

CITY COUNCIL ORDINANCE NO. 24-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, GRANTING A NON-EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE HANDLING SERVICES

WHEREAS, the City of Irvine ("City") desires to enter a franchise agreement with qualified solid waste enterprises ("Franchisees") entitled Non-Exclusive Franchise Agreement for Solid Waste Handling Services ("Non-Exclusive Franchise Agreement") to become effective as of September 1, 2024 by which Franchisees will have non-exclusive rights to provide solid waste handling services in the City that do not conflict with the City's exclusive franchise agreement, as more fully set forth in the Non-Exclusive Franchise Agreement; and

WHEREAS, the City previously entered non-exclusive franchise agreements with qualified solid waste enterprises which expire on August 31, 2026 (the "Prior Agreement"); and

WHEREAS, in connection with the City's efforts to achieve its sustainability goals, the City desires to encourage existing solid waste enterprises providing solid waste handling services pursuant to the Prior Agreement to enter the Non-Exclusive Franchise Agreement because this action will further the City's goals of: having a coordinated term for both its exclusive and non-exclusive franchises; enabling qualified solid waste enterprises to continue to provide competitive solid waste collection services to the City's businesses; ensuring its solid waste franchises and services provided thereunder reflect current industry practices, including the requirements and impacts of new State regulations and mandated programs such as SB 1383; and

WHEREAS, the City had determined an inequitable situation would exist, and achievement of its above noted goals would be hindered if some solid waste enterprises currently providing solid waste handling services in the City pursuant to the Prior Agreement were to enter the Non-Exclusive Franchise Agreement effective as of September 1, 2024 as is desired by the City; yet, other such solid waste enterprises wait to enter the Non-Exclusive Franchise Agreement until the termination of the Prior Agreement; and

WHEREAS, to avoid the above noted inequality and hindrance of the City's goals, a five year exclusionary period shall exist wherein the City will not enter the Non-Exclusive Franchise Agreement with otherwise qualified solid waste enterprises, and instead will only enter the Non-Exclusive Franchise Agreement with qualified solid waste enterprises that apply to do so prior to September 1, 2024 or after September 1, 2029; and

WHEREAS, California Public Resources Code Section 49300 requires the City Council to approve the terms of the Non-Exclusive Franchise Agreement pursuant to a resolution or ordinance; and

WHEREAS, the City's Charter requires that any franchise granted by the City Council be authorized pursuant to an ordinance, and that prior to adopting any such ordinance the City Council adopt a resolution declaring its intention to do so, and setting a time for an opportunity for any person having an interest in or objecting to the granting of a proposed franchise to appear before the Council and be heard; and

WHEREAS, On January 23, 2024, the Council adopted Resolution 24-05 consistent with the forgoing, setting the day and hour for a hearing upon a determination as to whether to enter the Non-Exclusive Franchise Agreement as Tuesday, February 13, 2024, at 5:00 p.m., or as soon thereafter as the matter can be heard, at the City Council Chambers, 1 Civic Center Plaza, City of Irvine, California 92606; and

WHEREAS, the provision of solid waste handling services is an activity supported in part through a public agency contract and therefore may be considered a "project" under the California Environmental Quality Act ("CEQA") (Pub. Res. Code §§ 21000 et seq.) (14 Cal. Code Regs. § 15378(a)(2)); and

WHEREAS, it can be seen with certainty that there is no possibility that the proposed Non-Exclusive Franchise Agreement could have a significant effect on the environment in that the Non-Exclusive Franchise Agreement is merely the continuation of an existing service in the City.

NOW, THEREFORE, the City Council of the City of Irvine DOES HEREBY ORDAIN as follows:

SECTION 1. Each of the above recitals is true and correct and is adopted by the City Council and incorporated herein.

SECTION 2. The City Council finds that adoption of the Non-Exclusive Franchise Agreement is exempt from CEQA pursuant to CEQA Guidelines Sections 15060(c)(2), 15061(b)(3) and 15301(b) as the Non-Exclusive Franchise Agreement is the continued provision of public utility equivalent services, the proposed changes are not anticipated to result in a direct or reasonably foreseeable indirect physical change in the environment, nor will they have the potential of creating a significant effect on the environment, and hence the Non-Exclusive Franchise Agreement is subject to the "common-sense" exemption set forth in the CEQA Guidelines.

SECTION 3. The City Council hereby agrees to enter into the Non-Exclusive Franchise Agreement with qualified Franchisees, subject to the terms set forth herein and in the Non-Exclusive Franchise Agreement, which is attached hereto as Exhibit "A" and incorporated herein by this reference.

SECTION 4. The City Council hereby authorizes the City Manager or his/her designee to execute the Non-Exclusive Franchise Agreement on behalf of the City with any qualified solid waste enterprise that applies to be a Franchisee before or after the five-year exclusionary period noted herein.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 27th day of February 2024.


MAYOR OF THE CITY OF IRVINE

ATTEST:


CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF IRVINE)

I, CARL PETERSEN, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing ordinance was introduced for first reading on the 13th day of February 2024, and duly adopted at a regular meeting of the City Council of the City of Irvine, held on the 27th day of February 2024.

AYES: 5 COUNCILMEMBERS: Agran, Carroll, Kim, Treseder, and Khan
NOES: 0 COUNCILMEMBERS: None
ABSENT: 0 COUNCILMEMBERS: None
ABSTAIN: 0 COUNCILMEMBERS: None


CITY CLERK OF THE CITY OF IRVINE

**NON-EXCLUSIVE FRANCHISE AGREEMENT FOR
COMMERCIAL SOLID WASTE COLLECTION**

BETWEEN THE CITY OF IRVINE AND

EFFECTIVE DATE:

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NON-EXCLUSIVE FRANCHISE AGREEMENT

This Non-exclusive Franchise Agreement (“Agreement”) is entered into and effective as of September 1, 2024, by and between the CITY OF IRVINE, a California municipal corporation (“City”) and _____ (“Franchisee”), relating to the provision of certain Solid Waste Handling Services within the City which are not subject to City’s Exclusive Franchise Agreement. City and Franchisee are referred to herein collectively as the “Parties” and individually as a “Party.”

RECITALS

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (“AB 939”), has declared that it is in the public interest to authorize and require local agencies to make adequate provision for the disposal of all Solid Waste within their jurisdictions.

B. Pursuant to California Public Resources Code Section 40059(a)(1), the City Council of the City has determined that the public health, safety and welfare require that an open and competitive system for Collection of Solid Waste exist within City applicable to Premises not subject to the City’s Exclusive Franchise Agreement, and that an exclusive franchise agreement be awarded to qualified solid waste enterprises for such purpose.

C. The City Council previously authorized and granted several non-exclusive franchise agreements with various franchisees (the “Prior Agreement”), and the Prior Agreement will terminate on August 31, 2026.

D. The Parties enter this Agreement with the intent of amending the Prior Agreement to: (i) reflect service standards and legal requirements in the Solid Waste industry which have changed over time and in particular the requirements imposed by SB 1383; and (iii) memorialize that this Agreement shall supersede the Prior Agreement, except with respect to certain continuing obligations as more specifically set forth herein.

E. It is the intent of the Parties that Franchisee, and not City, shall be solely responsible for establishing and collecting all charges for Solid Waste Handling Services provided by Franchisee pursuant to this Agreement.

F. City and Franchisee are mindful of the provisions of the laws governing the safe Collection, transport, Recycling, and disposal of Solid Waste, including AB 939, AB 341, AB 1594, AB 1826, SB 1383 the Resource Conservation and Recovery Act (“RCRA” – 42 U.S.C. § 6901 et. seq.), and the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”– 42 U.S.C. § 9601 et. seq.). City and Franchisee desire to leave no doubts as to their respective roles, and to memorialize that by entering into this Agreement City is not thereby becoming an “arranger” or a “generator” as those terms are used in CERCLA, and that it is Franchisee, not City, who is “arranging for” the Collection, transport for disposal, composting, and Recycling of municipal Solid Waste in the City which may contain Hazardous Substances. City and Franchisee understand and agree that it is Franchisee, and not City, who will arrange to Collect Solid Waste, that City has not, and, by this Agreement does not, instruct Franchisee on its

Collection methods, nor supervise the Collection process, nor do the Parties intend to place title to such Solid Waste in City, but rather intend that whatever, if any, title in and to such Solid Waste that otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Franchisee, and further that if Franchisee gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. By entering this Agreement, City and Franchisee further desire to confirm that Franchisee has agreed to indemnify City in connection with any claims relating to the inadvertent or intentional Collection, transportation and/or disposal by Franchisee of Hazardous Contaminants that may occur in connection with Franchisee's performance under this Agreement in accordance with the terms and conditions set forth herein.

G. By entering into this Agreement, Franchisee agrees to provide such Services as are necessary to ensure City complies with all Applicable Laws in connection with the Solid Waste Handling Services it provides hereunder, and represents and warrants that it has the experience and qualifications to conduct the services detailed herein.

H. The City Council hereby determines and finds that the public interest, health, safety and wellbeing will be served by entering this Agreement.

COVENANTS

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1 **RECITALS**

The Parties acknowledge the above Recitals are true and correct and incorporate them herein as if they were fully restated.

SECTION 2 **DEFINITIONS**

Whenever any term used in this Agreement has been defined by the California Public Resources Code or the Municipal Code, the definition of such term set forth therein shall apply unless the term is otherwise defined in this Agreement; and, terms defined in this Agreement shall have such meaning as defined in this Agreement for purposes of this Agreement. Otherwise, terms used in this Agreement shall have their ordinary meaning.

2.1 AB 341. "AB 341" shall mean Assembly Bill 341 from the 2011-2012 Regular Session of the California Legislature (Chapter 476, Statutes 2011), relating to mandatory commercial Recycling.

2.2 AB 939. "AB 939" shall mean the California Integrated Waste Management Act of 1989, currently codified as California Public Resources Code Section 40000 et seq., as it may be amended from time to time.

2.3 AB 1594. “AB 1594” shall mean Assembly Bill 1594 from the 2013-2014 Regular Session of the California Legislature (Chapter 719, Statutes 2014), .

2.4 AB 1826. “AB 1826” shall mean Assembly Bill 1826 from the 2013-2014 Regular Session of the California Legislature (Chapter 727, Statutes 2014).

2.5 Animal Waste. “Animal Waste” shall mean animal carcasses, dead animals, and/or parts or portions of dead animals. Animal Waste shall not include manure.

2.6 Applicable Laws. “Applicable Laws” shall mean all federal, state, county, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over an aspect of this Agreement that are in force on the Effective Date, and as may be enacted, issued or amended thereafter, including without limitation City’s Municipal Code, AB 939, SB 1383, and 14 CCR, Division 7, Chapter 12.

2.7 Approved Facility/ies. “Approved Facility” or “Approved Facilities” shall mean facilities designated in Exhibit D, as it may be amended by agreement of the Parties

2.8 Bins. “Bins” shall mean a Container, including dumpsters, compactors, and any similar such devices with a capacity of between approximately one and one-half (1½) and eight (8) cubic yards.

2.9 CalRecycle. “CalRecycle” shall mean the State of California Department of Resources Recycling and Recovery, the department within the State Natural Resources Agency responsible for the administration of the Integrated Waste Management Act of 1989, California Public Resources Code Section 40000 et seq.(“Act”), or any successor department or agency created or designated for such purpose pursuant to the Act.

2.10 Cart. “Cart” shall mean a plastic Container with a capacity of between approximately thirty-five (35) to ninety-six (96) gallons, having a hinged lid and wheels.

2.11 City. “City” shall mean the City of Irvine, a municipal corporation, located in Orange County, California.

2.12 City Council. “City Council” shall mean the City Council of the City of Irvine.

2.13 City Indemnitees. “City Indemnitees” shall mean the City and its past and present elected and appointed officials, officers, commissions, boards, members, employees, representatives, agents, consultants, and volunteers.

2.14 City Limits. “City Limits” shall mean the territorial boundaries of the City together with all amendments and changes thereto, which boundaries are depicted on maps, incorporated herein by reference, that are kept on file in the office of the City Clerk of the City of Irvine, and which are from time to time amended to reflect changes.

2.15 City Manager. “City Manager” shall mean the City Manager of the City of Irvine or his or her designee.

2.16 Collect/Collection. “Collect” or “Collection” shall mean to take physical possession of, transport, and remove Solid Waste from a Premises.

2.17 Collection Vehicles. “Collection Vehicles” shall have the meaning ascribed in Section 9.1 of this Agreement..

2.18 Commercial Customer. “Commercial Customer” shall mean a Customer receiving services hereunder in connection with Solid Waste generated at a Commercial Premises.

2.19 Commercial Premises. “Commercial Premises” shall mean property upon which a business activity is conducted, including but not limited to retail sales, services, manufacturing, assembling, storage, or wholesale operations, but excluding businesses conducted upon Residential Premises that are permitted under applicable zoning regulations and that do not constitute the primary use of the property. Commercial Premises include hotels, motels, assisted living facilities, convalescent centers, nursing homes, churches and private schools.

2.20 Container. “Container” shall mean any and all types of Solid Waste receptacles, including Carts, Bins and Rolloff Boxes.

2.21 County Agreement. “County Agreement” shall mean that certain Waste Disposal Agreement, as the same may be amended from time to time, entered into among various Orange County cities, including specifically the City of Irvine, and the County of Orange relating to the use of County landfills for the disposal of Refuse Collected in such cities, and which is on file in the office of the Clerk of the City of Irvine.

2.22 Customer. “Customer” shall mean any person or entity receiving Solid Waste Handling Services, including Recycling services, from Franchisee within the Franchise Area.

2.23 Dwelling Unit. “Dwelling Unit” shall mean one or more rooms designed for occupancy by one family for living and sleeping purposes and containing kitchen facilities or an area designed for the preparation of food for use solely by one family.

2.24 Effective Date. “Effective Date” shall mean September 1, 2024.

2.25 Environmental Laws. “Environmental Laws” shall mean all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, CERCLA, RCRA, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 USC §1251 et seq.; the Federal Clean Air Act, 42 USC §7401 et seq.; the Toxic Substances Control Act, 15 USC §2601 et seq.; the Oil Pollution Act, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code §78000 et seq.; the Hazardous Materials Release Response Plans & Inventory Act, California Health and Safety Code § 25500 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; the Toxic Mold Protection Act, California Health & Safety Code § 26100, et seq.; the California

Underground Storage of Hazardous Substances Laws, Chapter 6.7 of Division 20 of the California Health and Safety Code, §25280 et seq.; California Law governing the Above Ground Storage of Petroleum, Chapter 6.67 of Division 20 of the California Health and Safety Code, §25270 et seq.; and California law governing Hazardous Material Release Cleanup, Chapter 6.10 of Division 20 of the California Health and Safety Code, § 25403 et. seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

2.26 Exclusive Franchise Agreement. “Exclusive Franchise Agreement” shall mean that certain agreement with Waste Management Collection and Recycling, Inc., a California corporation, dba Waste Management of Orange County (“Waste Management”), or its permitted successor or assignee, effective as of April 1, 2024, as amended from time to time, and which relates to exclusive Solid Waste Handling Services for Residential Premises and Village Commercial Premises in the City.

2.27 Food Waste. “Food Waste” shall mean a subset of Organic Waste comprised of (i) any type of food (including without limitation fruits, vegetables, meat, poultry, seafood, bones, rice, beans, pasta, bread, dairy products), (ii) food soiled paper (for example, napkins, paper towels, and paper plates that are contaminated with food), and (iii) tea bags, coffee grounds, and coffee filters.

2.28 Franchisee. “Franchisee” shall mean the entity identified as the “Franchisee” in the preamble to this Agreement, or any entity pursuant to the terms hereof permitted to become the successor or assignee thereof.

2.29 Franchise Area. “Franchise Area” shall mean all Premises in the City not subject to the Exclusive Franchise Agreement, except that the Franchise Area shall include Premises subject to the Exclusive Franchise Agreement for purposes of Temporary Services.

2.30 Franchise Fee. “Franchise Fee” shall mean the franchise fee set forth herein and more fully defined in Section 11.1.

2.31 Gross Receipts. “Gross Receipts” shall mean and include all monies, fees, charges, consideration, and revenue received by, or imputed to Franchisee and any affiliates, parent companies, subsidiaries and/or subcontractors of Franchisee, in connection with, arising from, or in any way attributable to the services carried out by or on behalf of Franchisee pursuant to this Agreement. Gross Receipts includes, without limitation, all Customer charges that are received by Franchisee for services pursuant to this Agreement, without subtracting Franchise Fees. Gross Receipts does not include (i) revenue from the sale of Recyclable Material, Organic Waste, and other material that is diverted from disposal, or (ii) monies collected by Franchisee and used to pay tipping fees imposed by the County of Orange for disposal at a County landfill pursuant to the County Agreement.

2.32 Hazardous Contaminant. “Hazardous Contaminant” shall mean any “hazardous material,” as that term is defined under California Health & Safety Code Sections 25260 and 25501(n); any “hazardous substance,” as that term is defined herein or under California Health & Safety Code Sections 25281(h) and 78075(a), and under Title 42, Section 9601(14) of the United States Code; any “hazardous waste,” as that term is defined herein and under Title 42,

Section 6903(5) of the United States Code and under California Health & Safety Code Section 25117; any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; 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 the above-referenced statutory and regulatory provisions made before or after the date of execution of this Agreement.

2.33 Hazardous Substance. “Hazardous Substance” shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as “Hazardous Substances,” “Hazardous Materials,” “Hazardous Wastes,” “Toxic Waste,” or “Toxic Substances” or similarly identified as being hazardous to human health or the environment, in or pursuant to (i) CERCLA; (ii) the Hazardous Materials Transportation Act, 49 USC §5101, et seq.; (iii) RCRA; (iv) the Federal Water Pollution Control Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 78075; (vi) California Health & Safety Code §§ 25260 and 25501(n); (vii) the Clean Air Act, 42 USC §7401 et seq.; and (viii) California Water Code §13050; (b) any substances identified in any and all amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified and/or regulated as hazardous or toxic under any other applicable federal, state or local laws or regulations, including any of the Environmental Laws, currently existing or hereinafter enacted, including, without limitation, any asbestos or asbestos-containing material, polychlorinated biphenyl’s (“PCBs”), any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof, any natural gas and/or synthetic fuel products, and by-products thereof.

2.34 Hazardous Waste. “Hazardous Waste” shall mean all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115 and/or §25117, or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to RCRA, all future amendments thereto, and all rules and regulations promulgated thereunder.

2.35 Mixed-Use Development. “Mixed-Use Development” shall mean Premises where Containers are shared by Customers from both Commercial Premises and Multi-Family Dwellings for the Collection of Solid Waste generated on property under common ownership. The term Mixed-Use Development has been defined for purposes of this Agreement, and is specifically intended to have a different definition and meaning than the term “Mixed-use development” as set forth and defined in City’s Municipal Code.

2.36 Multi-Family Dwelling. “Multi-Family Dwelling” shall mean any Residential Premises at which more than one Dwelling Unit exists.

2.37 Municipal Code. “Municipal Code” shall mean City’s Municipal Code of Ordinances, including City’s Zoning Code, and all uncodified ordinances duly adopted by City, as such may be amended from time to time.

2.38 Non-exclusive Franchise Agreement. “Non-exclusive Franchise Agreement(s)” means that certain non-exclusive franchise granted by the City Council effective as of September 1, 2024 and entered between the City and various persons and entities related to the provision of Solid Waste Handling Services in the Franchise Area (with this Agreement being one of the Non-Exclusive Franchise Agreements).

2.39 NPDES. “NPDES” shall mean the National Pollutant Discharge Elimination System.

2.40 Organics Recycling Waiver. “Organics Recycling Waiver” shall mean a waiver granted to a Customer by City pursuant to SB 1383.

2.41 Premises. “Premises” shall mean any land, building and/or structure, or portion thereof, in the City where Solid Waste is produced, generated or accumulated.

2.42 Recycle or Recycling. “Recycle” or “Recycling” shall mean the process of Collecting, sorting, cleaning, treating and/or reconstituting materials that would otherwise be disposed of and returning these materials to the economic mainstream in the form of raw materials for new, reused or reconstituted products.

2.43 Recyclable Material (Recyclables). “Recyclable Material” or “Recyclables” shall mean that Solid Waste discarded within Premises that are subject to this Agreement and which is capable of being Recycled.

2.44 Refuse. “Refuse” shall mean that Solid Waste which the Applicable Laws do not require be Collected in a Container designated for the Collection of Recyclable Material or Organic Waste.

2.45 Refuse Cart. “Refuse Cart” shall mean a cart designated for the Collection of Refuse.

2.46 Residential Premises. “Residential Premises” shall mean all Premises upon which Dwelling Units exist.

2.47 Rolloff Box. “Rolloff Box” shall mean Solid Waste Collection Containers of ten (10) yards or larger, including compactors.

2.48 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. For the purposes of this Agreement, SB 1383 specifically includes the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted in November 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

2.49 Solid Waste. “Solid Waste” shall mean and include all discarded putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, construction waste, industrial waste, commercial Solid Waste, bulky items, and any other discarded solid, semisolid, and liquid waste permitted to be disposed of at a Class III landfill and which are included within the definition of “Nonhazardous Solid Waste” set forth in the California Code of Regulations, as it may be amended from time to time. Solid Waste does not include Hazardous Contaminants, Hazardous Substances, Hazardous Waste, low-level radioactive waste, untreated medical waste, or Special Wastes. Solid Waste includes Refuse, discarded Recyclable Materials, and Organic Waste.

2.50 Solid Waste Handling Services. “Solid Waste Handling Services” shall mean the Collection, and thereafter the transfer, transport, Recycling, processing, and disposal of Solid Waste.

2.51 Special Wastes. “Special Wastes” shall mean waste materials including sewage, sludge, industrial sludge, asbestos, auto bodies, tires, used motor oil, Animal Waste, explosive substances, radioactive materials, and other materials which may not be disposed of at a Class III landfill or which require special handling.

2.52 SRRE. “SRRE” shall mean City’s Source Reduction and Recycling Element approved by the State of California pursuant to the requirements of AB 939.

2.53 Temporary Service. “Temporary Service” shall mean the Collection, transfer, transport, Recycling, processing, and disposal of Solid Waste provided by a solid waste enterprise on an as-needed and temporary basis to any Premises within the City (including Residential Premises and Village Commercial Premises) in conjunction with construction, demolition, cleanup or other projects, and by use of temporarily placed Bins or Rolloff Boxes..

2.54 Term. “Term” shall have the meaning ascribed in Section 5 of this Agreement.

2.55 Transformation. “Transformation” shall mean incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. “Transformation” does not include composting.

2.56 Village Commercial Premises. “Village Commercial Premises” shall mean that subset of Commercial Premises which have been designated by City as falling within the scope of the Exclusive Franchise Agreement, and which are not within the scope of the Franchise Area and the non-exclusive franchise granted by this Agreement. The specific Commercial Premises which are designated as Village Commercial Premises are (i) those Commercial Premises which are located in areas designated as “Exclusive Village Commercial” on the Village Commercial Premises Map, attached hereto as Exhibit A; (ii) Mixed-Use Developments, whether currently in existence or developed in the future, which are deemed to be Village Commercial Premises, regardless of their location and whether or not said location is designated as “Exclusive Village Commercial” on the Village Commercial Premises Map; and (iii) any Commercial Premises within Planning Area 51 that is designated as a Village Commercial Premises as more fully set forth herein. Notwithstanding anything herein to the contrary, Village Commercial Premises shall not

include hotels, motels, assisted living facilities, convalescent centers or nursing homes, regardless of their location.

2.57 Village Commercial Premises Map. “Village Commercial Premises Map” shall mean the map attached hereto as Exhibit A, titled “Commercial Solid Waste Collection Service Areas.” The purpose of the Village Commercial Premises Map is to designate which Commercial Premises are designated as “Village Commercial Premises” and thereby within the scope of the Exclusive Franchise Agreement, and conversely outside of the scope of the Franchise Area and the non-exclusive franchise granted by this Agreement. The Village Commercial Premises Map is not intended to identify the location of Residential Premises, including Premises where Mixed-Use Developments exist; and, accordingly, Mixed-Use Developments (which are deemed to be Village Commercial Premises) may exist in areas designated as “Non-exclusive Commercial” on the Village Commercial Premises Map and are subject to the Exclusive Franchise Agreement.

2.58 Terms Defined in 14 CCR Section 18982. The following terms used herein are defined in 14 CCR Section 18982, and shall have the meaning defined therein:

- 2.58.1 Commercial Edible Food Generator
- 2.58.2 Edible Food
- 2.58.3 Food Recovery
- 2.58.4 Food Recovery Organization
- 2.58.5 Food Recover Service
- 2.58.6 Large Event
- 2.58.7 Large Venue
- 2.58.8 Organic Waste
- 2.58.9 Tier One Commercial Edible Food Generator
- 2.58.10 Tier Two Commercial Edible Food Generator

SECTION 3
NON-EXCLUSIVE FRANCHISE

3.1 Grant and Scope of Franchise.

City hereby grants to Franchisee, and Franchisee shall have throughout the duration of this Agreement, the non-exclusive franchise, right, license and privilege to provide Solid Waste Handling Services as set forth herein within the Franchise Area. Generally speaking, the rights granted herein pertain to: (1) Solid Waste Handling Services to Commercial Premises, excepting Village Commercial Premises, occurring on a regular schedule (such as weekly service); and (2) Temporary Services to any Premises in the City (including Residential and Village Commercial

Premises). In the event of any uncertainty, ambiguity, and/or dispute as to whether a particular Premises is subject to the Exclusive Franchise Agreement, and hence not within the Franchise Area of this Agreement, the determination of the applicable scope of this Agreement shall be made by the City Manager, and such determination shall be final. The Parties agree that any such determination is occurring pursuant to Public Resources Code Section 49523, is agreed to by the Parties upon mutually satisfactory terms, and is part of the consideration for entering into this Agreement.

3.2 Amendments to Scope of Franchise; Planning Area 51

3.2.1 The Parties acknowledge that as of the Effective Date, the Village Commercial Premises Map includes that certain land designated in City's Zoning Code as "Planning Area 51". Furthermore, that the Zoning Code's text and maps (generally found in Sections 9-51-3 and 9-51-6) depict and describe Planning Area 51 divided into individual "Districts" labeled Districts 1 through 9, with the balance of Planning Area 51 designated as The Great Park. The City has not yet finalized its plans for Planning Area 51, and a final determination of those Commercial Premises which should be designated as Village Commercial has therefore not yet occurred. Once the final planning for Planning Area 51 is complete, the Village Commercial Premises Map will be amended to depict those Commercial Premises within Planning Area 51 that are designated as Village Commercial Premises and thus not part of the Franchise Area and not within the scope of the non-exclusive franchise rights conveyed by this Agreement.

3.2.2 As of the Effective Date (but subject to change in the future as final plans for Planning Area 51 develop), it is anticipated that land currently described and depicted in City's Zoning Code as Districts 1, 4, 5, 7 and 8 within Planning Area 51 will be developed primarily for residential purposes, and accordingly City anticipates such Districts within Planning Area 51 will be designated as Village Commercial Premises. Moreover, City anticipates that all remaining land in Planning Area 51 (described and depicted in its Zoning Code as Districts 2, 3, 6 and 9, and The Great Park) will not be developed for residential purposes, and accordingly City does not anticipate designating such land within Planning Area 51 as Village Commercial Premises.

3.2.3 As of the Effective Date, the Village Commercial designations noted in Section 3.2.2. above, which are anticipated to ultimately be confirmed on a revised Village Commercial Map, shall apply (excepting for those Premises already designated within Planning Area 51 on Exhibit A as "Nonexclusive Commercial"); provided, however, the City Manager shall have the right in his/her reasonable discretion to determine whether to change such designations. In determining whether to change a Village Commercial designation the City Manager will consider the following: (i) City's primary goal of minimizing Collection Vehicle traffic near and around Residential Premises; and (ii) the Village Commercial Premises designation is intended to apply to Premises located in close proximity to Residential Premises, which are established to provide for the unified commercial needs of neighborhood residents.

3.2.4 Once any Premises that is not located in Planning Area 51 is designated as a Village Commercial Premises, it shall remain so designated for the remainder of the Term. Franchisee agrees that City may amend the Village Commercial Premises designation of properties in Planning Area 51 while City's planning is finalized, and that such changes will be reflected on

amended maps to be maintained by the City Manager. Moreover, the Parties agree that any such changes so effectuated are occurring pursuant to Public Resources Code Section 49523, are agreed to by the Parties upon mutually satisfactory terms, and are part of the consideration for entering into this Agreement. Franchisee expressly acknowledges that any change in scope of the franchise granted hereunder that may occur during the Term as a result of a change to the Village Commercial Premises designation of property located in Planning Area 51 as described in this Section 3.2 is occurring pursuant to Public Resources Code Section 49523, and is not a waiver of rights set forth in Public Resources Code Section 49520 which would be subject to the provisions of Public Resources Code Section 49524.

3.3 Franchise Rights to Include Right to Use City Rights of Way.

The franchise granted by this Agreement includes the right for Franchisee to conduct business on City's rights-of-way as more fully described herein in order to carry out its obligations as set forth in this Agreement, including by: allowing the placement and/or storage of its Containers in rights-of-way; allowing Collection Vehicles to drive at a pace, and repeatedly stop in, rights-of-way in a manner which disrupts traffic to the degree reasonably necessary to carry out its obligations hereunder, and which actions would otherwise be prohibited and a violation of laws applicable to the general public; and, Collecting, delivering and otherwise servicing Containers within rights of way and disrupting traffic as may be reasonably necessary to do so. The franchise hereby granted includes the right to encroach on City's rights-of-way for the forgoing purposes, without the need for an encroachment permit being issued to Franchisee or its Customers (as would be required of the general public to use City's rights-of-way in a similar manner) in connection with the services Franchisee provides hereunder; provided however, Franchisee's rights to use the City's rights-of-way may be limited by the City Manager as necessary for the protection of health, safety and public welfare. Notwithstanding the franchise rights granted herein to impede traffic as may be necessary to perform services hereunder, Franchisee shall take reasonable steps to schedule Collection of Containers, and otherwise perform its obligations hereunder, in a manner that endeavors to minimize the impact of its business activities on the flow of traffic.

3.4 Limitations on Scope of Franchise.

3.4.1 *Non-exclusive.* This Agreement shall be non-exclusive, and no provision hereof shall be deemed to require City to grant similar franchises to one or to any particular number of franchisees, nor to restrict or prohibit City from doing so. Franchisee understands and acknowledges City may enter similar non-exclusive franchise agreements pursuant to the same, or substantially similar terms, with any qualified Solid Waste enterprise.

3.4.2 *Exclusions.* Notwithstanding any other provisions set forth in this Agreement to the contrary, the non-exclusive contract, right, franchise, license, and privilege granted herein excludes:

(a) Solid Waste Handling Services at Village Commercial Premises or Residential Premises, other than Temporary Service at such Premises.

(b) except as provided otherwise herein, the Collection, transportation, or disposal of Hazardous Contaminants; Hazardous Substances; Hazardous Waste; items

commonly known in the waste industry as “universal waste” and/or “e-waste”; biohazardous waste; untreated medical waste; infectious waste; Animal Waste; used cooking fats, oils, grease and similar waste; Special Waste; or other materials which do not constitute Solid Waste.

(c) Those Solid Waste Handling Services, if any, which are governed by or subject to any legal right held by any Solid Waste enterprise to continue to operate (whether pursuant to a pre-existing Solid Waste permit, license, agreement, franchise, or otherwise), so long as any such legal right shall continue to exist.

3.5 Rights in Annexed Territories.

It is the intention of the Parties that, subject to all of the limitations set forth in Section 3.4 above, the non-exclusive franchise granted herein shall apply to any property incorporated into the City Limits during the Term hereof; provided, however, the exercise of the rights granted herein within annexed territories shall be limited by and subject to any legal right held by any Solid Waste enterprise to continue to operate (whether pursuant to a pre-existing Solid Waste permit, license, agreement, franchise, or otherwise), so long as any such legal right shall continue to exist.

3.6 Public Resources Code Section 49523 Acknowledgment .

If Franchisee has a pre-existing permit, license, agreement, franchise or other rights to provide services in the City, including because of being a Franchisee under the Prior Agreement, then Franchisee expressly acknowledges that any change or modification to the scope of such rights that may be effectuated by this Agreement is occurring pursuant to Public Resources Code Section 49523, is included herein upon mutually satisfactory terms, and is part of the consideration for entering into this Agreement. Moreover, Franchisee expressly acknowledges that any change in scope of such prior rights is occurring pursuant to Public Resources Code Section 49523, and is not a waiver of rights set forth in Public Resources Code Section 49520 which would be subject to the provisions of Public Resources Code Section 49524. Franchisee acknowledges that City has advised it that if it has rights pursuant to Public Resources Code Section 49520 which it does not wish to modify by entering this Agreement, it may choose to continue to operate in City pursuant to such rights rather than enter into this Agreement.

3.7 Notice Pursuant to Public Resources Code Section 49520.

The rights granted pursuant to the terms hereof shall expire upon the end of the Term of this Agreement as set forth in Section 5 below. Franchisee shall have no right to continue to provide services in City pursuant to Public Resources Code Section 49520, or otherwise, following the end of the Term hereof unless a subsequent franchise, contract, or permit is granted to Franchisee by City, or unless this Agreement is amended to provide such rights. This provision is intended to, and shall serve as the notice contemplated by Section 49520 with respect to the franchise rights granted herein.

SECTION 4 **ACCEPTANCE; WAIVER**

Franchisee agrees to be bound by and comply with all the requirements of this Agreement. Franchisee waives Franchisee’s right to challenge the terms of this Agreement under federal, state,

or local law, or administrative regulation. Additionally, by and upon the execution of this Agreement, Franchisee agrees to the termination of the Prior Agreement as of the Effective Date, agrees to waive any and all rights under the Prior Agreement, and agrees to release and hold the City harmless from any of the City's obligations thereunder (excepting, however, the right to compensation accrued and unpaid for services provided prior to the Effective Date); provided, however, nothing contained in this provision is intended to or shall relieve Franchisee from any obligation existing under the Prior Agreement pertaining to insurance, indemnification, or other legal obligations to City or Franchisee's Customers (as opposed to obligations to provide service pursuant to the terms thereof), or from any obligation set forth in the Prior Agreement which are called out as surviving the termination thereof, and all such obligations, including specifically those indemnification obligations relating to Environmental Laws, general liability, and AB 939 shall survive the termination of the Prior Agreement.

SECTION 5 **TERM**

The term of this Agreement shall commence on September 1, 2024 and end at midnight on August 31, 2041, unless this Agreement is terminated at an earlier date pursuant to Section 17 hereof.

SECTION 6 **CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

The satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by City in writing, is a condition precedent to the effectiveness of this Agreement:

6.1 Accuracy of Representation. All representations and warranties made by Franchisee and set forth in this Agreement shall be accurate, true, and correct on and as of the Effective Date of this Agreement.

6.2 Absence of Litigation. There shall be no litigation pending in any court challenging the award of this Agreement to Franchisee or the execution of this Agreement or seeking to restrain or enjoin its performance.

6.3 Furnishing of Insurance and Bond or Letter of Credit. Franchisee shall have furnished evidence of the insurance and Surety required by Sections 15 and 16 hereof.

6.4 Effectiveness of City Council Action. The City Council Ordinance approving this Agreement shall have become effective pursuant to California law.

SECTION 7
GENERAL REQUIREMENTS FOR SOLID WASTE HANDLING SERVICES
PROVIDED BY FRANCHISEE

7.1 Equipment

Franchisee shall furnish all labor, supervision, materials, supplies, and equipment necessary to provide for all Solid Waste Handling Services required by the terms of this Agreement.

7.2 Compliance with Applicable Laws; Performance Standards

Franchisee shall comply with all Applicable Laws as they may be amended from time to time. Franchisee shall obtain and maintain, at Franchisee's sole cost and expense, all permits and licenses applicable to Franchisee's operations under this Agreement, including specifically, without limitation, a City of Irvine Business License. Franchisee shall perform Solid Waste Handling Services as required hereunder in a workmanlike manner consistent with good housekeeping standards and generally accepted standards in the industry.

7.3 Noise and Disruption

Franchisee shall perform Solid Waste Handling Services as required hereunder in such a manner as to minimize noise and other disruptive impacts including, without limitation, those upon traffic. Franchisee shall use its best efforts to coordinate its Collection schedules so as not to interfere with street sweeping.

7.4 Collection Times

Unless approved, in writing, by the City Manager, (i) Franchisee shall not commence Collection of Solid Waste until 7:00 a.m., nor shall such activities occur after 8:00 p.m, and (ii) Franchisee may not Collect Solid Waste on Sundays unless specifically approved by the City Manager.

7.5 Requirements For Handling of Source Separated Solid Waste

Franchisee shall ensure all Solid Waste Source Separated in Containers by material type remains so separated after Collection. Franchisee shall utilize a Collection Vehicle dedicated for the purpose of Collecting Organic Waste from Customers, such that Organic Waste which has been separated prior to Collection, once Collected, is not commingled with other Solid Waste (including Recyclable Material). Similarly, Franchisee shall utilize a Collection Vehicle dedicated for the purpose of Collecting Recyclable Materials, such that Recyclable Material which has been separated prior to Collection, once Collected, is not commingled with other Solid Waste (including Organic Waste).

7.6 Approved Facilities

Franchisee shall provide a list of all facilities to which it intends to deliver Solid Waste for disposal or processing which shall be approved by the City Manager prior to Franchisee

commencing services pursuant to this Agreement (the "Approved Facilities"). The City Manager shall approve any facility proposed so long as it is properly permitted to process or dispose of the type of materials proposed to be delivered to it in a manner that complies with the Applicable Laws; and, once approved the list of Approved Facilities shall be attached hereto and incorporated herein as Exhibit D. All material Collected by Franchisee pursuant to this Agreement shall be delivered to one of the Approved Facilities identified in Exhibit D and in no case may Solid Waste be delivered to a facility that is not properly permitted to handle the type of materials so delivered, except as may be necessitated by a Force Majeure event, or temporary closure not exceeding five (5) business days. Franchisee may update Exhibit D, and the Approved Facilities noted therein, at any time subject to the City Manager's approval, which approval will not be withheld so long as any facility proposed to be added is properly permitted to process or dispose of the type of materials proposed to be delivered to it in a manner that complies with the Applicable Laws.

7.7 Collection Routes

Franchisee shall establish routes for all Customers serviced pursuant to the terms hereof in City, and provide City with maps, or other means satisfactory to City demonstrating such routes. The routes shall be sufficiently identified to reasonably enable the City to assess compliance with its obligations pursuant to 14 CCR §§ 18984.5 and 18984.6.

7.8 Authorized Truck Routes; Ingres and Egress.

Franchisee hereby acknowledges and agrees that the City Manager shall have the authority to set truck routes, including but not limited to entry and exit points to and from Commercial Premises, and after meeting and conferring with Franchisee to discuss concerns with existing or proposed routing, to direct Franchisee's Collection Vehicles to only utilize such routes, when necessary, in the City Manager's reasonable discretion, to reduce negative impacts on residential areas and City infrastructure.

7.9 No Commingling Without Consent.

Franchisee shall not during its Collection process commingle any type of Solid Waste (including Recyclable Material and Organic Waste) Collected hereunder in a Collection Vehicle with Solid Waste Collected in any other city, or on behalf of any other entity operating or existing within City that is not subject to this Agreement. Notwithstanding the foregoing, City, in its sole and absolute discretion, may allow Franchisee to commingle Solid Waste it Collects hereunder with that Collected from persons or places outside the Franchise Area, if:

7.9.1 Franchisee proposes a means acceptable to City by which to accurately identify and report the Solid Waste Collected from within and outside the Franchise Area; and

7.9.2 Franchisee obtains written consent from the City Manager to implement commingling pursuant to any such proposal; and

7.9.3 Franchisee's proposal as approved by the City Manager is successfully implemented such that timely and accurate information regarding the Solid Waste Collected from within the Franchise Area, and the delivery for diversion and/or diversion of such Solid Waste so as to enable the City to remain in compliance with related provisions of the Applicable Laws; and

7.9.4 Franchisee's proposal meets all obligations that may exist relating to the County Agreement.

The City Manager may in the exercise of his reasonable discretion withdraw any consent given to Franchisee by which commingling is authorized, and shall give reasonable written notice to Franchisee of such decision, which shall be deemed to be 30 days unless otherwise dictated by specific circumstances.

7.10 Collection and Replacement of Containers

Franchisee shall Collect Containers from the location upon the property of each Customer designated for their storage, and replace such Containers to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by the Customer and Franchisee.

7.11 Franchisee's Containers

7.11.1 Franchisee's Containers shall meet the minimum standards set forth on the attached Exhibit B, and shall comply with the Applicable Laws.

7.11.2 Franchisee shall be responsible to maintain and replace, as necessary, all of its Containers, and all Containers shall be maintained by Franchisee in good repair, with any question as to the meaning of this standard being resolved by the City Manager based upon the exercise of his/her reasonable discretion.

7.11.3 Franchisee shall ensure it maintains an accurate list that contains the total number and type of its Containers at each service address, as well as the frequency of Collection for each such Container. Franchisee shall keep this list up to date at all times, provide it to City upon request, and shall include a current updated list with each monthly, quarterly and annual report submitted pursuant to Section 10.

7.11.4 All Containers which are used primarily for the Collection of Solid Waste containing liquids shall be maintained by Franchisee in a watertight condition; and shall at all times comply with the provisions of any applicable NPDES permit.

7.11.5 Franchisee shall replace any damaged Containers, and shall remove any graffiti that appears on its Containers, within one (1) business day after becoming aware of the damage or graffiti.

7.11.6 All Bins and Rolloff Boxes shall be kept freshly painted in a uniform fashion.

7.11.7 Franchisee's name and local telephone number shall be placed on all Bins and Rolloff Boxes, in letters not less than three (3) inches high, so as to be visible in use. Franchisee's Carts shall contain, at a minimum, Franchisee's name and a distinct logo and identification number.

SECTION 8
MINIMUM REQUIREMENTS FOR SOLID WASTE HANDLING PROGRAMS

8.1 Commercial Premises Refuse Collection

Franchisee shall provide all Commercial Customers with at least one (1) Bin and/or Rolloff Box for Collection of Refuse that meet the minimum standards set forth in Exhibit B. As an alternative, and subject to the approval of the City Manager, Franchisee may offer Collection in Refuse Carts to Commercial Customers that do not have space for, or do not generate enough waste to require the use of, Bins for Collection. Franchisee shall Collect all Refuse placed in such Containers for Collection not less than once per week. Franchisee shall provide additional Containers for Refuse Collection to Commercial Customers, and provide additional Collections, upon request, or as may be required by City's Municipal Code, health and safety requirements, or by the City Manager. Containers shall be Collected by Franchisee from the location upon each Commercial Customer's property designated for their storage, and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by the Commercial Customer and Franchisee.

8.2 Commercial Premises Recycling Program

Franchisee shall provide a Recycling program to all Commercial Customers (the "Commercial Premises Recycling Program") that at a minimum meets the standards required under the Applicable Laws, including specifically AB 341 and SB 1383, and such program shall be consistent with Ordinance No. 21-19 adopted by the City to implement the Applicable Laws (including such amendments, if any, to it which may be required by CalRecycle). Franchisee shall deliver to each applicable Customer at least one Container for the Collection of Recyclable Materials. Franchisee shall work with Customers to evaluate the actual number of such Containers needed, and frequency of their Collection, with a goal of meeting the requirements of the Applicable Laws (such as AB 341 and SB 1383), taking into account each Customers' actual needs, and public health and safety needs. The City Manager shall resolve any dispute that may exist between Contactor and any Customer as to the number of Containers or frequency of Collection needed to comply with this provision. Franchisee shall assist the City in identifying Customers subject to this provision that are not in compliance with their obligations under the Applicable Laws. Franchisee shall produce, and keep current, information specifically outlining its Commercial Premises Recycling Program, and shall annually publish and distribute a brochure describing this service to all of its existing Customers in City.

8.3 Commercial Premises Organic Waste Recycling Program

Franchisee shall provide a program for the Collection, processing, and diversion from disposal of Organic Waste for all Commercial Customers consistent with the Applicable Laws (the "Commercial Organic Waste Recycling Program"). In connection with this obligation, Franchisee shall deliver at least one Container for the Collection of Organic Waste to each applicable Customer excepting such Customers for whom City issues an Organics Recycling Waiver. The Commercial Organic Waste Recycling Program may be designed to address the specific needs and waste stream of each Customer provided that all Customers shall receive Organic Waste Recycling service in accordance with Applicable Law. Franchisee shall work with Customers to evaluate the

actual service needed, as well as the number of Containers needed, and frequency of their Collection, with a goal of meeting the requirements of the Applicable Laws, including specifically SB 1383, taking into account each Customer's actual needs, and public health and safety needs. The City Manager shall resolve any dispute that may exist between Contactor and any Customer as to the number of Containers or frequency of Collection needed to comply with this provision. Franchisee shall be responsible for ensuring that the Commercial Organic Waste Recycling Program it provides meets the requirements of all Applicable Laws, including SB 1383. Franchisee shall make available information related to its Commercial Organic Waste Recycling Program and shall promote said program through its website, mailers, brochures, billing inserts, email content, social media, and/or online announcements, all as more fully set forth herein. Franchisee shall notify City of instances where a Commercial Customer refuses to implement the Commercial Organic Waste Recycling Program. City agrees in such instances to provide reasonable assistance to Franchisee, which may include adding its name to materials prepared for distribution to Customers regarding the requirements of the Applicable Laws, enforcement of its related ordinances as it may deem necessary (subject to its prosecutorial discretion), and participation by City Personnel in meetings with Commercial Customers who repeatedly refuse to implement the Commercial Organic Waste Recycling Program.

8.3.1 Franchisee may, as part of its Commercial Organic Waste Recycling Program, allow Customers to place Organic Waste in compostable plastic bags, and place such bags for Collection in Containers designated for the Collection of Organic Waste. Should this occur, Franchisee's Commercial Organic Waste Recycling Program shall comply with all provisions of the Applicable Laws related to the use of compostable plastic bags or compostable plastic, including without limitation those set forth in 14 CCR §18984.1 and 18984.4, and any associated notification and reporting requirements.

8.3.2 On behalf of City, Franchisee shall regularly identify opportunities for, barriers to, and incentives for Organic Waste recycling, and shall engage with its Customers in education and outreach related to Organic Waste recycling in a manner that ensures City is in compliance with its obligations to conduct outreach and education as set forth in the Applicable Laws, including SB 1383, in connection with the Customers serviced by Franchisee. The method(s) by which Franchisee contacts Customers for these purposes may be by any reasonable means Franchisee desires (which may include direct mail, email, telephone calls, site visits and/or such other methods as Franchisee reasonably deems appropriate), provided that such methods result in compliance with all Applicable Laws in connection with the Customers serviced by Franchisee. Franchisee shall include a summary of its activities pursuant to this provision in its monthly, quarterly and annual reports to City.

8.3.3 Franchisee shall identify all of its Customers that are Large Venues, Large Events and Tier 1 and Tier 2 Commercial Edible Food Generators. Franchisee shall provide a summary of each in its monthly, quarterly and annual reports to City. Once identified, Franchisee shall engage in education and outreach efforts with such Customers, including specifically by providing access to training materials for their employees that comply with the Applicable Laws as well as Franchisee's Implementation, Outreach and Education Plan, attached hereto as Exhibit E. To the extent known to Franchisee, Franchisee shall advise Customers that are Large Venues, Large Events and Tier 1 and Tier 2 Commercial Edible Food Generators of any

obligations under the Applicable Laws with which they are not in compliance regarding Recycling and Organic Waste Collection services.

8.3.4 If requested by City, Franchisee shall conduct visual inspections of Commercial Customer's Premises to evaluate their compliance with Organic Waste Collection obligations and service level needs. Franchisee shall annually conduct Customer surveys and onsite inspections on behalf of City in a manner that complies with the Applicable Laws at Premises that do not participate in Franchisee's Commercial Organic Waste Recycling Program and/or otherwise Recycle or divert Organic Waste. Franchisee shall provide copies to City of summaries of visual inspections and surveys performed, if any, each month and submit copies of all such materials as part of its monthly, quarterly and annual reports to the City in accordance with Section 10. In the event a Customer refuses to participate in Franchisee's Commercial Organic Waste Recycling Program, and does not report to Franchisee that it achieves compliance with its obligations under the Applicable Laws through other methods, Franchisee shall provide the City with Customer's name, address, contact information and such other information available to Franchisee as may be requested by City or CalRecycle, in a format reasonably approved by City.

8.4 Implementation, Outreach and Education Plan. Within 30 days of the Effective Date, Franchisee shall prepare an "Implementation, Outreach and Education Plan" which shall be submitted to the City Manager for approval and thereafter attached hereto and incorporated herein as Exhibit E. Franchisee shall provide ongoing education and outreach to Customers that at a minimum complies with the Implementation, Outreach and Education Plan. The purpose of Franchisee's Implementation, Outreach and Education Plan is to enable it to implement the services set forth in this Agreement, including specifically those related to SB 1383, and is intended to provide information to Customers related to the proper materials to place in each Container with sufficient specificity to enable Customers to understand Franchisee's various diversion programs, and their obligations under the Applicable Laws, including Ordinance No. 21-19 adopted by City. The Implementation, Outreach and Education Plan shall set forth Franchisee's plan to comply with the education and outreach requirements of the Applicable Laws, which shall include specific proposed tasks and indicate either dates for completion or each, or that a task is ongoing. The Implementation, Outreach and Education Plan shall include at least the following outreach to each of its Customers as part of its Commercial Organic Waste Recycling Program:

8.4.1 *Initial Direct Mailing Outreach to be performed by Franchisee*. Franchisee shall prepare a multi-lingual letter (in languages reasonably requested by City [which shall at a minimum include English, Spanish and Mandarin]) regarding the requirements of the Applicable Laws, including SB 1383, for City approval. Upon receipt of City approval, the letter shall be delivered by Franchisee to all of its Customers, and shall be provided to any new Customers who subscribe for service with Franchisee, informing such Customers of the availability of the Commercial Organic Waste Recycling Program and the requirements for compliance with AB 1826 and SB 1383. The letter shall note that subscription to Franchisee's Commercial Organic Waste Recycling Program is mandatory under State law for Customers that do not receive an Organic Recycling Waiver from City or otherwise comply with their obligations as generators of Organic Waste as set forth in the Applicable Laws. This letter shall be distributed to Customers in a manner that complies with the Implementation, Outreach and Education Plan set forth in Exhibit E.

8.4.2 *Initial Direct Mailing of Out of Compliance Outreach to be performed by Franchisee.* Franchisee shall prepare a letter for City approval targeted at its Customers who are not in compliance with their obligations related to Organic Waste under the Applicable Laws. The letter shall be delivered to all applicable Customers within the timeframes set forth in the Implementation, Outreach and Education Plan, attached hereto as Exhibit E, or as otherwise agreed to by the City Manager and Franchisee, and in any case not later than 120 days following the Effective Date. The letter shall explain the requirements of the Applicable Laws, detail the Customer's specific reasons for non-compliance, and explain the annual reporting requirements to CalRecycle. Franchisee shall concurrently provide City with a list of all Customers it believes are not in compliance with the regulatory requirements applicable to them associated with their generation of Organic Waste under the Applicable Laws, (including but not limited to a contact person, service and billing addresses, phone number, email, account notes and any other information reasonably necessary) as well as all available information relating to any refusal by the Customer to participate in the Commercial Organic Waste Recycling Program, in order that such information may be utilized for enforcement purposes and included in reports to CalRecycle.

8.5 Container Contamination Monitoring.

Franchisee shall provide a Container contamination monitoring program in connection with all Customers that complies with all Applicable Laws, and is approved by the City Manager in his/her reasonable discretion, which at a minimum meets the following requirements:

8.5.1 Franchisee shall provide on-going monitoring of the contents of Containers, using a method that is approved by City and complies with all Applicable Laws including specifically, without limitation 14 CCR § 18984.5, and may accomplish its obligations hereunder by physical inspection of the contents of Containers by Collection personnel at the time of Collection, or use of cameras which view, record and save images of the contents of Containers.

8.5.2 Franchisee shall take such steps as are necessary to comply with its on-going Container contamination monitoring obligations hereunder.

8.5.3 In the event Franchisee encounters a contaminated Container, meaning thirteen and one-half percent (13.5%) or more of the volume of the contents of the Container is comprised of materials other than that for which the Container is designated, Franchisee shall document the contaminated Container in a manner that complies with the Applicable Laws and is reasonably satisfactory to City, which shall at a minimum demonstrate: (i) thirteen and one-half percent (13.5%) or more of the volume of the contents of the Container is comprised of materials other than that for which the Container is designated, and (ii) the identity of the Customer to whom the Container was provided by Franchisee. Franchisee shall record such event in a computer logging/data-base system and include the date, time, Customer's address, type of Container (i.e., whether designated for general Solid Waste, Organic Waste, or Recyclable Materials) as well as video or photographic evidence of the contamination connecting it to the Customer/owner of the Container, and shall retain the video/photographic evidence of the incident to enable reasonable review, including review in connection with challenges by Customers to Franchisee's determination a Container was contaminated. Franchisee shall notify the Customer of the contamination incident as soon as reasonably feasible, in a manner consistent with the provisions

of this Section, and provide the information required by this Section to the Customer upon request. In addition, Franchisee shall provide the Customer with education materials related to the appropriate items to be placed in each Container. Franchisee shall maintain the forgoing records and provide them to the City as part of its monthly reporting, or more frequently if necessary to comply with City's enforcement obligations set forth in the Applicable Laws.

8.5.4 Upon discovering a contaminated Container, Franchisee shall provide notice by leaving a tag on the Container, or delivering the notice by mail, electronic mail, text or other electronic means reasonably calculated to ensure the Customer actually receives the notice.

8.5.5 Franchisee shall provide information to City regarding Container contamination in the reports it submits to City, with sufficient specificity to enable City to determine if enforcement action against the Customer is warranted and to meet the reporting requirements of SB 1383. In addition, Franchisee shall maintain the above noted records related to contamination and provide them to City, and otherwise assist City with such enforcement efforts as City may deem appropriate.

8.5.6 Franchisee shall perform route reviews or waste evaluations of each route in City on an ongoing basis in a manner that meets the requirements of 14 CCR § 18984.5, and is approved by the City Manager in his/her reasonable discretion. Once such action is completed, Franchisee shall provide any notification to Customers as may be required by the Applicable Laws. Franchisee shall keep records of the reviews and/or evaluations conducted pursuant to this provision, including specifically the records required by 14 CCR § 18984.6, and provide such records to City upon request. In addition, Franchisee shall include a summary of such information in a form acceptable to City, in its monthly, quarterly and annual reports to City.

8.6 Precautions Regarding the Collection of Hazardous Materials.

8.6.1 *Contractual Prohibition Requirement.* Franchisee shall include as a condition to its contractual agreement with its Customers a provision prohibiting disposal of Hazardous Waste in any of Franchisee's Collection Vehicles, Containers, or other equipment.

8.6.2 *Load Check Program.* Franchisee shall implement a load check program that includes, at a minimum, a visual check of all Containers to be emptied to protect against inclusion of Hazardous Waste. Franchisee shall prepare a written record of all Hazardous Waste discovered during load checks. The records shall comply with all City, county, state and federal Hazardous Waste Regulations, shall be maintained for a minimum of five (5) years following the expiration of this Agreement, and shall be made available to the City Manager upon request. Further, prior to destroying or discarding any of such records, Franchisee shall notify City, and upon City's election, Franchisee shall deliver such records to City. Franchisee shall handle and dispose of any Hazardous Materials it Collects in accordance with Applicable Laws.

8.7 Edible Food Recovery.

Franchisee shall assist City and Commercial Customers in meeting their obligations set forth in 14 CCR Section 18985.2, by at a minimum providing the following services:

8.7.1 As required by 14 CCR Section 18991.3, Franchisee shall identify all of its Commercial Customers that meet the definition of Tier One or Tier Two Commercial Edible Food Generators. Franchisee shall create, and keep current, a list of such Commercial Customers which list shall include: Customer name; service address; contact information; Tier One or Tier Two classification; type of business (as it relates to the Tier One or Tier Two Commercial Edible Food Generator definition); and such other information as may be required by City to enable it to contact the Customer. Franchisee shall provide a summary of this information in a form acceptable to City as part of its monthly, quarterly, and annual reports to City.

8.7.2 Franchisee shall cooperate with and assist City and/or its consultants in conducting annual inspections of Commercial Customers who are Tier One or Tier Two Commercial Edible Food Generators to assess their compliance with the requirements of 14 CCR Section 18991.3.

8.7.3 At least annually Franchisee shall provide its Customers who are Tier One and Tier Two Commercial Edible Food Generators with the following information:

8.7.3.1 Information about the Franchisee's and/or City's Edible Food Recovery program;

8.7.3.2 Information about Food Recovery Organizations and Food Recovery Services operating within the City, including information regarding how to contact such Food Recovery Organizations and Food Recovery Services; and,

8.7.3.3 Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.

8.7.4 Franchisee may provide the information required by this Section to Commercial Customers by including it with regularly scheduled notices, education and outreach materials, billing inserts, or other information disseminated to Commercial Customers.

8.7.5 Franchisee shall assist City, as well as its Customers who are operators of Large Venue's and Large Events with reporting and other assistance necessary to meet their obligations under the Applicable Laws to the extent arising out of Franchisee's Collection of Organic Waste pursuant to this Agreement.

8.7.6 Franchisee shall keep records of its efforts in connection with this Section, as well as records that provide its best estimate of the total tonnage of Edible Food recovered by its Customers within City, to the extent Franchisee has obtained such information through performance of its Organic Waste Collection Program pursuant to this Agreement, and shall provide summaries of such information in a form acceptable to City as part of its monthly, quarterly, and annual reports to City.

8.8 Assistance with Organic Recycling Waivers

8.8.1 Franchisee shall, upon request, assist its Customers in assessing if they qualify for an Organics Recycling Waiver, and provide such assistance as may be necessary for the Customer and City to evaluate any application submitted for such a waiver. Such assistance

shall include a review of the Customer's Organic Recycling Waiver application, and providing City with any information or data regarding the Customer's Premises, service levels or other factors which may be necessary to enable City to evaluate an Organic Recycling Waiver request.

8.8.2 City shall provide make available to Franchisee all Organics Recycling Waivers it grants in the Franchise Area. If requested by City or a Customer, Franchisee shall conduct such reasonable investigation and inquiry as may be necessary to enable City to determine if the criteria by which City granted an Organic Recycling Waiver to one of Franchisee's Customers continues to exist.

8.8.3 Franchisee shall maintain a record of each Organics Recycling Waiver issued by the City for its Customers, as well as any ongoing activity it undertakes in connection with Section 8.8.2 to provide data related to ongoing eligibility. A summary of such information shall be provided by Franchisee, in a form acceptable to City along with Franchisee's monthly, quarterly and annual reports to City.

8.9 Other Collection Programs As May Be Required by Law.

In the event CalRecycle, or any federal or state law or regulation, imposes upon City or Franchisee a requirement for the implementation of any source Separated program for the Collection of any type of discarded material (whether or not meeting the definition of Solid Waste hereunder) not already covered by this Agreement but applicable to Franchisee's Customers, Franchisee shall design and implement a program to comply with such requirement and accordingly operate hereunder in compliance with the Applicable Laws. Any program implemented pursuant to this Section shall be subject to the City Manager's reasonable approval.

8.10 Guaranteed Minimum Franchisee Recycling Rate.

In accordance with AB 939, Franchisee shall conduct its operations hereunder such that a minimum of fifty percent (50%) of all Solid Waste Collected from Franchisee's Customers (taking into account diversion achieved by efforts other than its services) is diverted from disposal at Landfills for each calendar year beginning January 1, 2025 ("Recycling Diversion Requirement"). For the purposes of this Section, diversion includes only Recycling methods, Transformation (and/or other forms of converting Solid Waste into energy), and other processes which are accepted by the State toward meeting City's diversion goal under the Applicable Laws. Franchisee shall not be entitled to a reduction in the Recycling Diversion Requirement if or when:

- Transformation or other facilities are no longer available for any reason; or
- CalRecycle diversion credit under AB 939 or other Applicable Laws is no longer provided for Solid Waste sent to a Transformation facility.

Notwithstanding anything in this Agreement to the contrary, Franchisee's Recycling Diversion Requirement under this Agreement shall be subject to all Applicable Laws, such that if diversion requirements in the State of California increase, Franchisee's Recycling Diversion Requirement shall increase in order to ensure compliance with all Applicable Laws.

To comply with this Section, Franchisee is required to submit timely tonnage reports supporting the Recycling Diversion Requirement, and to provide supporting documentation as may be requested by City or its designee as part of, or independent of, an audit. The failure or refusal of a Customer to receive service or comply with recommendations of Franchisee related to meeting the Recycling Diversion Requirement shall not be considered a breach by Franchisee of this Section. In addition, Franchisee shall not be in breach of this Agreement for failure to meet the Recycling Diversion Requirement if such failure arises from or is related to service waivers granted to Customers by City. Failure by Franchisee to meet, and fully support, the Recycling Diversion Requirement as described in this Section may result in termination of this Agreement pursuant to Section 17.

8.10.1 *Implementation of Additional Diversion Services.* In the event City does not meet the current diversion goal of fifty percent (50%) imposed by AB 939, and City finds that Franchisee is not meeting its Recycling Diversion Requirement as a result of its failure to perform its obligations under this Section 8.10, City may direct Franchisee to perform additional services (including the implementation of new diversion programs) or modify the manner in which it performs existing services.

8.10.2 *Compliance and Penalties.* City may provide Franchisee with written notice of violations of Franchisee's obligations under this Section 8.10. If Franchisee fails to cure any noticed violation within a reasonable period of time determined in City's sole discretion, the end date of which is stated in the written notice, the City may charge Franchisee up to Two Hundred Fifty Dollars (\$250) per day for each violation identified in the written notice. Upon request, City may in its sole discretion, but is not required to, extend Franchisee's period to cure. The penalties in this Section are in addition to any remedies that may be available to City.

SECTION 9

FRANCHISEE'S COLLECTION VEHICLES

9.1 General

Franchisee shall provide vehicles for the Collection of Solid Waste ("Collection Vehicles") that are sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Franchisee is expressly obligated to provide such Collection Vehicles and routes as are required to meet the service standards set forth herein. Franchisee shall have available on Collection days sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies.

9.2 Air Quality/Fuel Requirements

Franchisee's Collection Vehicles shall comply with all rules and regulations of the South Coast Air Quality Management District, the Air Resource Board, and any other regulatory body that may be in effect during the Term of this Agreement, as well as other federal, state and local laws and regulations that may be enacted during the Term of this Agreement. Franchisee's Collection Vehicles shall meet or exceed such air quality standards as may be adopted by the forgoing regulatory bodies during the Term. Franchisee shall convert its fleet of Collection Vehicles used in the Franchise Area to zero emissions vehicles in compliance with Applicable

Laws, including without limitation the State of California's Advanced Clean Fleets regulations, and any similar or related regulations. In the event that renewable gas, as defined in 14 CCR Section 18982(a)(62) (hereafter "RNG"), is commercially and reasonably available for use in the City, Franchisee shall make reasonable efforts for all Collection vehicles to be powered by RNG generated by a local facility or powered by RNG 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 Title 14 of CCR to recover Organic Waste and meets the requirements of 14 CCR Section 18993.1(h). 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 Franchisee certifying that the in-vessel digestion facility produces the RNG consistent with the requirements of 14 CCR Section 18993.1(h). Franchisee shall maintain records of the amount of RNG purchased and shall report this information upon its reasonable availability. Franchisee shall agree to 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.

9.3 Specific Requirements

Each Collection Vehicle utilized by Franchisee in the performance of this Agreement shall meet the following minimum standards:

9.3.1 Each Collection Vehicle shall be fueled by clean air technology in accordance with Applicable Laws.

9.3.2 Each Collection Vehicle shall be registered with the California Department of Motor Vehicles.

9.3.3 Each Collection Vehicle shall be inspected regularly by Franchisee to ensure it meets the requirements of the California Vehicle Code and the California Highway Patrol. Franchisee shall provide copies of its Biannual Inspection of Terminal inspection reports to City within 30 days of its receipt of such reports and shall make all records related to its Collection Vehicles, including Franchisee's maintenance records, available to City upon request by the City Manager.

9.3.4 Each Collection Vehicle shall be equipped with devices capable of covering every open section of the Collection Vehicle in which Solid Waste may be placed and, while operating upon the public rights-of-way, shall be covered so as to prevent any Solid Waste from falling or being blown or otherwise dislodged from the Collection Vehicle.

9.3.5 Each Collection Vehicle shall be continuously maintained so as to both: (1) meet the highest industry standards with regards to efforts to prevent liquid from leaking and to the degree possible ensure each Collection Vehicle is "watertight" and "leak-proof" and, (2) at all times comply with the provisions of all Applicable Laws, including, without limitation, the Vehicle Code and any applicable NPDES permit, with regard to materials leaking from Collection Vehicles. Franchisee shall be responsible to promptly clean any spillage or Solid Waste that leaks or otherwise escapes the Collection Vehicle.

9.3.6 As frequently as determined necessary by the City Manager, each Collection Vehicle shall be painted and shall have routine body work performed so that such vehicles do not become unsightly, as determined by the City Manager.

9.3.7 Franchisee's name, local or toll free telephone number, and a vehicle number shall be visibly printed or painted in letters not less than five (5) inches in height on both sides of each Collection Vehicle. Any other information or signage printed, painted, or displayed on Franchisee's Collection Vehicles, when such vehicles are providing Collection services within City Limits, shall be subject to approval by City.

9.3.8 Each Collection Vehicle shall be maintained in a clean and sanitary condition both inside and out and shall be washed at least once every seven (7) calendar days and steam cleaned on a regular basis.

9.3.9 Each Collection Vehicle shall carry a broom, shovel, and operable fire extinguisher, and shall be equipped with a communication device sufficient to allow the driver to communicate directly with Franchisee's dispatcher and/or main office.

9.3.10 Each Collection Vehicle shall be kept in good repair and working order, and shall be equipped with appropriate safety equipment, including any new safety related technologies that become standard in the waste industry, and at a minimum shall have a video monitor-based back-up system, or its equivalent.

9.3.11 Franchisee shall keep a sufficient supply of replacement parts and equipment on hand to ensure adequate vehicle maintenance and timely and continuous performance of the Solid Waste Handling Services contemplated by this Agreement.

9.3.12 Franchisee shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating properly.

9.3.13 Franchisee shall perform all scheduled maintenance functions upon Collection Vehicles in accordance with the manufacturer's specifications and schedule. Franchisee shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition.

9.3.14 Franchisee shall keep accurate records of all Collection Vehicle maintenance and repair, recorded according to date and mileage, including signed verifications that repairs and maintenance have been properly performed, and shall make such records available to City upon request.

9.3.15 No Collection Vehicle shall be utilized if it is leaking brake, hydraulic, or other fluids, and Franchisee shall clean up any leaks or spills from its Collection Vehicles per the NPDES permits in effect at the time. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such cleanup efforts.

9.3.16 Within 30 days of the Effective Date, Franchisee shall furnish City a written inventory of all vehicles, including Collection Vehicles, used in providing Solid Waste Handling Services pursuant to this Agreement. This inventory shall list all vehicles by manufacturer, ID number, date of acquisition, type, fuel type (i.e., diesel, LNG, RNG, zero emission, etc.) and capacity. The vehicle inventory list shall be included in the annual reports provided to City pursuant to Section 10, and updated with new vehicles that have been placed into service in the Franchise Area. The City Manager's approval shall be obtained prior to any Collection Vehicle newly being placed into service in the Franchise Area following the Effective Date, with a goal of ensuring all such vehicles comply with the Applicable Laws and encouraging collaboration in connection with means by which to advance City's sustainability goals, which approval shall not be unreasonably withheld.

9.3.17 Franchisee shall utilize Collection Vehicles of a size, weight, nature, and type so as to not be unreasonably intrusive on the community with respect to noise, emissions, maneuverability, safety, and other factors, and to avoid or minimize pavement damage and wear and tear of the street or adjacent properties, as approved by the City Manager.

9.3.18 Franchisee shall not load Collection Vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local laws or regulations. Noise levels of equipment used for Collection shall not exceed 75db (seventy-five decibels) when measured at a distance of twenty-five (25) feet from the Collection Vehicle, five (5) feet from the ground.

9.3.19 The average fleet age, when applied to all Collection Vehicles used by Franchisee in the Franchise Area, shall be no more than ten (10) years of age at any time during the Term, nor may any Collection Vehicle be purchased for use in the Franchise Area that is over seven (7) years of age at the time of purchase; provided however use of any Collection Vehicle(s) that would render the average fleet age to exceed ten (10) years may be approved in writing by the City Manager if he/she determines doing so is reasonable.

9.4 Costs of Operation and Damages

Franchisee shall be responsible for any costs incurred in connection with ensuring all Collection Vehicles comply with all Applicable Laws, including, without limitation, any such laws and regulations that may now exist or hereinafter be adopted relating to noise, fuels, emission standards, or weight limits.

9.5 City Inspection

City may cause or require any Collection Vehicle used in performance of this Agreement to be inspected and tested at any reasonable time and in such manner as may be appropriate to determine that the Collection Vehicle is being maintained in compliance with the provisions of this Agreement.

9.6 Correction of Defects and Removal of Vehicles from Use within City

Franchisee agrees to immediately remove from service, and replace or repair, to the City's satisfaction, any Collection Vehicle which City determines to be of unsightly appearance, unsafe,

unsanitary, leaking, out of compliance with any law or regulation or this Agreement, or otherwise in an unsatisfactory operating condition; and any such Collection Vehicle shall not be returned to service until the City Manager gives his written consent for its return.

SECTION 10 **REPORTING REQUIREMENTS**

10.1 General Application and Interpretation.

The Parties acknowledge that City will require reporting at various intervals by which information important to City can be compiled and analyzed. Throughout the Term the Parties agree to work together to address City's needs with respect to the information to be contained in reports prepared by Franchisee. The following is intended as a starting point in order to have established an objective baseline for reporting, but the frequency and content of the reports called out below may be changed by agreement of the Parties; provided any such change is approved by the City Manager in writing, and consistent with the Applicable Laws. Franchisee agrees to provide all information in its control necessary for City to meet its monthly, quarterly, and annual reporting obligations under the Applicable Laws, and to do so in a format reasonably acceptable to City. The express requirements set forth herein are not intended as a limitation, but rather set forth minimums which Franchisee shall comply with in order to meet its obligation to provide information and reports. Franchisee shall provide any additional information or reports requested by City to enable it to meet its obligations under the Applicable Laws not set forth herein.

10.2 Use of Reporting Software.

Franchisee shall utilize computer software, satisfactory to City, to produce reports required under this Section, and shall be responsible for costs associated therewith.

10.3 Customized Reports.

Upon request from City, Franchisee shall prepare and provide customized reports if necessary for City to respond to requests from CalRecycle, containing information that Franchisee is required to maintain hereunder in any reasonable format as may be requested by City.

10.4 Monthly Reports

At a minimum, Franchisee shall on a monthly basis report the following to the City, with each monthly report including a year-to-date summary page as well as the data submitted from the monthly report(s) submitted in the previous calendar year:

10.4.1 a summary of all Solid Waste Collected, sorted by type of waste Refuse, Recyclable Materials, and Organic Waste (and within each type, any additional breakdown reasonably available to Franchisee as a result of its normal operations (i.e., paper, CRV, Food Waste).

10.4.2 the number of Customers that received Temporary Service, including the number and type of Containers provided.

10.4.3 the facilities where all Solid Waste was delivered for disposal or processing and including the weight in tons so delivered; and, if requested by City, true and accurate copies of landfill and processing facility tipping receipts, records showing delivery at processing or reuse facilities, and similar such documents in order to enable City to verify Franchisee's reports.

10.4.4 a narrative of problems encountered (i.e., scavenging or other issues) and actions taken to address such problems and any recommendations for the City to assist with such actions.

10.4.5 a description of outreach and educational activities conducted, including copies of promotional and/or educational materials distributed to Customers during the month.

10.4.6 a description of the total quantities in tons of diversion in a manner that complies with the Applicable Laws and is acceptable to CalRecycle.

10.4.7 the number of Containers used by Franchisee, broken down by Container type utilized and Container capacity.

10.4.8 the total number of Organic Recycling Waivers granted by City to Franchisee's Customers, and the total number of related verifications performed by Franchisee.

10.4.9 the total number of Organic Recycling Waivers requested and a summary of the status of each waiver for which information or assistance requested by City from Franchisee is pending.

10.4.10 a report of contamination monitoring activities including:

10.4.10.1 the number of route reviews and/or waste evaluations conducted and a summary thereof;

10.4.10.2 a description of the process used for determining the level of contamination;

10.4.10.3 a summary of actions taken in cases where contamination was identified

10.4.11 a report listing all complaints asserting lack of compliance with SB 1383 and a summary of action taken in connection with each.

10.4.12 a report of activities related to Edible Food Generators including:

10.4.12.1 the total number of known Tier One and Tier Two Commercial Edible Food Generators that are Customers of Franchisee within the City.

10.4.12.2 the number of known Food Recovery Services and Food Recovery Organizations located and operating within the City that contract or have written

agreements with Franchisee's Customers who are Commercial Edible Food Generators for Food Recovery

10.4.12.3 the number of Tier One and Tier Two Commercial Edible Food Generators that are Franchisee's Customers and are participating in an Edible Food Recovery program

10.4.12.4 a report of the total pounds of Edible Food Recovered in the previous month if known to Franchisee.

10.4.12.5 the number of Commercial Edible Food Generators that are Franchisee's Customers and participate in an Edible Food Recovery program, if known to Franchisee, and any known reasons provided by those who do not participate.

10.5 Quarterly Reports

Franchisee shall on a quarterly basis provide a summary of the information required in the monthly reports, in a format reasonably acceptable to City, and such other information and/or back up data as may be reasonably requested by City to enable it to comply with its obligations under the Applicable Laws.

10.6 Annual Reports

Within forty-five (45) days after the end of each calendar year during the Term and within forty-five (45) days after the end of the Term, Franchisee shall submit a written annual report, in a form approved by City, which includes, at least the following information:

10.6.1 a summary of the information required in the monthly and quarterly reports, in a format reasonably acceptable to City, and such other information and/or back up data as may be reasonably requested by City to enable it to comply with its obligations under the Applicable Laws.

10.6.2 a summary of the previous year's activities including, but not limited to, Solid Waste Handling Services begun or discontinued during the reporting year, and the number of Franchisee's Customers broken down on a monthly basis;

10.6.3 any information and reports not otherwise contained in this Section 10 required by City to meet its reporting obligations imposed by the Applicable Laws;

10.6.4 a revenue statement, certified by the chief financial officer of Franchisee, setting forth all fees and payments to the City, including Franchise Fees, and the basis for the calculation thereof, including specifically a breakdown of sources of revenue included in Gross Receipts and the amount of revenue derived from each such source comprising Gross Receipts.

10.7 Confidential and Proprietary Information.

Franchisee acknowledges that City is legally obligated to comply with the California Public Records Act ("CPRA"), lawfully issued subpoenas, and other legal obligations. City acknowledges

that certain records, reports, or information contained therein, which Franchisee may be required to maintain under this Agreement or Applicable Law, are protected by or exempt from disclosure under Applicable Law (including, without limitation, law governing data security and privacy rights) or are of a proprietary or confidential nature or may include intellectual property of Franchisee, including, without limitation, any confidential information, copyrighted material, proprietary information, trade secrets or trademark/service mark, as well as any and all such documents or reports containing such information (together, "Franchisee's Intellectual Property"). In such instances, Franchisee will inform City in writing of which records which may be protected or exempt from disclosure under Applicable Law or contain Franchisee's Intellectual Property. At such time as City receives a request for records under the CPRA or Federal Freedom of Information Act or a subpoena or other court order requesting disclosure of records which include Franchisee's Intellectual Property, City shall notify Franchisee of the request, subpoena or order and of City's obligation and intent to provide a response within ten (10) days. Franchisee shall within five (5) days either: (i) consent in writing to the disclosure of the records; or (ii) seek and obtain, at Franchisee's sole cost and expense, the order of a court of competent jurisdiction staying or enjoining the disclosure of the records. Nothing in this Agreement shall require Franchisee to disclose any records, reports, or information protected by or exempt from disclosure under Applicable Law to the City or any third party, or provide any of Franchisee's Intellectual Property to City or any third party under any circumstances. The City agrees to hold all documents and information reviewed by City pursuant to this Agreement which comprise Franchisee's Intellectual Property as confidential and shall not disclose the same unless and to the extent disclosure is required pursuant to Applicable Law.

10.8 Format of Reports

Each report shall be submitted to City, addressed to the City Manager or his or her designee. Records related to performance of this Agreement shall be maintained by Franchisee in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. The format of each report shall be approved by City. Franchisee agrees to submit all reports to e-mail addresses designated by City in an electronic format approved by the City, compatible with City's software/computers at no additional charge.

10.9 Adverse Information

Franchisee shall provide City copies of all reports, pleadings, applications, notifications, communications, and documents, as well as copies of all decisions, correspondence, and actions, and other material adversely affecting this Agreement, or related in any manner to Franchisee's performance of this Agreement, submitted or received by Franchisee to or from the United States Environmental Protection Agency, CalRecycle, the California Regional Water Quality Control Board, and any other federal, state, regional, or local regulatory agency. Copies shall be submitted to City simultaneously with Franchisee's filing of such matters with said agencies. Franchisee's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request.

10.10 Disaster and Labor Unrest Plan

Within ninety (90) days after the Effective Date, Franchisee shall prepare an updated draft disaster cleanup and labor unrest implementation plan that sets forth procedures for Collection of Solid Waste, and implementation of other Solid Waste Handling Services set forth herein, following a major disaster such as an earthquake, fire or other similar event, or a strike or labor unrest. The plan shall address, as applicable, priorities for cleanup at critical facilities, procedures for reimbursement for costs, describe communication plans, list key contact persons, and provide maps showing proposed sites for stockpiling of disaster debris that cannot be transported to the landfill. Franchisee shall coordinate the plan with City's emergency service teams. The draft plan shall be presented to the City Manager for consideration and approval. The final plan shall be distributed to those employees of Franchisee and City who would have a role in implementing it in the event of a disaster or labor unrest.

10.11 Failure to Report

The refusal of Franchisee to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by Franchisee in such report shall be deemed a material breach of this Agreement, and shall subject Franchisee to all remedies, legal or equitable, which are available to City under this Agreement or otherwise. In the event City elects to suspend Franchisee's franchise rights for Franchisee's failure to file a report, as a condition to Franchisee's reinstatement, Franchisee shall be required to pay to City a penalty in the amount of Five Hundred Dollars (\$500) for each thirty (30) day period in which the applicable report is delinquent.

SECTION 11
FRANCHISEE'S CONSIDERATION

In addition to any other consideration set forth herein, as part of its consideration for entering into this Agreement, and for the non-exclusive franchise, right and privilege to provide Solid Waste Handling Services within City as specified herein, Franchisee shall provide the following:

11.1 Franchise Fee. Franchisee shall pay to City, a franchise fee equal to fourteen percent (14.0%) of Franchisee's annual Gross Receipts each year, or portion thereof, during the entire Term of this Agreement (the "Franchise Fee"). Said Franchise Fee shall be paid to City quarterly within forty-five (45) days following the end of each of the following quarterly periods: April 1, July 1, October 1 and January 1. Should any such due date fall on a weekend, Holiday, or other day in which the City's business offices are closed, payment shall be due on the first day thereafter in which the City's business offices are open. The amount of each payment shall be equal to fourteen percent (14.0%) of Franchisee's Gross Receipts received in the calendar quarter preceding the date payment is due. The Franchise Fee due hereunder shall apply to Gross Receipts of Franchisee collected after the expiration of the Term hereof relating to Franchisee's performance during the Term. Franchise Fees shall be accompanied by a statement certified by an officer of Franchisee attesting to the accuracy of the amounts paid, and setting forth the basis their calculation in a manner acceptable to City.

11.2 Reimbursement for SB 1383 Compliance. Franchisee shall make quarterly payments to City to pay its pro-rata share of the amount needed to offset the costs the City incurs in complying with SB 1383 in the Franchise Area (the “SB 1383 Compliance Reimbursement Payment”). The total amount of the SB 1383 Compliance Reimbursement Payment as of April 1, 2025 is Two Hundred Fifty Seven Thousand Dollars (\$257,000). Thereafter, the annual amount of the SB 1383 Compliance Reimbursement Payment shall be adjusted each year as of April 1 by the percentage increase (if any) in the Consumer Price Index, for All Urban Consumers, all items index (CPI-U) – Los Angeles, Long Beach, Anaheim, as published by the United States Department of Labor, Bureau of Labor Statistics, by calculating the average of the changes in the CPI-U between each month during the 12 month period ending on the immediately preceding date of December 31.

11.2.1 Commencing April 1, 2026, Franchisee shall make quarterly payments to City on or before April 1, July 1, October 1 and January 1 each year during the Term in an amount equal to Twenty-five percent (25%) of its Designated Annual SB 1383 Contribution. For purposes of this Section 11.2, Franchisee’s “Designated Annual SB 1383 Contribution” shall be the pro-rata share of the total SB 1383 Compliance Reimbursement Payment equal to the percent of Solid Waste Collected (in tons) by Franchisee in the Franchise Area during the immediately preceding 12 month period ending December 31, as compared to the total of all Solid Waste Collected in the Franchise Area (in tons) during that same period by all Franchisee’s that have been granted one of the Non-Exclusive Franchise Agreements.

11.2.2 Franchisee shall make two payments to City in connection with the Compliance Reimbursement Payment on April 1, 2025. The First payment is to cover the Compliance Reimbursement Payment for the period of September 1, 2024 (the Effective Date) through March 31, 2025; and, the second is to cover the first quarterly payment due for the period commencing April 1, 2025. The amount of each of the two payments due on April 1, 2025 shall be as follows:

11.2.2.1 For the payment intended to apply to the period from the Effective Date through March 31, 2025, the total SB 1383 Compliance Reimbursement Payment shall be One Hundred Seventy One, Three Hundred Thirty Three Dollars (\$171,333.00) [which is based on the total SB 1383 Compliance Reimbursement Payment having been pro-rated over the eight month period between the Effective Date of September 1, 2024, and March 31, 2025]. Franchisee’s Designated Annual SB 1383 Contribution applicable to this payment shall be the pro-rata share of One Hundred Seventy One, Three Hundred Thirty Three Dollars (\$171,333.00) equal to the percent of Solid Waste Collected (in tons) by Franchisee in the Franchise Area during the period between September 1, 2024 and January 31, 2025, as compared to the total of all Solid Waste Collected (in tons) in the Franchise Area during that same period by all Franchisee’s that have been granted one of the Non-Exclusive Franchise Agreements. One Hundred percent (100%) of Franchisee’s Designated Annual SB 1383 contribution for the period of September 1, 2025 to March 31, 2025 (as noted above) shall be due on April 1, 2025.

11.2.2.2 For the payment intended to apply to cover the first quarterly payment due for the period commencing April 1, 2025, the total SB 1383 Compliance Reimbursement Payment, without modification, shall apply. Franchisee’s Designated Annual SB 1383 Contribution shall be the pro-rata share of Two Hundred Fifty Seven Thousand Dollars

(\$257,000) equal to the percent of Solid Waste Collected (in tons) by Franchisee in the Franchise Area during the period between September 1, 2024 and January 31, 2025, as compared to the total of all Solid Waste Collected (in tons) in the Franchise Area during that same period by all Franchisee's that have been granted one of the Non-Exclusive Franchise Agreements. Twenty-five percent (25%) of Franchisee's Designated Annual SB 1383 contribution for the period of April 1, 2025 to March 31, 2026 (calculated as noted above) shall be due on April 1, 2025. Franchisee shall make three additional payments to City equal to this payment on or before July 1, 2025, October 1, 2025 and January 1, 2025.

11.3 Additional Charges and Interest For Late Payments. In the event Franchisee fails to make any of the payments provided for in this Agreement on or before the dates due, Franchisee shall pay to City, in addition to the amount due, the following amounts:

11.3.1 A sum of money equal to five percent (5%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting for, and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving the revenue; and

11.3.2 Interest on the delinquent sum (excluding the late payment charge referred to in Section 11.3.1) at the maximum legal rate, with said sum to be applied as interest for loss of use of the money due and to be calculated commencing on the date first due through and including the date upon which full payment, including all interest and penalties, is made.

SECTION 12
INDEMNIFICATION, WARRANTIES GUARANTEES AND RELATED
OBLIGATIONS PROVIDED IN CONNECTION WITH APPLICABLE LAWS

12.1 Warranties and Representations.

12.1.1 Franchisee warrants and represents that it is familiar with City's SRRE, it is familiar with City's waste stream, and it has the ability to and will provide sufficient programs and services to ensure City will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in the Applicable Laws, and all amendments thereto, with respect to the Customers it services hereunder.

12.1.2 Without regard to any related indemnification requirements, Franchisee guarantees to City that it shall carry out its obligations under this Agreement so that with respect to the Customers Franchisee services hereunder: (1) both it and City will at all times be in compliance with the requirements of all Applicable Laws, including specifically AB 939, AB 341, AB 1826 and SB 1383, and (2) City will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in the Applicable Laws. In meeting this obligation, Franchisee shall be mindful of and comply with all requirements of the County Agreement, including specifically, without limitation, the requirements thereof generally relating to (i) the delivery of Solid Waste only to transfer stations that provide quarterly certifications of Solid Waste delivered, and (ii) the

disposal of residual Solid Waste that remains after Recycling processes have been completed. Commencing immediately upon the Effective Date, Franchisee shall implement all programs necessary to ensure City complies with all state-mandated programs relevant to the services provided hereunder and shall perform public education, awareness, and outreach activities as required by any state-mandated program or as reasonably required by the City Manager in accordance with this Agreement. Franchisee shall submit to the City Manager for review and approval all proposed written public educational, awareness and outreach materials. Franchisee shall engage in any required education, awareness, and outreach activities within thirty (30) days of commencing services to any new Customers, and on not less than an annual basis with all existing Customers. Franchisee shall provide City with monthly, quarterly and annual written reports in a form acceptable to the City Manager and adequate to meet City's filing and reporting requirements under the Applicable Laws, throughout the Term of this Agreement. At City's request, Franchisee shall be responsible to prepare, or assist City with the preparation of, all reports and other information as may be required by any agency, including specifically, the State of California, in order to comply with any Applicable Laws related to the services contemplated by this Agreement.

12.2 Mutual Cooperation. City and Franchisee shall reasonably cooperate in good faith with all efforts by each other to meet City's diversion and other compliance requirements imposed by AB 939, AB 341, AB 1826, SB 1383, and other Applicable Laws. In this regard, City's obligations shall include, without limitation, making such petitions, requests and applications as may be reasonably requested by Franchisee for time extensions in meeting diversion goals, reductions in diversion goals, or other exceptions from the terms of AB 939, AB 341, AB 1826, SB 1383 and other Applicable Laws.

12.3 Performance Requirements. Franchisee's obligations pursuant to the provisions of this Section shall include, but not be limited to, the following terms:

12.3.1 Indemnification Requirements. Franchisee agrees to defend, with counsel reasonably approved by City, indemnify, and hold harmless the City Indemnitees from and against all fines and/or penalties and other liabilities which may be imposed by CalRecycle or any other regulatory agency if (1) Franchisee fails or refuses to timely provide information relating to its operations which is required pursuant to this Agreement or any Applicable Laws and such failure or refusal prevents or delays City from submitting reports required by Applicable Laws in a timely manner; (2) Franchisee fails or refuses to timely implement programs or otherwise comply with the provisions of this Agreement related to the mandates of the Applicable Laws and such failure or refusal prevents or delays City from complying with the Applicable Laws in a timely manner; or (3) the source reduction and Recycling goals, diversion goals, program implementation requirements, or any other requirements of Applicable Laws are not met with respect to the Customers Franchisee services hereunder.

12.3.2 Assistance to City; Payment of Fees, Fines, and Penalties. In addition to the forgoing, Franchisee agrees, at its sole cost and expense, to:

- (a) Assist City in responding to inquiries from CalRecycle;

(b) Assist City in preparing for, and participating in, CalRecycle's biennial review of City's compliance with Applicable Laws;

(c) Assist City in applying for any extension to comply with any of the Applicable Laws, if so directed by City;

(d) Assist City in any hearing conducted by CalRecycle relating to City's compliance with Applicable Laws;

(e) Assist City in the development and implementation of a public awareness and education program that is consistent with Applicable Laws, as well as any related requirements of Applicable Laws;

(f) Provide City with advice on Recycling, source reduction, and other technical assistance related to compliance with the Applicable Laws;

(g) Defend, with counsel acceptable to City, the City Indemnitees against the imposition of fines and/or penalties, or any other liabilities, issued by CalRecycle as a result of Franchisee's failure to comply with Applicable Laws, including, without limitation, AB 939, AB 341, AB 1826, and SB 1383; and

(h) Be solely responsible for and pay, any fees, penalties or other costs imposed against City by CalRecycle and reimburse, indemnify and hold harmless City against any and all costs, fees, charges, fines, penalties, or other liabilities, levied against it for violation of any state-mandated diversion requirements, or violation of any other provision of Applicable Laws to the extent arising from or in any way related to Franchisee's performance of its obligations under this Agreement; provided, however, Franchisee's obligation to indemnify City for any penalties or fines set forth in this sub-paragraph shall be in proportion to the amount of such fines or penalties imposed because of Franchisee's delay or failure to perform its obligations hereunder.

12.4 Annual Compliance Review. City intends to review Franchisee's performance annually at its expense to ensure compliance with the terms and provisions of this Agreement ("Annual Compliance Review"). At a minimum, City intends to have internal staff or qualified outside consultants review Franchisee's performance to ensure ongoing compliance with the terms hereof, including, but not limited to, the payment of required fees, performance of the Solid Waste Handling Services stated herein, implementation of programs required under the Agreement, Franchisee's maintenance and upkeep of records, and Franchisee's compliance with all Applicable Laws. Franchisee shall provide any and all information reasonably requested by City in connection with its efforts to ensure compliance with the terms hereof, regardless of whether such information is specifically otherwise called out herein as an item that Franchisee is required to maintain and provide to City; provided that any qualified outside consultant shall agree to a reasonable non-disclosure agreement with Franchisee to protect Franchisee's Intellectual Property and be subject to California data security and privacy rights under Applicable Law.

SECTION 13
FRANCHISEE'S BOOKS AND RECORDS; AUDITS

13.1 Examination of Records. Franchisee shall maintain all records relating to the Solid Waste Handling Services provided hereunder, including but not limited to Customer lists, billing records, accounts payable records, maps, service requests, cash receipts records, AB 939 compliance records, and other documents and materials which reasonably relate to Franchisee's compliance with and performance of the provisions of this Agreement (the "Records"), for the full Term of this Agreement, and an additional period thereafter of not less than three (3) years, or any longer period required by law. City shall have the right, upon five (5) business days advance notice, to inspect the Records. Such Records shall be made available to City at Franchisee's regular place of business, but in no event outside the County of Orange. Among other things, City shall be allowed to review Franchisee's contracts with its Customers, and shall be allowed to communicate directly with Franchisee's Customers, for the purpose of determining whether Franchisee is in compliance with this Agreement.

13.2 CERCLA Defense Records. City views the ability to defend against CERCLA Claims and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for disposal, as well as where it was not taken, to be matters of significant importance. 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) for not less than five (5) years following the termination of this Agreement, and agrees to notify the City Manager, City Clerk and City Attorney before destroying such records thereafter. At any time, including after the expiration of the Term hereof, Franchisee shall provide copies of such records to City. The requirements of this Section shall survive the expiration of the Term of this Agreement.

13.3 Audits by City. City shall have the right to conduct or to contract with an independent qualified auditing firm to perform an audit, at City's expense, of Franchisee's records (the "City Audit") to ensure compliance with the provisions of this Agreement on an annual and/or as-needed basis, to be determined by the City. The independent qualified auditor shall agree to a reasonable non-disclosure agreement with Franchisee to protect Franchisee's Intellectual Property and be subject to California data security and privacy rights under Applicable Law. The City Audit shall include, without limitation, a review of Franchisee's cash receipts records, Solid Waste tonnage Collection, diversion, and other related records, as well as those of each of its parent, subsidiary and/or affiliated companies, as appropriate, to determine Franchisee's Gross Receipts, the accuracy of Franchise Fees paid, and such other information as is reasonably deemed appropriate by the City Manager to evaluate Franchisee's performance hereunder. As part of the City Audit Franchisee's Customer's accounts and related records may be subject to review. While Franchisee will not be required to submit detailed account records, such as the names and addresses of Customers, to the City in connection with required reports hereunder, Franchisee shall make such records and information available for review in connection with the City Audit at Franchisee's business offices.

Should any City Audit reveal an underpayment of any Franchise Fee required pursuant to this Agreement, the amount of such underpayment shall become due and payable to City not later than fifteen (15) days after written notice of such underpayment is sent to Franchisee by City,

complete with any additional late charges as set forth herein. If a City Audit reveals inaccuracies or inconsistencies in more than five percent (5%) of all Customer accounts, either with Franchisee's operations or billing systems, or an underpayment of Franchise Fees of more than three percent (3%), Franchisee shall bear the entire cost of such City Audit and shall pay a sum necessary to cover such costs to the City within thirty (30) days of demand.

SECTION 14
RULES AND REGULATIONS OF CITY MANAGER

The City Manager shall have the power to establish rules and regulations respecting the accumulation, Collection and transportation of Solid Waste not inconsistent with the provisions of this Agreement, providing such rules and regulations are found to be reasonably necessary by the City Manager for enforcement of the provisions of this Agreement, or any and all Applicable Laws and ordinances, and for the preservation of the public peace, health and safety. Franchisee agrees to comply with any and all such rules and regulations.

SECTION 15
INDEMNIFICATION; LEGAL EXPENSES; BONDS

15.1 General Indemnification.

15.1.1 Franchisee hereby agrees to and shall defend, reimburse, indemnify and hold harmless the City Indemnitees from and against any and all claims, suits, actions, proceedings, liabilities, damages, injuries, demands, orders, losses, costs, fees, charges, expenses, fines, liens, penalties, attorneys' fees, consultant fees, forfeitures and judgments, of whatever kind or nature (collectively, "Claims") in law or equity or in other proceedings, whether judicial, quasi-judicial or administrative in nature, of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to any property, or for contribution or indemnity claimed by third parties) arising out of, resulting from, and/or in any way connected with this Agreement including: (1) the negligence or willful misconduct of Franchisee, its officers, employees, agents, and/or subcontractors in performing services under this Agreement; (2) the failure of Franchisee, its officers, employees, agents, and/or subcontractors to comply in all respects with the provisions of this Agreement (including without limitation Franchisee's obligation to ensure City complies with the requirements of the County Agreement), all Applicable Laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Franchisee, its officers, employees, agents, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws); and (4) any challenge to the award of, or any provisions of this Agreement (including any claim that the application of any provision hereof violates any provision of the California Constitution). The foregoing defense, reimbursement, indemnity and hold harmless provisions shall apply regardless of whether such Claim is also caused in part by any of City Indemnitees' negligence, but shall not extend to matters resulting from the City Indemnitees' sole negligence, or willful misconduct. Franchisee further agrees to and shall, upon demand of City, at Franchisee's sole cost and expense, defend (with attorneys acceptable to City) the City Indemnitees against and all Claims in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse City for any and all costs and expenses City

incurs in providing any such defense, either before, during or after the time Franchisee elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Franchisee. Franchisee shall receive credit towards this indemnity obligation for any sums received by or for the benefit of City from insurance obtained by Franchisee for the benefit of City

15.1.2 Franchisee, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend the City Indemnitees in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or any other federal or state laws to provide Collection services in the City.

15.1.3 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.

15.2 Hazardous Substances Indemnification.

15.2.1 Without regard to any insurance coverage or requirements (but giving credit to Franchisee for any sums received by or for the benefit of City from insurance obtained by Franchisee for the benefit of City), 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), defend, reimburse, indemnify, and hold the City Indemnitees harmless from and against any and all Claims, (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, mitigation 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:

15.2.1.1 results in any Claim asserting that any of the City Indemnitees are 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

15.2.1.2 relates to material Collected, transported, Recycled, treated or disposed of by Franchisee.

15.2.2 Franchisee's obligations pursuant to this Section shall apply, without limitation, to:

15.2.2.1 any Claims brought pursuant to or based on the provisions of any Environmental Laws, and any and all amendments and regulations thereto, and any other Federal, State, regional or local environmental statutory or regulatory provision;

15.2.2.2 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 by Franchisee of any facility;

15.2.2.3 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;

15.2.2.4 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.

15.3 Additional Indemnification Requirements.

15.3.1 The defense, reimbursement, indemnity and hold harmless obligations in this Section shall apply irrespective of the negligence or willful misconduct of Franchisee or any Affiliate of Franchisee, but shall not extend to matters resulting from the City Indemnitees' sole negligence, or willful misconduct.

15.3.2 The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation, and shall survive the termination or expiration of this Agreement.

15.3.3 With regard to any claim covered by this provision arising from the delivery of Solid Waste to the Orange County landfill system pursuant to the terms of the County Agreement, the defense, reimbursement, indemnity and hold harmless provisions hereof are intended to be supplemental to any indemnification obligations owed to the City by the County of Orange pursuant to the County Agreement.

15.4 Surety. Contemporaneously with execution of this Agreement, as security for Franchisee's faithful performance of all obligations of this Agreement, Franchisee shall provide a surety mechanism (the "Surety") as more fully defined below in the amount of Ten Thousand Dollars (\$10,000). The Surety may be comprised of either a performance bond or an irrevocable letter of credit, or a combination of both. If a letter of credit is utilized to satisfy some or all of the Surety requirements, it shall be drawn upon a financial institution with an office within fifty (50) miles of City, and otherwise in a form acceptable to the City Attorney. The performance bond, if any, shall be issued by a duly authorized corporate surety company authorized to do business in California, and in a form acceptable to the City Attorney. The cost of the Surety shall be the sole responsibility of Franchisee. The Surety shall be released within ninety (90) days after both (i) the expiration of the Term of this Agreement, and (ii) Franchisee's satisfactory performance of all obligations hereunder.

15.5 Forfeiture of Surety. In the event Franchisee shall for any reason become unable, or fail in any way, to perform as required by this Agreement, City may declare a portion or all of the Surety, as may be necessary to recompense and make whole the City, forfeited to the City. Upon partial or full forfeiture of the Surety, Franchisee shall restore the Surety to its original amount within thirty (30) days of the City's notice to do so. Failure to restore the Surety to its full amount within thirty (30) days shall be a material breach of this Agreement.

15.6 Use of Surety by City. Notwithstanding any provision hereof to the contrary, thirty (30) days following City providing Franchisee with written notice of its failure to pay City any amount owing under this Agreement, either the letter of credit or performance bond comprising the Surety may be utilized by City for purposes including, but not limited to: (1) payment of sums due under the terms of this Agreement which Franchisee has failed to timely pay to City; and (2) reimbursement of costs borne by City to correct violations of this Agreement not corrected by Franchisee.

15.7 Replacement Letter of Credit. City may draw upon the entire letter of credit (if any) utilized to meet Franchisee's obligations pertaining to the Surety, and convert it to a cash deposit, if Franchisee fails to cause the letter of credit to be extended or replaced with another satisfactory letter of credit no later than sixty (60) days prior to its expiration.

SECTION 16 **INSURANCE**

16.1 Insurance Coverage. Franchisee shall procure and maintain during the entire Term of this Agreement the following types of insurance and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Franchisee's performance hereunder or the actions or inactions of any of Franchisee's officers, agents, representatives, employees, or subcontractors in connection with Franchisee's performance. The insurance requirements hereunder in no way limit Franchisee's various defense and indemnification obligations or any other obligations as set forth herein.

16.2 Comprehensive General Liability. Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) annual aggregate for liability arising out of Franchisee's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the occurrence limit. Such insurance shall be endorsed to:

16.2.1 Name the City of Irvine and its employees, representatives, officers, officials, agents, representatives, and volunteers (collectively hereinafter "City and City Personnel") as additional insured for claims arising out of Franchisee's performance of this Agreement.

16.2.2 Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

16.3 Automobile Liability Insurance. Insurance with a limit of liability of not less than Two Million Dollars (\$2,000,000) each occurrence and Two Million Dollars (\$2,000,000) annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary

will equal the minimum limits set above. Such insurance shall include coverage for all “owned,” “hired” and “non-owned” vehicles, or coverage for “any auto.” Such insurance shall be endorsed to:

16.3.1 Name the City and City Personnel as additional insureds for claims arising out of Franchisee’s performance of this Agreement.

16.3.2 Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

16.4 Workers’ Compensation Insurance.

16.4.1 In accordance with the Labor Code of California and covering all employees of Franchisee providing any service in the performance of this agreement. Such insurance shall be endorsed to waive the insurer’s right of subrogation against the City and City Personnel with respect to the performance of Franchisee’s obligations under this Agreement.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement unless your insurance carrier is the State of California Insurance Fund (SCIF) and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.

Franchisee’s completion of the form attached hereto as Exhibit C shall be a condition precedent to Franchisee’s rights under this Agreement. Should Franchisee certify, pursuant to Exhibit C, that, in the performance of the work under this Agreement, it shall not employ any person in any manner so as to become subject to the workers’ compensation laws of California, Franchisee shall nonetheless maintain responsibility for requiring that any subcontractors performing work under this Agreement have and maintain workers’ compensation insurance, as required by Section 3700 of the Labor Code, for the work performed under this Agreement.

16.5 Environmental Pollution Control Insurance. Franchisee shall maintain either an endorsement to its general liability policy, or a separate policy of insurance covering environmental pollution and contamination that names the City and City Personnel as an additional insured. Said coverage shall be in the amount of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, and shall substantially comply with all other provisions set forth in Section 16.1.

16.6 Endorsements. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to City for approval. Additional Insured Endorsements shall not:

- (1) Be limited to “Ongoing Operations”
- (2) Exclude “Contractual Liability”
- (3) Restrict coverage to the “Sole” liability of Franchisee

- (4) Contain any other exclusion contrary to the Agreement.

Any Deductible and/or Self-Insured Retentions must be disclosed to City.

16.7 Acceptability of Insurers. Each policy shall be from a company with current A.M. Best's rating of A VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

16.8 Insurance of Subcontractors. Franchisee shall be responsible for causing subcontractors to maintain the same types and limits of coverage in compliance with this Agreement, including naming the City and City Personnel as additional insureds to the subcontractor's policies.

16.9 Verification of Coverage. Franchisee shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Article. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences.

16.10 Loss or Reduction in Insurance. In the event that Franchisee fails to retain or maintain insurance with the scope and amounts of coverage required hereunder, City shall have the right, but not the obligation, to either terminate this Agreement, or obtain insurance coverage as required herein on behalf of Franchisee and utilize funds from the Surety to pay the cost of providing such coverage.

SECTION 17

CITY'S REMEDIES; DEFAULT AND TERMINATION

17.1 City's Right to Suspend or Terminate. The City shall have the right to suspend or terminate this Agreement, and the non-exclusive franchise granted herein, upon Franchisee's breach of any of its obligations hereunder.

17.2 Notice of Default. If the City Manager determines that Franchisee has defaulted in the performance of any obligation hereunder, or that Franchisee's performance pursuant to this Agreement with respect to such matters has not been in conformity with reasonable industry standards which are obtained in similar cities in Southern California, the provisions of this Agreement, the requirements of the Municipal Code, the requirements of CalRecycle, including, but not limited to, requirements for source reduction and Recycling or any other applicable federal, state, or local law or regulation, including but not limited to the laws governing transfer, storage, or disposal of Special Wastes, or Hazardous Substances (to the extent applicable to Franchisee, and/or Franchisee's activities under this Agreement), the City Manager may provide written notice to Franchisee of such default. The City Manager may, in such written notice, set a reasonable time within which correction of such default shall be made. Unless a longer or shorter time is otherwise specified by the City Manager, a reasonable time for correction shall be thirty (30) days from the date such written notice is given.

17.3 Termination Without Right to Cure. City shall have the right of suspension or termination as a result of Franchisee's failure to timely cure any deficiency as set forth above, which right is in addition to City's right to terminate this Agreement without affording Franchisee an opportunity to cure in circumstances where Franchisee is determined to have materially breached this Agreement. Notwithstanding anything to the contrary in Section 17.2 above, City shall thus be afforded the right to terminate this Agreement without affording the right to cure in the event of any material breach hereof by Franchisee, including without limitation any action, inaction or circumstance defined herein as a material breach, and/or under any of the following circumstances which are hereby defined as material breaches:

17.3.1 If Franchisee practices, or attempts to practice, any fraud upon City.

17.3.2 If Franchisee becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Franchisee in a bankruptcy proceeding.

17.3.3 If Franchisee willfully violates any orders or rulings of any regulatory body other than City having jurisdiction over Franchisee relative to this Agreement. So long as City's rights are not prejudiced during the pendency of any challenge to such orders or rulings by Franchisee, Franchisee may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no material breach of this Agreement shall be deemed to have occurred until a final ruling has been rendered.

17.3.4 If Franchisee fails to meet the diversion requirements of this Agreement or pursuant to Applicable Laws.

17.3.5 If Franchisee fails to materially comply with any insurance or indemnification requirement set forth in this Agreement; provided, however, that Franchisee shall have a reasonable opportunity to cure any default relating to the Franchisee's failure to provide the City with proof of insurance, so long as such insurance is in effect at all times.

17.3.6 If City is required to pay any fine or penalty, which Franchisee is required by the terms hereof to pay, yet which Franchisee fails, refuses, neglects or is unable to timely pay; provided, however, that Franchisee shall have a reasonable opportunity to cure any such default.

17.3.7 If Franchisee, or any management level employee of Franchisee is convicted of a "Criminal Matter" (as defined herein). For purposes of this Section the term "Criminal Matter" refers to any felony or misdemeanor offense having any relationship to either Solid Waste Handling Services or public corruption (including, without limitation, bribery, conflict of interest related allegations, vote selling, or any similar type charges).

17.4 Termination Procedure. The following procedure shall apply to either of the following:

17.4.1 any action or inaction by Franchisee which is a material breach of this Agreement, not requiring that Franchisee be afforded the right to cure, or

17.4.2 any circumstance in which Franchisee fails to correct, to the satisfaction of the City Manager, all deficiencies contained in a written notice of default within the specified

time (or if it is not reasonably possible to correct such deficiencies within the specified time, and Franchisee fails to commence to correct or remedy such deficiencies within the specified time and diligently effect such correction or remedy thereafter).

17.4.3 In the event of either of the above, then the City Manager shall either refer the matter to the City Council for review, or review the matter himself or herself and upon completion of such review notify Franchisee of the City Manager's decision, in writing.

17.5 City Manager Review. If the City Manager reviews the matter and determines that Franchisee has failed to properly or adequately perform as set forth above, the City Manager, in the exercise of his or her sole discretion, may terminate this Agreement, or take such other action as he or she deems appropriate to pursue any remedy available to City. A decision or order of the City Manager shall be final and binding on Franchisee unless Franchisee files a "Notice of Appeal" with the City Clerk within five (5) days of the date the notice of the City Manager's decision is given. The City Manager shall schedule any appeal for consideration by the City Council at the earliest feasible Council Meeting following the date a Notice of Appeal is given to City.

17.6 City Council Review. In the event an appeal of a decision of the City Manager is filed, or if the City Manager refers the matter directly to the City Council upon Franchisee's failure to cure a default, the City Council shall set the matter for consideration as a regular agenda item, and the matter shall not require a public hearing. In reviewing the matter the City Council may consider any information reported by the City Manager regarding the deficiencies, and shall give Franchisee, or its representatives and any other interested person, a reasonable opportunity to be heard. The Council shall determine, in the exercise of its absolute and sole discretion, whether Franchisee has failed to properly or adequately perform as set forth above, and if so whether to terminate the Agreement, or take such other action as it deems appropriate to pursue any remedy available to City. The decision of the City Council shall be final.

17.7 Performance During Reviews. Franchisee's performance under this Agreement is not excused, nor shall its rights to operate hereunder be impacted, during any period of time when its performance is under review as set forth above, including at any time prior to a final decision as to whether such performance is deficient.

17.8 Franchisee's Obligations Upon Termination. In the event this Agreement is terminated pursuant to this Section 17 or the Term of this Agreement expires:

17.8.1 Franchisee shall have no right or authority to engage in Solid Waste Handling Services within the City Limits under this Agreement.

17.8.2 Franchisee shall remain liable to City for any and all fees that would otherwise be payable by Franchisee, including specifically amounts resulting from the late payment of Franchise Fees.

17.8.3 Franchisee shall allow its Customers to arrange for Solid Waste Handling Services with a Solid Waste enterprise authorized to perform such services, without penalty or liability for breach of contract.

17.8.4 Franchisee shall remove all of its Containers used in performance of Solid Waste Handling Services hereunder from the Premises of all Customers, and shall, within such time period as specified by the City Manager, deliver all Solid Waste in such Containers to an Approved Facility for processing or disposal pursuant to the terms hereof. If Franchisee fails to comply with the provisions of this subsection within the time periods prescribed, City shall have the right to take any of such actions that have not been performed by Franchisee. Franchisee shall promptly reimburse City for all sums expended by City in taking such actions, along with a ten percent (10%) administrative fee.

17.9 City's Remedies Cumulative. The rights and remedies of City set forth in any Section herein shall be in addition to any and all other rights and privileges City may have, and shall not be deemed to limit any such other rights or privileges of City under this Agreement or by virtue of any law.

SECTION 18

FRANCHISEE'S REMEDIES; ADMINISTRATIVE HEARING

18.1 Administrative Hearing. Should Franchisee contend that City is in breach of any aspect of this Agreement, it shall give notice to the City Manager requesting an administrative hearing on the allegation. The hearing shall occur as soon as reasonably possible, or on such date as mutually agreed by the parties, and shall be held before an impartial hearing officer to be determined by the City Manager. The hearing officer shall make an advisory ruling on Franchisee's allegations, and suggest a remedy if a breach by City is determined to exist. The hearing officer's ruling and recommendations shall become final and binding if the Parties so agree in writing within 30 days of the date notice of the decision is given to the Parties. Otherwise, the hearing officer's ruling shall have no further force or effect.

18.2 Other Remedies; Claims. Franchisee shall be entitled to all available remedies in law or equity for City's breach of this Agreement; provided, however, Franchisee shall not file or otherwise commence any action against City, in law or equity, in any court, until after an administrative hearing as set forth above has been completed, and the above noted thirty (30) day period to accept the hearing officer's decision has passed, or either City or Franchisee has given timely written notice to the other that it will not accept the hearing officer's decision.

18.3 Actions for Damages. As a prerequisite to the filing and maintenance of any action for damages by Franchisee against City arising out of or relating to this Agreement, Franchisee shall present a claim to City, as required by Government Code Section 910 et seq., within thirty (30) days of the date of the occurrence giving rise to the claim for damages.

SECTION 19

ASSIGNMENT, SUBLETTING, AND TRANSFER; REQUIREMENTS AND LIMITATIONS

This Agreement shall not be sold, hypothecated, sublet, assigned, or otherwise transferred, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold, or otherwise transferred, 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, except Franchisee, either by action or

inaction of Franchisee or by operation of law, without the prior written consent of City which may be withheld with or without cause. For purposes of permitting Franchisee to subcontract with other haulers to assist in providing services hereunder, and provided Franchisee will continue to provide services hereunder with its own employees, the written consent of the City Manager shall suffice. Any other transfer, sale, subcontract, hypothecation, assignment or lease shall require the written consent of the City Council as expressed by a Resolution. Any attempt by Franchisee to hypothecate, subcontract, lease, assign, sell, or otherwise transfer any right or interest in this Agreement without the written consent of City shall be null and void and shall give rise to City's right, but not obligation, to terminate this Agreement.

SECTION 20 **GENERAL PROVISIONS**

20.1 Force Majeure. Franchisee shall not be in default under this Agreement in the event that its ability to provide Solid Waste Handling Services, in compliance with its obligations hereunder, is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, strikes or other labor disturbances lasting seven (7) days or less (unless Franchisee is in compliance with the disaster/labor unrest plan, in which case the time limitation shall not be applicable), embargoes or delays in transportation, explosion, natural disasters or threats of natural disaster such as floods, earthquakes, landslides, fires, pandemics, quarantines, or "other catastrophic events" which are beyond the reasonable control of Franchisee. The term "other catastrophic events" does not include: (i) the financial inability of Franchisee to perform; (ii) failure of Franchisee to obtain any necessary permits or licenses from other governmental agencies except to the extent the delay is caused by the governmental agency(ies); (iii) the failure to obtain the right, or the loss of the right, to use the facilities of any public utility where such failure is due in substantial part to the acts or omissions of Franchisee; or (iv) strikes or other labor disturbances lasting longer than seven (7) days (unless Franchisee is in compliance with the disaster/labor unrest plan, in which case the time limitation shall not be applicable).

20.2 Property Damage. Any physical damage caused by the negligent or willful acts or omissions of employees, agents, or subcontractors of Franchisee to private or public property shall be promptly repaired or replaced.

20.3 Pavement Damage. Franchisee shall be responsible for the cost of repair of any extraordinary damage to the public streets located within the City resulting from providing the Solid Waste Handling Services required hereunder.

20.4 Right of Entry. Franchisee shall not have the right, until Franchisee receives permission from the property owner, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Solid Waste Handling Services pursuant to this Agreement.

20.5 City's Authorized Agent. Excepting amendments hereto and such actions set forth herein specifically calling for City Council action or approval, the City Manager is authorized to take any action with regard to any matter, or enforce any right, set forth herein requiring action by City.

20.6 Amendments. Except as otherwise expressly stated herein, no amendment of this Agreement shall be valid unless in writing duly executed by the Parties.

20.7 Independent Contractor. It is expressly understood and agreed that Franchisee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Franchisee shall have the exclusive control over the details of the services and work performed hereunder and all persons performing the same; that Franchisee shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any; and that nothing herein shall be construed as creating a partnership or joint venture between City and Franchisee. Neither Franchisee nor its officers, employees, agents or subcontractors shall obtain any rights to retirement benefits, workers' compensation benefits or any other benefits which accrue to City employees and Franchisee hereby expressly waives any claim it may have, or hereafter acquire, to such benefits.

20.8 Law to Govern; Venue. The laws of the State of California shall govern this Agreement without reference to its conflicts of laws principles. In the event of litigation between the parties, venue and jurisdiction shall lie exclusively in a state court of competent jurisdiction in Orange County, California. The parties agree to waive any potential claim to diversity jurisdiction under Title 28 U.S.C. § 1332 or any other statute, law or judicial authority which actually or colorably provides for federal jurisdiction.

20.9 Joint Drafting. In the event of any legal proceeding this Agreement shall be interpreted as if jointly drafted by the Parties.

20.10 Section Headings. The section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

20.11 Successors and Assigns. The terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties.

20.12 Waiver. The waiver by either Party of any breach or violation of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach or violation of the same or of any other term, covenant or condition.

20.13 Notices. All notices, or other communications whatsoever which this Agreement contemplates or requires either Party to give to the other, shall, except as otherwise provided herein, be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective party as follows:

To City: City of Irvine
 Attn: City Manager
 One Civic Center Plaza
 Irvine, CA 92623

To Franchisee: _____

or to such other address as either Party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed given on the date served if served personally between the hours of 8:00 a.m. to 5:00 p.m. on any regular business day for City's business offices. If mailed, notice shall be deemed given three (3) business days from the date such notice is deposited in the United States mail in the manner proscribed above.

20.14 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be affected unless their enforcement under the circumstances would be unreasonable, inequitable or would otherwise frustrate the purposes of this Agreement.

20.15 Exhibits Incorporated. Exhibits A through E are attached to and incorporated in this Agreement by reference.

20.16 Attorneys' Fees and Litigation Costs. In the event either party brings any action or proceeding to enforce or interpret the terms or provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees and other litigation costs and expenses, including without limitation expert witness fees, consultant fees and costs, without regard to whether the matter proceeds to trial. Without limiting its scope in any way, this provision is expressly intended to, and shall, apply to fees and costs incurred in any appeal.

20.17 Corporate Resolution. Concurrent with the execution of this Agreement, Franchisee shall provide City with a corporate resolution of its Board of Directors demonstrating the authority for the undersigned to enter and lawfully bind Franchisee to this Agreement, or in the event Franchisee is not a Corporation, with such evidence of authority as required by the City Manager.

20.18 Integration. This Agreement contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals, and agreements between the Parties, whether written or oral. The Parties acknowledge this document has been executed with the consent and upon the advice

of counsel. Each of the Parties acknowledges that no party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other party to execute this instrument.

20.19 Compliance with Law. In providing the services required under this Agreement, Franchisee shall at all times, at its sole cost, comply with all Applicable Laws, including the laws and regulations of the United States, the State of California, the provisions of the Municipal Code, and any federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended.

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

CITY OF IRVINE
a California municipal corporation

APPROVED AS TO FORM:

City Attorney

Date: _____

By: _____
City Manager

ATTEST:

Date: _____

By: _____
City Clerk

Franchisee _____

Date: _____

By: _____

Title: _____

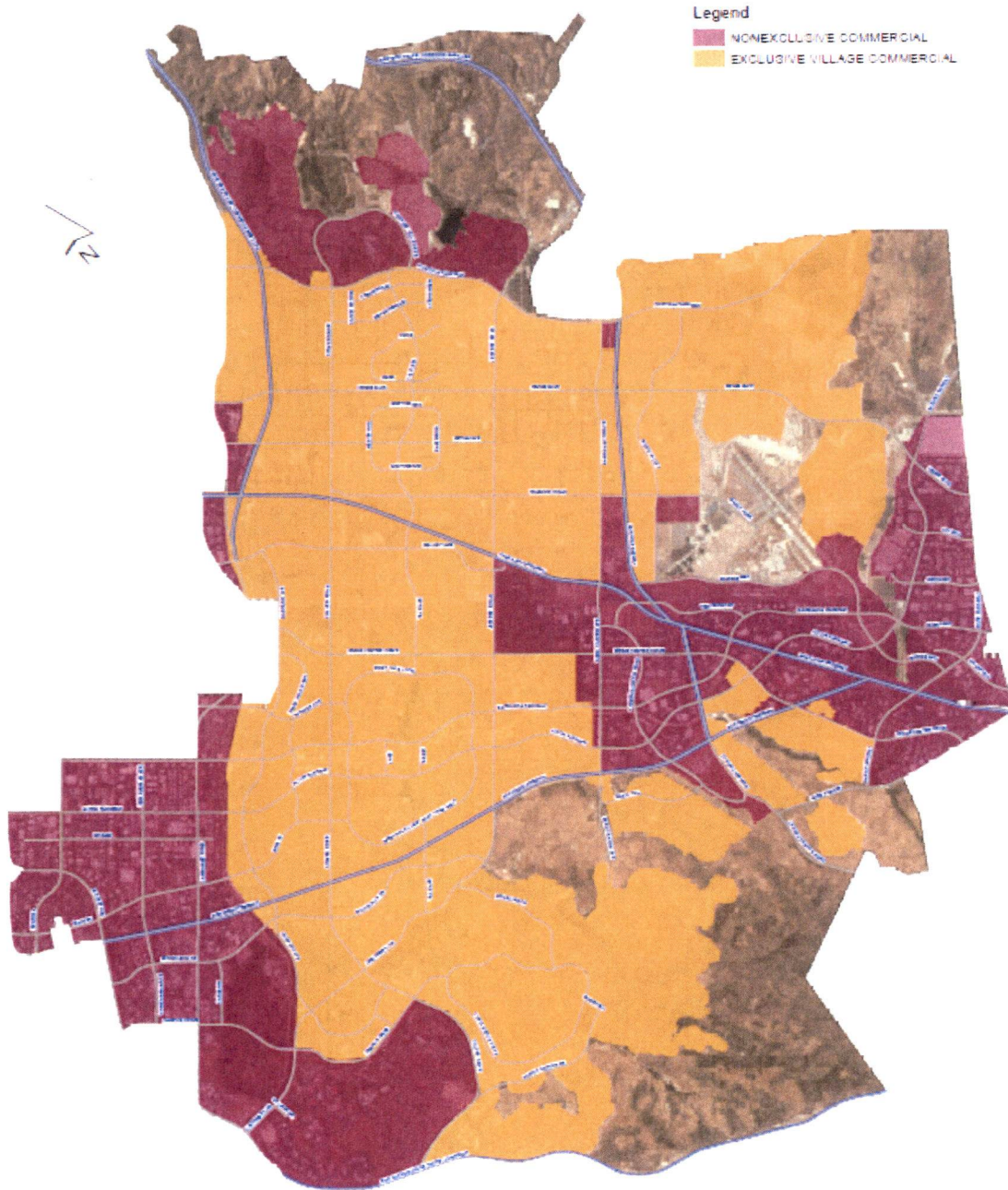
EXHIBIT A

Village Commercial Premises Map

EXHIBIT A

SOLID WASTE COLLECTION SERVICE AREA MAP

CITY OF IRVINE



NOTE: Pursuant to California Public Resources Code Section 49520, et seq., some solid waste haulers may have legal rights to provide waste services to certain areas in the City regardless of the area designations on this map. All franchised haulers are eligible to provide collection of Construction and Demolition Debris and Temporary Bin Service, as defined in the Nonexclusive Franchise Agreement, to any premises within the City on an as needed and temporary basis. The terms and limitations of this agreement shall not apply to waste services provided at the facilities or properties of public agencies within the City limits that are not subject to the legal jurisdiction of the City of Irvine, including but not limited to public schools and colleges, and services to State, County and other governmental agencies.

EXHIBIT B

CONTAINER/BIN SPECIFICATIONS

- All Containers utilized by Franchisee shall meet the standards of the industry and shall perform to the reasonable satisfaction of the City Manager in order to be utilized in City.
- Each Refuse, Organic Waste and Recycling Cart or Bin utilized by Franchisee shall be labeled in a manner and with graphics that contain all information required by the Applicable Laws, and subject to approval by City, and at a minimum shall: (1) explain/depict the items designated to be Collected in the Container, as well as items which are prohibited from being placed in each Container; and, (2) identify the name of Franchisee and Franchisee's phone number for service related issues, including complaints.
- Any Containers used after the Effective Date shall comply with the Applicable Laws, including any associated color requirements of the Applicable Laws; provided Containers previously distributed in connection with the Prior Agreement may continue to be used provided doing so complies with the Applicable Laws related to such Containers.

EXHIBIT C

Workers' Compensation Insurance Certification

Contract Services Description: _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(CHECK ONE APPLICABLE BOX BELOW)

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this Agreement and shall submit insurance certificates evidencing such coverage as set forth herein.

I certify that, in the performance of the work under this Agreement, **I shall not employ any person** in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of Irvine and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, **if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions and immediately furnish insurance certificates** evidencing such coverage as set forth herein.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated:	
Contracting Firm:	
Signature:	
Title:	
Address:	

EXHIBIT D

APPROVED FACILITIES

(To be provided by Franchisee and approved by City Manager)

EXHIBIT E
IMPLEMENTATION, OUTREACH AND EDUCATION PLAN

(To be provided by Franchisee and approved by City Manager)

AFFIDAVIT OF POSTING

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF IRVINE)

I, CARL PETERSEN, City Clerk of the City of Irvine, HEREBY DO CERTIFY that on the 27th day of February 2024, I caused to have published and posted a foregoing true and correct copy of Ordinance No. 24-03 of the City of Irvine in the following public places in the City:

- 1) Digital Board at Main Entrance of City Hall, Irvine.
- 2) Digital Board at Lakeview Senior Center, Alton Avenue and Lake Road, Irvine.
- 3) Digital Board at Northwood Community Center, Yale at Bryan Avenue, Irvine.
- 4) Digital Board at Rancho Senior Center, at Ethel Coplen Way, Irvine.
- 5) Digital Board at William Woollett Jr. Aquatics Center, at Walnut Avenue, Irvine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City Council of the City of Irvine, California, the 27th day of February 2024.


CITY CLERK OF THE CITY OF IRVINE