

FRANCHISE AGREEMENT
BETWEEN
THE CITY OF MONTEREY
AND
MONTEREY CITY DISPOSAL SERVICE

*For Collection, Sweeping, Diversion, and Disposal of Solid Waste and
Collection, Transport, and Processing of Recyclable and Organic Waste*

EXPIRATION DECEMBER 31, 2030

Table of Contents

ARTICLE I. GRANT OF FRANCHISE AND TERM.....	2
ARTICLE II. DEFINITIONS.....	3
ARTICLE III. SOLID, ORGANIC WASTE, AND RECYCLABLES COLLECTION SERVICES ..	8
ARTICLE IV. STREET SWEEPING	15
ARTICLE V. CONTAMINATION MONITORING.....	18
ARTICLE VI. EDUCATION AND OUTREACH.....	20
ARTICLE VII. OTHER COLLECTION RELATED SERVICES	24
ARTICLE VIII. INSPECTION AND ENFORCEMENT.....	26
ARTICLE IX. BILLING - AUDITS - RECORDS - REPORTS.....	27
ARTICLE X. COLLECTION RATES AND RATE ADJUSTMENTS	30
ARTICLE XI. FRANCHISE FEES	31
ARTICLE XII. INDEMNIFICATION – INSURANCE – BONDS.....	32
ARTICLE XIII. DEFAULT AND REMEDIES.....	36
ARTICLE XIV. GENERAL PROVISIONS	41



FRANCHISE AGREEMENT

This franchise agreement, made and entered into this _____ day of December, 2020, between the CITY OF MONTEREY, a charter city and a municipal corporation of the State of California (hereinafter "City"), and MONTEREY CITY DISPOSAL SERVICE, INC., a California corporation, (hereinafter referred to as "Franchisee").

RECITALS

THIS FRANCHISE AGREEMENT is entered into with reference to the following facts:

1. The legislature of the State of California, by its enactment of the California Integrated Waste Management Act of 1989 (AB 939), has declared that it is within the public interest to authorize local agencies to make adequate provisions for solid waste handling within their jurisdiction, and has established a solid waste management process which requires cities and other local agencies to implement plans for source reduction, reuse and recycling as part of their integrated waste management practices.

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

3. The City built a Recycling Center on City-owned land in 1995 to recover and divert its solid waste. Franchisee entered into a ground lease with City for occupation of the Recycling Center property on March 1, 1994 with ownership of improvements reverting to City at the end of the franchise period. City and Franchisee are parties to that certain Ground and Facility Sublease dated as of March 1, 1994, as amended.

4. The State of California has found and declared that the amount of refuse generated in California, coupled with diminishing disposal capacity and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of AB 939 and subsequent related legislation including, but not limited to the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), and SB 016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), directed the responsible State agency, and all local agencies, to promote diversion and to maximize the use of feasible waste reduction, re-use, recycling, and composting options in order to reduce the amount of refuse that must be disposed.

5. The Legislature of the State of California, by enactment of Assembly Bill 1826 (Mandatory Commercial Organics Recycling; Public Resources Code Chapter 12.9, commencing with Section 42649.8), requires businesses to recycle their organic waste on and after April 1, 2016, depending on the amount of waste they generate per week, and this law also requires that on and after January 1, 2016, local jurisdictions across the state implement an organic waste recycling program to divert organic waste generated by businesses, including multifamily residential dwellings. Additionally, Senate Bill 1383, passed in 2016, imposes a 75% organic waste reduction goal by 2025.

6. In the opinion of the Council of the City of Monterey ("City Council"), the public health, safety, and well-being require that the collection, transportation, and recycling, or disposal of solid waste, including, but not limited to, the frequency and means of such collection, transportation, and recycling, or disposal, and the charges and fees therefore, be provided by contract without competitive bidding.

7. The parties previously entered into the following agreements: the original refuse collection franchise agreement authorized by Ordinance No. 2282 C.S. on April 3, 1979, as amended by Ordinance No. 3095 C.S. on March 31, 1992, Ordinance No. 3133 C.S. on October 5, 1993, Ordinance 3306 C.S. on June 4, 2002, and Ordinance No. 3466 on September 6, 2011.

8. The City Council, having determined that Monterey City Disposal Service, Inc., by demonstrated experience, reputation, and capacity is qualified to continue to provide for both the collection of solid waste within the corporate limits of the City and the transportation of such solid wastes to appropriate places of processing, recycling, and disposal, desires that Franchisee be retained to perform such services on the bases set forth in this Agreement.

9. The City Council further declared its intention of maintaining reasonable rates for the collection, transportation, recycling, and/or disposal of solid waste and recyclable materials.

10. The parties hereto desire to replace their Amended Franchise Agreement dated December 2, 2011, and its extensions, by this new Agreement.

IT IS MUTUALLY AGREED AS FOLLOWS:

Article I. GRANT OF FRANCHISE AND TERM

1. **Grant of Franchise.** City hereby grants to Franchisee an exclusive right, privilege, and franchise for collection, street sweeping, diversion, and disposal of solid waste, and collection and transport for processing of organic waste and recyclable materials, within the boundaries of the City of Monterey, as they now exist or as hereafter legally modified, subject to the terms and conditions hereinafter set forth. The title to all Solid Waste and Recyclables shall pass directly from the Generator to Franchisee by operation of law and is not intended to relieve any Generator from any potential liability under any local, state, or federal laws, regulations, and statutes or under common law for the improper use, release or disposal of hazardous materials as that term is defined under any such laws.
2. **Term.** The term of this Franchise Agreement shall commence on January 1, 2021, and shall end on December 31, 2030.
3. **Acceptance and Waiver.** Franchisee hereby accepts the franchise and agrees to collect, transport, recycle, and dispose of all solid waste, organics, and recyclables, as well as to sweep streets, in accordance with the terms and conditions set forth in this Agreement and all applicable federal, state, and local laws, rules, and regulations, including the ordinances and regulations of the City now in effect and as they may hereinafter be amended or enacted; and Franchisee waives any right it may have to challenge any of the terms of this Agreement under federal, state, or local law or administrative regulation.
4. **Prior Agreements.** This Agreement shall supersede all prior Franchise Agreements and amendments thereto entered into between these parties.



5. **Exclusions from the Franchise.** The granting of this exclusive Franchise shall not preclude the categories of materials listed below from being delivered to and collected and transported by others, as permitted under Section 14-1 of the Monterey City Code, provided that nothing in this Franchise is intended to, nor shall be, construed to excuse any person from obtaining any authorization from the City that is otherwise required by law:
- a. Recyclables separated from Solid Waste by the Generator and for which Generator is compensated for said materials or not charged for the service by a collector, as may be licensed or permitted by the City, who shall not receive value from the Generator for the collector's services to the Generator;
 - b. Recyclables and Organic Waste which are separated at any premises and which are transported personally by the owner or occupant of such premises (or by that person's full-time employees) to a collection or processing facility;
 - c. Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
 - d. Yard Trimmings removed from a premises by a gardening, landscaping, or tree trimming business as an incidental part of a total service offered by that business rather than as a hauling service; and tree trimmings, clippings, and all similar materials generated at parks, and other City-maintained premises, which are collected and transported by the City to a disposal site or facility;
 - e. Construction and Demolition Debris removed from a premises by a licensed demolition or construction business using its own employees and equipment as an incidental part of a total service offered by that contractor rather than as a hauling service;
 - f. Animal waste and remains from slaughterhouses or butcher shops for use as tallow;
 - g. Solid Waste which is generated at any premises and which is transported personally by the Generator of such premises (or by that person's fulltime employees) to a licensed public solid waste disposal facility in a manner consistent with the City Code and other applicable laws;
 - h. By-products of sewage treatment, including sludge, grit, and screenings; and
 - i. Pre and post-consumer Food Waste generated by commercial or industrial businesses that compost or donate Food Waste as part of their corporate policies and practices.

Article II. DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the meanings respectively ascribed to them as follows:

- 1. **AB 939.** The California Integrated Waste Management Act 1989 codified in part at Public Resources Code 40000 et seq., as it may be amended from time to time and as implemented by the regulations of the California Integrated Waste Management Board, or its successor.



2. **Blue Container.** “Blue Container” has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and Collection of Source Separated Recyclables or SSBCOW.
3. **CalRecycle.** The California Department of Resources Recycling and Recovery.
4. **City Manager.** The City Manager of Monterey, or authorized designee.
5. **Commercial Premises.** All occupied real property in the City used for commercial purposes including, without limitation, wholesale or retail establishments, restaurants, other food establishments, bars, stores, shops, offices, mechanized manufacturing facilities, repair, research and development or professional services, sports or recreational facilities, industrial facilities, and construction and demolition sites; but shall not include property occupied by governmental agencies or schools that do not consent to their inclusion. Except where separately delineated in this Agreement, Commercial Premises includes multifamily residential dwellings that consist of five or more units.
6. **Compactor.** A mechanical apparatus that compresses materials and/or the container that holds the compressed materials.
7. **Compliance review.** A review of records by the City or CalRecycle to determine compliance with subscribing to an organic waste collection service as required by Title 14, Division 7, Chapter 12 of the California Code of Regulations.
8. **Construction and Demolition Debris (C&D).** The nonhazardous waste building material concrete, soil, asphalt, and ceramics, soil, packaging, Yard Trimmings, rubble, and other used or Discarded Materials resulting from construction or demolition.
9. **Container(s).** A receptacle for temporary storage of Discarded Materials. Containers may include bins, carts, roll-off boxes, compactors, cans, bags, or other storage instruments to the extent such Containers are permitted by the City and Franchisee for use for Collection services provided under the Agreement.
10. **Designated Disposal Site.** The facility or facilities approved in writing by the Director for the disposal of Solid Waste or Gray Container Waste collected by Franchisee under the terms of this Agreement.
11. **Director.** The City of Monterey Community Development Director, or authorized designee.
12. **Discarded Materials.** A form of Solid Waste, and shall be regulated as such. For purposes of this Agreement, material is deemed to have been discarded, without regard to whether it is destined for recycling or Disposal, and whether or not it has been separated from other Solid Waste, in all cases where a fee or other compensation, in any form or amount, is directly or indirectly solicited from, or, levied, charged, or otherwise imposed on, or paid by, the Generator or customer in exchange for handling services. As used herein, handling services include, without limitation, the Collection, removal, transportation, delivery, and processing and/or Disposal of the material. Discarded Materials do not include Edible Food that is recovered for human consumption and is not discarded. For the purposes of this Agreement, Discarded Materials include Source Separated Recyclable Materials, SSBCOW, SSGCOW, Food Waste, Gray Container Waste, and Construction and Demolition Debris once the materials have been placed in Containers for Collection.



13. **Disposal.** “Disposal” or “Dispose” means the final disposition of any Solid Waste Collected by the Franchisee or residue from Franchisee’s processing activities at a Designated Disposal Site.
14. **Diversión.** “Diversión (or any variation thereof including “Divert”)” means activities which reduce or eliminate Discarded Materials from Disposal, including, but not limited to, source reduction, reuse, salvage, recycling, and composting.
15. **Excluded Waste.** “Excluded Waste” means Hazardous Waste, Infectious Waste, volatile, corrosive, regulated radioactive waste, and toxic substances or material that Designated Disposal Site operator(s) reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or Disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be Disposed of in Class III Landfills or accepted at the facility by permit conditions, waste that in Franchisee’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Franchisee or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe collection, processing, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include used motor oil and filters, household batteries, and/or latex paint when such materials are defined as allowable materials for collection through this Agreement and the Generator or Customer has properly placed the materials for collection pursuant to instructions provided by City or Franchisee as set forth in this Agreement.
16. **Food Waste.** Discarded materials that will decompose and/or putrefy, including (1) all kitchen and table food waste, (2) animal or vegetable scraps that are generated during or resulting from the storage, preparation, cooking, eating or handling of food, and (3) discarded paper that is contaminated with Food Waste. Food Waste is a subset of Organic Waste.
17. **Generator.** The owner or occupant of premises, including businesses, which initially produces Solid Waste, Recyclables, and/or Organic Waste.
18. **Gray Container.** “Gray Container” has the same meaning as in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and collection of Gray Container Waste.
19. **Gray Container Waste.** Solid Waste that is collected in a Gray Container that is part of a three-Container Organic Waste Collection service that prohibits the placement of Organic Waste in the Gray Container as specified in 14 CCR Sections 18984.1(a) and (b) or as otherwise defined in 14 CCR Section 17402(a)(6.5). For the purposes of this Agreement, Gray Container Waste includes carpet and textiles. The parties acknowledge that at the commencement of this Agreement, Gray Container Waste will be collected in the brown container currently provided by Franchisee.
20. **Green Container.** “Green Container” has the same meaning as in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and Collection of SSGCOW.
21. **Gross Receipts.** Revenue collected by Franchisee for waste collection, hauling, recycling and other services under this Agreement.



22. **Hazardous Waste.** All substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the State of California in Health and Safety Code sections 25110.02, 25115, and 25117, as they may be amended, or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601, et seq.; (ii) the Hazardous Materials Transportation Act, 49 USC Section 5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq.; (iv) the Clean Water Act, 33 USC Section 1251, et seq.; (v) California Health and Safety Code Sections 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC Section 7401, et seq.; and (vii) California Water Code Section 13050; any amendments, rules, or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereinafter enacted; and any other hazardous or toxic substance, material, chemical, waste, or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State, and local environmental laws currently existing or hereinafter enacted, including without limitation, friable asbestos, polychlorinated biphenyl ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products. Hazardous Waste includes hazardous wood waste, which means wood that falls within the definition of "treated wood" or "treated wood waste" in 22 CCR Section 67386.4, or as otherwise defined in 14 CCR Section 18982(a)(30.5).
23. **Household Hazardous Waste.** Hazardous waste generated at (1) residential premises, or (2) by small quantity generators defined as businesses generating no more than 100 kg. (220 lbs.) or 27 gallons per month of hazardous waste that meet the criteria set forth in California Health and Safety Code section 25218.1(a) as amended.
24. **Illicit Discharges.** Any release to the storm drain system of any substance that is prohibited to be discharged under local, state, or federal statutes, ordinances, codes, or regulations.
25. **Infectious Waste.** Medical waste generated by a person or at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments that are identified in California Health and Safety Code section 25117.5 as amended.
26. **Large Item.** Items including, but not limited to, large and small household appliances (including refrigerators, ranges, washers, dishwashers and other similar items commonly known as "white goods"), furniture, carpets, mattresses, and items such as stereos and televisions (commonly known as "brown goods"), and clothing. Large items do not include car bodies, Construction and Demolition Debris, Organic Materials, or items requiring more than two persons to remove. In the event a question arises as to whether a specific item or category of items meets the definition of a Large Item, the City shall be responsible for determining whether said definition shall apply, which determination shall be final and binding on all parties.
27. **MRWMD.** The Monterey Regional Waste Management District.
28. **Organic Waste.** Solid Waste containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

29. **Prohibited Container Contaminants.** “Prohibited Container Contaminants” means the following: (i) Discarded Materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclables for the City’s Blue Container; (ii) Discarded Materials placed in the Green Container that are not identified as acceptable SSGCOW for the City’s Green Container; (iii) Discarded Materials placed in the Gray Container that are acceptable Source Separated Recyclable Materials and/or SSGCOW to be placed in City’s Green Container and/or Blue Container; and (iv) Excluded Waste placed in any Container.
30. **Recyclables.** Materials that have been separated from the Solid Waste stream prior to disposal and in order to be returned for use or reuse in the form of raw materials for new, used or reconstituted products, which meet the quality standard necessary to be used in the market place and that are not landfilled. Recyclables include, but are not limited to, plastic bottles and jars, paper, cardboard, glass, newspaper, and metal containers.
31. **Recycling Center** The City of Monterey-owned facility at 10 Ryan Ranch Road, Monterey, which is to be operated by the Franchisee to separate, process and market recyclables.
32. **Solid Waste.** Waste generated by the occupants of a property during the course of their ordinary daily living and/or working routine. Solid Waste must be of a size small enough to be placed in and set out at the curbside in the appropriate container. This does not include Infectious Waste, Hazardous Waste, Recyclables, or Organic Waste.
33. **Source Separated.** Materials, including commingled Recyclables, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of the Agreement, Source Separated shall include separation of materials by the Generator, property owner, property owner’s employee, property manager, or property manager’s employee into different Containers for the purpose of collection such that Source Separated materials are separated from Solid Waste for the purposes of collection and processing.
34. **Source Separated Blue Container Organic Waste (SSBCOW).** Source Separated Organic Waste that can be placed in a Blue Container that is limited to the Collection of those Organic Wastes and Non-Organic Recyclables as defined in 14 CCR Section 18982(a)(43); or as otherwise defined by 14 CCR Section 17402(a)(26.7). The accepted types of SSBCOW and process for modifying the accepted types of SSBCOW are specified in Article III.
35. **Source Separated Green Container Organic Waste (SSGCOW).** Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate Collection of Organic Waste by the Generator, excluding SSBCOW, carpets, non-compostable paper, and textiles. The accepted types of SSGCOW and process for modifying the accepted types of SSGCOW are specified in Article III. SSGCOW is a subset of Organic Waste.
36. **Street Sweeping Services.** The process of moving debris and cleaning streets and other paved surfaces at frequencies and in a manner consistent with the provisions of this Agreement.
37. **Yard Trimmings.** The types of SSGCOW resulting from normal yard and landscaping installation, maintenance, or removal that the Generators Source Separate and set out in Green Containers for Collection for the purpose of processing by the Franchisee. The



accepted types of Yard Trimmings and process for modifying the accepted types of Yard Trimmings are specified in Article III. Yard Trimmings are a subset of SSGCOW.

Article III. SOLID WASTE, ORGANIC WASTE, AND RECYCLABLES COLLECTION SERVICES

1. **General.** The services to be provided under this Franchise Agreement by the Franchisee shall consist of furnishing all required personnel, labor, supervision, equipment (excluding compactors), materials, supplies and all other items necessary for the collection, transportation, composting, recycling and disposal of all Solid Waste, Recyclables, and Organic Waste generated or accumulated within the City in accordance with the terms and provisions of this Agreement and all applicable laws, rules, and regulations. The enumeration and specification of requirements for particular items of personnel, labor or equipment shall not relieve Franchisee of the duty to furnish all others, as may be required, whether enumerated or not. The work to be done by Franchisee pursuant to this Agreement shall be accomplished in a thorough and workmanlike manner so that the residents and businesses within the City are provided reliable, courteous and high-quality integrated Solid Waste and Recyclables collection. Aspects of service quality shall not relieve Franchisee of the duty of accomplishing all other aspects of integrated waste management services in the manner provided in this Article, whether such other aspects are enumerated elsewhere in this Agreement or not.

2. **Designation of Facilities.** Franchisee shall transport all Discarded Materials collected in accordance with this Agreement to the Designated Disposal Site, Recycling Center, or other facilities designated in writing by the Director as appropriate for each type of Discarded Materials. City may designate an alternative facility for Franchisee's use for a short or extended period of time or may designate a new facility on a permanent basis when necessary to comply with Federal, State, and local laws and regulations.
 - a. **Compliance with Facility Rules.** Franchisee shall cooperate with each facility operator and comply with facility operator's requirements including: (i) how and where to unload collection vehicles; (ii) respecting operations and construction of new facilities; and, (iii) the facility operator's Excluded Waste screening and exclusion program. Franchisee shall also comply with the waste evaluations and contamination assessment procedures and schedule provided by the facility operator.

 - b. **Vehicle Tare Weights for Approved Facility(ies).** Franchisee shall coordinate with the Facility operator(s) to ensure that all collection vehicles used by Franchisee to transport Discarded Materials to the designated facilities are weighed to determine unloaded ("tare") weights. Franchisee shall work with facility operator(s) to electronically record the tare weight, identify vehicle as Franchisee's, and provide a distinct vehicle identification number for each vehicle. Franchisee shall provide the City with a report listing the vehicle tare weight information upon request. Franchisee shall promptly coordinate with facility operators to weigh additional or replacement collection vehicles prior to Franchisee placing them into service. Franchisee shall check tare weights at least annually, or within fourteen (14) days of the City's request, and shall re-tare vehicles immediately after any major maintenance service that could impact the weight of the vehicle by more than fifty (50) pounds.

 - c. **Records and Investigations.** Franchisee shall maintain accurate records of the quantities of Discard Materials transported to and accepted at the designated facility(ies) and shall



cooperate with City and any regulatory authority in any audits or investigations of such quantities.

- d. Transportation to Non-Approved Facilities Prohibited. Franchisee shall not transport Discarded Materials to a facility other than a designated facility without prior City written approval from the City.

3. **Collection Services Generally.**

- a. Regulation. Franchisee agrees to comply with the regulations for collection of Solid Waste, Recyclables, and Organic Waste as set forth in Chapter 14 of the Monterey City Code, as it may from time to time be amended, and all applicable state laws and regulations promulgated by CalRecycle. No later than January 1, 2022, Franchisee shall provide a three-Container Collection program for the separate Collection of Source Separated Recyclables, SSGCOW, and Gray Container Waste as specified in this Article, using Containers that comply with the requirements of this Agreement and CalRecycle regulations.
- b. Days and Hours of Collection. Franchisee shall provide regular Solid Waste, Recyclables, and Organic Waste collection to the inhabitants of the City during the term of the franchise on at least a weekly basis as set forth in Chapter 14 of the Monterey City Code. The City reserves the right to establish additional collection procedures including, but not limited to, the following: (i) Collection hours; (ii) Collection days; (iii) Office and Recycling Center hours; and (iv) Special clean-up programs the City may deem necessary.
- c. Collection on Holidays. If the day of collection on any given route falls on a holiday or a day on which the Designated Disposal Site is closed, Franchisee may provide collection service for such route on the next workday following such holiday (including Saturdays for regularly scheduled Friday collections) or may provide collection on such holiday except that Franchisee shall never provide residential collection service (unless in case of emergency where such pickup is authorized in advance by the City) on New Year's Day, Thanksgiving Day, or Christmas Day.
- d. Establishing Routes. Franchisee shall have the right to establish and change collection routes and collection days to provide for efficient operation and service. If any such route change results in a difference in collection service, the occupant of the affected premises shall be given at least ten (10) days' notice in writing. If a route change results in a pick-up at any premises on a later day in the week than the previous pick-up date, Franchisee shall provide one extra pick-up without charge for the premises so affected, in order that Solid Waste will not accumulate more than seven (7) consecutive days.
- e. Cleanup on Route. Franchisee shall pick up all blown, littered, or broken material, including, but not limited to, vehicle fluids resulting from its collection and hauling operations. Each vehicle shall be equipped with at least one broom, one shovel, and absorbent oil for use in cleaning up material and storage for such debris. Except when serviced curbside, containers removed from enclosures must be returned to enclosures and container lids and enclosure doors must be closed by Franchisee personnel after collection is performed. If the area around the public recycling roll off container (currently located at 600 Pacific Street), requires additional cleaning by City staff, then Franchisee shall reimburse the City for the full cost of up to four (4) hours per month of said clean-up time.



- f. Responsibility to Purchase Containers. Franchisee shall provide containers, excluding compactors, for Solid Waste / Gray Container Waste, Source Separated Recyclables, Organic Waste / SSGCOW, and other collections as required by the City and in compliance with California Code of Regulations Title 14, Article 3's Container color requirements. Notwithstanding the foregoing, Franchisee is not required to replace functional Containers that do not comply with the color requirements prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first. Beginning January 1, 2022, Franchisee shall place a label on each new Container or lid provided to Generators with the applicable container collection requirements as set forth in Title 14, Article 3 of the California Code of Regulations specifying what materials are allowed to be placed in each container.
- g. Location of Containers. In residential zones, Containers shall be collected from the curb or shoulder of the traveled way in a location that is reasonably selected by the occupant and Franchisee for both temporary storage and collection. Containers in commercial zones shall be placed in a location convenient for both storage and collection. Location of all containers, both residential and commercial, shall be in conformity with Chapter 14 of the City Code. In case of disagreement between the occupant and the Franchisee as to the location of containers in any zone, the Director, or designee, shall determine the location.
- h. Alternative Service Location for Seniors and Disabled Customers. Franchisee shall allow persons over age 65 and those that have a disability as defined by the Americans with Disabilities Act that are occupants of single family premises to receive collection services at a location other than curbside. Franchisee shall review all applications made by Customers to determine conformance with this exemption and shall grant exemptions as applicable and make reasonable accommodations with regard to the provision of and servicing Containers. Rates for senior and physically disabled collection services shall be as set forth in the current rate resolution.
- i. Responsibility at Curb. The Franchisee's collection personnel shall leave at the point of collection any reusable containers and any protective covers used to set out waste/recyclables in a safe and orderly manner.
- j. Container Upkeep. General repair and upkeep of Franchisee-purchased containers shall be the responsibility of Franchisee and Franchisee shall maintain all containers in a sanitary condition. Containers shall be marked with Franchisee's name and telephone number. Franchisee shall inspect, touchup, or repaint if necessary, all containers in accordance with this Agreement. Containers reported by City to Franchisee to be graffiti impacted shall be cleaned, repainted, or replaced in seven (7) business days upon receipt of written notice by City to Franchisee.
- k. Damage to Containers. The Franchisee shall be responsible for any damage caused to reusable containers and protective covers by the Franchisee's collection personnel. The Franchisee shall replace, at its expense, any reusable containers or protective covers damaged by the Franchisee's collection personnel. If a dispute arises between a resident and the Franchisee as to the cause of the damage, the City Manager, or designee, shall determine the cause of damage. This decision shall be final.
4. **Solid Waste Disposal / Gray Container Waste Disposal.** Franchisee shall transport all Solid Waste, collected in City to the Designated Disposal Site. Franchisee shall pay all costs



associated with transporting and disposal of Solid Waste including payment of any gate or other fees charged at the Designated Disposal Site. Franchisee shall observe and comply with all regulations and posted rules in effect at the Designated Disposal Site and take direction from the operator thereof with respect to delivery of Solid Waste.

No later than January 1, 2022, Franchisee shall provide Gray Container Waste collection service, in accordance with all applicable CalRecycle regulations, Chapter 14 of the City Code, and this Agreement. Franchisee shall transport the Gray Container Waste to the Designated Disposal Site as specified herein. Franchisee may allow carpets and textiles to be placed in the Gray Containers. Prohibited Container Contaminants shall not be collected in the Gray Containers. The Containers shall comply with the requirements of this Agreement and CalRecycle regulations.

5. **Source Separated Recyclables Collection (Blue Container)**. Franchisee shall provide Blue Containers to customers for collection of Source Separated Recyclables and shall provide Source Separated Recyclables collection service in accordance with all applicable CalRecycle regulations, Chapter 14 of the City Code, and this Agreement. Franchisee shall transport the Source Separated Recyclables to the Recycling Center.

Source Separated Recyclables that are to be accepted for collection in the Source Separated Recyclables collection program include the following: (i) non-organic Recyclables such as: aluminum, glass bottles and jars, rigid plastics (marked # 1 through # 7), and tin and bi-metal cans; and (ii) SSBCOW such as: paper products, printing and writing papers, wood and dry lumber, and textiles. The Parties agree that the list of accepted types of Source Separated Recyclables may be added to or removed from this list from time to time by mutual consent provided that in all cases SSBCOW is included for collection. Franchisee shall not add or remove materials to or from this list without written approval from the Director, and such approval shall not be unreasonably withheld. No later than January 1, 2022, Franchisee shall comply with all applicable CalRecycle regulations, Chapter 14 of the City Code, and this Agreement regarding collection of Source Separated Recyclables. Prohibited Container Contaminants shall not be collected in the Blue Containers.

AB 341 requires all owners or responsible parties of Commercial Premises generating four (4) or more cubic yards of Solid Waste per week and all Multifamily Dwellings with 5 or more units ("AB 341 Generator") to arrange for Recycling services by July 1, 2012. The Act requires all cities to provide a commercial Recycling program for AB 341 Generators on or before July 1, 2012. Franchisee acknowledges these requirements and agrees that for AB 341 Generators that contract with or pay Franchisee to haul Solid Waste and/or Recyclables, Franchisee shall implement a recycling program pursuant to the terms of this Agreement.

Further, Franchisee shall comply with the requirements of AB 1826 and Monterey City Code section 14-3.1 regarding the provision of a commercial Recycling program for Organic Waste Generators.

Franchisee shall also collect motor oil and filters from residential customers at the curbside provided that they have been placed in approved containers.

- a. **City Right to Redirect Recyclables**. The City may, at any time during the term of this Agreement, require Franchisee to deliver Recyclables collected under this Agreement to an alternative Recyclables processing facility. In the event that City makes such a requirement, the Parties shall meet and confer and thereafter adjust the Franchise Fee to reflect the amount charged or paid by the alternative facility to Franchisee for the

delivery of Recyclables. Franchisee shall comply with such direction within ten (10) business days of the City's notice or the date specified in such notice, if more than ten (10) business days from the date of notice.

- b. Improperly Prepared Recyclables. When the Franchisee's collection personnel encounter improperly prepared Recyclables or Prohibited Container Contaminants in the Recyclables container, they must adhere to the procedures in Article V.
- c. Marketing. The Franchisee shall be responsible for marketing Source Separated Recyclables collected in the City that are delivered for processing at the Recycling Center. Franchisee's marketing strategy shall promote the highest and best use of materials presented in the waste management hierarchy established by the Act. Where practical, the marketing strategy should include use of local, regional, and domestic markets for Recyclables. Franchisee shall have no obligation to market Recyclables that have been redirected pursuant to Article III, Section 5(a).
- d. Residue Disposal. Residue from the processing of Recyclables collected under this Agreement at the Recycling Center, which cannot be marketed, shall be disposed of by Franchisee at the Designated Disposal Site.

6. SSGCOW Collection (Green Container).

- a. Franchisee shall provide Green Containers to Customers for collection of Yard Trimmings and shall provide Yard Trimmings collection service, in accordance with all applicable CalRecycle regulations, Chapter 14 of the City Code, and this Agreement. Franchisee shall transport the Yard Trimmings to the organic waste processing facility approved by the Director. Yard Trimmings that are to be accepted for collection in the Green Container include the following: leaves, grass cuttings, brush and branches one (1) inch in diameter or less, and other small vegetative material that biodegrade naturally. The Parties agree that accepted types of Yard Trimmings may be added to or removed from this list from time to time by mutual consent. Franchisee shall not add or remove materials to or from this list without written approval from the Director, and such approval shall not be unreasonably withheld. Carpets, non-compostable paper, textiles, and Prohibited Container Contaminants shall not be collected in the Green Containers.
- b. No later than January 1, 2022, Franchisee shall implement a Food Waste collection program that allows Generators to intentionally commingle Food Waste and Yard Trimmings in the Green Containers. Franchisee shall provide SSGCOW collection service and transport the SSGCOW to an organic waste processing facility approved in writing by the Director. Franchisee shall collect compostable plastics in the Green Containers for processing at the approved Organic Waste processing facility. The Parties shall meet and confer regarding further implementation of the Food Waste Collection program, including the collection of compostable plastics in the SSGCOW program.
- c. Exception to Green Container Service. Any condominium, planned unit development, or homeowner's association which has Solid Waste service may be exempted from the requirement for Organic Waste service by the City if it meets the following conditions:
 - i. It has the Organic Waste generated by maintenance of its common area disposed of by its landscape contractor(s) at a legally authorized disposal site or processing facility. The landscape contractor's disposal

responsibility must be described in writing in the contract with their landscape contractor(s); or

- ii. It composts all of the Organic Waste created by maintenance of its common area on its property. The composting requirements must be described in writing in its contract with its landscape contractor.
 - iii. This exception shall no longer be available beginning January 1, 2022.
- e. Improperly Prepared or Contaminated SSGCOW. When the Franchisee's collection personnel encounter improperly prepared SSGCOW or Prohibited Container Contaminants in the Green Container, they must adhere to the procedures in Article V.

7. Hazardous Waste Inspection and Handling.

- a. Inspection Program and Training. Franchisee shall develop a load inspection program that includes the following components: (i) personnel and training; (ii) load checking activities; (iii) management of wastes; and, (iv) record keeping and emergency procedures. Franchisee's load checking personnel, including its collection vehicle drivers, shall be trained in: (i) the effects of Hazardous Waste on human health and the environment; (ii) identification of prohibited materials; and, (iii) emergency notification and response procedures. Collection vehicle drivers shall inspect containers before collection when practical.
- b. Response to Excluded Waste Identified During Collection. If Franchisee determines that material placed in any container for collection is Hazardous Waste, other waste that may not legally be disposed of at the Designated Disposal Site or presents a hazard to Franchisee's employees, the Franchisee shall have the right to refuse to accept such material. The Generator shall be contacted by the Franchisee and requested to arrange proper Disposal. If the Generator cannot be reached immediately, the Franchisee shall, before leaving the Premises, leave a tag at least two (2) inches by six (6) inches in size, which indicates the reason for refusing to collect the material and lists the phone number of a facility that accepts the Hazardous Waste or a phone number of an entity that can provide information on proper disposal of the Hazardous Waste. Under no circumstances shall Franchisee's employees knowingly collect Hazardous Waste or remove unsafe or poorly containerized Hazardous Waste from a collection container. Prior to commencement of this Agreement, the tag that will be used to notice Generators of reason for non-collection shall be reviewed and approved by the City.

If Hazardous Waste is found that could possibly result in imminent danger to people or property, the Franchisee shall immediately notify the Fire Department.

- c. Response to Hazardous Waste Identified at Disposal or Processing Facility. In the event that Hazardous Waste is delivered to the Designated Disposal Site or Recycling Center prior to detection and the Generator cannot be identified or fails to remove the waste, Franchisee shall arrange for removal of the Hazardous Wastes at its cost by permitted haulers in accordance with all applicable laws and regulatory requirements. The Franchisee may at its sole expense attempt to identify and recover the cost of disposal from the Generator. If the Generator can be successfully identified, the cost of this effort, as well as the cost of disposal shall be chargeable to the Generator.

8. City Facilities Collection and Special Events.



- a. City Facilities. Franchisee shall collect Source Separated Recyclables, SSCGOW, and Gray Container Waste from City facilities in the same manner as those services are provided to commercial customers. Franchisee shall provide service to all existing City facilities as well as any future City facilities established after the Commencement Date. Franchisee shall provide these services at no additional charge to the City. Collection shall occur as often as required, but in no event less than once each week to ensure no overflow.
- b. Public Litter and Recycling Container Service. Franchisee shall provide Collection, transportation, processing, and disposal service to all public litter containers and public recycling containers in place or placed by the City on sidewalks on Alvarado Street and Lighthouse Avenue. The frequency of collection shall be approved by the Director for each location.
- c. Special Events Collection Service – 2021. Franchisee shall provide Solid Waste, Recyclables and Organic Waste services to the special events held in the City. Special event services include, at a minimum, (1) providing adequate public education to event and venue organizers, vendors, and attendees; (2) providing adequate and appropriate signage for all containers clearly indicating acceptable materials in each; (3) providing adequate number and volume of waste and recyclables containers for the event and for the storage of collected material on-site. The City reserves the right to modify the rate resolution to incorporate fees for this service.
- d. Special Events Collection Service – 2022 Forward. No later than January 1, 2022, Franchisee shall provide Source Separated Recyclables, SSGCOW, and Gray Container Waste services in accordance with CalRecycle regulations. Franchisee shall provide and set-up event collection stations for collection of Source Separated Recyclables, SSGCOW, and Gray Container Waste at City-sponsored special events. Each event collection station shall include a separate Container for each of Source Separated Recyclables, SSGCOW, and Gray Container Waste, as appropriate. Franchisee shall provide a sufficient number of event collection stations of sufficient capacity to meet the needs of the event as determined by Franchisee in cooperation with the event organizer. Franchisee shall provide liners/bags for the containers at the collection stations, and shall line the containers as a part of the station set-up. Collection stations shall include adequate signs and labeling.

9. Collection Equipment Requirements.

- a. General. Franchisee shall provide a fleet of collection vehicles sufficient in number and capacity to efficiently perform the work required by the Franchise in strict accordance with its terms. Franchisee shall have available on collection days sufficient back-up vehicles for each type of collection used (i.e., automated side loader, rear loader, front loader, and Roll-off) to respond to complaints and emergencies.
- b. Specifications. All vehicles used by Franchisee in providing collection services shall comply with all federal, state and local requirements for such vehicles as they now exist or may be amended to read in the future, and be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage, or overflow. All such vehicles, shall comply with U.S. Environmental Protection Agency noise emission regulations and other applicable noise control regulations. Franchisee shall maintain all equipment it operates within the City in a clean, neat, and attractive condition and in good repair. All collection equipment must be washed weekly and painted frequently enough to maintain a positive public image



and minimize complaints from customers. The City shall have the right to require collection equipment to be washed or painted.

- c. Vehicle Identification. Franchisee's name, local telephone number, and a unique vehicle identification number designed by Franchisee for each vehicle, not including sweeping vehicles, shall be prominently displayed on all service vehicles, in letters and numbers no less than two and one-half (2 1/2) inches high. Vehicle maintenance records must be kept and be available to the City on request. All collection equipment shall be equipped to totally cover and secure loads to prevent material from blowing or falling out during collection and hauling.

Article IV. STREET SWEEPING

1. **Scope of Services**. Franchisee shall furnish all materials, labor, supervision and equipment necessary to perform all work required for regularly scheduled sweeping of all public streets and areas within the City of Monterey as directed by City. Scheduled sweepings shall be at the frequency and within the time frames as directed by the Director and be in accordance with the regional storm water management permit (SWMP). Exceptions to the schedule resulting from equipment breakdowns are to be reported to the City immediately with a catch-up schedule.

2. **Unscheduled Sweeping Time Bank**. Franchisee shall also provide 500-hours annually for unscheduled sweepings and any related services as otherwise assigned by the City. The time bank shall be used for emergency incidents as well as for special events, such as street fairs and parades. Franchisee will receive no less than a 24-hour notice for these unscheduled services. Emergency incidents including vehicle accidents, illicit discharges, and other emergencies shall be responded to within two hours or less depending on the severity of the incident. Concurrently with each franchise fee payment made to the City, Franchisee shall include a statement itemizing the number of hours used in the sweeping time bank, the date of the sweeping, and whether this was an emergency incident or special event. Franchisee shall provide the City written notice when the City reaches 50 hours remaining in the sweeping time bank. If the City utilizes all of the 500 hours in the sweeping time bank and requires additional unscheduled sweeping, each additional unscheduled hour shall be billed at the rate of Seventy-Five Dollars per hour (\$75.00/hour), which shall be deducted from the next franchise fee payment.

3. **Sweeping Method**. Sweeper operators shall not exceed the sweeper manufacturer's recommended speed and shall not exceed five (5) miles per hour in residential areas and eight (8) miles per hour in commercial areas. Sweeping speeds shall be maintained to thoroughly clean the streets as conditions warrant. Adequate water shall be used at all times to maximize dust control. Franchisee shall not discharge liquid waste from the sweeper units onto City streets or into the storm drain system.

Items that impede sweeping, including but not limited to, palm fronds, rocks, trash and debris, shall be removed from the sweeping path and properly disposed of by the operator rather than driving around them. Items that impede sweeping and are immovable, such as construction debris, and impaired vertical or horizontal clearance by tree limbs shall be reported to the City immediately for corrective action. Franchisee is not responsible for areas missed due to parked cars or other personal property. Sweeper operators shall be responsible for immediately reporting to the City's Sustainability Coordinator all Illicit Discharges observed during routes. Prior to sweeping City streets, sweeper operators shall be trained by Franchisee to recognize Illicit Discharges and storm water pollution sources

with City-approved training material. Such training shall be documented for review by the City.

In areas where drainage is a problem, Franchisee shall make as many passes as necessary to remove debris from standing water. In addition, all sand, dirt, rocks, gravel, vegetation, and other debris that can be swept up shall be removed from the street during the sweeping operation. Sweeper operators shall report drainage problems to the City.

4. **Standards of Service.** All areas swept pursuant to this Agreement shall be thoroughly cleaned and all debris in said areas shall be picked up by the sweeper unit and disposed of at the Franchisee's expense. Sweeping shall include the removal of all sand, gravel, dirt, litter, vegetation, and any and all other debris that accumulates between sweeps.

Curb lines shall be swept along both sides of the roadway, or to the edge of the pavement where no curb exists, along all curbs on raised medians, over all portions of painted medians, painted left and right turn pockets, and all intersection cross gutters. Sweeping shall normally require one pass over an area. Franchisee shall make additional passes or make such extra effort required to adequately clean the street to the satisfaction of the City. Extra effort shall be required when sweeping equipment leaves a dirt/silt smear in its swept path.

All sweeping operations shall be conducted as quietly as possible and shall conform to applicable noise level regulations as they now exist or may be amended to read in the future. Compaction shall not occur in residential zones. The City may conduct random checks of noise emission levels to ensure compliance. Street sweeping shall only occur during the hours approved in writing by the Director.

5. **Equipment.** Equipment by Franchisee used to perform under the terms of this Agreement may be mechanical broom, vacuum, or regenerative air design, but regardless of the specific type used by Franchisee, all equipment must be adequate to meet the standards provided in this Agreement. Franchisee shall provide all necessary facilities for the storage of equipment, parts, supplies, and equipment maintenance as is required to perform the services under the terms of this Agreement. Franchisee shall be responsible for all costs associated with maintenance of the equipment used to fulfill the terms of this Franchise. In addition to any other specifications in this Agreement, street sweeping equipment requirements are as follows:

- a. All equipment shall be maintained so as to have a clean appearance and shall clearly identify Franchisee by name.
- b. All equipment shall be maintained in good mechanical condition, including brushes and brooms that are to be replaced at regular intervals. Franchisee shall be responsible to immediately clean any vehicle fluids (hydraulic fluids, lubricating oils, etc.) that leak or spill from equipment into the street or public right of ways.
- c. Sweeping equipment shall not be stored on City property or public right of ways unless mechanical failure prevents immediate removal. In the event of mechanical failure all efforts must be made to remove the equipment from the public right of way as soon as possible. The City must approve any overnight storage on the public right of way or City property.
- d. All sweeping equipment is subject to inspection by the City at any time.

- e. All sweepers shall have an operational strobe and back-up alarm and shall conform to all local, state, and federal safety requirements.
 - f. Franchisee shall maintain or have access to alternative equipment sufficient to meet all obligations and schedules herein.
6. **Staffing.** Franchisee shall maintain sufficient staffing levels to meet all street sweeping requirements of this Agreement. In addition to any other staffing requirements in this Agreement, Franchisee shall ensure that sweeper operators:
- a. Receive appropriate training in safety, equipment operation, recognizing Illicit Discharges, and storm water pollution prevention regulations;
 - b. Are in uniform or other work clothing suitable for public contact as approved by the City; and
 - c. Are licensed as required by the State of California to operate the equipment required herein, and abide by all laws while driving within the City.
7. **Water Use.** Water for all sweeping operations shall be the responsibility of Franchisee. Arrangements for the cost, payment, and method of loading shall be the responsibility of Franchisee. Washing of sweeping equipment on City property or right of way is prohibited.
8. **Street Sweeping Diversion and Disposal.** Street sweeping debris shall be collected and disposed of and Franchisee shall Divert the greatest amount of the debris possible given the material acceptance standards at approved disposal facilities. Diversion and disposal shall meet AB 939 waste diversion requirements established by CalRecycle and all other applicable local, state, and federal regulations. Franchisee assumes ownership of the material once it is collected from the streets. Franchisee shall keep daily records of every dump, including the route swept and estimated amount of debris. Forms may be required for compliance with NPDES and CalRecycle regulations.
9. **Communication.** Franchisee shall have direct communication with all sweeping equipment in the field utilizing radios or cellular telephones. Each sweeper operator shall have the ability to communicate verbal information immediately to City staff, Policy and Fire Department personnel, and citizens, and for reporting Illicit Discharges. In addition, Franchisee shall supply a 24-hour telephone number for emergency response. Franchisee shall also provide City with a contact phone number for the City Traffic Engineer to notify Franchisee of the location of traffic counter installations. Franchisee shall make sweeper operators aware of their locations in order to raise their brooms and avoid destruction of counter cables. Franchisee shall use due diligence to avoid traffic counter cables.
10. **Deficiencies and Corrections.** If a swept area is deemed to be below acceptable performance standards, the standard section shall be re-swept within 24 hours of notification by the City. Franchisee shall re-sweep at their own expense. The City shall be notified of the completed re-sweep. All other deficiencies shall be corrected and addressed pursuant to Article XIII of this Agreement.
11. **Report Submittals.** Franchisee shall submit written reports relating to street sweeping services according to the following schedule:
- a. Monthly reports, which shall include at a minimum: (i) total curb miles swept; (ii) total curb miles missed and an explanation therefore; (iii) quantity of street



sweeping debris collected, including tonnage diverted from landfill disposal to a designated processing facility, and (iv) citizen complaints and resolution.

- b. Immediate reports, which shall be provided in instances of hazardous street or drainage conditions, Illicit Discharges, or serious vehicle accidents.

Article V. CONTAMINATION MONITORING

1. **Contamination Monitoring Procedures.** Prior to January 1, 2022, the City and Franchisee shall implement a container inspection system for purposes of contamination monitoring, which may be performed by Franchisee or a third party.
2. **Actions upon Identification of Prohibited Container Contaminants.**
 - a. **Record Keeping.** Upon finding Prohibited Container Contaminants in a Container, the driver or other Franchisee representative shall record each event of identification of Prohibited Container Contaminants in a written log or in the on-board computer system including date, time, Customer's address, type of Container (Blue, Green, or Gray Container); and maintain photographic evidence, if required. Franchisee shall submit this record to the Franchisee's customer service department, and Franchisee's customer service department shall update the Customer's account record to note the event, if the documentation if the on-board computer system did not automatically update the Customer's account record.
 - b. **Identification of Excluded Waste.** If Franchisee's personnel observe Excluded Waste in an uncollected Container, the Franchisee's personnel shall issue a non-collection notice for this Container in accordance with subsection (d) and shall not collect the Discarded Materials that contain Excluded Waste. Franchisee's personnel shall record that observation in accordance with the prior section and immediately inform their route supervisor. Franchisee shall follow protocols specified in subsections (d)-(f). The route supervisor shall investigate and initiate applicable action within one (1) business day or sooner if the Hazardous Waste may cause immediate danger.
 - c. **Courtesy Pick-Up Notices.** Upon identification of Prohibited Container Contaminants in a Customer's Container, Franchisee may, in the instance of a first offense, provide the Customer a courtesy pick-up notice. The courtesy pick-up notification shall: (i) inform the Customer of the observed presence of Prohibited Container Contaminants; (ii) include the date and time the Prohibited Container Contaminants were observed; (iii) include information on the Customer's requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Collection in the Blue Container, Green Container, and/or Gray Container; (iv) inform the Customer of the courtesy pick-up of the contaminated materials on this occasion with information that following instances Franchisee may issue a non-collection notice; and, (v) may include photographic evidence. Franchisee shall leave the courtesy pick-up notice attached to or adhered to the Generators' contaminated Containers; at the premises' door or gate; or may deliver the notice by mail, e-mail, text message, or other electronic means.

Franchisee may collect the contaminated Source Separated Recyclables or SSGCOW and transport the material to the appropriate approved facility for processing; or, Franchisee may collect the contaminated materials with Gray



Container Waste and transport the contaminated materials to the appropriate Designated Disposal Site.

- d. Non-Collection Notices. Upon identification of Prohibited Container Contaminants in a Container in excess of standards set by the Director or Excluded Waste, Franchisee shall provide a non-collection notice to the Generator. The non-collection notice shall, at a minimum: (i) state the reason(s) for non-collection; (ii) include the date and time the notice was left or issued; and (iii) describe the premium charge to Customer for Franchisee to return and collect the Container after Customer removes the Contamination. The non-collection notice may include photographic evidence of the violation(s).

The Franchisee's notice of non-collection may be left attached to or adhered to the Generator's Container, or at the premises' door or gate at the time the violation occurs, or may be delivered by mail, e-mail, text message, or other electronic means.

Franchisee shall submit a sample of its non-collection notice to the Director for approval prior to implementing use of it with Customers.

- e. Communications with Customer. Whenever a Container at the premises of a Commercial or a Multi-Family customer is not collected, Franchisee shall contact the customer on the scheduled collection day or within 24 hours of the scheduled collection day by telephone, email, text message, or other verbal or electronic means to explain why the Container was not collected. Whenever a Container is not collected because of Prohibited Container Contaminants, a customer service representative shall contact the Customer to discuss, and encourage the customer to adopt proper Discarded Materials preparation and separation procedures.
- f. Franchisee Return for Collection. Upon request from customer, Franchisee shall collect Containers that received non-collection notices within one (1) Working Day of customer's request if the request is made at least two (2) Working Days prior to the regularly scheduled collection day. Franchisee shall bill customer for the extra collection service event ("extra pick-up") at the applicable City-approved rates. Franchisee shall notify customer of the rate for this service at the time the request is made by customer.
- g. Notification to City. Franchisee shall supply a record of violations to the City and shall notify the City of a Generator's third occurrence in any twelve-month period. The City may issue an administrative citation and/or direct the Collector to increase the service level of the Generator at the Generator's expense.

3. **Disposal of Contaminated Materials.** If the Franchisee observes Prohibited Container Contaminants in a Generator's Container(s), Franchisee may Dispose of the Container's contents, provided Franchisee complies with the noticing requirements in Section (3)(c) above.

4. **Hauler Route Review Contamination Monitoring by Franchisee.**

- a. Methodology and Frequency. No later than January 1, 2022, Franchisee shall, at its sole expense, conduct hauler route reviews for Prohibited Container Contaminants in collection Containers in a manner that is deemed safe by the Franchisee; is approved by the City; and, is conducted in a manner that results in all routes being reviewed annually. Hauler route reviews may be performed by Franchisee personnel



or, subject to approval of the Director which approval shall not be unreasonably withheld, Franchisee may contract with a third party entity to conduct the route reviews.

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

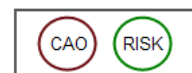
If the City and/or CalRecycle notifies Franchisee that the methodology is inadequate to meet the requirements of 14 CCR Section 18984.5(b), Franchisee shall, at its sole expense, revise the methodology and, after obtaining City or CalRecycle approval, conduct additional hauler route reviews, increased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

The Director may request, and Franchisee shall accept, modifications to the schedule to permit observation of the hauler route reviews by the City. In addition, Franchisee shall provide an email notice to the Director no less than ten (10) business days prior to each scheduled hauler route review that includes the specific time(s) and location(s).

- b. Noticing of Generators with Contamination, Non-Collection, and Disposal of Materials. Upon finding Prohibited Container Contaminants in a Container during a hauler route review, Franchisee shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Sections 2-3.
- c. Monthly Reporting Requirements. Franchisee shall maintain records and report to the City monthly on contamination monitoring activities and actions taken, in accordance with all City and CalRecycle reporting requirements.

Article VI. EDUCATION AND OUTREACH

1. **General**. The City shall be responsible for designing, implementing, and conducting a public education and outreach program. The City's public education and outreach strategy shall focus on improving Generator understanding of the benefits of and opportunities for source reduction, reuse, and Landfill Disposal reduction and supporting compliance with applicable laws and regulations, including, but not limited to SB 1383 and SB 1383 regulations. In general, City-provided public education and outreach aims to: (i) inform Generators about the services that are provided under this Agreement with specific focus on describing the methods and benefits of source reduction, reuse, recycling; (ii) instruct Generators on the proper method for placing materials in Containers for collection and setting Containers out for collection, with specific focus on minimizing contamination of Source Separated



Recyclables and SSCGOW; (iii) clearly define Excluded Waste and educate Generators about the hazards of such materials and their opportunities for proper handling; (iv) discourage Generators from buying products if the product and its packaging are not readily Reusable, Recyclable, or compostable; (v) inform Generators subject to Food Recovery requirements under SB 1383 Regulations of their obligation to recover Edible Food and actions they can take to prevent the creation of Food Waste; (vi) encourage the use of Compost; and, (vii) encourage Generators to purchase products/packaging made with recycled-content materials. The cumulative intended effect of these efforts is to reduce each Generator's Solid Waste and, ultimately, Disposal of Solid Waste, and Franchisee agrees to support and not undermine or interfere with such efforts.

2. **Franchisee Cooperation and Support for City Educational Efforts.** Franchisee acknowledges that they are part of a multi-party effort to operate and educate the public about the regional integrated waste management system. Franchisee shall cooperate and coordinate with the City on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns. Franchisee shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of public education and outreach programs or campaigns conducted by the City or its designee.

Franchisee shall obtain approval from the Director on all Franchisee-provided public education materials outside of the City's education plan, including, but not limited to: print, radio, television, or internet media before publication, distribution, and/or release. City shall have the right to request that Franchisee include City identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld.

3. **Content and Production Requirements.** The City will be responsible, in its sole discretion and subject to budgetary constraints, to prepare all public education materials, in accordance with the requirements of 14 CCR, Division 7, Chapter 12, Article 4, and may request that they be reviewed by Franchisee prior to production; Franchisee shall review and comment on the materials within five (5) business days of a request from the City. Notwithstanding the foregoing, at the beginning of each March and October during the term of the franchise, the Franchisee shall, at its sole expense, distribute advertisements to both commercial and residential customers that shall include, but not be limited to:
- a. Information on compliance with applicable State laws and regulations and City Code provisions, including but not limited to mandatory recycling and mandatory organics diversion requirements.
 - b. Definitions and descriptions of residential and commercial waste, organics collection, green waste and recyclables.
 - c. The manner in which these materials must be prepared and source-separated by customers.
 - d. Collection schedules and schedule changes resulting from holidays.
 - e. Waste reuse and reduction educational information.
 - f. Street sweeping information.
 - g. Information published on radio and local cable television stations carrying public service announcements concerning collection service and recycling education.

- h. Any information that the Director determines to be pertinent to collection services.
- i. Franchisee's toll-free telephone number(s), mailing address and street address.
4. **Bill Inserts.** Franchisee agrees to insert and distribute brochures, newsletters, or other information developed by the City as inserts in Franchisee's customer invoices at no additional charge to the City. Bill inserts shall be designed and produced by the City with review and comment by Franchisee, and final approval by the City. Franchisee shall be responsible for printing the bill inserts. For customers receiving electronic bills, Franchisee agrees to distribute brochures, newsletters, or other information developed by the City as attachments to customer invoices at no additional charge to the City. Franchisee shall provide electronic bill inserts (or separate email attachments) to customers who are billed electronically, and paper bill inserts to customers who receive paper bills. Electronic bill inserts/attachments must be readily available for the customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City's request for such inserts, Franchisee shall comply with such request during its next billing cycle for the targeted customer group. Franchisee shall perform this service with no additional requirement for compensation.
5. **Minimum Website Requirements.** Franchisee shall develop and maintain a website that is specifically dedicated to the City to provide Generators with detailed service information. The website or webpage shall be accessible by the public, and shall include all education and outreach materials being provided, without requirement for login. Franchisee shall update the website regularly so that information provided is current.
6. **Education Materials for Property and Business Owners and Tenants.** On or before January 1, 2022, Franchisee shall annually provide Property Owners and Commercial Premises owners with public education materials for their distribution to all employees, contractors, tenants, and Customers of the properties and businesses. The Franchisee's public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials, and shall reflect content requirements described in Section 8 below. A Commercial Premises or Multi-Family Property Owner may request these materials more frequently than the standard annual provision if needed to comply with the requirement of 14 CCR Section 18984.10 for Commercial Businesses and Multi-Family Property Owners to provide educational information to new tenants and employees before or within fourteen (14) days of occupation of the Premises. In this case, the Commercial Premises or Multi-Family Property Owner may request delivery of materials by contacting the Franchisee at least two (2) weeks in advance of the date that the materials are needed.
7. **Education Requirements for Commercial Edible Food Generators**
- a. On or before February 1, 2022, Franchisee shall develop a list of Food Recovery Organizations and Food Recovery Services operating within the City, maintain the list on the Franchisee's website, share the list with the City if the City wants to post the list on additional City websites, and update the list annually. The list shall include, at a minimum, the following information about each Food Recovery Organization and each Food Recovery Service:
- Name and physical address;
 - Contact information;

- Collection service area; and,
 - An indication of types of Edible Food the Food Recovery Service or Food Recovery Organization can accept for Food Recovery.
- b. At least annually, the Franchisee shall provide Commercial Edible Food Generators with the following information:
- Information about the City's Edible Food Recovery program;
 - Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10;
 - Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
 - Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.
- c. Franchisee may provide the information required by subsection (ii) above by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to commercial businesses.
8. **Minimum Content Requirements.** Prior to February 1, 2022, and annually thereafter, Franchisee shall include the following education and outreach content to Customers by incorporation of this content into the public education materials described in Section 3.
- a. Collection system description. Information on the Generator's requirements to properly separate Source Separated Recyclables, SSGCOW, and Gray Container Waste and place such materials in appropriate Containers pursuant to this Agreement, SB 1383 Regulations, and all other Applicable Law.
 - b. Information on methods for the prevention of Source Separated Recyclables and SSGCOW generation; managing SSGCOW on Generator's Premises through composting or other Landfill Disposal reduction activities allowed under 14 CCR Sections 18983.1 and 18983.2; sending SSGCOW to Community Composting operations; and any other requirements imposed by the City regarding discarded materials.
 - c. Information regarding the methane reduction benefits of reducing the Disposal of SSGCOW, and the method(s) that the Franchisee uses to recover SSGCOW.
 - d. Information regarding how to recover Source Separated Recyclables and SSGCOW, and a list of haulers approved by the City.
 - e. Information related to the public health and safety and environmental impacts associated with the Disposal of SSGCOW and SSBCOW.
 - f. Information regarding programs for donation of Edible Food;
 - g. For Commercial Customers, information about the City's Edible Food Recovery Collection program; Tier One Commercial Edible Food Generators and Tier Two Edible Food Generators requirements specified in 14 CCR, Division 7, Chapter 12, Article 10;



Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and, information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.

- h. Information regarding self-hauling requirements.
 - i. Any other federal, State, or local requirements to properly separate Discarded Materials or other necessary actions by Generators, including applicable requirements of the City Code, AB 341, AB 1826, and SB 1383 and corresponding regulations.
9. **Languages**. Franchisee shall make all public education and outreach materials required by this Article available in English and Spanish. Upon Director's request, Franchisee shall provide materials in additional languages beyond those specified in this Section in response to shifting demographics within the City; updates to State requirements or Applicable Law; or, any other reason deemed appropriate by the City.
10. **Record Keeping and Reporting Requirements**. Franchisee shall comply with the public education and outreach record keeping and reporting requirements of the City.

Article VII. OTHER COLLECTION RELATED SERVICES

1. **Collection of Christmas Trees**. From December 26 through January 15 (or longer if so desired by Franchisee) Franchisee shall collect Christmas trees placed at the curb by residential customers on their regular collection day without additional charge. Franchisee shall transport all collected Christmas trees to the approved organic waste processing facility for processing. If Christmas trees are placed at the curb after the time period allowed for collection, Franchisee may charge Customers a fee for collection.

Franchisee may require that Christmas trees be cut into sections. Christmas trees that are flocked shall be collected, but may be delivered to the Designated Disposal Site at the discretion of the Franchisee. Christmas trees that contain tinsel, lights, or other decorations, or are attached to a tree stand are not required to be collected; however, Franchisee may affix a non-collection notice to the tree informing Customer of the reason for non-collection.

2. **Collection of Household Hazardous Waste**. Franchisee will provide weekly curbside (or side/back-yard service for eligible customers) collection of used household batteries to all single-family customers that are set out in a sealed, reusable clear zipper type bag (to be provided by the customer) on top of the Recyclables Container, and at no additional charge to the customer. Franchisee may propose an alternative method of residential battery collection for approval by the City. Customers will not be required to contact customer service in advance.
3. **Large Item Pick-Up**.
- a. Franchisee shall provide pick-up of up to four (4) Large Items at a frequency of no more than four (4) times per year from each occupied residence with standard residential waste service within the City. Residences at military installations shall receive Large Item pick-up service of up to four (4) Large Items at a frequency of no more than four (4) times per year from each occupied residence upon request. Franchisee shall make every possible attempt to Divert all Large Items collected. Fees for Large Item collection shall be as set forth in the current rate resolution.

- b. If requested by City, this program will be extended to multi-family customers and businesses for a fee that shall be as set forth in the current rate resolution.
4. **Removal of Illegally Dumped Large Items.** Within a reasonable time following notification from the City, Franchisee shall collect Large Items discarded illegally in the public right-of-way. Franchisee shall provide collections services for up to one hundred and twenty (120) Large Items per year. Any requests for service beyond one hundred and twenty Large Items per year may be billed to the City at the standard collection rate.
 5. **Litter Removal from Highway 1 On and Off Ramps.** If requested by City, Franchisee shall provide for litter removal services for the various on and off ramps on Highway 1 in the City of Monterey.
 6. **AB 939 Compliance Efforts.** The Franchisee shall use its good faith and best business efforts to coordinate and cooperate with the City in assisting the City in meeting its mandated responsibilities under the California Integrated Waste Management Act of 1989, as set forth in Public Resources Code § 40000, et seq., including the State's requirements for a source reduction and recycling element and other elements of City's integrated waste management plan.
 7. **Construction and Demolition Debris.** The 2019 California Green Building Standards Code requires sixty-five percent (65%) diversion of Construction and Demolition Debris. Franchisee acknowledges these requirements and agrees that, subject to the restrictions contained in Monterey City Code section 14-1, for all Customers that contract with or pay Franchisee to haul Construction and Demolition Debris, Franchisee shall implement a Diversion program. If new or additional Diversion requirements are imposed by law, ordinance or regulation City or Franchisee, the City shall have the right to require Franchisee to Divert additional Construction and Demolition Debris by providing Franchisee with ten (10) calendar days' written notice of the new Diversion requirements. Upon request by the City, Franchisee shall provide all documents and information requested to prove that Franchisee has complied with this section, any applicable law, ordinance or regulation related to recycling or diversion of Construction and Demolition Debris.

In addition, no later than January 1, 2022, Franchisee shall Collect Construction and Demolition Debris materials in accordance with applicable CalRecycle regulations implementing SB 1383, including but not limited to arranging for the processing of Organic Waste in the Construction and Demolition Debris in a manner deemed not to constitute Landfill Disposal pursuant to 14 CCR section 18983.1(a).

8. **Cooperation and Non-Interference with Food Recovery Efforts.** Franchisee shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of food recovery efforts in the City.
9. **Franchisee Personnel.**
 - a. **Minimal Administrative Staff Requirements.** Administrative staff shall include, but not be limited to, separate dedicated customer service representatives for residential and commercial accounts of City customers. If any position is terminated, a replacement must be made within 30-days of termination. If Franchisee fails to hire a replacement for any of these positions within 30-days, the City reserves the right to hire and bill Franchisee for this service.



- b. Employee Appearance. The Franchisee shall assure that all its employees are suitably, adequately and safely attired. Workers shall wear and carry identification.
- c. Driver Qualifications. All drivers shall be trained and qualified in the operation of waste collection and/or street sweeping vehicles and must have a valid license of the appropriate class, issued by the California Department of Motor Vehicles, in effect.
- d. Safety Training. Franchisee shall provide suitable operational and safety training for all of its employees who operate collection vehicles or equipment. Franchisee shall train its employees involved in collection to identify, and not to collect, Hazardous Waste. Upon the City Manager's request, Franchisee shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.
- e. No Gratuities. Franchisee shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the collection of Solid Waste, Recyclables, Organic Waste, or street sweeping under this Franchise.

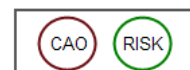
10. Use of Premises and Removal of Debris. The Franchisee shall, at its expense, to:

- a. Take every precaution against injuries to persons or damage to property.
- b. Store its apparatus, materials, supplies and equipment in such orderly fashion as will not unduly interfere with the progress of its work.
- c. Strictly ensure and be solely responsible for the enforcement requirements that solid waste originating in whole or in part from outside the City be attributed to the responsible city, knowingly or otherwise.
- d. Franchisee is required to conduct business operations at 10 Ryan Ranch Road. The Franchisee shall pay appropriate expenses associated with the rental of this property for the term of this Agreement.

Article VIII. INSPECTION AND ENFORCEMENT

1. Annual Compliance Reviews

- a. General. Franchisee or with the Director's approval a third party entity, shall perform compliance reviews described in this Section commencing January 1, 2022, and at least annually thereafter, unless otherwise noted.
- b. Commercial Generator Compliance Reviews. Franchisee shall complete a compliance review of all Multi-Family and Commercial Customers that generate two (2) cubic yards or more per week of Solid Waste, including Organic Waste, to determine their compliance with: (i) Generator requirements under the City's Discarded Materials Collection program; and, (ii) if applicable for the Generator, Self-Hauling requirements pursuant to 14 CCR Section 18988.3 and Section 14-1 of the City Code, including whether a Multi-Family or Commercial Business is complying through Back-Hauling SSGCOW and/or SSBCOW. The compliance review shall mean a "desk" review of records to determine Customers' compliance with the above requirements and does not necessarily require on-site observation of service; however, the City may request that



Franchisee perform an on-site observation of service in addition to or in lieu of the desk review if needed to obtain the required information.

- c. Annual Hauler Route Review. Beginning April 1, 2022 and annually thereafter, the Franchisee shall conduct annual hauler route reviews of Commercial, Multi-Family, and Single-Family Generators for compliance with the City's Discarded Materials Collection program and Container contamination monitoring. These hauler route reviews may be performed concurrently with the contamination monitoring hauler route reviews, provided that Franchisee documents a reasonable sampling of Generators for which compliance with the City's Discarded Materials Collection program during the hauler route review was assessed.

2. Compliance Review Process

- a. Number of Reviews. Franchisee shall conduct a sufficient number of compliance reviews, hauler route reviews, and inspections of Generators, to adequately determine the Generators' overall compliance with SB 1383 Regulations, AB 1826, AB 341, and Chapter 14 of the City Code. The City reserves the right to specify the total number of compliance reviews, the type and timeframe, and to require additional inspections if the City determines that the amount of inspections conducted by the Franchisee is insufficient. The City may require the Franchisee to prioritize inspections of entities that the City determines are more likely to be out of compliance.
- b. Non-Compliant Entities. From January 1, 2022 through December 31, 2023, when compliance reviews are performed by Franchisee pursuant to this Article, Franchisee shall provide educational materials in response to violations. Franchisee shall provide these educational materials to the non-compliant Customers and Generators within ten (10) business days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or Hauler route review. Franchisee shall document the non-compliant Customers and Generators and the date and type of education materials provided, and shall report such information to the City in accordance with the Director's requirements. Beginning January 1, 2024, the Franchisee shall, in addition to providing the education materials described in this subsection, document non-compliant Customers and Generators determined through Franchisee's compliance reviews pursuant to this Article, and shall report all Customers and Generators with violations of SB 1383 Regulations to the City in accordance with the Director's requirements. The City shall be responsible for subsequent enforcement action against the Generators.
- c. Documentation of Inspection Actions. Franchisee shall generate a written and/or electronic record and maintain documentation for each inspection, Hauler route review, and compliance review conducted, including all information required by the Director.

Article IX. BILLING - AUDITS - RECORDS - REPORTS

1. Billing

- a. General. Franchisee shall bill all customers and be solely responsible for collecting billings at rates set in accordance with this Agreement. Franchisee's website shall provide customers with the ability to pay their bills through an electronic check or credit card and include the ability for customer billings to be automatically charged on a recurring basis. Franchisee shall prepare, mail, and collect bills from customers who decline to use such internet-based billing system. Franchisee shall make arrangements

to allow customers to pay bills by cash, check, electronic check, money order, and credit card.

- b. Comment Form. The Franchisee shall provide with its billings, a comment form specifically inviting comments both positive and negative as to service provided by the Franchisee. Comments received shall be incorporated into the monthly report provided to the City.
- c. Collection Data. Franchisee shall be responsible for collection of payment from Customers with past due accounts ("bad debt"). Franchisee shall make reasonable efforts to obtain payment from delinquent accounts through issuance of late payment notices, telephone requests for payments, and assistance from collection agencies. When a customer has been sent to collection and/or service terminated, this information shall be made available to the City. A monthly report produced by the Franchisee shall include new terminations and accounts without service. Reports shall separately list those addresses that are currently vacant.

2. Customer Service Requirements.

- a. Franchisee shall maintain an office as provided by the City at the City-owned Recycling Center. The office must be suitable, as determined by the City, to perform all customer service requirements, proper storage of data, customer transactions and compliance information. Said office shall be open from 8:00 a.m. until 5:00 p.m. daily, Monday through Friday, except holidays.
- b. The Franchisee shall maintain and staff a toll free telephone number from 8:00 to 5:00 p.m. Monday through Friday, excluding holidays, in order for customers to access the Franchisee with inquires, requests and/or complaints. The toll-free number must be within the calling area of City customers. If the Franchisee changes the toll-free number for any reason during the term of the franchise, a direct mail piece containing the new toll-free number must be sent to all customers serviced in the City. The staff shall be knowledgeable and courteous in answering customer's information requests and resolving customer complaints regarding collection service.
- c. During non-business hours, and if staff is unavailable for any period of time, a telephone recorder will be used to record customer information requests and complaints. Calls received by noon must be returned by 5:00 p.m. on the same day. If received after noon, the call must be returned as soon as possible and no later than noon the following business day.

3. Data Collection. Franchisee shall collect such data for each route and collection crew sufficient for the City and Franchisee to meet all reporting and compliance requirements pursuant to this Agreement, state law, and CalRecycle regulations. This information must be made available within two weeks upon request by the Director to evaluate efficiency of service or route performance. The following information shall be included:

- a. Total number of accounts on each route.
- b. Actual daily routes including streets and addresses.
- c. Customer participation rates for waste and recycling.
- d. Customer set out rates for waste and recycling.

e. Type of service as follows:

- i. Commercial waste.
- ii. Commercial cardboard
- iii. Commercial fiber.
- iv. Commercial commingled recyclables.
- v. Commercial green waste.
- vi. Commercial organics.
- vii. Commercial HHW.
- viii. Residential solid waste.
- ix. Residential green waste.
- x. Residential commingled recyclables.
- xi. Residential recyclables.
- xii. Residential and commercial vehicle oil recycling.
- xiii. Residential and multi-family organics.
- xiv. Residential HHW.
- xv. Residual weights from Material Recovery Facility.

f. Any new services incurred during the term of this franchise shall be included in this report. The City has the right to request any additional collection or franchise related information from the Franchisee as may be desired for the program.

4. **Audits.**

- a. **Financial Audit.** Franchisee's financial records shall be audited at least once annually by a certified public accountant at the expense of the Franchisee. The accountants selected by the Franchisee must be approved by and reportable to City, and all audit records must be available to the City for review. Franchisee must submit to City annual financial statements prepared by a certified public accountant no later than six (6) months after the close of its fiscal year.
- b. **Management Audit.** The Franchisee will have prepared, at its expense, when requested by the City Manager, a management performance audit by an independent firm specializing in such audits, certifying that the Franchisee's operations and management practices are such that rates are minimized.

5. **Maintenance of Records.** The Franchisee shall maintain records on a current basis to support its billing to the customer. The City or its authorized representatives shall have the authority to inspect, audit, and copy on reasonable notice and from time to time any records of the Franchisee regarding its billings or its work hereunder. The Franchisee shall retain these records for inspection, audit, and copying for three (3) years from the date of completion or termination of this franchise. Franchisee shall ensure that records are current and that specific route information, such as container type, service received, etc. is accurately compiled each month.

6. **Complaints.** All complaints involving omission of a scheduled collection, an untidy collection, or damage to property shall be acted upon by the end of the next working day. All other complaints, except for SB 1383 non-compliance complaints, shall be acted upon within a reasonable period of time. The Franchisee shall cause a written log of all complaints to be prepared and shall furnish monthly, by the fifth working day of the month, complaints or comments received the previous month, to the City's Sustainability Coordinator a copy of any or all said complaints. Said record shall contain at least the following information:



- a. Address of the complaining party.
- b. Nature of the complaint.
- c. Date received.
- d. Date acted upon.
- e. Remedial action taken by Franchisee.

7. **SB 1383 Regulatory Non-Compliance Complaints**. For complaints received in which the person alleges that an entity is in violation of SB 1383 Regulations, Franchisee shall document the information required by the Director. Franchisee shall provide this information in a brief complaint report to the City for each SB 1383 Regulatory non-compliance complaint within ten (10) business days of receipt of such complaint, and a monthly summary report of SB 1383 Regulatory non-compliance complaints in accordance with all City and CalRecycle regulations.

- a. **Investigation**. Franchisee shall commence an investigation, within thirty (30) calendar days of receiving a complaint in the following circumstances: (i) upon Franchisee's receipt of a complaint that an entity may not be compliant with SB 1383 Regulations and if City determines that the allegations against the entity, if true, would constitute a violation of SB 1383 Regulations; and, (ii) upon City request to investigate a complaint received by City, in which City determines that the allegations against the entity, if true, would constitute a violation of SB 1383 Regulations. Franchisee is required to investigate complaints against Customers and Generators, but not against Food Recovery Organizations, Food Recovery Services, and other entities regulated by SB 1383 Regulations.

Franchisee shall investigate the complaint using one or more of the methods:

- i) Reviewing the Service Level of the entity that may not be compliant with SB 1383 Regulations.
 - ii) Inspecting Premises of the entity identified by the complainant, if warranted; and/or,
 - iii) Contacting the entity to gather more information, if warranted.
- b. **Reporting**. Within ten (10) calendar days of completing an investigation of an SB 1383 Regulatory non-compliance complaint, Franchisee shall submit an investigation report that documents the investigation performed and recommends to City on whether or not the entity investigated is in violation of SB 1383 Regulations based on the Franchisee's investigation. The City shall make a final determination of the allegations against the entity.

Article X. COLLECTION RATES AND RATE ADJUSTMENTS

1. Collection Rates.

- a. The Council of the City of Monterey shall approve Franchisee collection rates. Collection rates established by Council will be charged by Franchisee for all services. Franchisee shall retain revenues received for the sale of Recyclables including California Redemption Value revenues. Such revenues have been considered in the establishment of rates for services provided under this Agreement. Initial rates shall be as set forth in City Council Resolution No. 19-053 C.S.



- b. Net profit by Franchisee before taxes in any one year is limited to seven percent (7%) of gross sales (“Reasonable Profitability”). Franchisee agrees to apply any portion of net income above and beyond this maximum allowable gross profit toward improvements that enhance operations in response to service requirements, or, alternatively, reduce rates, at City’s option.
2. **Rate Adjustment Request.** Should the Franchisee find it necessary to request a rate adjustment, said request must be made in writing to the City Manager and accompanied by a current audited financial statement for the immediately preceding calendar year, together with a current financial statement for the period ending no more than three (3) months prior to the request for a solid waste rate adjustment. In giving consideration to a rate change, the City may consider any of the following:
- Labor costs and employment benefits.
 - Equipment repair and replacement costs.
 - Landfill costs.
 - Landfill location.
 - Taxes and insurance.
 - Cost of fuel.
 - Cost of compliance with governmental regulations.
 - Rates of similar services in cities similarly situated.
 - Cost of accounting, such as financial audits, management performance studies, or other studies requested by the City, and other items of overhead related to operating costs, including recycling programs.
 - Debt service and depreciation on capital improvements and equipment at the recycling center at 10 Ryan Ranch Road.
 - Results of financial and management performance audits.

In the event of an application for a rate increase, it is understood that the Franchisee shall have the burden of demonstrating to the reasonable satisfaction of the City that the failure of City to adjust the rates will result in Franchisee’s financial loss or failure to achieve Reasonable Profitability. The Franchisee will have to demonstrate financial loss or a failure to achieve reasonable profitability. The City Manager shall have the right to request any information that they, in their sole judgment, determine is necessary to establish the reasonableness or accuracy of Franchisee’s request for a rate increase. Franchisee’s failure to fully cooperate in a timely manner with any reasonable request for information by the City Manager may result in either the denial of or delay in the approval of the request for a rate increase.

Article XI. FRANCHISE FEES

- Franchise Fee.** In consideration of said franchise, Franchisee agrees to pay the sum of fifteen percent (15%) of its annual gross receipts. Gross receipts reflect cash collected for waste collection, hauling, and recycling services.
- Payments.** The fees due under this Agreement are payable three (3) times per year on the first day of January, May, and September. Payments made more than thirty (30) days after the date due shall be delinquent. Franchisee shall pay a penalty of two percent (2%) per month, or part of any month, on the delinquent amount. Each remittance to City shall be accompanied by a statement listing the amount of each fee paid; calculation of each fee; and, statement of Gross Receipts, by Customer Type for the period collected from all



operations conducted or permitted by this Agreement. City Manager may, at any time during the Term, request a detailed calculation of Gross Receipts which may include, but is not necessarily limited to, the number of customers charged at each service level and rate for each billing period.

3. **Compliance Costs.** Franchisee and City acknowledge that total costs for compliance with CalRecycle regulations implementing SB 1383 or other future enacted State legislation are unknown at the time the Parties are entering into this Agreement. Franchisee expressly assumes the risk of said compliance costs and agrees that it will provide services sufficient to achieve regulatory compliance or will provide additional funding separate from and on top of the Franchise Fee to the City in the event that the City provides services to achieve compliance with applicable State law and/or CalRecycle regulations.

Article XII. INDEMNIFICATION – INSURANCE – BONDS

1. Indemnification.

- a. **General Indemnification.** Franchisee agrees to indemnify, defend with counsel acceptable to City, and hold harmless the City and its officers, officials, employees, volunteers, and agents (the “Indemnified Parties”) from any and all liability, loss, claims, demands, actions, or causes of action, including but not limited to payment of attorney’s fees and costs, of every kind and description resulting directly or indirectly, arising out of, or in any way connected with Franchisee’s performance under this Agreement, including, but not limited to, any matter related to liability arising pursuant to the Comprehensive Response Compensation and Liability Act (CERCLA) 42 USC § 9601-75, or any other federal, state, or local environmental hazard and contamination cleanup liability statutes, except to the extent such loss or damage was caused by the active negligence or willful misconduct of City.
- b. **Hazardous Waste.** Franchisee shall indemnify the Indemnified Parties from and against all claims, actual damages including, but not limited to, special and consequential damages, natural resource damage, punitive damages, injuries, costs, response, remediation, and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnified Parties or Franchisee arising directly or indirectly from or caused by any of the following: (i) the violation of any environmental laws or the failure to clean up and mitigate the consequences of the spill or release of any Hazardous Waste; and (ii) Franchisee's activities under this Agreement concerning any Hazardous Waste at any place where Franchisee stores or disposes of solid or Hazardous Waste pursuant to this Agreement, or preceding Agreements between City and Franchisee. The foregoing indemnity is intended to operate as an agreement pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9607(e)) and any amendments thereto, and California Health and Safety Code Section 25364, or any successor statute, to insure, protect, hold harmless, and indemnify City from liability.
- c. **AB 939 Indemnification.** Franchisee hereby binds itself to protect, defend with counsel of the City's choice, and indemnify the Indemnified Parties against all fines or penalties imposed by CalRecycle, in the event the source reduction and recycling goals of the Integrated Waste Management Act of 1989, as amended, are not met by the City and



such failure to meet such goals has been occasioned by the failure of the Franchisee to achieve the diversion thresholds established herein.

- d. AB 341 Indemnification. Franchisee agrees to meet all requirements of AB 341, specifically Public Resources Code Section 42649, or any successor statute, as to portion of the Solid Waste and Recyclables stream collected and/or handled by Franchisee. Franchisee agrees to protect, defend, indemnify, and hold the Indemnified Parties harmless against all fines or penalties imposed by CalRecycle, or other entity, arising from the failure of Franchisee to meet AB 341 diversion and recycling requirements with respect to the Solid Waste and Recyclables collected and/or handled by Franchisee.
- e. AB 1826 Indemnification. Franchisee agrees to meet all requirements of AB 1826, specifically Public Resources Code Section 42649.82, or any successor statute, as to the portion of the Organic Waste collected and/or handled by Franchisee. Franchisee agrees to protect, defend, indemnify, and hold the Indemnified Parties harmless against all fines or penalties imposed by CalRecycle, or other entity, arising from the failure of Franchisee to meet AB 1826 recycling requirements with respect to the Food Scraps and Green Waste collected and/or handled by Franchisee.
- f. SB 1383 Indemnification. Franchisee agrees to meet all requirements of SB 1383, specifically Public Resources Code Section 42652, or any successor statute, as to the portion of Organic Waste collected and/or handled by Franchisee. Franchisee agrees to protect, defend, indemnify, and hold the Indemnified Parties harmless against all fines or penalties imposed by CalRecycle or other entity, arising from the failure of Franchisee to meet SB 1383 recycling requirements with respect to the Organic Waste collected and/or handled by Franchisee.
- g. Notice. City agrees to give notice to Franchisee when the City receives a claim for damages or other liability for which Franchisee has provided indemnification under this Section.

2. Insurance.

- a. Minimum Coverages. Franchisee shall at all times during the term of the franchise, maintain in effect the following insurance coverage naming City as an additional insured:
 - i) Comprehensive General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.
 - ii) Pollution Liability Insurance: \$5,000,000 Combined Single Limit, naming Franchisee and City as Insureds shall be procured and maintained during the life of this Franchise. The Pollution Liability insurance required shall be written on an "occurrence," rather than a "claims made" basis, if such coverage is obtainable. If it is not obtainable, Franchisee must arrange for "tail coverage" to protect the City from claims filed for a period of at least three (3) years after the expiration or termination of this Franchise relating to incidents which occurred prior to such expiration or termination.
 - iii) Automobile Liability: \$5,000,000 combined single limit per accident for bodily injury and property damage. Pollution Liability Insurance shall be required at the stated minimum coverage level and may be a separate policy. The MCS90 Endorsement to



the Automobile Policy is not acceptable for meeting Pollution Liability Insurance requirements under this Franchise.

- iv) **Workers' Compensation and Employers Liability:** Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per incident.
- b. **Additional Insured.** City and its officers, officials, and employees shall be named as an additional insured on all policies, except the workers' compensation coverage, and receive a copy of all policies evidencing the required coverage.
- c. **Minimum Scope of Insurance.** Coverage of the insurance required in 2.a., above, shall be at least as broad as:
 - i) Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
 - ii) Insurance Services Office form number CA 0001 (Ed. V78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
 - iii) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
- d. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, agents, volunteers and employees; or the Franchisee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- e. **Other Insurance Provisions.** The policies of insurance required by this Franchise shall contain, or be endorsed to contain, the following provisions:
 - i) **General Liability and Automobile Liability Coverages**
 - (1) The City, its officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Franchisee; products and completed operations of the Franchisee; premises owned, leased or used by the Franchisee; or automobiles owned, leased, hired or borrowed by the Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents, or volunteers.
 - (2) The Franchisee's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, agents, or volunteers shall be excess of the Franchisee's insurance and shall not contribute with it.
 - (3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or volunteers.



- (4) Coverage shall state that the Franchisee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- ii) **Workers' Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents, and volunteers for losses arising out of work performed by Franchisee for the City.
- f. **Acceptability of Insurers.** The insurance policies required by this Section 2 shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.
- g. **Verification of Coverage.** Franchisee shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. 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 the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- h. **Delivery of Proof of Coverage.** Simultaneously with the execution of this Franchise, and at least annually thereafter, Franchisee shall furnish the City certificates of each policy of insurance required hereunder, in form and substance satisfactory to the City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If the City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to the City.
- i. **Subcontractors.** Franchisee shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- j. **Required Endorsements.** Each insurance policy shall provide or be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to the City Manager ten (10) Business Days for delinquent insurance premium payments).
- k. If Franchisee fails to procure and maintain any insurance required by this Franchise, the City may take out and maintain, at the Franchisee's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due the Franchisee.
3. **Performance Bond.** This Agreement shall not become effective until Franchisee has secured and delivered to City a good and sufficient surety bond, to be approved by the City Attorney, in the amount of one million dollars (\$1,000,000) to secure the full, true and faithful performance of all the terms, obligations and conditions of this Agreement on the part of Franchisee to be kept and performed and Franchisee agrees to secure and present said bond for approval of the City Attorney concurrently with the execution of this Agreement. Said bond shall not be subject to cancellation and shall be in full force and effect for the full term of one (1) year, and shall be renewed, or a new bond furnished subject to approval herein provided, not less than fifteen (15) days prior to the expiration of the then existing bond on file with City; it being understood and agreed that Franchisee shall, at all times



during the term of this Agreement, maintain on file with the City Clerk good and sufficient faithful performance surety bond in accordance with the requirements of this Section.

4. **Protection of Work and Property.** Franchisee shall at all times safely guard the City's property from injury or loss in connection with this franchise. It shall at all times safely guard and protect its own work, and that of adjacent property, from damage. The Franchisee shall replace or make good any such damage, loss or injury unless such is caused directly by the negligence or willful misconduct of the City, or its duly authorized representative.
5. **Damage of Property.** In the event the Franchisee damages property of any of the customers or the City itself while engaged in the performance of this Agreement, it will fully compensate said customer(s) for such damage or damages or restore said damaged property to its original condition.

Article XIII. DEFAULT AND REMEDIES

1. **Liquidated Damages.**
 - a. **General.** City finds, and Franchisee agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Franchisee of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of this Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that franchised services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.
 - b. **Performance Standards.** The Parties further acknowledge that consistent, reliable Solid Waste collection service is of utmost importance to City and that City has considered and relied on Franchisee's representations as to its quality of service commitment in awarding the Franchise to it. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Franchisee fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as material breach under this Article, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.
 - c. Franchisee agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:



LIQUIDATED DAMAGES	
ITEM	AMOUNT
Each failure to commence service to a new Customer account within seven (7) days after order.	\$ 500.00 per incident
Each failure to remove graffiti from a container within seven (7) days of notification by City or Customer.	\$ 500.00 per incident
Each occurrence of discourteous behavior to a Customer.	\$ 500.00 per incident
Each failure to clean up spill or leakage of oil, hydraulic fluid, coolant, or other fluid from any collection vehicle used by Franchisee, which causes a stain of 0.5 square feet or greater.	\$ 500.00 per incident or location
Each failure to respond by the end of the next working day to any complaint involving omission of a scheduled collection, an untidy collection, or damage to property.	\$ 300.00 per incident
Failure to collect Solid Waste, which has been properly set out for collection, from an established Customer account on the scheduled collection day.	\$ 125.00 per incident
Failure to collect Solid Waste, which has been properly set out for collection, from an established Customer account on the scheduled collection day, two (2) or more times at the same Customer address during a Quarter.	\$ 500.00 per incident
Failure to properly return empty waste containers to proper set-out location that avoids pedestrian or vehicular traffic impediments.	\$ 125.00 per incident
Failure to renew Performance Bond or renew Insurance and submit Certificate of Insurance prior to expiration date.	\$ 125.00 per calendar day
Failure to submit monthly or annual report(s), as required. If City determines report is not complete, the Franchisee shall be given forty-five (45) business days to complete report.	\$ 125.00 per calendar day



	Report shall be considered late until such time as a correct and complete report is received by City.	
	Failure to maintain collection vehicles in condition specified by this Agreement.	\$ 125.00 per vehicle per calendar day
	Failure to notify Customer with reason for non-collection due improperly prepared Recyclables.	\$ 125.00 per incident
	Disposal of Recyclable and Organic Waste Materials that have been separately collected by Franchisee at a Disposal facility without first obtaining the required permission of City.	\$ 1,000 per day 1 st and 2 nd instance, \$5,000 per day subsequent instances

d. **Procedure for Assessment of Liquidated Damages.** City may assess liquidated damages for each calendar day or event, as appropriate, that Franchisee is determined to be liable in accordance with this Agreement. Prior to assessing liquidated damages, and within five (5) business days of becoming aware of circumstances that would warrant assessment of liquidated damage, City shall provide notice to Franchisee that such circumstances exist, and whether the City intends to pursue assessment of liquidated damages. The notice will include a brief description of the violation or incident of non-performance. Franchisee may review (and make copies at its own expense) all information in the possession of City relating to the violation or incident of non-performance. Franchisee may, within ten (10) days after receiving the notice, request a meeting with the Director. Franchisee may present evidence in writing and through testimony of its employees and others relevant to the violation or incident of non-performance. The Director will provide Franchisee with a written explanation of their determination as to each violation or incident of non-performance prior to authorizing the assessment of liquidated damages. Within thirty (30) days after Franchisee's receipt of any assessment of liquidated damages in excess of \$10,000, Franchisee may appeal in writing to the City Manager setting forth Franchisee's basis for contesting the Director's assessment. The City Manager shall then have ten (10) days to issue a written decision regarding the appeal. In such case, the decision of the City Manager shall be final and Franchisee shall not be subject to, or required to exhaust, any further administrative remedies.

2. **Notice of Breach and Time to Cure.** Except as provided in section (3) herein, any act or omission by Franchisee that violates the terms, conditions, or requirements of this Agreement, the Integrated Waste Management Act, as it may be amended from time to time, or any applicable law, statute, ordinance, order, directive, rule, or regulation shall constitute a breach under this Agreement, if: (1) the failure or refusal of Franchisee to perform as required by Article IV, Section 10 of this Franchise is not cured within two (2) business days after receiving notice from the City specifying the breach; or (2) in the case of any other breach of the Franchise, the breach continues for more than thirty (30) calendar days after written notice from the City for the correction thereof, provided, however, that

where such breach cannot be cured within such thirty (30) day period, Franchisee shall not be in default of this Franchise if Franchisee shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and Franchisee continues such performance diligently and with continuity until completed.

3. **Material Breach – Termination without Right to Cure.** City shall have the right of termination as a result of Franchisee's failure to timely cure any breach 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 the event of any material breach hereof, City shall have the right to terminate this Agreement upon ten (10) days' written notice without affording Franchisee the right to cure including, without limitation, any action, inaction or circumstance defined elsewhere in the Agreement as a material breach and/or under any of the following circumstances which are hereby defined as material breaches:
- a. Fraud or Deceit. Franchisee practices, or attempts to practice, any fraud or deceit upon the City.
 - b. Insolvency or Bankruptcy. 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.
 - c. Failure to Perform Services. Franchisee ceases to provide collection, transportation, processing, or street sweeping services as required under this Agreement for a period of two (2) consecutive calendar days or more, for any reason within the control of Franchisee.
 - d. Failure to Pay or Report. Franchisee fails to make any payments to City required under this Agreement including payment of City fees or Liquidated Damages and/or refuses to provide City with required information, reports, and/or records in a timely manner as provided for in the Agreement.
 - e. False, Misleading, or Inaccurate Statements. Any representation or disclosure made to the City by Franchisee in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement; and, any Franchisee-provided report containing a misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by the Agreement, excepting non-numerical typographical and grammatical errors.
 - f. Seizure or Attachment. There is a seizure of, attachment of, or levy on, some or all of Franchisee's operating equipment, including without limits its equipment, maintenance or office facilities, or any part thereof.
 - g. Suspension or Termination of Service. There is any termination of the transaction of business by Franchisee related to this Agreement, including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) calendar days.



- h. **Criminal Activity.** Franchisee, its officers, managers, or employees are found guilty of criminal activity related directly or indirectly to performance of this Agreement or any other agreement held with the City.
- i. **Assignment without Approval.** Franchisee transfers or assigns this Agreement without the expressed written approval of the City.
- j. Franchisee fails to meet the diversion requirements of this Agreement or pursuant to applicable laws.
4. **Possession of Records Upon Termination.** In the event of termination of this Agreement, Franchisee shall furnish City Manager with immediate access to all of its business records, including without limitation, proprietary Franchisee computer systems, related to its customers, collection routes, and billing of accounts for collection services.
5. **City's Remedies Cumulative; Specific Performance.** City's rights to terminate the Agreement and to take possession of the Franchisee's records are not exclusive, and City's termination of the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which City may have. By virtue of the nature of this Agreement, the urgency of timely, continuous, and high quality service; the lead time required to effect alternative service; and, the rights granted by City to the Franchisee, the remedy of damages for a breach hereof by Franchisee is inadequate and City shall be entitled to injunctive relief (including but not limited to specific performance).
6. **Effect of Termination on Lease.** Termination of this Agreement shall result in the concurrent termination of the Ground Lease of the Recycling Center property with ownership of improvements to revert to City.
7. **Excuse from Performance.** The Parties shall be excused from performing their respective obligations hereunder during and only during the time they are prevented from so performing by reason of floods, earthquakes, other "acts of God", war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Franchisee's employees or directed at Franchisee is not an excuse from performance and Franchisee shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events; provided, that in the case of labor unrest or job action directed at a third party over whom Franchisee has no control, the inability of Franchisee to make collections or sweep streets due to the unwillingness or failure of the third party to provide reasonable assurance of the safety of Franchisee's employees while making collections or sweeping streets or to make reasonable accommodations with respect to container placement and point of delivery, time of collection or other operating circumstances to minimize any confrontation with pickets or the number of persons necessary to make collections shall, to that limited extent, excuse performance and provided further that the foregoing excuse shall be conditioned on Franchisee's cooperation in making collection and sweeping streets at different times and in different locations. The Party claiming excuse from performance shall, within two (2) days after such Party has notice of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this Section. In the event that either Party validly exercises its rights under this Section, the Parties hereby waive any claim against each other for any damages sustained thereby. The Party claiming excuse under this Section shall use its best efforts to remedy its inability to perform as soon



as possible. The partial or complete interruption or discontinuance of Franchisee's services caused by one or more of the events described in this Section shall not constitute a default by Franchisee under this Franchise. Notwithstanding the foregoing, however, if Franchisee is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of thirty (30) days or more, other than as the result of third party labor disputes where service cannot be provided for reasons described earlier in this section, the City shall nevertheless have the right, in its sole discretion, to terminate this Franchise by giving ten (10) days' notice.

8. **Right to Demand Assurances of Performance.** If Franchisee (1) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (2) appears in the reasonable judgment of the City to be unable to regularly pay its bills as they become due; or (3) is the subject of a civil or criminal judgment or order entered by a federal, state, regional or local agency for violation of an environmental law, and the City Manager believes in good faith that Franchisee's ability to perform under the Franchise has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from Franchisee reasonable assurances of timely and proper performance of this Franchise, in such form and substance as the City Manager believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Franchise. If Franchisee fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall constitute a breach of this Agreement for purposes of Article XIII, Section 3.

Article XIV. GENERAL PROVISIONS

1. **Alternative Service.** If the Franchise is temporarily unable to provide service (e.g. drop box service) within 72 hours of a customer's request, the customer, after providing notice to the Franchisee, may obtain alternative service for a period of up to seven (7) days.
2. **Assignability.** This Franchise shall not be assignable either voluntarily or involuntarily by operation of law, without the express written consent of the Council of the City of Monterey. The transfer of any interest by Franchisee representing an aggregate of fifteen percent (15%) or more of its ownership is a prohibited assignment during the life of this Agreement.
3. **Emergency Operation.** If a state of emergency is found to exist and Franchisee defaults or is unable to perform under the terms of this Agreement, the City, by adoption of a resolution by a 4/5 vote of the City Council, may take temporary possession of Franchisee's facilities and equipment and operate the franchise during the period of emergency, for a period not-to-exceed thirty (30) days, under such terms and conditions as will protect the public health, safety, and welfare. City shall assume liability during such period of operation and shall hold Franchisee harmless from any liability incurred as a result of the City's actions. At the end of the thirty (30) day period, the City, by further resolution of the City Council, adopted by a 4/5 vote, may extend the period of City operation or, if such emergency has ended, determine the reasonable compensation for the use for the franchise. Final adjustment and allocation of gross revenue, costs and expenses for the period during which the City temporarily assumed the obligations of the Franchisee shall be determined by an audit by a Certified Public Accountant and prepared in report form with his "unqualified opinion" annexed thereto. Cost of the audit shall be borne equally by both parties.
4. **Compliance with Law.** Franchisee agrees to conduct all work under this Agreement in conformity with all applicable federal, state, and local laws and regulations, and the terms of



this Agreement. During the Term of this Agreement, Franchisee and City agree that the City's ordinances may be amended as necessary to permit the City to comply with changes to federal, state, and local legislative and regulatory requirements, which may affect or alter the City's obligations or requirements for the disposal or diversion of Solid Waste, Recyclables, or Organic Waste. Franchisee agrees to comply with any such amendment of the City's ordinances without the need to amend this Agreement.

5. **Relationship of Parties.** The Parties intend that Franchisee shall perform the services required by this Franchise as an independent Franchisee engaged by the City and not as an officer or employee of the City, nor as a partner of or joint venturer with the City. No employee or agent of Franchisee shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, Franchisee shall have the exclusive control over the manner and means of conducting the Solid Waste, Recyclable Material or Organic Waste collection, sweeping and disposal services performed under this Franchise, and all persons performing such services. Franchisee shall be solely responsible for the acts and omissions of its officers, employees, subcontractor, and agents. Neither Franchisee nor its officers, employees, subcontractor and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with the City.
6. **Conflict of Interest.** Franchisee hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.
7. **Equal Opportunity Employment.** Franchisee represents that it is an equal opportunity employer and it shall not discriminate against any authorized subcontractor, employee, or applicant for employment because of race, religion, color, national origin, disability, ancestry, sex, age, or any other impermissible basis under law.
8. **Notices.** All notices required or given pursuant to this franchise shall be in writing and shall be deemed properly served when delivered in person or deposited first class postage prepaid, in the United States Mail, addressed to: (City) City Manager, City of Monterey, City Hall, Monterey, CA 93940; (Franchisee) Monterey City Disposal Service, Inc. PO Box 2780, Monterey CA 93942-2780.
9. **Severability.** If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent of permitted by law.
10. **Licenses and Permits.** The Franchisee shall obtain all applicable licenses and permits, including a City Business License. All such licenses and permits shall be paid for by the Franchisee and maintained continuously for the term of the Franchise Agreement.
11. **Attorneys' Fees and Costs of Suit.** If City or Franchisee shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Agreement, the losing party shall pay the successful party costs of suit including costs of appeal and a reasonable sum for attorneys' fees which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.
12. **Amendment of Agreement.** Any modification or amendment to this Agreement shall be in writing and must be approved by the Monterey City Council.



- 13. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California and the City of Monterey.
- 14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act, or other applicable law) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

EXECUTED by the parties, on the date set forth below, at Monterey, California.

CITY OF MONTEREY

Date: 12/23/2020 | 8:20 AM PST

By: DocuSigned by:
Clyde Roberson
 Clyde Roberson, Mayor

MONTEREY CITY DISPOSAL SERVICE, INC.

Date: 12/23/2020 | 8:21 AM PST

By: DocuSigned by:
Tom Parola
 Thomas Parola, President

