables containers.

1C. Source separated Organics Container Waste Collection

Option 1C.1: Collection program for source separated organics container waste (including green waste and food waste) (source separated organics container)

Upon initiation of services under this agreement, franchisee shall provide source separated organics containers to customers for source separated organics container waste collection. Franchisee shall transport the source separated organics container waste to (i) the approved organic waste processing facility, or (ii) the approved transfer facility for transfer and transport to the approved organic waste processing facility, as specified in Exhibit A.

Source separated organics container waste that are to be accepted for collection in the source separated organics container waste collection program include the following: food scraps, food-soiled paper, compostable plastics, and source separated organics container waste. The parties agree that types of source separated organics container waste may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the city. Franchisee shall not add or remove materials to or from this list without written approval from the city or signed amendment to the

## **EXHIBIT B: COLLECTION SYSTEM OPTIONS**

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agreement, and such approval shall not be unreasonably withheld. Carpets, non-compostable paper, textiles, and prohibited container contaminants shall not be collected in the source separated organics containers.

Green waste that are to be accepted for collection in the source separated organics container waste collection program include the items defined in Section 3.54. The parties agree that accepted types of green waste may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the city. Franchisee shall not add or remove materials to or from this list without written approval from the city or signed amendment to the agreement, and such approval shall not be unreasonably withheld. Carpets, non-compostable paper, textiles, and prohibited container contaminants shall not be collected in the source separated organics containers.

Franchisee may collect compostable plastics in the source separated organics containers for processing at the approved organic waste processing facility. At least three (3) months prior to the commencement of the collection of compostable plastics in the source separated organics container waste program, franchisee shall provide written notification to the city that the facility can process and recover these compostable plastics. Franchisee shall provide written notification to the city annually that the facility has and will continue to have the capabilities to process and recover the compostable plastics. Franchisee shall notify the city within five (5) business days of the facility's inability to accept compostable plastics. The notification shall include: a description of the reasons the facility is no longer able to process and recover compostable plastics; the period of time the facility will not process and recover compostable plastics; and, the franchisee's proposed plan to assist in education and outreach of customers in the event that compostable plastics are no longer accepted for collection. Such changes shall be handled as a change in scope pursuant to section 5.

Option 1C.2: Green Waste Collection Program; Plan for Food Waste to be Separately Collected (source separated organics container and source separated food waste container)

Upon initiation of services under this agreement, franchisee shall provide source separated organics containers for customers for collection of green waste. Franchisee shall transport the green waste to (i) the approved organic waste processing facility, or (ii) the approved transfer facility for transfer and transport to the approved organic waste processing facility, as specified in Exhibit A.

Green waste that is intended to be accepted for collection in the source separated organics container waste collection program include the items defined in Section 3.54. The parties agree that accepted types of green waste may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the city. Franchisee shall not add or remove materials to or from this list without written approval from the city or signed amendment to the agreement, and such approval shall not be unreasonably withheld. Carpets, non-compostable paper, textiles, and prohibited container contaminants shall not be collected in the source separated organics containers.

Upon initiation of services under this agreement, franchisee shall implement a food waste collection program for all customers. Franchisee shall provide source separated food waste containers to customers for collection of source separated food waste. Franchisee shall transport the food waste

## **EXHIBIT B: COLLECTION SYSTEM OPTIONS**

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to (i) the approved organic waste processing facility, or (ii) approved transfer facility for transfer and transport to the approved organic waste processing facility, as specified in Exhibit A.

Franchisee may collect compostable plastics in the source separated food waste containers for processing at the approved organic waste processing facility. At least three (3) months prior to the commencement of the collection of compostable plastics in the source separated organics container waste program, franchisee shall provide written notification to the city that the facility can process and recover these compostable plastics. Franchisee shall provide written notification to the city annually that the facility has and will continue to have the capabilities to process and recover the compostable plastics. Franchisee shall notify the city within five (5) business days of the facility's inability to accept compostable plastics. The notification shall include: a description of the reasons the facility is no longer able to process and recover compostable plastics; the period of time the facility will not process and recover compostable plastics; and, the franchisee's proposed plan to assist in education and outreach of customers in the event that compostable plastics are no longer accepted for collection. Such changes shall be handled as a change in scope.

### **1D. Refuse Container Waste Collection (Refuse Container).**

Franchisee shall provide refuse containers to customers for collection of refuse container Waste. Franchisee shall transport the refuse container waste to (i) the approved disposal facility, or (ii) the approved transfer facility for transfer and transport to the approved disposal facility, as specified in Exhibit A. Franchisee may allow carpets and textiles to be placed in the refuse containers. Prohibited container contaminants shall not be collected in the refuse containers.

## **OPTION 2: Two-Container System for Source separated Organics Container Waste and Mixed Waste (Source separated Organics and Refuse Containers)**

2A. General. Upon initiation of services under this agreement, franchisee shall provide a two-container collection program for all customers for collection of source separated organics container waste and mixed waste.

2B. Source separated Organics Container Waste Collection. Franchisee shall provide source separated organics containers to customers for the collection of source separated organics container waste, and shall transport the source separated organics container waste to (i) the approved organic waste processing facility, or (ii) the approved transfer facility for transfer and transport to the approved organic waste processing facility, as specified in Exhibit A.

Source separated organics container waste that are to be accepted for collection in the source separated organics container waste collection program include the following: food scraps; food-soiled paper; green waste; and compostable plastics. The parties agree that types of source separated organics container waste may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the city. Franchisee shall not add or remove materials to or from this list without written approval from the city or signed amendment to the agreement, and such approval shall not be unreasonably withheld. Carpet, non-compostable paper, textiles, and prohibited container contaminants shall not be collected in the source separated organics containers.

## **EXHIBIT B: COLLECTION SYSTEM OPTIONS**

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Green waste that are to be accepted for collection in the source separated organics container waste collection program include the items defined in Section 3.54]. The parties agree that accepted types of green waste may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the city. Franchisee shall not add or remove materials to or from this list without written approval from the city or signed amendment to the agreement, and such approval shall not be unreasonably withheld.

Franchisee may collect compostable plastics in the source separated organics container for processing at the approved organic waste processing facility. At least three (3) months prior to the commencement of the collection of compostable plastics in the source separated organics container waste program, franchisee shall provide written notification to the city that the facility can process and recover these compostable plastics. Franchisee shall provide written notification to the city annually that the facility has and will continue to have the capabilities to process and recover the compostable plastics. Franchisee shall notify the city within five (5) business days of the facility's inability to accept compostable plastics. The notification shall include: a description of the reasons the facility is no longer able to process and recover compostable plastics; the period of time the facility will not process and recover compostable plastics; and, the franchisee's proposed plan to assist in education and outreach of customers in the event that compostable plastics are no longer accepted for collection. Such changes shall be handled as a change in scope pursuant to section 5.

- 2C. Mixed Container Waste Collection (Mixed Waste Container). Franchisee shall provide mixed waste containers to customers for collection of mixed waste (including refuse and recyclable materials), and shall allow generators to intentionally commingle all mixed waste, excluding source separated organics container waste, in the mixed waste containers. Franchisee shall transport the contents of the mixed waste containers to (i) the approved high diversion organic waste processing facility, or (ii) the approved transfer facility for subsequent transfer and transport to the approved high diversion organic waste processing facility, as specified in Exhibit A. Prohibited container contaminants shall not be collected in the mixed waste containers.

### **3. USE OF PLASTIC BAGS FOR SOURCE SEPARATED ORGANICS CONTAINER COLLECTION (APPLICABLE TO OPTION 1 OR 2 ABOVE)**

- 3A. Option 1: Food Waste in Plastic Bags in the Source Separated Organics Container

Franchisee shall allow customers and generators to place food waste in plastic bags and put the bagged food waste in the source separated organics container. At least three (3) months prior to the commencement of the use of plastic bags for the food waste program, franchisee shall provide written notification to the city that allowing the use of bags does not inhibit the ability of the city to comply with SB 1383, and that the approved organic waste processing facility can process and remove plastic bags when it recovers source separated organics container waste. Annually, on December 1<sup>st</sup> of each calendar year, franchisee shall provide written notification to the city that the facility has and will continue to have the capabilities to process and remove plastic bags when it recovers source separated organics container waste. If, at any time during the term of the agreement, the approved organic waste processing facility can no longer accept plastic bags, city may assess liquidated damages or deem such failure an event of default. Franchisee shall notify the city within five (5) business days

## **EXHIBIT B: COLLECTION SYSTEM OPTIONS**

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of the facility's inability to accept plastic bags. The notification shall include: a description of the reasons the facility is no longer able to process and recover plastic bags; the period of time the approved facility will not process and recover plastic bags; and, the franchisee's proposed plan to assist in education and outreach of customers in the event that plastic bags are no longer accepted for collection. Such changes shall be handled as a change in scope.

### **3B. Option 2: Source separated Organics Waste in Plastic Bags in the Organics Containers**

Franchisee shall allow customers and generators to place source separated organics container waste in plastic bags and put the bagged source separated organics container waste in the source separated organics container. At least three (3) months prior to the commencement of the use of plastic bags for the source separated organics container waste program, franchisee shall provide written notification to the city that allowing the use of bags does not inhibit the ability of the city to comply with SB 1383, and that the approved organic waste processing facility can process and remove plastic bags when it recovers source separated organics container waste. Franchisee shall annually provide written notification to the city that the facility has and will continue to have the capabilities to process and remove the plastic bags when it recovers source separated organics container waste. If, at any time during the term of the agreement, the approved organic waste processing facility can no longer accept plastic bags, city may assess liquidated damages or deem such failure an event of default. Franchisee shall notify the city within five (5) business days of the facility's inability to accept plastic bags. The notification shall include: a description of the reasons the facility is no longer able to process and recover plastic bags; the period of time the approved facility will not process and recover plastic bags; and, the franchisee's proposed plan to assist in education and outreach of customers in the event that plastic bags are no longer accepted for collection. Such changes shall be handled as a change in scope.

### **4. C&D Collection**

Franchisee shall collect C&D materials from all customers that subscribe to its C&D collection services and transport the C&D to (i) the approved C&D processing facility, or (ii) the approved transfer facility for transfer and transport to an approved C&D processing facility. Franchisee shall provide C&D collection and processing services in accordance with this agreement. Franchisee shall charge customers for C&D collection services.

**EXHIBIT C:**  
**AB 341, AB 827, AND SB 1383 IMPLEMENTATION PLAN**

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- A. November 15, 2021 – Waste Management sending mailers to all customers informing them about SB 1383 and organics services. Mailer will include City letter with ordinance.
- B. December 15, 2021 – Waste Management to re-send mailer to all customers and conduct site visits to encourage organics services.
- C. January 15, 2021 – Upon City approval, Waste Management will automatically enroll customers to organics services.







# CERTIFICATE OF LIABILITY INSURANCE

1/1/2023

DATE (MM/DD/YYYY)

12/27/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

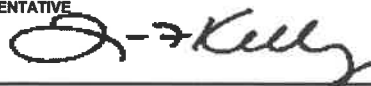
<b>PRODUCER</b> LOCKTON COMPANIES 3657 BRIARPARK DRIVE, SUITE 700 HOUSTON TX 77042 866-260-3538	<b>CONTACT NAME:</b> <b>PHONE</b> (A/C, No, Ext): <span style="float:right"><b>FAX</b></span> (A/C, No): <b>E-MAIL</b> <b>ADDRESS:</b>													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td><b>INSURER A :</b> ACE American Insurance Company</td> <td>22667</td> </tr> <tr> <td><b>INSURER B :</b> Indemnity Insurance Co of North America</td> <td>43575</td> </tr> <tr> <td><b>INSURER C :</b> ACE Fire Underwriters Insurance Company</td> <td>20702</td> </tr> <tr> <td><b>INSURER D :</b> ACE Property &amp; Casualty Insurance Co</td> <td>20699</td> </tr> <tr> <td><b>INSURER E :</b></td> <td></td> </tr> <tr> <td><b>INSURER F :</b></td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	<b>INSURER A :</b> ACE American Insurance Company	22667	<b>INSURER B :</b> Indemnity Insurance Co of North America	43575	<b>INSURER C :</b> ACE Fire Underwriters Insurance Company	20702	<b>INSURER D :</b> ACE Property & Casualty Insurance Co	20699	<b>INSURER E :</b>		<b>INSURER F :</b>
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<b>INSURER F :</b>														
<b>INSURED</b> 1300299 WASTE MANAGEMENT HOLDINGS, INC. & ALL AFFILIATED, RELATED & SUBSIDIARY COMPANIES INCLUDING: USA WASTE OF CALIFORNIA, INC. DBA WASTE MANAGEMENT 1970 EAST 213TH STREET LONG BEACH CA 90810														

**COVERAGES** CALONGBE **CERTIFICATE NUMBER:** 3498851 **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU INCLUDED <input checked="" type="checkbox"/> ISO FORM CG00010413 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	Y	HDO G72492365	1/1/2022	1/1/2023	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 5,000,000 MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 6,000,000 PRODUCTS - COMP/OP AGG \$ 6,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> MCS-90	Y	Y	MMT H25550328	1/1/2022	1/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$
D	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	Y	Y	XEUG27929242 007	1/1/2022	1/1/2023	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000 \$ XXXXXXXX
B A C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WLR C68918595 (AOS) WLR C68918558 (AZ, CA & MA) SCF C68918637 (WI)	1/1/2022 1/1/2022 1/1/2022	1/1/2023 1/1/2023 1/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 3,000,000 E.L. DISEASE - EA EMPLOYEE \$ 3,000,000 E.L. DISEASE - POLICY LIMIT \$ 3,000,000
A	<b>EXCESS AUTO LIABILITY</b>	Y	Y	XSA H25550286	1/1/2022	1/1/2023	COMBINED SINGLE LIMIT \$9,000,000 (EACH ACCIDENT)

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 THIS CERTIFICATE SUPERSEDES ALL PREVIOUSLY ISSUED CERTIFICATES FOR THIS HOLDER, APPLICABLE TO THE CARRIERS LISTED AND THE POLICY TERM(S) REFERENCED.  
 BLANKET WAIVER OF SUBROGATION IS GRANTED IN FAVOR OF CERTIFICATE HOLDER ON ALL POLICIES WHERE AND TO THE EXTENT REQUIRED BY WRITTEN CONTRACT WHERE PERMISSIBLE BY LAW. CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED ON ALL POLICIES (EXCEPT FOR WORKERS' COMP/EL) WHERE AND TO THE EXTENT REQUIRED BY WRITTEN CONTRACT. ADDITIONAL INSURED IN FAVOR OF GALLANT CONSTRUCTION COMPANY, INC. AND RIVERSIDE PARTNERSHIP, INC. (ON ALL POLICIES EXCEPT WORKERS' COMPENSATION/EL) WHERE AND TO THE EXTENT REQUIRED BY WRITTEN CONTRACT.

<b>CERTIFICATE HOLDER</b> <b>3498851</b> CITY OF BELL GARDENS 8327 GARFIELD AVENUE BELL GARDENS CA 90201	<b>CANCELLATION</b> See Attachment SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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POLICY NUMBER: HDO G72492365

COMMERCIAL GENERAL LIABILITY  
CG 00 01 04 13

## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

### SECTION I – COVERAGES

#### COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

### d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

### e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - (i) Any insured; or
    - (ii) Any person or organization for whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
    - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
    - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
  - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

- (5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
- (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;

- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

#### COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

##### 2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Recording And Distribution Of Material Or Information In Violation Of Law

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.



**COVERAGE C – MEDICAL PAYMENTS**

**1. Insuring Agreement**

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;
- provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

- a. Any Insured  
To any insured, except "volunteer workers".
- b. Hired Person  
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. Injury On Normally Occupied Premises  
To a person injured on that part of premises you own or rent that the person normally occupies.

**d. Workers' Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under Coverage A.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - b. This insurance applies to such liability assumed by the insured;
  - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
  - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
  - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
  - f. The indemnitee:
    - (1) Agrees in writing to:
      - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
      - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
      - (c) Notify any other insurer whose coverage is available to the indemnitee; and
      - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
    - (2) Provides us with written authorization to:
      - (a) Obtain records and other information related to the "suit"; and
      - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

## SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:
- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

- (1) "Bodily injury" or "personal and advertising injury":
- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
  - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
  - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
  - (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by;
  - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by; you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

- c. Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
- a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
- a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage B.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy  
Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.
2. Duties In The Event Of Occurrence, Offense, Claim Or Suit
  - a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
    - (1) How, when and where the "occurrence" or offense took place;
    - (2) The names and addresses of any injured persons and witnesses; and

- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.  
You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### 3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

#### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

##### a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

##### b. Excess Insurance

(1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
  - (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.
- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

(2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

##### c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### 5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### 6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;

- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
- 2. "Auto" means:
  - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
  - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

- 3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- 4. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
    - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.
- 5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
- 7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
  - a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - f. The use of another's advertising idea in your "advertisement"; or
  - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed.
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
  - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.



As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
21. "Your product":
- a. Means:
    - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - (a) You;
      - (b) Others trading under your name; or
      - (c) A person or organization whose business or assets you have acquired; and
    - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
    - (2) The providing of or failure to provide warnings or instructions.
22. "Your work":
- a. Means:
    - (1) Work or operations performed by you or on your behalf; and
    - (2) Materials, parts or equipment furnished in connection with such work or operations.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
    - (2) The providing of or failure to provide warnings or instructions.

