

## ATTACHMENT B

### ORDINANCE NO. 2021-15

#### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, GRANTING NON-EXCLUSIVE FRANCHISE AGREEMENTS FOR COMMERCIAL SOLID WASTE AND DIVERTIBLE MATERIALS HANDLING SERVICES WITHIN THE CITY OF NEWPORT BEACH**

**WHEREAS**, the City Council of the City of Newport Beach ("City Council") finds and determines that the collection of municipal solid waste and divertible materials, including recyclable materials, food scraps, green waste, wood waste, construction and demolition debris and all other materials that can be diverted from landfill disposal (collectively, "Commercial Solid Waste") generated within the City of Newport Beach ("City") is a vital public service;

**WHEREAS**, the City Council further finds and determines the collection, transportation, storage, and disposal of municipal solid waste and the collection, transportation, processing and diversion of processable municipal solid waste and divertible materials ("Commercial Franchise Services") is a matter of great public concern because improper control of such matters subjects the City to potential liability, damages and penalties and may create a public nuisance, air pollution, fire hazard, infestation and other problems affecting the public health, safety and welfare;

**WHEREAS**, the non-exclusive franchises for use of public streets to provide Commercial Franchise Services promotes the public health, safety and welfare by providing permanence and stability among those businesses wishing to provide such service and accountability to the City for compliance with current and future state mandates;

**WHEREAS**, in 2017, the City Council adopted a model non-exclusive commercial solid waste franchise agreement for private solid waste haulers and, thereafter, entered into franchise agreements with a number of commercial solid waste franchise haulers ("2017 Franchise"), effective through November 8, 2024;

**WHEREAS**, although the 2017 Franchise did not expire until November 8, 2024, on October 22, 2019, the City Council approved a new model franchise agreement in compliance with Assembly Bill 1826 and Assembly Bill 341 ("2020 Franchise"), that expires in the year 2027;

**WHEREAS**, the City has since received applications from new applicants that wish to perform work under the 2020 Franchise;

**WHEREAS**, pursuant to Article XIII of the City Charter, Chapter 12.63 (Solid Waste Management) of the Newport Beach Municipal Code ("NBMC"), and California Public Resources Code Sections 40059, 49300, and 49500 through 49523, or any successor statutes, the City is authorized to enter into non-exclusive franchise agreements for Commercial Franchise Services with private solid waste haulers;

**WHEREAS**, pursuant to City Charter Section 1301 (Resolution of Intention. Notice and Public Hearing), on July 27, 2021, the City Council adopted Resolution No. 2021-68, providing notice of a public hearing to be held on August 24, 2021 to grant the 2020 Franchise to the franchise haulers identified in the resolution;

**WHEREAS**, a public hearing was held on August 24, 2021, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Section 1301 of the City Charter. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing;

**WHEREAS**, pursuant to Section 12.63.080 (Required Findings) of the NBMC, the City Council finds, on the basis of the application, information, materials, and testimony submitted, that:

- The applications submitted by Franchisees (defined herein) complies with Chapter 12.63 (Solid Waste Management) of the NBMC;
- The Franchisees have not within the past three years: (1) had a franchise terminated by the City; and/or (2) operated a solid waste enterprise within the City without a franchise;
- Awarding the 2020 Franchise is in accordance with the objectives of Chapter 12.63 (Solid Waste Management) of the NBMC;
- Granting the 2020 Franchise to Franchisees will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the City or be materially detrimental to the public welfare or injurious to property or public improvements; and

- Franchisees have demonstrated sufficient experience, equipment and a recycling plan and diversion program to safely comply with the requirements of the 2020 Franchise; and

**WHEREAS**, having considered all oral and documentary evidence presented at the public hearing, the City Council determines that the granting of the 2020 Franchise to Franchisees is in the public interest.

**NOW THEREFORE**, the City Council of the City of Newport Beach ordains as follows:

**Section 1:** There is hereby granted to each entity listed below (collectively, "Franchisees"), which do not currently hold a franchise with the City, the 2020 Franchise attached hereto as Attachment 1:

- a. Greenstone Materials, Inc.; and
- b. Roche Excavating, Inc.

**Section 2:** Franchisees' right to use City's public streets, ways, alleys and places for the purposes set forth in this ordinance, is not exclusive and the City reserves the right to grant a similar use of public streets, ways, alleys and places to any person at any time from the effective date of this ordinance until the expiration of the 2020 Franchise on October 7, 2027.

**Section 3:** Franchisees shall comply with and shall be bound by all terms, provisions and conditions contained in the City Charter and the NBMC including, but not limited to, Chapters 6.04 (Garbage, Refuse and Cuttings), 6.06 (State Mandated Municipal Solid Waste Diversion Programs), and 12.63 (Solid Waste Management), Resolution No. 2021-68, this ordinance, and the 2020 Franchise attached hereto as Attachment 1.

**Section 4:** The 2020 Franchise granted under this ordinance shall take effect on October 14, 2021, and shall expire October 7, 2027, unless terminated earlier pursuant to the terms of the agreement. Notwithstanding the effective date above, the 2020 Franchise granted by this ordinance shall not become effective unless and until the Franchisee files written acceptance of the 2020 Franchise with the City Clerk and delivers to the City all bonds and insurance policies required to be furnished in accordance with the requirements of Chapter 12.63 of the NBMC and the 2020 Franchise. The written acceptance shall be in form and substance as prescribed by the City Attorney and shall operate as an acceptance of each and every term, condition and limitation contained in this ordinance, the 2020 Franchise, Article XIII (Franchises) of the City Charter, Resolution No. 2021-68, and Chapter 12.63 (Solid Waste Management) of the NBMC. A Franchisee shall file written acceptance of the 2020 Franchise no later than ten (10) days after the adoption of this ordinance.

**Section 5:** During the term of the 2020 Franchise, Franchisee shall pay to City franchise fees for the privilege of providing Commercial Solid Waste and Divertible Materials Handling Services in the City of Newport Beach and use of public streets, ways, alleys and places for such purposes. Franchise fee payments shall be paid quarterly and shall be computed and paid on the basis of paid receipts received by the Franchisee for all Commercial Solid Waste and Divertible Materials Handling Services provided by the Franchisee within the City. Franchise fees shall total sixteen percent (16%) of Franchisee's gross receipts as follows:

(a) Franchisee shall pay to the City ten and one-half percent (10.5%) of the Franchisee's gross receipts, of which one-half of one percent (0.5%) shall be attributable for the preparation, adoption, and implementation of an integrated waste management plan consistent with of the City's Source Reduction and Recycling Element; and

(b) Franchisee shall pay to the City Environmental Liability Fund five and one-half percent (5.5%) of Franchisee's gross receipts.

**Section 6:** The City Council authorizes the Mayor and City Clerk to execute the attached 2020 Franchise in substantially the same form as the attached.

**Section 7:** The City Council of the City of Newport Beach finds that this ordinance is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with Sections 15060(c)(2), 15060(c)(3), 15061(b)(3) and 15308 of the California Code of Regulations Title 14, Division 6, Chapter 3. The City Council further finds that this ordinance is categorically exempt under Sections 15301 and 15308, which exempts "existing operations and facilities" and "actions by regulatory agencies for protection of the environment." Application of Sections 15301 and 15308 is appropriate because neither this ordinance nor the 2020 Franchise changes or expands existing solid waste operations and facilities within the City. This ordinance is also consistent with the goals of California State Assembly Bills 939, 341, and 1826, *The California Solid Waste Management Act*, CALGreen, as well as the objectives of the City's Source Reduction and Recycling Element.

**Section 8:** The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

**Section 9:** If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

**Section 10:** The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 24th day of August 2021, and adopted on the 14th day of September 2021, by the following vote, to-wit:

AYES, COUNCILMEMBERS \_\_\_\_\_

\_\_\_\_\_

NOES, COUNCILMEMBERS \_\_\_\_\_

\_\_\_\_\_

ABSENT COUNCILMEMBERS \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
BRAD AVERY, MAYOR

**ATTEST:**

\_\_\_\_\_  
LEILANI I. BROWN, CITY CLERK

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
AARON C. HARP, CITY ATTORNEY

Attachment: Agreement Template for 2020 Non-Exclusive Franchise Agreement for  
Commercial Solid Waste and Divertible Materials Handling Services

**NON-EXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE CITY OF  
NEWPORT BEACH AND \_\_\_\_\_ FOR COMMERCIAL  
SOLID WASTE AND DIVERTIBLE MATERIALS HANDLING SERVICES**

This Non-exclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 ("Effective Date") by and between the City of Newport Beach, a California municipal corporation and charter city organized and existing under the laws of the State of California ("City"), and \_\_\_\_\_, a [*insert name and type of business entity e.g. corporation, LLC, partnership*] ("Franchisee") (City and Franchisee may collectively be referred to as "Parties"), whose address is \_\_\_\_\_ and is made with reference to the following:

**RECITALS**

This Agreement is entered into on the basis of the following facts:

A. Assembly Bill ("AB") 939 (the California Integrated Solid Waste Management Act of 1989, hereinafter the "Act"; Public Resources Code Sections 40000 *et seq.*) requires the City to divert from landfill disposal a minimum of fifty percent (50%) of all municipal solid waste generated within the City.

B. In 2011, the Act was amended by AB 341 to establish a statewide goal of diverting from landfills seventy-five percent (75%) of all municipal solid waste by 2020 and required the City, on or before July 1, 2012, to provide a commercial recycling program.

C. AB 341 also requires all businesses generating more than four (4) cubic yards per week of commercial municipal solid waste and all multifamily dwellings of five (5) units or more to arrange for recycling services by July 1, 2012.

D. In 2014, the Act was further amended by AB 1826 to require the City, on or before January 1, 2016, to provide a diversion program for collection and diversion of food scraps and green waste.

E. AB 1826 also requires commercial generators of certain quantities of food scraps and green waste to participate in a diversion program beginning on a date between April 1, 2016 and January 1, 2019, depending on the quantity of waste generated. Some smaller commercial generators are required by CalRecycle to participate on or after January 1, 2020.

F. The City has received written notification from CalRecycle of its intention to enforce the deadlines for implementation of AB 341 and AB 1826 programs within the City as required by the Act; therefore, it is important that Franchisee implement and maintain successful AB 341 and AB 1826 diversion programs for all commercial customers as required by the Act, to the satisfaction of both the City and CalRecycle.

G. Pursuant to Article XIII of the City Charter, Code Chapter 12.63, and Public Resources Code Sections 40059, 49300, and 49500 through 49523, or any successor statutes, the City is authorized to enter into non-exclusive franchise agreements for commercial solid waste and divertible materials handling services.

H. On October 10, 2017, the City Council of the City of Newport Beach ("City Council") adopted Ordinance No. 2017-16, An Ordinance of the City Council of the City of Newport Beach, California, Granting Non-Exclusive Solid Waste Franchises to Provide Commercial Solid Waste Handling Services Within the City of Newport Beach.

I. As part of its adoption of Ordinance No. 2017-16, the City entered into a number of nonexclusive franchise agreements allowing solid waste haulers to operate in the City.

J. On October 22, 2019, the City Council approved revisions to the nonexclusive franchise agreement with solid waste haulers to improve procedures for compliance with Assembly Bills 341 and 1826. The revised nonexclusive franchise agreement also extended the term for an additional two (2) years.

K. Pursuant to Code Chapter 12.63, Franchisee has filed a franchise application with the City to operate under the new Nonexclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services.

L. The Parties now wish to terminate the franchise agreement adopted pursuant to Ordinance No. 2017-16 and enter into a new Nonexclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services.

ALTERNATIVE, IF THEY DO NOT HAVE A CURRENT FRANCHISE AGREEMENT, THEN L. WOULD READ, "The Parties now wish to enter into a Nonexclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services."

M. City has reviewed Franchisee's application and Franchisee has represented it is capable of providing collection services for commercial recyclable materials, food scraps, green waste, municipal solid waste, and/or construction and demolition debris in the City.

N. Pursuant to this Agreement, City desires to authorize Franchisee to provide those non-exclusive commercial services for collection, transportation, delivery, and disposal of Municipal Solid Waste and/or collection, transportation, processing and diversion of recyclable materials, food scraps, green waste, wood waste, and construction and demolition debris as requested in Franchisee's application and for which Franchisee has demonstrated capability.

O. The City Council has determined that this grant of a non-exclusive franchise is in the public interest.



**NOW, THEREFORE,** the City and Franchisee do hereby agree as follows:

## **SECTION 1. GRANT OF FRANCHISE**

A. By Ordinance No. 2020-20, City has granted to Franchisee a non-exclusive Franchise authorizing Franchisee to provide Commercial Franchise Services within all or any part of the City and to use the public streets and public right-of-ways for such purpose. Franchisee acknowledges that the Franchise is not exclusive and that the Franchise is subject to all provisions of applicable law, including, but not limited to, Article XIII of the City Charter, Ordinance No. 2020-20, Code Chapter 12.63, and the terms and conditions of this Agreement.

B. Upon the Effective Date of this Agreement, the parties agree that any prior authorization relating to the provision of Commercial Franchise Services within all or any part of the City arising under and pursuant to any prior franchise issued to Franchisee shall be deemed to be abandoned and of no further force or effect except the Franchisee's obligation(s) to comply with the Diversion requirements set forth in Sections 12 through 15, the Continuing Obligations set forth in Section 23(J), or any other obligations specified in the franchise agreement granted pursuant to Ordinance No. 2017-16.

## **SECTION 2. TERM OF FRANCHISE**

This Agreement shall commence on the Effective Date, and shall terminate on the Termination Date, unless terminated earlier as set forth herein.

## **SECTION 3. DEFINITIONS**

"AB 341 Generator" means all Municipal Solid Waste generators required by AB 341 (Public Resources Code Section 41780.01) to divert Recyclable Materials generated on-site from Disposal including (A) all businesses located and operating within the City, and the responsible party, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic yards of Municipal Solid Waste per week; including but not limited to, retail stores, restaurants, offices, supermarkets, convenience stores, malls, strip malls, service businesses, hospitals, assisted living facilities, and federal, state and local government facilities; (B) Multifamily Dwellings consisting of five (5) or more units regardless of the amount of Municipal Solid Waste generated; (C) the City, its facilities, its non-residential properties, and (D) special events that take place in the City that generate four (4) or more cubic yards of municipal solid waste per event whether or not sponsored by the City.

"AB 1826 Generator" means all food-generating businesses within the City, and the responsible parties, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic yards of Municipal Solid Waste per week and are required by AB 1826, as codified in Public Resources Code Section 42649.82, to divert all Food Scraps generated on-site from Disposal; including but not limited to, all restaurants, cafeterias, hospitals, and supermarkets; (B) all non-food-generating businesses and the responsible parties, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic

yards of Municipal Solid Waste per week and that generate Green Waste and/or Wood Waste (C) all Multifamily Dwellings consisting of five (5) or more units regardless of the amount of Municipal Solid Waste generated; (D) federal, state and local government facilities, schools, the City, its facilities, and its non-residential properties; and (E) special events that take place within the City that generate four (4) or more cubic yards of municipal solid waste per event, whether or not sponsored by the City. As of the effective date of this Agreement, the threshold amount of Municipal Solid Waste provided for in Public Resources Code Section 42649.81 is four (4) or more cubic yards of Municipal Solid Waste per week on or after January 1, 2020. If CalRecycle changes the quantities of Municipal Solid Waste necessary to be considered an AB 1826 Generator, the definition of an AB 1826 Generator shall be automatically amended to reflect these new quantities.

“Act” means the California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000, *et seq.*) as amended and as implemented by regulations of CalRecycle (or its successor agency) and the Air Resources Board (or its successor agency).

“Alternative Daily Cover” or “ADC” means cover material other than earthen material placed on the surface of the active face of a Municipal Solid Waste Landfill at the end of each operating day to control vectors, flies, fires, odors, blowing litter and scavenging. Prior to 2014, Green Waste was included in the list of CalRecycle-approved ADC materials and use of Green Waste for this purpose was counted as “Diversion” for purposes of the Act. AB 1594, passed and signed into law in 2014, phases out the use of Green Waste as ADC effective January 1, 2020. As of January 1, 2020, no Green Waste Collected within the City will not be used as ADC and Green Waste must be diverted for processing such as mulching, Composting, as feedstock for Anaerobic Digestion or other CalRecycle-approved means that counts as Diversion.

“Anaerobic Digestate” or “Digestate” means the material left at the conclusion of a biological process that decomposes organic matter in an enclosed environment with little or no oxygen, resulting in a biogas and a liquid/solid stream called Digestate (CCR Section 17896.2(a)(6)). Any Digestate created from Green Waste, Food Scraps or other organic materials Collected within the City must be further processed at a permitted Composting Facility or utilized in another manner that is fully permitted and approved by all federal, state and local regulatory agencies, including but not limited to CalRecycle, and that is considered as “Diversion” by CalRecycle for purposes of the Act.

“Anaerobic Digestion” means a biological process that decomposes organic matter in an environment with little or no oxygen, resulting in a biogas and a liquid/solid stream called Anaerobic Digestate. Such activity takes place at an “Anaerobic Digestion Facility.”

“Bin(s)” means open top rectangular containers with wheels, with attached plastic or metal lids, used for storage of Municipal Solid Waste, Recyclable Materials, Green Waste, Food Scraps, Construction and Demolition Debris or other materials that are Collected by Franchisees or other Persons authorized to Collect and transport such materials within City.

“Bioengineered Feedstock” means a mixture of materials utilized in Wastewater Treatment Plants (WWTP’s) or publically-owned treatment works (POTW’s) to produce biogas. (This process is also referred to as “wet anaerobic digestion.”) Bioengineered Feedstock may include primary and secondary sludge, greases from the WWTP grease trap, and organic materials such as Food Scraps from businesses and households or other organic materials from industries that have been pre-treated and liquefied to the required consistency.

“Bioengineered Feedstock Facility” means a Processing Facility that accepts Food Scraps and other Bioengineered Feedstock, chops, macerates or otherwise size-reduces the incoming materials, mixes the material with liquid and produces a slurry which is then transported or otherwise delivered to a Wastewater Treatment Plant or similar facility that uses Bioengineered Feedstock to produce methane,

“CalRecycle” means the California Department of Resources Recycling and Recovery, the successor agency to the former California Integrated Waste Management Board.

“Can” means a receptacle for Municipal Solid Waste, Recyclable Materials, Green Waste, Food Scraps or wood provided by the Customer and Collected using manual (instead of automated) means of Collection.

“Cart” means a plastic wheeled Container with a hinged lid used to store Municipal Solid Waste, Recyclable Materials, Green Waste or Food Scraps that is Collected by an automated or semi-automated vehicle.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §9601 *et seq.*).

“City Council” means the City Council of the City of Newport Beach.

“City Manager,” “Finance Director,” and “Public Works Director” mean the City Manager, Finance Director and Public Works Director of the City or their designee.

Clean Materials Recovery Facility (“Clean MRF”) means a materials recovery facility (“MRF”), or that portion of a MRF, that processes Recyclable Materials that have been separated from Municipal Solid Waste such as Single Material Recyclables and Single Stream Recyclable Materials, containing no more than the maximum Residue or contamination allowed by CalRecycle (10% Residue).

“Code” means the Newport Beach Municipal Code.

“Collect” or “Collection” means taking physical possession of Commercial Solid Waste, or other materials, from Customers and transporting such materials by means of a motor vehicle, or other means, to a MRF, Compost Facility, other Organics Processing Facility, Construction and Demolition Debris Processing Facility, transfer station or Landfill.

“Commercial Franchise Services” means the services provided by Franchisees pursuant to the terms and conditions of the Franchise and includes the Collection, transportation, storage, and Disposal of Municipal Solid Waste and the Collection, transportation, Processing and Diversion of Processible Municipal Solid Waste, Recyclable Materials, Green Waste, Wood Waste, Food Scraps and/or Construction and Demolition Debris by private solid waste enterprises, and includes, without limitation, the placement of Commercial Solid Waste and Divertible Materials Containers on public property.

“Commercial Premises” means 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, federal, state and local government facilities, schools, Multi-Family Dwellings that receive centralized Collection service and construction and demolition sites.

“Compactor” means an enclosed rectangular or square metal container containing a ramrod to condense and compress the contents, and is typically used to store Municipal Solid Waste, Green Waste, Recyclable Materials, Food Scraps or Construction and Demolition Debris. Compactors may be small (3 or 4 cubic yards) for use on smaller Commercial Premises or large (10, 20, 30 or cubic yards) for use at large Commercial Premises such as supermarkets, hotels, and large retail stores or at construction sites. A special Roll Off vehicle equipped with hooks and a winch to pull the Compactor on to the railed bed of the vehicle is used to Collect Compactors and transport them to a Landfill or to a Processing Facility.

“Compost” means the product resulting from the controlled biological decomposition of organic wastes which are separated from the Municipal Solid Waste stream at the point of generation and includes Food Scraps, Green Waste, and wood that are not hazardous wastes.

“Compost Facility” means a facility that processes one (1) or more of the following: Food Scraps, Green Waste, wood and food-soiled fiber such as paper napkins and paper towels, by means of outdoor windrow composting, aerated static pile composting, covered composting, vermiculture or other outdoor composting methods or covered composting with use of either finished compost or fiber, synthetic or other type(s) of cover(s) applied to the compost piles.

“Composting” means the controlled microbial degradation of organic materials yielding a safe and nuisance-free finished product called Compost, a soil amendment suitable for incorporating into topsoil and for growing plants.

“Construction and Demolition Debris” means all inert material of every nature, description or kind, which has resulted from the building or demolition of a structure, pavements, sidewalks, curbs, gutters and other concrete structures, including all lumber scraps, shingles, plaster, sheetrock, packaging, rubble, brick, stone, concrete, asphalt,

dirt, rock and other building material. A facility that accepts Construction and Demolition Debris for separation and further processing to prepare materials for sale or re-use (such as removing nails and screws from wood, or grinding of concrete and asphalt) and then markets the materials for re-use is a "Construction and Demolition Debris Processing Facility."

"Container(s)" means any object designed and used to hold or store Municipal Solid Waste, Recyclable Materials, Food Scraps, Green Waste, or Construction and Demolition Debris to be Collected by Franchisees. Containers include Carts, Bins, open top Roll Off Boxes, and Compactors.

"Contamination" means materials that are not specified for Collection in particular Containers or for processing at either a Clean MRF or a Dirty MRF, which would either interfere with such processing and/or reduce the quality and value of the Recovered Materials. For example, for purposes of Collection, metals and plastics would constitute "Contamination" if placed in a Food Scrap Container and tree trimmings would constitute "Contamination" if placed in a Recyclable Materials Container.

"Customer" means the owner, occupant, manager or user of premises at which Municipal Solid Waste, Recyclable Materials, Green Waste, Wood Waste, Food Scraps or Construction and Demolition Debris are generated who requests and receives Commercial or Multifamily Collection services for Municipal Solid Waste and/or Divertible Materials from one or more Franchisees. In the event a business, non-residential property, Multifamily dwelling or Commercial Premises shares Containers and/or Collection services, "Customer" refers only to the entity that arranges and pays for such services.

Dirty Materials Recovery Facility ("Dirty MRF") means a facility, or that certain portion of a facility, that processes Processable Municipal Solid Waste to separate Recyclable Materials, Green Waste, Wood Waste, Construction and Demolition Debris and other Divertible materials for sale to end users. Franchisees shall not utilize any Dirty MRF that has not been approved by City and that does not meet the standards and requirements of Public Resources Code Section 42649 and all subsequent amendments, rules, and regulations promulgated in furtherance thereof requiring a Dirty MRF to be a source-separated comparable MRF.

"Disposal" means the final disposition of solid waste of Municipal Solid Waste at a permitted landfill or transformation at a permitted facility, as transformation is defined and limited by the Act other permitted solid waste disposal facility.

"Diversion" or "Divert" means any combination of Recycling, sorting, Composting and other processing activities conducted at a Clean MRF, a Dirty MRF, a Compost Facility, an Anaerobic Digestion Facility, a Bioengineered Feedstock Facility, and/or a Construction and Demolition Debris Processing Facility in order to use or market the materials for re-use, remanufacture, reconstitution or otherwise return the materials to the economic marketplace and to prevent the materials from being Disposed in a Landfill.

"Diversion Plan" or "the Plan" means a plan prepared for a Customer by Franchisee pursuant to Exhibit E, Section A 2 of this Franchise Agreement that describes in detail the Diversion Program(s) recommended by Franchisee to be implemented at Customer's premises. A Diversion Plan contains estimated quantities of Divertible Materials generated at the Customer's premises, recommended types and sizes of outside Containers for storage of Divertible Materials, recommended frequency of Collection; modifications to sizes, types and Collection frequency for Containers for Municipal Solid Waste to adjust for the separate storage and Collection of Divertible Materials, and plans for the flow of materials through Customer's premises, including the location and sizing of interior Containers required for separation and interim storage of Divertible Materials. Diversion Plans also contain projected costs and any projected cost savings to the Customer for implementing the Diversion Plan.

"Diversion Program(s)," "Recycling Program(s)" and "Diversion Services" mean Recyclable Materials Collection, Green Waste Collection, Wood Waste Collection, Food Scraps Collection, Processable Municipal Solid Waste Collection, Construction and Demolition Debris Collection and subsequent processing of the Collected materials at a Clean MRF, a Dirty MRF, a Compost Facility, an Anaerobic Digestion Facility, a facility creating Engineered Feedstock for digestion at a wastewater treatment plant, a Construction and Demolition Debris Processing Facility and all other programs operated by Franchisees, the City, Residents, Customers or other Persons that have the effect of Diverting Municipal Solid Waste from Landfill Disposal. Diversion Programs includes, but is not limited to, all of the programs included in the City's SRRE and all of the programs included in this Agreement.

"Divertible Materials" or "Divertible" means Recyclable Materials, Food Scraps, Green Waste, Wood Waste, Construction and Demolition Debris, electronic waste, universal waste and all other materials that can be diverted from Landfill Disposal. Divertible Materials includes, but is not limited to, all materials required to be diverted from Landfill Disposal by City, CalRecycle or any state or federal agency."

"Edible Food For Human Consumption" or "Edible Food" means food that has been prepared but not served, and includes, but is not limited to: any appetizer, soup, salad, entrée, dessert, raw fruit and vegetable, that may or may not have been sliced, grated, cooked, baked or otherwise prepared for consumption but not served; any packaged sandwich, salad, fruit and fruit salad and any other non-served food that meets state and local requirements as being edible for human consumption.

"Effective Date" means the date upon which this Agreement is effective as set forth in the first paragraph of this Agreement.

"Environmental Laws" means any and all present and future federal, state or local laws (whether common law, statute, rule, regulation or otherwise), permits, orders and any other requirements of Governmental Authorities relating to the environment or any "Hazardous Substance" or "Hazardous Substance Activity" as defined herein, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601 *et seq.*) as amended from time to time and

the applicable provisions of the California Health and Safety Code and California Water Code.

“Food Scraps” means material resulting from the production, processing, preparation or cooking of food for human consumption that is separated from Municipal Solid Waste. Food scraps include surplus or unsold edible food, raw food left over after food preparation, leftover cooked food, as well as spoiled food such as vegetables and culls, and plate scrapings. Food scraps includes food-soiled paper that is mixed in with the food scraps. “Food Scraps” are Collected and transported to Food Scrap Processing Facilities which include Compost Facilities, Anaerobic Digestion Facilities, and Wastewater Treatment Plants utilizing Engineered Feedstock.

“Food Soiled Paper” means paper towels, tissue products, paper napkins, paper plates and cups, coffee filters, tea bags, waxed paper, butcher paper, paper take-out boxes and containers, greasy pizza boxes, paper bags, cardboard and wax-coated cardboard produce boxes that are Contaminated with Food Scraps. Food Soiled Paper does not include polystyrene, aluminum foil, foil-lined wrap or diapers.

“Franchise” or “Franchise Agreement” means this Agreement between the City and a Franchisee, granted pursuant to Agreement Section 1(A), providing Franchisee the right, for a specified period of time and pursuant to Article XIII of the City Charter, the Code, and the terms and conditions of this Agreement, to provide for the Collection and Diversion of Commercial Solid Waste Handling Services to Commercial Premises and Multifamily Dwellings within all or any part of the City of Newport Beach and to use the public streets and public right-of-ways for such purpose. Throughout this Agreement, the terms “Agreement,” “Franchise” or “Franchise Services” may be used interchangeably unless otherwise specified or the context requires otherwise.

“Franchisee” means the individual or business entity identified as “Franchisee” on the signature page of this Agreement.

“Franchise Fee” means the fee or assessment imposed by the City on a Franchisee, which among other things, is intended to offset the City’s expenses related to the administration of the Franchise Agreement, the Integrated Waste Management Program, the maintenance and implementation of the City’s Source Reduction and Recycling Element, compliance with the California Integrated Waste Management Act, to compensate the City for damages to its streets, sidewalks, curbs and gutters and other infrastructure resulting from the Franchisee’s exercise of its rights under the franchise, City’s reporting requirements and other related expenses.

“Generator” means a resident, an owner or responsible party for a Multifamily Dwelling, Commercial Premises, or business that Generates Municipal Solid Waste, Recyclable Materials, Green Waste, Food Scraps and/or Construction and Demolition Debris as a result of its business, commercial facility or property activity. Generator may also include tenants, property managers for facilities with leased space, employees and contractors of Generator.

“Generate” means to bring into existence or create, or to use, maintain, or possess an item, material or product, the result of which such creation, bringing into existence, use, maintenance or possession is that the item, material or product first becomes, or is converted transformed, evolved or deemed as Municipal Solid Waste, Recyclable Materials, Food Scraps, Green Waste or Construction and Demolition Debris.

“Green Waste” means any debris that is composed of organic material or plantlike matter, which is a result of seasonal variations, landscape or gardening activities. Green Waste includes, without limitation, grass clippings, leaves, shrubs, trees, branches, stumps, flowers, plant stalks and non-hazardous wood. Green Waste does not include Food Scraps.

“Gross Receipts” means all money, whether paid by cash, check, debit or credit, or other consideration collected from Customers by Franchisee that relates in any way to Commercial Franchise Services provided by Franchisee to Customers, whether or not such services occur wholly or partially within the City, including, but not limited to, Collection, processing, removal, marketing and Diversion of Recyclable Materials, Green Waste, Food Scraps, Processable Municipal Solid Waste and Construction and Demolition Debris and Disposal of Non-Processable Municipal Solid Waste, Industrial Waste, trash, litter, as well as fuel surcharges. Gross receipts shall also include all money received by any Person other than the Franchisee, where the money was paid to the Person to avoid the Franchisee’s obligations under this chapter and/or the Franchise. Gross Receipts shall not include (or if included there shall be deducted, but only to the extent they have been included) the following: (1) if any sales taxes are levied on the Franchisee’s Commercial Franchise Services in the City, the amount of State sales taxes collected in connection with Franchisee’s provision of such services in the City and remitted to the State pursuant to State law; (2) the amount of documented bad debt write-offs due to uncollectible accounts for Franchisee’s Commercial Franchise Services in the City, not to exceed three percent (3%) of Gross Receipts; and (3) revenues collected for Franchisee’s Commercial Franchise Services provided to the City through a written contract.

“Hazardous Waste” or “Hazardous Substance” means any (a) chemical, compound, material, mixture or substance that is now or hereinafter defined or listed in, or otherwise classified pursuant to any Environmental Law as a “hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “infectious waste,” “toxic waste,” “toxic pollutant,” or any other formulation intended to define, list or classify substances by reason of deleterious properties or effect and (b) petroleum, petroleum by-products, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas in such synthetic gas), ash, steam, drilling fluids, produced waters and other wastes associated with the exploration, development and production of crude oil, natural gas or geothermal resources.

“Industrial Waste” means solid waste originating from mechanized manufacturing facilities, factories, refineries, construction and demolition projects, publicly operated treatment works, or solid waste placed in Commercial Solid Waste containers excluding hazardous waste.



“Landfill” means a fully permitted disposal site that accepts Municipal Solid Waste that is in compliance with all Federal, State and local laws, regulations and permits conditions at the time Municipal Solid Waste is delivered and unloaded at the disposal site.

“Multifamily Dwelling” mean housing projects containing or consisting of five (5) or more units, whether apartment houses, condominiums, townhomes, or mixed use projects, mixed use condominiums and rental housing, which use centralized Commercial Solid Waste Containers (including Bins, Carts and/or Compactors) for storage of Municipal Solid Waste, Recyclable Materials, Green Waste and/or Food Scraps. Multifamily Dwelling does not include single-family residences, duplexes, tri-plexes or four-plexes that receive individual Collection services for Municipal Solid Waste, Recyclable Materials, Green Waste and/or Food Scraps stored in wheeled carts. For purposes of the implementation of the Diversion programs, reporting requirements, and the percentage Diversion requirements, “Commercial Tons” shall include only Tons Collected from Multifamily Dwellings in Carts, Bins, Compactors or Roll Off Boxes and shall not include any Tons Collected from Containers Collected from Commercial Premises. Tons Collected from Containers Collected from Commercial Premises shall be reported separately.

“Municipal Solid Waste” means all Processable Municipal Solid Waste and all Non-Processable Municipal Solid Waste, putrescible and nonputrescible solid and semisolid wastes, Generated in or upon, related to the occupancy of, remaining in or emanating from residential, commercial, and/or industrial premises, including, but not limited to, garbage, trash, refuse, rubbish, ashes, Industrial Waste, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, and other solid and semisolid wastes. Municipal Solid Waste excludes Recyclable Materials, Green Waste, Food Scraps, Construction and Demolition Debris, liquid wastes, abandoned vehicles and hazardous, biohazardous and biomedical wastes.

“Non-Processable Municipal Solid Waste” means putrescible and non-putrescible solid and semi-solid wastes Generated in or upon, related to the occupancy of, remaining or emanating from residential, Commercial, and/or industrial premises, that has been segregated or separated from Recyclable Materials, Food Scraps, Green Waste, wood and/or Construction and Demolition Debris such that the remaining constituents in the Non-Processable Municipal Solid Waste (such as broken glass, diapers, ashes, Industrial Waste, discarded Bulky Goods that cannot be re-used or dismantled for Recycling, manure, vegetable or animal solid or semi-solid wastes that remain after segregation of Food Scraps and Green Waste) cannot be diverted by reasonable economic or technologically available means. Non-Processable Municipal Solid Waste does not include Recyclable Materials, Green Waste, Food Scraps, wood, Construction and Demolition Debris, Bulky Goods or other materials that have been segregated for Diversion; liquid wastes; low level radioactive waste regulated under California Health and Safety Code Sections 20015, *et seq.*; abandoned vehicles and auto parts; hazardous, biohazardous and biomedical wastes.

“Person” means an individual, firm, association, organization, partnership, corporation, business trust, joint venture, Limited Liability Company, the United States,

the State of California, the County, municipality, special purpose district or any other business entity whatsoever.

“Processable Municipal Solid Waste” means putrescible and non-putrescible solid and semi-solid wastes Generated in or upon, related to the occupancy of, remaining or emanating from residential, commercial, and/or industrial premises that can be sorted at a Dirty MRF to separate any Divertible Materials contained therein for Recycling. Processable Municipal Solid Waste may also contain non-divertible constituents including but not limited to, broken glass, diapers, ashes, Industrial Waste, discarded Bulky Goods that cannot be re-used or dismantled for Recycling, manure, vegetable or animal solid or semi-solid wastes that remain after segregation of Food Scraps and Green Waste, which cannot be separated or sorted out of the Processable Municipal Solid Waste by reasonable economic or technologically available means.

“Processing Facility/Facilities” means a facility or facilities where the following activities are conducted: sorting, cleaning, treating, Composting and reconstituting Collected materials and returning these materials to the economic mainstream in the form of raw materials for new, reused or reconstituted products which meet the quality standards of the market place (activities are herein collectively defined as “Processing”). Processing Facilities include Materials Recovery Facilities (both Clean and Dirty MRF’s as defined herein), Composting Facilities, Anaerobic Digestion Facilities, Wastewater Treatment Plants, Construction and Demolition Debris sorting facilities, and concrete and asphalt grinding facilities. Processing Facilities do not include waste-to-energy, thermal destruction or any type of Transformation facilities.

“Recycle/Recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become Non-Processable Municipal Solid Waste, and returning them to the economic mainstream in the form of raw materials for new, reused, or reconstituted products which meet the quality standards used in the marketplace. Recycling does not include Transformation.

“Recycling Facility” means a Recycling Materials Recovery Facility (either a Clean or Dirty MRF), a Construction and Demolition Debris sorting facility or a re-use facility that is fully permitted and operating in compliance with federal, state and local laws and regulations and includes Recycling Facilities that receive, process, and market Recyclable Materials that have been source separated by the Generator or segregated from Processable Municipal Solid Waste, such as Single-Material Recyclables and Single Stream Recyclable Materials. The Recycling Facility may be located at a landfill.

“Recyclable Materials” means items in the solid waste stream which can be reused or processed into a form suitable for reuse consistent with the requirements of State law (*i.e.*, AB 939). Recyclable materials include, but are not limited to, aluminum and tin cans, glass bottles, plastic bottles, plastic containers, newspaper, paper, printed materials, paper containers, cardboard and textiles.

“Recycling Requirements” means the obligations imposed by or upon the City pursuant to State, Federal and local law, ordinance, resolution, policy, plan or program relative to Diverting all, or a portion, of the Municipal Solid Waste generated within the

City including, without limitation, State mandates to Divert fifty percent (50%) of the Municipal Solid Waste Generated within the City, achievement of the per capita Diversion requirements in the Act, and the provision of City-approved Diversion services to all Customers. Recycling Requirements includes future changes to the Act that may require the City to Divert higher percentages of Municipal Solid Waste Generated within the City and/or to provide additional and/or enhanced or expanded Diversion Programs.

“Residue” means the Non-Processable Municipal Solid Waste destined for Disposal in a Landfill, which remains after processing at a Processing Facility has taken place. Residue does not include Anaerobic Digestate. The percent of Residue is calculated by dividing the weight of the Residue by the weight of the total materials delivered for processing at the facility. State law and regulations govern the allowable amount of Residue that can be Generated by a Processing Facility. Franchisees shall not utilize Processing Facilities that exceed State-required maximum Residue Generation rates for any materials Collected within the City.

“Responsible Party” means the individual or entity responsible for the Generator’s management of solid waste and/or Recycling at the Generator’s commercial premises, business, or non-residential property.

“Roll Off Boxes” means large open top rectangular metal Containers used to store and transport Municipal Solid Waste, Recyclable Materials, Green Waste, Construction and Demolition Debris or other materials.

“Single Material Recyclables” means those Recyclable Materials which satisfy each of the following requirements: (1) have been segregated from Processable Municipal Solid Waste for separate handling and Diversion by or for the Generator thereof; (2) have been further segregated or sorted so that various types of Recyclable Materials, such as glass, metals, paper, cardboard, plastics are not commingled; and (3) after such segregation, contain no more than five percent (5%) by weight (measured by each load being transported, Collected and/or Disposed) of any Residue or Contamination material which cannot be Recycled, Composted or similarly utilized, and which instead must be Disposed in a Landfill.

“Single Stream Recyclable Materials” or “Single Stream Recyclables” means those Recyclable Materials collected as separated from Processable Municipal Solid Waste by the Generator or Customer and consisting of a mixture of metals, glass, plastics #1-7, and all paper from Residential Premises, Commercial Premises, Multifamily Dwellings and industrial premises. Single Stream Recyclable Materials are distinguished from Single-Material Recyclables, which consist of only a single type of material such as cardboard, separated from other Recyclable Materials.

“Split Bins” means Bins that have a divider down the middle, dividing the Bin into two (2) separate compartments. Such Bins have separate locking lids for each side of the Bin that allows the Bin to be emptied one (1) side at a time. The lid on the side of the Bin that is for storage of Recyclable Materials is designed such that it allows for the placement of Recyclable Materials in the Bin without unlocking or opening the lid, and yet

does not allow Recyclable Materials to spill out when the lid is closed and locked for the emptying of the MSW stored on the opposite side of the Bin.

“SRRE” means the Source Reduction and Recycling Element of the Integrated Waste Management document for the City prepared and updated pursuant to the California Public Resources Code.

“Term” means the finite amount of time that commences on the Effective Date and terminates on the Termination Date.

“Termination Date” means October 7, 2027.

“State” means the State of California.

“Transformation” means incineration, pyrolysis, distillation, or biological conversion (other than Composting) to turn Municipal Solid Waste and/or organic materials into a fuel used to produce energy (example: waste-to-energy). Transformation does not include Composting, gasification, Biomass Conversion, or wet or dry Anaerobic Digestion.

“Transformation Facility” means a facility using a Transformation process to turn Municipal Solid Waste and/or organic materials into a fuel used to produce energy. A Franchisee may only utilize Transformation for the quantity of Municipal Solid Waste allowed by CalRecycle to be counted as Diversion pursuant to the Act, as this may be changed in the future by legislation or regulations. The Act currently provides that a jurisdiction can only use Transformation to divert up to ten percent (10%) of the Municipal Solid Waste generated in the jurisdiction. Therefore, materials collected by a Franchisee and processed at a Transformation Facility shall be limited to ten percent (10%) of the Non-Processable Municipal Solid Waste Collected by the Franchisee within City.

“Ton” means a short ton of two-thousand (2,000) pounds avoirdupois.

“Wood Waste” means all non-hazardous wood material that is not painted with lead-based or other paints containing materials identified as hazardous waste, or treated with creosote or other hazardous materials. Wood Waste includes, but is not limited to, tree branches and other wood trimmings, dimensional lumber and other pieces of wood generated during the manufacture or processing of wood products. For wood generated from construction and/or demolition activities, see the definition of “Construction and Demolition Debris.”

#### **SECTION 4. FRANCHISE FEES**

A. During the Term of this Franchise, Franchisee shall pay to City Franchise Fees for the privilege of providing Commercial Franchise Services in the City and for the use of public streets, right-of-ways and places for such purposes. The Franchise Fees that Franchisee shall pay to the City shall total sixteen percent (16%) of the gross receipts which are reasonably related to the value of Agreement for all Commercial Franchise Services provided by Franchisee in the City as follows:

1. Ten and one-half percent (10.5%) of the Gross Receipts for all Commercial Franchise Services provided by the Franchisee in the City ("Commercial Franchise Service Fee"), of which one half percent (.5%) shall be attributable to the maintenance and implementation of the City's SRRE, and shall be separately accounted for, and used only for the costs stated in Public Resources Code Section 41901 or any successor provision.

2. Five and one-half percent (5.5%) of the Gross Receipts for all Commercial Franchise Services provided by Franchisee in the City shall be paid into an Environmental Liability Fund, which shall be a separate fund established and maintained by City ("Environmental Liability Fund Fee"). Hereinafter, Environmental Liability Fund Fee and Commercial Franchise Fee shall be collectively referred to as "Fees."

B. City and Franchisee acknowledge the potential environmental liability that may result from Commercial Franchise Services under Federal and State environmental protection laws and the Public Resources Code. City intends to take reasonable actions to obtain protection and indemnification against future environmental liability for Commercial Solid Waste and Divertible Materials generated within the City and the activities of Franchisee under this Agreement for handling such Commercial Solid Waste and Divertible Materials. To provide protection and indemnification to City for Franchisee's Commercial Franchise Services in the City, Franchisee agrees to collect from its customers an Environmental Liability Fund Fee for payment into the Environmental Liability Fund. The Environmental Liability Fund may be used by the City for any expense associated with this Franchise, including, but not limited to, the purchase of environmental liability insurance and paying all costs, expenses, and penalties that arise from or in any way relate to liability incurred by the City as a result of any act, negligence, or omission by the City, Franchisee, Franchisee Customer, or any of their respective officers, directors, shareholder members, volunteers, partners, employees, agents, subcontractors, suppliers, representatives or affiliates. The Environmental Liability Fund may also be used by the City to pay for any Disposal, Diversion, or Recycling activity required of the City, Franchisee, or any Generator under State, Federal or local law. The Fund shall not be commingled with or included in the City's General Fund.

1. The Fees shall be paid concurrently.

2. Compliance with this Section shall not limit Franchisee's indemnification as set forth in Agreement Section 10; however, the indemnification provisions of Agreement Section 10 shall be secondary to the Environmental Liability Fund established by this Section or any insurance purchased by the Environmental Liability Fund.

C. The Fees shall be paid on a calendar quarterly basis on forms prescribed by the Finance Director.

D. All payments shall be made in lawful money of the United States of America and shall be paid to City in person or by United States' mail, or overnight mail service, at the Cashier's Office located at 100 Civic Center Drive, P.O. Box 1768, Newport Beach,

California, 92658, or to such other address as City may from time to time designate in writing to Franchisee. If requested by City, Franchisee shall make payments electronically (at [www.newportbeachca.gov](http://www.newportbeachca.gov)) or by wire transfer (at Franchisee's cost). Franchisee assumes all risk of loss and responsibility for late charges and delinquency rates if payments are not timely received by City regardless of the method of transmittal.

E. Franchisee hereby acknowledges that the late payment of Fees or other sums due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, any payment of any sum to be paid by Franchisee not paid within five (5) calendar days of its due date shall be subject to a ten percent (10%) late charge plus interest on the amount due at the rate of ten percent (10%) per annum from the date due and payable by the terms of this Agreement until the same shall be paid. City and Franchisee agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to City for its loss suffered by such late payment by Franchisee.

F. With the exception of October 30, 2020, Fees shall be due and payable on April 30, July 30, October 30 and January 30 of each calendar year of the Term. Any dates falling on a weekend or holiday may be paid the first business day following the weekend or holiday. Fees must be received by City, not merely postmarked, by or before the aforementioned dates.

G. In the event Franchisee believes that it has paid Fees in excess of the Fees due to City, Franchisee may submit a request for refund to the Finance Director on a form provided by the Finance Director. If proof of overpayment is satisfactory to the Finance Director, the Finance Director shall refund to Franchisee any overpayment. Franchisee shall not apply any overpayment as a credit against any other amounts payable to City unless specifically authorized by the Finance Director in writing.

H. Each Franchise Fee and Environmental Liability Fund Fee payment shall be accompanied by a written statement described in Code Section 12.63.090, or any successor section, on a form provided by the Finance Director. No statement filed under this Section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the City from collecting by appropriate action the sum that is actually due and payable.

I. Franchisee may separately list the actual Franchise Fee rate and Environmental Liability Fund Fee rate as established by this Section, and any other fees required by this Agreement, on its invoices to its customers. In no case may the Franchise Fee rate or Environmental Liability Fund Fee rate listed by the Franchisee on the invoice exceed the actual Franchise Fee or Environmental Liability Fund Fee rates imposed by the City.

## **SECTION 5. PERFORMANCE BOND/DEPOSIT**

A. Prior to the placement of any Container for Commercial Franchise Services on public or private property, Franchisee shall, to ensure compliance with the duties and

obligations imposed by the provisions of the Code, State regulation, regulations adopted by the City Manager and this Agreement, either: (1) provide City with a cash deposit ("Deposit"); or (2) obtain, provide and maintain, at its own expense, a faithful performance bond ("Bond"). The amount of the Deposit and Bond shall be determined in the Public Works Director's sole and absolute discretion.

B. If Franchisee decides to provide a Bond, the Bond shall be issued by an insurance organization or surety: (1) currently authorized by the Insurance Commissioner to transact business of insurance in the State of California; (2) listed as an acceptable surety in the latest revision of the Federal Register Circular 570; and (3) assigned a Policyholders' Rating A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide: Property-Casualty. The Bond shall be in the form attached hereto as Exhibit "A," which is incorporated herein by this reference.

## **SECTION 6. DIVERSION AND DISPOSAL OF MUNICIPAL SOLID WASTE, RECYCLABLE MATERIALS, FOOD SCRAP AND GREEN WASTE**

A. Franchisee shall comply with all Diversion requirements imposed by law, ordinance, or regulation on City, Franchisee, and/or any Commercial Premises or Multifamily Dwelling. On a monthly basis, Franchisee shall Divert a minimum of fifty-five percent (55%) of all Processable Municipal Solid Waste, Recyclable Materials, Food Scraps and Green Waste Collected in the City by Franchisee. This Diversion requirement is separate from and in addition to any Diversion requirements set forth in Agreement Sections 7, 12, 13, 14 and 15. In the event new or additional Diversion requirements are imposed by law, ordinance or regulation on City, Franchisee, and/or any Commercial Premises or Multifamily Dwelling, the City shall have the right to require Franchisee to Divert additional Municipal Solid Waste, Recyclable Materials, Food Scraps, and/or Green Waste by providing Franchisee with thirty (30) calendar days written notice of the new Diversion requirements. Upon request of the Public Works Director, Franchisee shall provide all documents and information requested by the Public Works Director to prove that Franchisee has complied with this subsection, any applicable law, ordinance, regulation, or condition related to Recycling and Diversion of Municipal Solid Waste, Recyclable Materials, Food Scraps and/or Green Waste.

B. Franchisee shall Dispose of all Non-Processable Municipal Solid Waste collected in the City, over which Franchisee has control, in accordance with the Franchise Hauler Acknowledgment, attached hereto as Exhibit "B" and incorporated herein by reference. Franchisee hereby accepts and agrees to abide by all terms of the Franchise Hauler Acknowledgment. If, during the Term of this Agreement, the City's Waste Disposal Agreement with Orange County expires, lapses, or is terminated, the Franchise Hauler Acknowledgment shall be null and void and Franchisee shall Dispose of Municipal Solid Waste Collected in the City only by taking it to a fully permitted Orange County certified/licensed landfill or to a fully permitted licensed transfer station, which is lawfully authorized to accept that specific type of solid waste material and has been approved by the City.

C. Franchisee shall not Dispose of Municipal Solid Waste, Recyclable Materials, Food Scraps, or Green Waste by depositing it on any land except a permitted facility, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system. Nothing in this Agreement shall be deemed or construed as authorizing Franchisee to operate a Landfill, Recycling Facility, or other solid waste disposal facility in the City.

D. If Franchisee violates the terms in Agreement Section 6(A) and/or Section 6(B) above, Franchisee agrees that the City has the future right to direct that all Municipal Solid Waste be delivered to a fully permitted Disposal facility designated by City and that Recyclable Materials, Food Scraps, Green Waste and/or Wood Waste be delivered to a fully permitted Processing Facility designated by City. This exercise of "flow control" by the City shall be made upon at least thirty (30) calendar days prior written notice to Franchisee, and written notice shall include the violation(s) prompting the City's action regarding "flow control." Failure to comply with the Recycling, Diversion, and/or Disposal requirements set forth in this Section shall be a material breach of this Agreement.

E. Franchisee shall include as a condition to its contractual agreement with its Customers a provision prohibiting disposal of Hazardous Waste in any Container.

F. Franchisee shall implement a load check program that includes, at a minimum, a visual check of all Containers to be emptied to protect against inclusion of Hazardous Waste and shall prepare a written record of all Hazardous Waste discovered during the process. The records shall comply with all State and Federal Hazardous Waste Regulations and shall be maintained for the length of the Term of the Franchise and for a minimum period of three (3) years, or for any longer period required by law, after the Extended Termination Date. The records shall be made available to the City in Franchisee's monthly reports submitted pursuant to Agreement Section 16.

G. This Agreement does not purport to grant Franchisee or City ownership over materials that Franchisee's Customers discard for pickup by Franchisee or that Franchisee handles under this Agreement. The right to possession or ownership of those materials shall be determined in accordance with law and any agreement between Franchisee and its Customers, and not as a result of this Agreement. Parties acknowledge that City has no ownership rights in Divertible Materials or revenue from sale thereof, except as provided in this Agreement.

H. City makes no representations or warranties with respect to characterization of Municipal Solid Waste, Recyclable Materials, Food Scraps, or Green Waste within City. City expressly disclaims any representations and warranties, either express or implied, as to the merchantability or fitness of Municipal Solid Waste, Recyclable Materials, Food Scraps, or Green Waste for any particular purpose.

## **SECTION 7. DIVERSION OF CONSTRUCTION AND DEMOLITION DEBRIS**

A. On a monthly basis, Franchisee shall Divert a minimum of sixty-five percent (65%) of all Construction and Demolition Debris collected in the City by Franchisee. This Diversion requirement shall be in addition to and separate from any Diversion



requirements set forth in Agreement Section 6. Franchisee shall also comply with all requirements of Section 15. If new or additional Diversion requirements are imposed by law, ordinance or regulation on City, Franchisee, and/or any Commercial Premises or Multifamily Dwelling, 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 of the Public Works Director, Franchisee shall provide all documents and information requested by the Public Works Director to prove that Franchisee has complied with this subsection, any applicable law, ordinance, regulation, or condition related to Recycling and Diversion of Construction and Demolition Debris.

B. Franchisee shall Dispose of, or oversee Disposal of, any Construction and Demolition Debris collected in the City by Franchisee, and not diverted pursuant to Agreement Section 7(A), in accordance with the Franchise Hauler Acknowledgment, attached hereto as Exhibit "B." Franchisee hereby accepts and agrees to abide by all terms of the Franchise Hauler Acknowledgment. If, during the Term of this Agreement, the City's Waste Disposal Agreement with Orange County expires, lapses or is terminated, the Franchise Hauler Acknowledgment shall be null and void and Franchisee shall Dispose of non-Diverted Construction and Demolition Debris collected by Franchisee in the City only by taking such debris to an Orange County certified/licensed landfill, State certified/licensed transfer station, State certified/licensed recycling facility or State certified/licensed materials recovery facility which is lawfully authorized to accept that specific type of solid waste material. Franchisee shall not dispose of Construction and Demolition Debris by depositing it on any land except a permitted facility, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system.

C. If Franchisee violates the terms in Agreement Section 7(A) and/or Section 7(B) above, Franchisee agrees that the City has the future right to direct that Construction and Demolition Debris be delivered to a permitted processing and/or disposal facility designated by City. This exercise of "flow control" by the City shall be made upon at least thirty (30) calendar days prior written notice to Franchisee, and written notice shall include the violation(s) prompting the City's action regarding "flow control." Failure to comply with the Recycling, Diversion, and/or Disposal requirements set forth in this Section shall be a material breach of this Agreement.

D. Franchisee shall include as a condition to its contractual agreement with its Customers a provision prohibiting disposal of Hazardous Waste in any Container.

E. Franchisee shall implement, or require a third party to implement, a load check program that includes, at a minimum, a visual check of all Containers to be emptied to protect against inclusion of Hazardous Waste and shall prepare a written record of all Hazardous Waste discovered during the process. The records shall comply with all local, State and Federal Hazardous Waste regulations, and shall be maintained for the length of the Term of the Franchise and for a minimum period of three (3) years, or for any longer period required by law, after the Extended Termination Date. The records shall be made available to the City upon request.

F. This Agreement does not purport to grant Franchisee or City ownership over materials that Franchisee's Customers discard for pickup by Franchisee or that Franchisee handles under this Agreement. The right to possession or ownership of those materials shall be determined in accordance with law and any agreement between Franchisee and its customers, and not as a result of this Agreement. Parties acknowledge that City has no ownership rights in Recyclable Materials or revenue from sale thereof, except as provided in this Agreement.

G. City makes no representations or warranties with respect to characterization of Construction and Demolition Debris within City. City expressly disclaims any representations and warranties, either express or implied, as to the merchantability or fitness of Construction and Demolition Debris for any particular purpose.

## **SECTION 8. FRANCHISEE'S APPLICATION; RECORDS; AUDITS**

A. Application. Franchisee has submitted an application to City in substantially the same form as the template attached hereto as Exhibit "C" and incorporated herein by reference as a condition of entering into this Agreement. Franchisee hereby represents and warrants that all information contained in the application submitted to City, and any information submitted by Franchisee to City supplementary thereto, is true and correct and does not contain any untrue statement of a material fact nor omit a material fact that makes a statement contained therein misleading.

B. Records. Franchisee shall maintain all records relating to Franchisee's Commercial Franchise Services provided hereunder including, but not limited to, Customer lists, billing records, accounts payable records, maps, service requests, cash receipts records, AB 939/341/1826 compliance records, tonnage reports, weight tickets and invoices from all Landfills, Processing Facilities, and Recycling Facilities utilized for Commercial Solid Waste collected within City, and all other documents and materials which reasonably relate to Franchisee's compliance with and performance of the provisions of this Agreement ("Records"), for the full Term of this Agreement and an additional period thereafter of not less than three (3) years, or any longer period required by law. Such Records shall be made available to City at Franchisee's regular place of business, but in no event outside the County of Orange. All Records shall be clearly identifiable, and Franchisee shall maintain record security sufficient to preserve records from destruction or damage from foreseeable events. Data maintained in an electronic medium shall be protected, and backed up, with a copy stored at a separate site from the original data.

C. CERCLA Defense Records. City's ability to defend against CERCLA and related litigation is a matter of great importance. Franchisee shall maintain and preserve records establishing where Solid Waste Collected in the City was landfilled for the full Term of this Agreement and an additional period thereafter of not less than five (5) years, or any longer period required by law. At any time, including after the expiration of the Term, Franchisee shall provide copies of such records to City within three (3) business days of City's request.

D. Inspection; Audit. On an annual or as-needed basis, City shall have the right, upon five (5) business days advance notice, to inspect Franchisee's Records and/or conduct, or to contract with an independent auditing firm to perform, an audit, at City's expense, of Franchisee's Records ("City Audit") to ensure compliance with the provisions of this Agreement. The City Audit shall include, without limitation, review and/or copying of Franchisee's cash receipts, books of account, Municipal Solid Waste and Divertible Materials tonnage reports, Collection, Disposal and Diversion records, and other related records, as well as those of each of its parent, subsidiary and/or affiliated companies, as appropriate. As part of the City Audit, Franchisee's Customer accounts and related records may be subject to review. While Franchisee will not be required to submit for copying detailed account records, such as Customer names, Franchisee shall make such records and information available for review in connection with the City Audit. The purpose of the City Audit shall be for: (a) verification of the Fees paid by Franchisee under this Agreement, and the accuracy thereof; (b) verification of the amounts of Municipal Solid Waste and Divertible Materials reported as Collected, processed, Diverted and Disposed by Franchisee pursuant to this Agreement; (c) verification of Recycling/Diversion program implementation efforts and actions taken by Franchisee pursuant to this Agreement; and (d) verification of such other information as is reasonably deemed appropriate by the Public Works Director to evaluate Franchisee's performance hereunder.

E. Reimbursement. Franchisee shall reimburse City for all of City's costs in performance of an audit if, as a result of the audit, it is determined:

1. There was any intentional misrepresentation by Franchisee with respect to the amount of Fees due to the City;

2. There is a One Thousand and 00/100 Dollars (\$1,000.00) or greater discrepancy in the amount of Fees due to the City.

3. There was any intentional misrepresentation by Franchisee with respect to Franchisee's Commercial Franchise Services and/or Franchisee's handling and transportation of Municipal Solid Waste and/or Divertible Materials or with regard to any information provided about Diversion; or

4. There is a discrepancy (whether intentional or not) in the number of Tons of Municipal Solid Waste, Recyclable Materials, Green Waste, Foods Scraps and/or Construction and Demolition Debris Collected, Recycled, processed and/or Disposed that equals or exceeds two percent (2%).

Such reimbursement shall be paid by Franchisee within ten (10) calendar days of the date City notifies Franchisee in writing that Franchisee is liable to reimburse the City in conformance with this subsection and the amount of City's audit costs.

## **SECTION 9. INSURANCE REQUIREMENTS**

Without limiting Franchisee's indemnification of City, and prior to commencement of the Effective Date of this Agreement, Franchisee shall obtain, provide copies to City and maintain at its own expense during the Term of this Agreement policies of insurance of the type and amounts described in the Insurance Requirements attached hereto as Exhibit "D" and incorporated herein by reference.

## **SECTION 10. RESPONSIBILITY FOR DAMAGES AND INJURY/INDEMNIFICATION**

A. Franchisee Responsibility. Franchisee shall be solely responsible for any damages caused as a result of Franchisee's acts, negligence, or omissions including, but not limited to, injuries to or death of any person or damage to public and/or private property and damages to public improvements arising from or as a result of Franchisee's Commercial Franchise Services.

B. General Indemnification. Franchisee shall indemnify, hold harmless, and defend City, and each of its past, present and future elected officials, officers, employees, agents, consultants, volunteers, affiliates, assignees, representatives, attorneys, subsidiaries, and affiliated entities and their respective successors, heirs and assigns (collectively, "Indemnified Parties") from and against any costs, expenses, damages, and losses, including actual attorneys' fees ("Losses") of any kind or character to any person or property arising directly or indirectly from or caused by any of the following: (i) any act, negligence, or omission of Franchisee or its respective officers, directors, shareholder members, partners, employees, agents, Franchisee's subcontractors, suppliers, representatives and affiliates ("Franchisee Representatives"); (ii) Franchisee's or Franchisee Representative's activities; (iii) any accident or casualty within or arising out of the performance of Franchisee's Commercial Franchise Services under this Franchise; (iv) any violation or alleged violation of any law, ordinance or statute now or hereafter enacted arising out of Commercial Recyclable Materials, Food Scraps, Green Waste, Wood Waste, Construction and Demolition Debris and/or Municipal Solid Waste services performed pursuant to the Franchise; (v) the negligence or willful misconduct of Franchisee or any of Franchisee Representatives in the performance of Franchisee's Commercial Franchise Services under the Franchise; and (vi) any breach of the Franchise.

Franchisee shall not be required to indemnify, hold harmless and defend the Indemnified Parties from the sole negligence, active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Franchisee.

C. Hazardous Substances Indemnification. 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 Substance; and (ii) Franchisee's activities under this Agreement concerning any Hazardous Substance 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.

D. AB 939 Indemnification. Franchisee agrees to meet all requirements of City's SRRE as to the portion of the Commercial Solid Waste 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 Act Diversion requirements with respect to the portion of the Commercial Solid Waste stream collected by Franchisee.

E. AB 341 Indemnification. Franchisee agrees to meet all requirements of AB 341, specifically Public Resources Code Section 42649, or any successor statute, as to the portion of the Municipal Solid Waste and Recyclable Materials 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 Municipal Solid Waste and Divertible Materials Collected and/or handled by Franchisee.

F. 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 Food Scraps, Green Waste and Wood Waste streams 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.

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.

## **SECTION 11. COMMERCIAL SOLID WASTE AND DIVERTIBLE MATERIALS COLLECTION SERVICES**

A. Authorized Collection Services. Franchisee may only provide those Commercial Franchise Services designated in Franchisee's application, or any amended application, and for which Franchisee has demonstrated compliance with Code Section 12.63.050, or any successor section.

B. Frequency of Collection. Franchisee shall collect all Municipal Solid Waste and Divertible Materials from Commercial Premises and Multifamily Dwellings on a schedule to be agreed upon between Franchisee and its Customers, subject to the restrictions set forth in Agreement Section 11(C); provided, however, that such schedule complies with Code Subsections 6.04.110 and 6.04.120 and does not permit the accumulation of Commercial Solid Waste or Divertible Materials in quantities that are unreasonable or detrimental to the public health or safety. Requests for Collection from Customer Premises with overflowing Containers, or from Customer Premises where there have been missed pickups, shall be serviced within twenty-four (24) hours of any such request by the Customer or City. Should City receive a Customer complaint related to or arising from Franchisee's failure to collect Commercial Solid Waste and Divertible Materials as provided herein, Franchisee's Collection schedule shall be submitted to the City for review.

C. Hours and Days of Collections.

1. Franchisee shall not collect Commercial Solid Waste or Divertible Materials in any area of the City after 6:30 p.m. and prior to 5:00 a.m.

2. Franchisee shall not Collect Commercial Solid Waste or Divertible Materials from any Commercial Premises or Multifamily Dwelling located within five hundred (500) feet of an occupied residential premise, motel or hotel, nor shall any of Franchisee's Collection vehicles be operated in any residential areas of the City except between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, nor on any Saturday or Sunday, except between the hours of 8:00 a.m. and 6:00 p.m.

3. Franchisee shall neither operate its Collection vehicles nor Collect Commercial Solid Waste or Divertible Materials from any Commercial Premises, governmental facility, or Multifamily Dwelling located within five hundred (500) feet of a school, or other educational facility between the hours of 7:30 a.m. and 9:00 a.m. or 1:00 p.m. and 3:00 p.m., Monday through Friday. The limitations in Agreement Section 11(C)(3) notwithstanding, Franchisee's operation of Collection vehicles on any non-residential arterial roadway within the City are subject to Section 6.04.130(A) but shall not be prohibited or limited under this Agreement.

4. Commercial Solid Waste and Divertible Materials collection on Sundays shall be limited to Food Scraps and Municipal Solid Waste from Commercial Premises, which require Collection every day due to public health and safety concerns.

5. At Franchisee's request, the City shall provide maps illustrating the geographic limitations placed on Franchisee's Collection services pursuant to Agreement Section 11(C)(3) ("Maps"). City expressly disclaims any liability related to or arising from the accuracy of any Maps provided by City. City may update the Maps as needed, and Franchisee's failure to request or secure the Maps, or any updated Maps, shall not relieve Franchisee of any obligations under this Agreement.

D. Containers. Franchisee shall provide the appropriate sized Containers to each Customer for storage of the Commercial Solid Waste and Divertible Materials Collected by Franchisee. Containers provided by Franchisee must be identified with Franchisee's name and be in the color identified by Franchisee in Franchisee's application.

## **SECTION 12. AB 341 RECYCLING PROGRAM FOR COMMERCIAL PREMISES AND MULTIFAMILY DWELLINGS**

A. Diversion Program. The Act requires all AB 341 Generators to arrange for Recyclable Materials Collection services by July 1, 2012. The Act requires all cities to provide a commercial Recyclable Materials Collection Program for AB 341 Generators on or before July 1, 2012. Franchisee acknowledges these requirements and agrees that, subject to the restrictions contained in Agreement Section 11(A), for all AB 341 Generators that contract with or pay Franchisee to haul Municipal Solid Waste and/or Divertible Materials, Franchisee shall implement a Recyclable Materials Collection Program using one or more of the following:

1. Provide Single Stream Recyclable Materials and (if applicable) Single Material Collection service on a weekly or more frequent basis.
2. Provide Collection of Recyclable Materials commingled with Municipal Solid Waste and process the Collected material at a City-approved Dirty MRF that yields Diversion results comparable to source separation. No Dirty MRF may be used for separation of AB 341 materials unless the Dirty MRF has been approved by City as meeting the standards and requirements of Public Resources Code Section 42649 and all rules, amendments and regulations promulgated in furtherance thereof.
3. If Franchisee observes that the AB 341 Generator has one (1) or more internal Programs that Divert Recyclable Materials, is self-hauling or backhauling Recyclable Materials, donating or selling Recyclable Materials to a third party, or is using a third party or other Franchisee to Collect Recyclable Materials, Franchisee shall report this to City and City, in its sole discretion, shall make a final determination as to the adequacy of the internal and/or third party Recyclable Materials Diversion Program(s). If the City finds the internal and/or third party Program(s) inadequate, Franchisee shall proceed to implement a Recyclable Materials Diversion Program to Divert all the remaining AB

341 Recyclable Materials generated by the AB 341 Generator as described in Exhibit E, which is incorporated herein by reference.

B. Act Compliance. The Parties agree that provision of an AB 341 Diversion Program, as set forth in this Section 12 and in Exhibit "E," is of paramount importance for the City to comply with the Act. The Parties further agree that providing high quality Diversion Services, public education and technical assistance to AB 341 Generators to obtain their full participation in AB 341 Diversion Program is essential for Franchisee to implement an effective Diversion Program for each and every AB 341 Generator it serves. The Parties acknowledge that achievement of this requirement is integral to the City's compliance with the Act and that failure to implement said AB 341 Diversion Programs may cause City to be non-compliant with the Act and be grounds for termination of this Agreement.

C. Program Implementation. Within ninety (90) calendar days of either: (1) the Effective Date of this Agreement; or (2) the date an AB 341 Generator initiates service with Franchisee to collect or transport Municipal Solid Waste and/or Divertible Materials, whichever is later, Franchisee shall implement a Recyclable Materials Diversion Program for said AB 341 Generator. For purposes of this Section 12, "implement" as provided herein shall mean Franchisee's completion of all of the steps and requirements in Exhibit E.

### **SECTION 13. AB 1826 FOOD SCRAP DIVERSION PROGRAM FOR COMMERCIAL PREMISES**

A. Food Scrap Diversion Program. The Act requires AB 1826 Generators to implement Diversion Programs as follows. On or after January 1, 2017, all owners and responsible parties of Commercial Premises generating four (4) or more cubic yards of Food Scraps and/or Green Waste per week must arrange for Diversion Programs for those materials. On or after January 1, 2019, all owners and responsible parties of Commercial Premises generating four (4) or more cubic yards of Commercial Solid Waste per week must arrange for Diversion Programs for Food Scraps and Green Waste. The Act requires cities to provide a commercial Food Scrap Diversion Program for AB 1826 Food Scrap Generators on or before January 1, 2016. Franchisee acknowledges these requirements and agrees that, subject to the restrictions contained in Agreement Section 11(A), for all AB 1826 Food Scrap Generators that contract with or pay Franchisee to haul Municipal Solid Waste and/or Divertible Materials Franchisee shall implement a Food Scrap Diversion Program. The City will maintain a listing of all AB 1826 Food Scrap Generators. City expressly disclaims any liability related to or arising from the accuracy of any lists provided by City. Franchisee's failure to request or secure the list on an annual basis shall not relieve Franchisee of any obligations under this Section. Franchisee shall implement a Food Scrap Diversion Program using one or more of the following:

1. Provide source separated Food Scrap Collection service on a weekly or more frequent basis.
2. If Franchisee observes that the AB 1826 Food Scrap Generator has one (1) or more internal Food Scrap Diversion Programs, is self-hauling



or backhauling Food Scraps, is donating or selling Food Scraps, is donating edible food for human consumption, and/or is using a third party or other Franchisee to Collect Food Scraps, Franchisee shall report this to City and City, in its sole discretion, shall make a final determination as to the adequacy of the internal and/or third party Food Scrap Diversion Program(s). If the City finds the internal and/or third party program(s) are inadequate, Franchisee shall proceed to implement a Diversion Program to Divert all the remaining AB 1826 Food Scraps generated by the AB 1826 Generator.

B. Act Compliance. The parties agree that provision of a Food Scrap Diversion Program as described in this Section 13 and in Exhibit "E" is of paramount importance for the City to comply with the Act. The parties further agree that providing high quality Diversion Services, public education, and technical assistance to AB 1826 Food Scrap Generators to obtain their full participation in AB 1826 Diversion Programs is essential for Franchisee to implement an effective Food Scrap Diversion Program for each and every AB 1826 Food Scrap Generator it serves. The parties acknowledge that achievement of this requirement is integral to the City's compliance with the Act and that failure to implement said Diversion Program may cause City to be non-compliant with the Act and be grounds for termination of this Agreement.

C. Program Implementation. Within ninety (90) calendar days of either: (1) the Effective Date of this Agreement; or (2) the date an AB 1826 Food Scrap Generator initiates service with Franchisee to Collect and/or transport Municipal Solid Waste and/or Divertible Materials, whichever is later, Franchisee shall implement a Food Scrap Diversion Program for said AB 1826 Food Scrap Generator. For purposes of this Section, Franchisee shall be found to have "implemented" a Food Scrap Diversion Program for an AB 1826 Food Scrap Generator only if Franchisee completes all of the steps and requirements in Exhibit E.

#### **SECTION 14. AB 1826 COMMERCIAL AND MULTIFAMILY GREEN WASTE AND WOOD WASTE COLLECTION PROGRAM.**

A. Act Requirements. The Act requires all AB 1826 Generators of Green Waste and/or Wood Waste to implement Diversion Programs as follows. All Commercial Premises and all Multifamily Dwellings generating four (4) or more cubic yards of Food Scraps and/or Green Waste and Wood Waste must arrange for Diversion Programs for Green Waste and Wood Waste on or before January 1, 2017. On or after January 1, 2019, all owners and responsible parties of Commercial Premises and Multifamily Dwellings generating four (4) or more cubic yards of Commercial Solid Waste per week are required to arrange for Diversion Programs for Green Waste and Wood Waste. The Act requires cities to provide Commercial and Multifamily Green Waste and Wood Waste Diversion Programs for AB 1826 Green Waste and Wood Waste Generators on or before January 1, 2016. Franchisee acknowledges these requirements and agrees that, subject to the restrictions contained in Agreement Section 11(A), for all AB 1826 Green Waste and Wood Waste Generators that contract with or pay Franchisee to haul Municipal Solid Waste and/or Divertible Materials, Franchisee shall implement a Green Waste and Wood Waste Diversion Program. (For wood generated by construction and demolition projects,

the requirements of Sections 7 and 15 shall apply.) The City will maintain a listing of all AB 1826 Green Waste and Wood Waste Generators. City expressly disclaims any liability related to or arising from the accuracy of any lists provided by City. Franchisee's failure to request or secure the list on an annual basis shall not relieve Franchisee of any obligations under this Section. Franchisee shall implement a Green Waste and Wood Waste Diversion Program using one or more of the following:

Provide source separated Green Waste and Wood Waste Collection service on a weekly or more frequent basis.

1. Provide Collection of Green Waste and Wood Waste co-mingled with Municipal Solid Waste and process the Collected material at a City-approved Dirty MRF that yields Diversion results comparable to source separation. No Dirty MRF may be used for separation of AB 1826 Green Waste or Wood Waste materials unless the Dirty MRF has been approved by City as meeting the standards and requirements of Public Resources Code Section 42649 and all rules, amendments and regulations promulgated in furtherance thereof.
2. If Franchisee observes that the AB 1826 Green Waste and Wood Waste Generator has one (1) or more internal Green Waste and/or Wood Waste Diversion Program(s), is self-hauling or backhauling Green Waste and/or Wood Waste, is donating or selling Green Waste and/or Wood Waste, or is using a third party or other Franchisee to Collect Green Waste and/or Wood Waste, Franchisee shall report this to City and City, in its sole discretion, shall make a final determination as to the adequacy of the internal and/or third party Green Waste and/or Wood Waste Diversion Program(s). If the City finds the internal and/or third party program(s) are inadequate, Franchisee shall proceed to implement a Diversion Program to Divert all the remaining Green Waste and Wood Waste generated by the Customer.
3. If the AB 1826 Green Waste and Wood Waste Generator is using a landscaping company to haul away Green Waste and Wood Waste, Franchisee shall report this to the City and City, in its sole discretion, shall make a final determination as to the adequacy of the landscaper program to Divert all the Green Waste and Wood Waste. If the City finds the landscaper program to be inadequate and/or lacking the proper documentation of the end use for the Collected Green Waste and Wood Waste, Franchisee shall proceed to implement a Diversion Program to Divert all the Green Waste and Wood Waste generated by the AB 1826 Generator.

All Green Waste and Wood Waste Collected by Franchisee shall be delivered to a permitted Green Waste and/or Wood Waste Processing Facility for Diversion. No Green Waste or Wood Waste Collected in City may be used as Alternative Daily Cover at a

landfill as an end use. This prohibition includes Green Waste and Wood Waste processed at a permitted Processing Facility as well as the residue from such Facility.

B. Act Compliance. The parties agree that provision of a Green Waste and Wood Waste Diversion Program as described in this Section 14 and in Exhibit "E" is of paramount importance for the City to comply with the Act. The parties further agree that providing high quality Diversion Services, public education, and technical assistance to AB 1826 Green Waste and Wood Waste Generators to obtain their full participation in AB 1826 Diversion Programs is essential for Franchisee to implement an effective Green Waste and Wood Waste Diversion Program for each and every AB 1826 Green Waste and Wood Waste Generator it serves. The parties acknowledge that achievement of this requirement is integral to the City's compliance with the Act and that failure to implement said Diversion Programs may cause City to be non-compliant with the Act and be grounds for termination of this Agreement.

C. Program Implementation. Within ninety (90) calendar days of either: (1) the Effective Date of this Agreement; or (2) the date an AB 1826 Green Waste and Wood Waste Generator initiates service with Franchisee to Collect and/or transport Municipal Solid Waste and/or Divertible Materials, whichever is later, Franchisee shall implement a Green Waste and Wood Waste Diversion Program for said AB 1826 Green Waste and Wood Waste Generator. For purposes of this Section, Franchisee shall be found to have "implemented" a Green Waste and Wood Waste Diversion Program for an AB 1826 Green Waste and Wood Waste Generator only if Franchisee completes all of the steps and requirements in Exhibit E.

## **SECTION 15. CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING PROGRAM**

A. Act Requirements. The California Green Building Standards Code codified in the California Code of Regulations Title 24, Part 11, ("CalGreen") and adopted by reference in Code Section 15.11.010, requires mandatory diversion of Construction and Demolition Debris. Contractor shall comply with all requirements of CalGreen, as it may be amended from time to time. In the event CalGreen and the City's Construction and Demolition Debris diversion requirements differ, Franchisee shall comply with the highest Construction and Demolition Debris Diversion percentage. Further, City reserves the right to amend and/or expand its own Construction and Demolition Debris Recycling ordinance at any time during the Term. Contractor shall provide all services necessary to (a) inform Customers of, (b) support Customer compliance with, and (c) support City's enforcement of, the Construction and Demolition Debris Recycling requirements pursuant to CalGreen and the Code.

B. Construction and Demolition Debris Diversion Program. Franchisee acknowledges these requirements and agrees that, subject to the restrictions contained in Agreement Section 11(A), for all Customers that contract with or pay Franchisee to haul Construction and Demolition Debris, Franchisee shall implement a Diversion Program as described and set forth in Exhibit "F" which is incorporated herein by reference.

## SECTION 16. REPORTING REQUIREMENTS.

A. Monthly Reports. Franchisee shall submit monthly reports to the Public Works Director identifying, at a minimum, the following information:

1. The address of each facility serviced and the precise services provided to each address including, but not limited to, Commercial Franchise Services broken down by type (*i.e.*, Recyclable Materials, Food Scraps, Green Waste, Wood Waste, Construction and Demolition Debris, and/or Municipal Solid Waste) presented in an Excel format acceptable to the City;

2. The frequency of Commercial Franchise Services provided to each address;

3. The number of containers by type and size at each address and the frequency of collection;

4. The actual tonnage, by material category, collected per month in tons.;

5. The location of the Landfill and/or Processing Facility to which the Municipal Solid Waste, Recyclable Materials, Green Waste, Wood Waste and/or Food Scraps were taken during the previous month and the Diversion rate achieved if the facility accepts mixed waste materials/Processable Municipal Solid Waste;

6. AB 341 and AB 1826 compliance information by Generators, including the total number of AB 341 and AB 1826 accounts serviced by the Franchisee, the total number of accounts that have a Recycling Program, Food Scrap Diversion Program, and/or Green Waste/Wood Waste Diversion Program provided by the Franchisee, the number of Customers with Franchisee-documented internal Diversion programs that comply with AB 1826 and AB 341, the number of Customers that comply with AB 341 or AB 1826 via a Clean or Dirty MRF, the number of Customers that do not have an AB 341 or AB 1826-compliant Diversion program, and a description of outreach efforts for non-compliant Generators;

7. The "Exhibit E Tracking Document" described in subparts D, E and F of Exhibit E.

8. Such other tonnage or other information as requested by the Public Works Director including weight tickets and Diversion records.

B. Form of Report. Monthly reports shall be included in the City provided electronic template. No other templates or formats will be accepted. Use of any alternate format or template shall result in the monthly report being considered incomplete and inaccurate and the Franchisee shall be subject to assessment of liquidated damages pursuant to Section 24(B) of the Franchise.

C. Report Due Date. Each monthly report shall be submitted on or before the 25th day of the month following the end of the month.

D. Submission. Franchisee shall submit each monthly report to:

Public Works Director  
City of Newport Beach  
P.O. Box 1768  
100 Civic Center Dr.  
Newport Beach, CA 92658

E. No Waiver. Franchisee shall file the monthly report required under Agreement Section 16(A) regardless of whether Franchisee has provided Commercial Franchise Services in the City during the reported month.

F. Compliance. Franchisee shall comply with all Recycling and Diversion requirements imposed by law, ordinance, or regulation on the City. At the end of each calendar month, reports will be evaluated for compliance with City Recycling and Diversion requirements. Failure to comply with City Recycling and Diversion requirements shall be a material breach of this Agreement.

## **SECTION 17. HAULER REPRESENTATIVE**

Franchisee shall designate, at a minimum, one (1) individual employed by Franchisee to assist City in implementing the Agreement's Recycling and Diversion programs, as applicable, and to manage all reporting requirements set forth herein ("Hauler Representative"). Franchisee shall provide City with the Hauler Representative's contact information, and the Hauler Representative shall be the primary contact for the City. The Hauler Representative shall respond to any City questions or concerns relating to or arising from Franchisee's performance under this Agreement within five (5) business days of City submitting such question or concern.

## **SECTION 18. VEHICLES AND EQUIPMENT**

A. Containers. Any and all Containers provided to Customers for storage, Collection or transportation of Municipal Solid Waste, Recyclable Materials, Food Scraps, and/or Green Waste shall meet the requirements designated by the Public Works Director as well as State of California minimum standards for solid waste handling established under Public Resources Code Section 43020 and applicable health requirements, or any successor statutes or requirements.

B. Identification. All Containers and vehicles used by Franchisee in the performance of Commercial Franchise Services shall be marked with Franchisee's name in letters which are not less than four inches (4") high and which are easily read by the general public.

C. Equipment.

1. Maintenance; Records. Franchisee shall, at all times, provide such number of vehicles and such equipment as will be adequate for the Commercial Franchise Services, which it is authorized to provide under this Agreement. All vehicles utilized by Franchisee in the performance of this Agreement shall be registered with the California Department of Motor Vehicles. All vehicles must pass annual "BIT" and brake inspections and Franchisee shall provide evidence of such to the Public Works Department upon request. Upon request by the City, Franchisee shall provide records from the most recent California Highway Patrol biennial inspection of the terminal(s) responsible for the maintenance and repair of equipment used in the City. All vehicles shall be properly maintained, kept clean and in good condition and repair, shall not leak any fluids, and shall be uniformly painted. All Commercial Solid Waste and Divertible Materials Containers used in the performance of this Agreement shall be kept clean and in good repair, shall not leak any fluids, and shall be uniformly painted in the color identified by Franchisee in Franchisee's application. All equipment required by City in the performance of this Agreement, including vehicle mirrors and the collision avoidance system, may be subject to inspection by the City upon twenty-four (24) hours' notice by the Public Works Director. All drivers employed by Franchisee and operating equipment in the City shall be properly licensed for the class of vehicle they drive, enrolled in the Department of Motor Vehicles Employee Pull Notice (EPN) program, and abide by all State and federal regulations for driver hours and alcohol and controlled substances testing.

2. Solid Waste and Divertible Materials Retention. Each vehicle shall be so constructed and used in a manner so that no rubbish, garbage, debris, oil, grease or other material will blow, fall, or leak out of the vehicle. All Municipal Solid Waste and Divertible Materials shall be transported by means of vehicles that are covered in such a manner as to securely contain all Solid Waste and Divertible Materials and to prevent such Municipal Solid Waste and Divertible Materials from projecting, blowing, falling or leaking out of the vehicles. Any Municipal Solid Waste or Divertible Materials dropped or spilled in Collection, transfer or transportation shall be immediately cleaned up by Franchisee. A broom and a shovel shall be carried at all times on each vehicle for this purpose. In addition, each Collection vehicle shall be equipped with trash bags, masking tape and notice of non-Collection tags for the purpose of separating Hazardous Waste for return to the Generator. A communications device such as a two-way radio or a cellular telephone shall also be maintained on each vehicle at all times.

3. Vehicle Mirrors. All equipment used by Franchisee for Commercial Franchise Services in the City with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or more shall be equipped with a convex mirror on the front of each vehicle, adjusted so as to enable the operator to see all points on an imaginary horizontal line which:

- (a) Is three feet (3') above the road;
- (b) Is one foot (1') directly forward from the midpoint of the front of the vehicles; and

(c) Extends the full width of the front of the vehicle.

4. Collision Avoidance System. All vehicles operated by Franchisee in the City shall include the best available collision avoidance system that is capable of detecting adjacent pedestrians and bicyclists. City reserves the right to inspect Franchisee's vehicles, at any time, to confirm that the installation and capability of Franchisee's collision avoidance system is consistent with Section 18(C)(4).

On or before January 1 of each year, Franchisee shall submit to City a certification signed under penalty of perjury containing the following:

- i. List of any collection vehicle (including front loader, rear loader, side loader, and roll off vehicles and all "spares") of such vehicles that franchisee operate in the City.
- ii. Collision Avoidance System installed on each vehicle including name of system, manufacturer, date installed, name of Person who installed the system, name of Person(s) who tested the system to ensure proper installation and operation of system.

5. Storage. Franchisee shall not store any vehicle or equipment on any public street, public right-of-way or other public property in the City without obtaining a Temporary Street Closure Permit from the Public Works Department and prior written consent of the Public Works Development.

6. Compliance. Should the Public Works Director at any time give written notification to Franchisee that any vehicle does not comply with the standards hereunder, the vehicle shall be promptly removed from service by Franchisee and not used again until inspected and authorized in writing by the Public Works Director.

7. City Standards. Placement of Containers and equipment shall be in accordance with the standards set by the City.

8. Equipment Standards. All equipment provided by Franchisee shall be in accordance with standards set by the Public Works Department.

## **SECTION 19. ABANDONED CONTAINERS**

A. If Franchisee abandons any Commercial Solid Waste or Divertible Materials Container within the City, the City may remove the Container and/or dispose of the contents of the Container and recover its cost from Franchisee.

B. For the purposes of this Section, "abandons" includes:

1. Franchisee's failure to remove the Container within the time period specified by the City Council upon termination of the Franchise pursuant to Section 12.63.140 of the Code, or any successor statute;

2. Franchisee's failure to remove the Container within ten (10) calendar days after the expiration or termination of the Franchise granted to Franchisee, except in the case where Franchisee has been granted an extension of the Term of said Franchise or Franchisee has been granted a subsequent franchise authorizing Franchisee to Collect and transport the type or types of Commercial Solid Waste for which the Container was used pursuant to this Agreement; or

3. Franchisee's failure to collect the Container and dispose of the contents of the Container within two (2) calendar days after the Public Works Director issues written notice to Franchisee to dispose of the contents.

4. Franchisee's failure to replace a Container that fails to comply with the City's aesthetic standards, as set forth in this Agreement, within five (5) calendar days of receiving written notice from the Public Works Director of non-compliance.

## **SECTION 20. COMPLIANCE WITH LAW**

A. Franchisee shall perform all Commercial Franchise Services in accordance with applicable federal, state, and local law, including, but not limited to, Code Chapter 12.63, Article XIII of the City Charter, Ordinance No. 2020-20 and the terms and conditions of this Agreement.

B. During the Term of this Agreement, Franchisee and City agree that the City's ordinances may be amended as provided herein, as provided in Chapter 12.63 or as necessary to permit the City to comply with changes to federal, state, and local legislative regulatory requirements, which may affect or alter City's obligations or requirements for Commercial Solid Waste management. Franchisee agrees to comply with any such amendment of the City's ordinances without the need to amend this Agreement.

## **SECTION 21. PERMITS AND LICENSES**

A. Applicable Permits and Licenses. Franchisee shall obtain and maintain, at Franchisee's sole cost and expense, all permits and licenses applicable to Franchisee's operations under the Franchise, which are required of Franchisee by any governmental agency. Payment of the Franchise Fee and Environmental Liability Fund Fee shall be in addition to any permit or license fees or business tax prescribed by the City for the same period.

B. Orange County Landfill Account. Franchisee shall obtain and maintain for the Term of this Agreement an account with the Orange County landfills. If Franchisee disposes of any Municipal Solid Waste collected from the City at an Orange County landfill, the Franchisee shall utilize its landfill account only (no "cash" disposal).



## **SECTION 22. PUBLIC EDUCATION ACTIVITIES**

A. Informational Materials. Each year during the Term of this Agreement, Franchisee shall transmit informational materials to all Customers and to such prospective Customers as it may select, informing them of the Commercial Franchise Services that are required of them under State law as well as Hazardous Waste Disposal requirements.

B. Customer Compliance Notification. Each year during the Term of this Agreement, Franchisee shall notify all AB 1826 and AB 341 accounts for which it provides Commercial Franchise Services of the Customer's compliance obligations.

C. Submission to City of Informational Materials. Franchisee's informational materials shall be provided to the Public Works Director upon request if, in City's sole and absolute discretion, such informational materials are necessary for City to comply with State reporting requirements.

## **SECTION 23. SUSPENSION; TERMINATION; APPEAL**

A. City's Right to Suspend or Terminate. The Franchise granted to Franchisee may be suspended or terminated by the City Council pursuant to Code Section 12.63.140, or any successor statute.

B. Notice of Default. Should the Public Works Director determine Franchisee has defaulted in the performance of any obligation hereunder, the Public Works Director may provide written notice to Franchisee of such default ("Default Notice"). The Public Works Director may, in the Default Notice, set a reasonable time within which Franchisee may cure such default. Unless a longer or shorter time is otherwise specified by the Public Works Director, a reasonable time for correction shall be thirty (30) calendar days from the date the Default Notice is issued.

C. Public Works Director Review. Within ten (10) business days of the Public Works Director's issuance of the Default Notice, at the request of Franchisee, the Public Works Director will hold a meeting with Franchisee to discuss the failure(s) described in the Default Notice. Such request shall immediately suspend any deadlines set forth in Agreement Section 23(B) or the Default Notice. During Franchisee's meeting with the Public Works Director, Franchisee shall have an opportunity to present evidence explaining or justifying the failures described in the Default Notice. After the meeting, the Public Works Director will make a determination, in his or her sole discretion, as to whether to uphold the Default Notice, or any portion thereof, and shall issue such determination within five (5) business days of the meeting. Franchisee will have thirty (30) calendar days from the date the Public Works Director's determination is issued to cure the upheld Default Notice or portion thereof.

D. Appeal to City Manager. Within five (5) business days of the Public Works Director issuing his/her determination, Franchisee may appeal the Public Works Director's determination, in writing, to the City Manager. City's receipt of such appeal request shall immediately suspend any deadlines set forth in Agreement Section 23(C).

The City Manager will hold a meeting with Franchisee no more than ten (10) business days after receiving Franchisee's written appeal request. After the meeting, the City Manager will make a determination, in his or her sole discretion, as to whether to uphold the Default Notice, or any portion thereof, and shall issue such determination within five (5) business days of the meeting. The decision of the City Manager shall be final. Franchisee will have thirty (30) calendar days from the date the City Manager's determination is issued to cure the upheld Default Notice or any portion thereof.

F. Failure to Timely Cure. If Franchisee fails to timely cure a Default Notice, or any portion thereof, then the applicable liquidated damages set forth in Agreement Section 24 shall be final and conclusive and the amount(s) shall be immediately due and payable. Franchisee's failure to timely cure three (3) Default Notices shall be a material breach of this Agreement.

G. Audit Findings. Notwithstanding anything to the contrary, if Franchisee disagrees with City's audit findings, then Franchisee may, within ten (10) business days after service of the audit finding, appeal to the City Manager specifying the basis for its disagreement with City's audit findings. If Franchisee fails to timely request such an appeal, then the discrepancy determinations shall be final and conclusive and the violation shall be deemed established.

H. Termination Without Right to Cure. City shall have the right of suspension or termination as a result of Franchisee's failure to timely cure any deficiency or default 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 without affording Franchisee the right to cure including, without limitation, any action, inaction or circumstance defined herein as a material breach and/or under any of the following circumstances which are hereby defined as material breaches:

1. If Franchisee conducts, or attempts to conduct, fraud upon City.
2. If Franchisee becomes insolvent, unable, or unwilling to pay its debts.
3. If Franchisee fails to materially comply with any insurance or indemnification requirement set forth in this Agreement; provided, however, that Franchisee shall have a reasonable opportunity to cure any default relating to the Franchisee's failure to provide the City with proof of insurance, so long as such insurance is in effect at all times.
4. If City is required to pay any fine or penalty, which Franchisee is required by the terms hereof to pay, yet which Franchisee fails, refuses, neglects or is unable to timely pay.

5. If Franchisee fails to submit Records thirty (30) calendar days or more following a written request by City, or its designated representative for Records disclosure.

6. Franchisee fails to meet the Diversion requirements of this Agreement or pursuant to applicable laws.

I. Removal of Commercial Solid Waste and Divertible Materials Containers; Customer Notification. In the event this Franchise is terminated or expires without a grant of a subsequent franchise allowing Franchisee to continue performing Commercial Franchise Services in City, then within ten (10) calendar days of such termination or expiration Franchisee shall:

1. Remove all of Franchisee's Municipal Solid Waste and Divertible Materials Containers from all Franchisee's Collection service locations and properly dispose of all Municipal Solid Waste in such containers and deliver all Divertible Materials to Processing Facilities for Diversion within the time period specified by the City Council; and

2. Submit to the Public Works Director a list of the names and addresses of Generators in the City for which Franchisee provided Commercial Franchise Services as of the date of termination or expiration (*i.e.*, Franchisee's City of Newport Beach customer list); or

3. Send written notification to each Solid Waste Generator, AB 341 Generator and AB 1826 Generator on Franchisee's customer list that Franchisee is no longer authorized to provide Commercial Franchise Services in the City. Such notification shall be in the form provided by the Public Works Director and shall be personally delivered or shall be sent by first class mail, postage prepaid, to the customers' billing addresses. Franchisee shall submit to the Public Works Director an affidavit, signed under penalty of perjury, stating that the required notification has been provided by Franchisee to all of Franchisee's City Customers.

J. Continuing Obligations. Upon Agreement termination, suspension or expiration:

1. Franchisee shall have no right or authority to engage in Commercial Franchise Services in the City, subject to the provisions of Sections 49520-49524 of the Public Resources Code, or any successor statutes.

2. Franchisee shall remain liable to City for any and all Franchise Fees and Environmental Liability Fund Fees that would otherwise be payable by Franchisee, for any and all liquidated damages, late charges and/or interest assessed.

3. Franchisee shall have a continuing obligation to submit to City all reports and records required by this Agreement. Franchisee's obligation shall survive this Agreement shall continue for such period of time as required by this Agreement or applicable law.

4. Franchisee shall allow the Commercial Solid Waste Generators, AB 341 Generators and AB 1826 Generators served by Franchisee to arrange for Commercial Franchise Services with another Franchise Holder or Person authorized to perform such services, without penalty or liability for breach of contract on the part of the generators, for such period of time as Franchisee is not authorized to perform such services because of termination or suspension.

5. Franchisee shall have a continuing obligation to provide the indemnifications required in this Agreement. Such indemnifications include, but are not limited to, the Hazardous Materials indemnification and AB 939, AB 341, and AB 1826 indemnifications as set forth in Agreement Section 10.

## **SECTION 24. CITY'S REMEDIES**

A. The City incurred considerable time and expense procuring this Agreement to secure an improved level and quality of Recycling and compliance with State Diversion mandates.

B. Liquidated Damages. The Parties agree the following liquidated damages schedule represents a reasonable estimate of the amount of damages, considering all 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 expected in anticipation that proof of actual damages would be costly or inconvenient:

| <b>Applicable Section(s)</b> | <b>Failure(s)*</b>  | <b>Damages</b>   |
|------------------------------|---|--|
| <b>6(A), 7(A)</b>            | Comply with City-mandated Diversion requirements within thirty (30) calendar days of notification by City               | Two hundred fifty dollars (\$250) per business day until compliant |
| <b>6(B), 7(B)</b>            | Deliver Commercial Solid Waste as designated  | Two hundred fifty dollars (\$250) per truck delivery               |
| <b>8(B)</b>                  | Provide requested records   | Two hundred fifty dollars (\$250) per business day until completed |
| <b>11(A)</b>                 | Provide only those Commercial Franchise Services for which Franchisee has applied                                       | Two hundred fifty dollars (\$250)                                  |
| <b>11(C)</b>                 | Collect at unauthorized locations and/or during unauthorized hours five (5) or more times in a twelve (12) month period | Two hundred fifty dollars (\$250)                                  |

|   |   |   |
|---|---|---|
| <b>11(D)</b>                              | Label Containers; paint vehicles and/or Containers corporate color  | Fifty dollars (\$50) per business day until corrected                     |
| <b>12(A), Exhibit E, Parts A, B and C</b> | <b>12(C),</b> Implement AB 341 Diversion Program including Tasks 1-16 in Exhibit E, Part A within the timeframe in Franchise Section 12C. Comply with the requirements of Exhibit E, Parts B and C within ninety (90) days of the events described in Part B, or within ninety (90) days of a previously operating AB 341 Program malfunctioning as required by Part C.   | One thousand dollars (\$1,000) per occurrence                             |
| <b>13(A), Exhibit E, Parts A, B and C</b> | <b>13(C),</b> Implement AB 1826 Food Scrap Diversion Program including Tasks 1-16 in Exhibit E, Part A, within the timeframe in Franchise Section 13C. Comply with the requirements of Exhibit E, Parts B and C within ninety (90) days of the events described in Part B or within ninety (90) days of a previously operating Food Scrap Diversion Program malfunctioning as required by Part C.                                 | One thousand dollars (\$1,000)  |
| <b>14(A), Exhibit E, Parts A, B and C</b> | <b>14(C),</b> Implement AB 1826 Green Waste and Wood Waste Diversion Program including Tasks 1-16 in Exhibit E, Part A, within the timeframe in Franchise Section 14C. Comply with the requirements of Exhibit E, Parts B and C within ninety (90) days of the events described in Part B or within ninety (90) days of a previously operating Green Waste and Wood Waste Diversion Program malfunctioning as required by Part C. | Five hundred dollars (\$500)  |
| <b>15(B)</b>                              | Implement Construction and Demolition Diversion Program   | One thousand dollars (\$1,000)  |
| <b>16(A), 16(B), 16(E)</b>                | Submit complete and accurate monthly reports  | One hundred dollars (\$100) per business day until corrected or completed |

|              |   |  |
|--------------|---|--|
| <b>16(C)</b> | Submit timely monthly reports   | One hundred dollars (\$100) – if not submitted when due<br><br>Five hundred dollars (\$500) – if not submitted w/in thirty (30) calendar days after due date |
| <b>17</b>    | Designate qualified Hauler Representative; Failure of Hauler Representative to timely respond to City | Fifty dollars (\$50) per business day until completed  |
| <b>18(C)</b> | Secure or maintain vehicles or vehicle equipment  | One hundred dollars (\$100) per business day until completed   |
| <b>19</b>    | Remove, replace, or collect abandoned Container(s)  | Fifty dollars (\$50) per business day until completed  |

\*Unless otherwise designated, reference to “failure(s)” refers to each occurrence of specified breach (such as for each Customer or each Customer record entry or complaint) and not for aggregate occurrences of those breaches (such as for all Customers on a given route or day).

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

By placing its initials below, each party specifically confirms:

- (1) the accuracy of the statements made in Agreement Section 24; and
- (2) it has had ample opportunity to consult with legal counsel and obtain an explanation of liquidated damage provisions prior to signing this Agreement.

**FRANCHISEE**  
Initial Here: \_\_\_\_\_

**CITY**  
Initial Here: \_\_\_\_\_

## **SECTION 25. CONFIDENTIAL INFORMATION.**

A. Confidential Information. In the performance of this Agreement or in contemplation thereof, the parties and their respective employees and agents may have access to private or confidential information owned or controlled by the other party and such information may contain proprietary details and disclosures. All information and

data identified in writing as proprietary or confidential by either party ("Confidential Information") and so acquired by the other party or its employees or agents under this Agreement or in contemplation thereof shall be and shall remain the disclosing party's exclusive property. The recipient of Confidential Information shall use all reasonable efforts (which in any event shall not be less than the efforts the recipient takes to ensure the confidentiality of its own proprietary and other confidential information) to keep, and have its employees and agents keep, any and all Confidential Information confidential, and shall not copy, or publish or disclose it to others, nor authorize its employees, agents or anyone else to copy or disclose it to others, without the disclosing party's written approval; nor shall the recipient make use of the Confidential Information except for the purposes of executing its obligations hereunder, and (except as provided for herein) shall return the Confidential Information and data to the first party at its request. The City's duty to maintain confidentiality as described hereunder shall be subject to the laws of the State of California.

B. Excluded Information. The foregoing conditions will not apply to information or data which is, or which becomes generally known to the public by publication or by any means other than a breach of duty on the part of the recipient hereunder, is information previously known to the recipient, is information independently developed by or for the recipient or is information generally released by the owning party without restriction.

C. Public Records Request. Should City receive a public records request, or otherwise be directed by any governmental authority to disclose any or all Confidential Information in City's possession, custody or control, City shall promptly provide notice to Franchisee of such request to allow Franchisee an opportunity to prevent disclosure.

D. Right to Injunctive Relief. Because of the unique nature of the Confidential Information, the parties agree that each party may suffer irreparable harm in the event that the other party fails to comply with any of its obligations under this Section, and that monetary damages may be inadequate to compensate either party for such breach. Accordingly, the parties agree that either party will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief to enforce the terms of this Section.

## **SECTION 26. ASSIGNMENT**

Franchisee shall not assign, sell, subcontract, transfer or otherwise delegate its authority to perform any portion of the Commercial Franchise Services or obligations under the Franchise without prior express consent of the City Council. This prohibition includes any transfer of ownership or control of Franchisee, or the conveyance of a majority of Franchisee's stock to a new controlling interest. City's consent shall not be unreasonably withheld.

## **SECTION 27. MISCELLANEOUS PROVISIONS**

A. Notices. Except as otherwise provided in this Agreement, all notices required by this Agreement shall be given by personal service or by deposit in the United States mail, postage pre-paid and return receipt requested, addressed to the parties as follows:

To: Public Works Director  
City of Newport Beach  
P.O. Box 1768  
100 Civic Center Dr.  
Newport Beach, CA 92660

To Franchisee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall be deemed effective on the date personally served or, if mailed, three (3) calendar days after the date deposited in the mail.

B. Integrated Agreement. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the City and Franchisee, and all preliminary negotiations and other agreements of any kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

C. Amendments. This Agreement supersedes all prior agreements and understandings between the parties and may not be modified or terminated orally, and no modification, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties.

D. Recitals. The Parties acknowledge that the Recitals are true and correct and are hereby incorporated by reference into this Agreement.

E. Applicable Law. The laws of the City, State of California, and applicable Federal law, shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

F. Authority. The parties signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

G. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

H. Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a difference character.

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



J. 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, handicap, ancestry, sex or age or any other impermissible basis under law.

K. Compliance with Laws. Franchisee shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. Franchisee agrees to obtain a business license from the City in accordance with the Code. The parties hereto agree that the Franchise and this Agreement are the only authorizations to conduct Commercial Franchise Services in the City and that the issuance of a business license does not grant the Franchisee a right to conduct Commercial Franchise Services or other business in the City.

L. Conflicts of Interest. Franchisee and its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "California Political Reform Act"), which (i) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement, and (ii) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest. If subject to the California Political Reform Act, Franchisee shall conform to all requirements of the California Political Reform Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Franchisee shall indemnify and hold harmless City for any and all claims for damages resulting from Franchisee's violation of this subsection.

M. Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

N. No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

O. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the day and year written below.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: \_\_\_\_\_

**CITY OF NEWPORT BEACH,**  
a California municipal corporation

Date: \_\_\_\_\_

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

Aaron C. Harp  
City Attorney

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

Will O'Neill  
Mayor

**ATTEST:**

Date: \_\_\_\_\_

**FRANCHISEE:**

Date: \_\_\_\_\_

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

Leilani I. Brown  
City Clerk

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

Date: \_\_\_\_\_

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

**[END OF SIGNATURES]**

Attachments:    Exhibit A – Faithful Performance Bond  
                      Exhibit B – Franchise Hauler Acknowledgement  
                      Exhibit C – Franchisee Application Template  
                      Exhibit D – Insurance Requirements  
                      Exhibit E – Required Tasks for Implementation of Diversion Programs  
                      Exhibit F – Construction and Demolition Debris Diversion Program

**EXHIBIT A**

**CITY OF NEWPORT BEACH  
BOND NO. \_\_\_\_\_  
FAITHFUL PERFORMANCE BOND**

The premium charges on this Bond is \$ \_\_\_\_\_.

WHEREAS, the City of Newport Beach, State of California, has awarded to \_\_\_\_\_ hereinafter designated as the "Principal," a Non-exclusive Franchise for Commercial Solid Waste and Divertible Materials Handling Services ("Franchise Agreement") in the City of Newport Beach, in strict conformity with the Franchise Agreement on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

WHEREAS, Principal has executed or is about to execute the Franchise Agreement and the terms thereof require the furnishing of a Bond for the faithful performance of the Franchise Agreement.

NOW, THEREFORE, we, the Principal, and \_\_\_\_\_, duly authorized to transact business under the laws of the State of California as Surety (hereinafter "Surety"), are held and firmly bound unto the City of Newport Beach, in the sum of Seven Thousand Five Hundred Dollars and 00/100 (\$7,500.00) lawful money of the United States of America, to be paid to the City of Newport Beach, its successors, and assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, or the Principal's heirs, executors, administrators, successors, or assigns, fail to abide by, and well and truly keep and perform any or all the services, covenants, conditions, and agreements in the Franchise Agreement documents and any alteration thereof made as therein provided on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to its true intent and meaning, or fails to indemnify, defend, and save harmless the City of Newport Beach, its officers, employees and agents, as therein stipulated, then, Surety will faithfully perform the same, in an amount not exceeding the sum specified in this Bond; otherwise this obligation shall become null and void.

As a part of the obligation secured hereby, and in addition to the face amount specified in this Performance Bond, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City, only in the event City is required to bring an action in law or equity against Surety to enforce the obligations of this Bond.

Surety, for value received, stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Franchise Agreement or to the services to be performed thereunder shall in any way affect its obligations on this Bond, and it does

hereby waive notice of any such change, extension of time, alterations or additions of the Agreement or to the services or to the specifications.

This Faithful Performance Bond shall be extended and maintained by the Principal in full force and effect for seven (7) years following the date Principal is granted the Franchise Agreement by City.

In the event that the Principal executed this bond as an individual, it is agreed that the death of any such Principal shall not exonerate the Surety from its obligations under this Bond.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name of Contractor (Principal)

\_\_\_\_\_  
Authorized Signature/Title

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Authorized Agent Signature

\_\_\_\_\_  
Address of Surety

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Telephone

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Aaron C. Harp  
City Attorney

*NOTARY ACKNOWLEDGMENTS OF  
CONTRACTOR AND SURETY MUST BE ATTACHED*

## ACKNOWLEDGMENT

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

State of California

County of \_\_\_\_\_ } ss.

On \_\_\_\_\_, 20\_\_\_\_ before me, \_\_\_\_\_,

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

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

WITNESS my hand and official seal.

—

Signature

(seal)

## ACKNOWLEDGMENT

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

State of California

County of \_\_\_\_\_ } ss.

On \_\_\_\_\_, 20\_\_\_\_ before me, \_\_\_\_\_,

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

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

WITNESS my hand and official seal.

Signature

(seal)

## **EXHIBIT B**

### **FRANCHISE HAULER ACKNOWLEDGEMENT**

THIS FRANCHISE HAULER ACKNOWLEDGMENT is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2021 (the "Acknowledgment"), by and between the City of Newport Beach, a charter city and municipal corporation (the "City"), and \_\_\_\_\_ (the "Franchise Hauler").

#### **WITNESSETH**

WHEREAS, the City and the Franchise Hauler have heretofore entered into an agreement entitled NONEXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE CITY OF NEWPORT BEACH AND \_\_\_\_\_ FOR COMMERCIAL SOLID WASTE AND DIVERTIBLE MATERIALS HANDLING SERVICES (the "Franchise"); and

WHEREAS, the Franchise provides for the collection and disposal of certain municipal commercial solid waste as described therein ("Franchise Waste") generated within the City; and

WHEREAS, the County of Orange (the "County") owns, manages and operates a sanitary landfill disposal system for municipal solid waste generated within the County; and

WHEREAS, the City and the County have heretofore entered into a Waste Disposal Agreement as of 2009, and subsequent Amendment to the Waste Disposal Agreement dated April 28, 2016 (collectively, the "Disposal Agreement"), determining that the execution of such Disposal Agreement will serve the public health, safety and welfare of the residents of the City and County, by maintaining public ownership and stewardship over the Orange County Landfill Disposal System (the "Disposal System"); and

WHEREAS, under the Disposal Agreement, the County has agreed to provide long-term disposal of all municipal solid waste generated within the City and the City has agreed to exercise all legal, and contractual power which it possesses from time to time to deliver or cause the delivery of such waste to the Disposal System; and

WHEREAS, the provisions of the Waste Disposal Agreement which guarantee capacity for the long term disposal of waste at specified rates generated in the City provide significant benefits to the Franchise Hauler; and

WHEREAS, notwithstanding any Franchise provisions to the contrary, the Franchise Hauler explicitly acknowledges the aforementioned benefits to the City, the County and the Franchise Hauler in providing for the disposal of all Franchise Waste to the Disposal System; and

WHEREAS, the City and the Franchise Hauler desire to enter into this Acknowledgment to assure that the City and the Franchise Hauler will be entitled to the benefits of the Waste Disposal Agreement and to assure conformity with the waste

delivery obligations which have been agreed to by the City under the Disposal Agreement through the delivery of waste by the Franchise Hauler to the Disposal System; and

WHEREAS, the Franchise Hauler's agreement to deliver Franchise Waste to the Disposal System under this Acknowledgment is given in consideration of the Franchise Hauler's right to receive the Contract Rate for such disposal as provided in the Disposal Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Capitalized terms used and not otherwise defined herein are used as defined in the Disposal Agreement.
2. The Franchise Hauler hereby waives any right which it may possess under applicable law to contest on any ground, constitutional, statutory, case law, administrative or otherwise, (a) the right, power or authority of the County or the City to enter into or perform their respective obligations under the Disposal Agreement, (b) the enforceability against the County or the City of the Disposal Agreement, or (c) the right, power or authority of the City to deliver or cause the delivery of all Controllable Waste to the Designated Disposal Facility in accordance with this Acknowledgment.
3. The City and the Franchise Hauler each hereby represent that this Acknowledgment has been duly authorized by all necessary action of their respective governing bodies.
4. The Franchise Hauler shall deliver or cause to be delivered all Controllable Waste (including all residue from the processing by any means, wherever conducted, of Controllable Waste) to the Disposal System, and shall otherwise assist the City in complying with its obligations under the Waste Disposal Covenant in Section 3.1 of the Disposal Agreement.
5. The Franchise Hauler shall not haul Controllable Waste to any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility unless the contract or other agreement or arrangement between the Franchise Hauler and the operator of such facility is sufficient in the opinion of the County to assure that the Residue from such facility constituting City Acceptable Waste (or Tonnage equivalencies) and the City Acceptable Waste transferred by such facility shall be delivered to the Designated Disposal Facility in compliance with the Waste Disposal Covenant.

6. The Franchise Hauler shall pay the Contract Rate imposed by the County at the Designated Disposal Facility for the disposal of all Controllable Waste, which rate shall be subject to potential adjustment necessary to reflect the circumstances set forth in the Disposal Agreement.
7. Nothing in this Acknowledgment is intended to restrict any right or responsibility explicitly given the Franchise Hauler in the Franchise to recycle City Acceptable Waste, except as provided in paragraph 5 above with respect to Residue from any such recycling operations.
8. The obligations of the Franchise Hauler under this Acknowledgment shall apply notwithstanding any provision of the Franchise which may conflict herewith.
9. This Acknowledgment may be enforced by the City by any available legal means. In any enforcement action by the City, the burden of proof shall be on the Franchise Hauler to demonstrate compliance herewith.
10. This Acknowledgment shall be in full force and effect and shall be legally binding upon the City and Franchise Hauler from the date hereof and shall continue in full force and effect until the earlier of (i) the end of the term of the Franchise or (ii) the end of the term of the Disposal Agreement.
11. The City and Hauler agree that the County shall be an express third party beneficiary of this Acknowledgment, and shall be entitled to independently enforce the obligations of the Franchise Hauler hereunder.
12. Franchise Hauler agrees to assist the County in verifying tonnage collected by the Franchise Hauler and providing information required by the County. Franchise Hauler will provide upon request refuse tonnage collected within the County, and outside the County (if relevant to confirming tonnage origination), separated by jurisdiction, by load type (residential, commercial, roll-off box), and by facility to which it was delivered (specify which landfill or transfer station). Franchise Hauler will provide customer service levels and route lists. Franchise Hauler will cooperate with County audits to verify reported origin of tonnage by making records and personnel available to the County and/or its auditors.



**EXHIBIT C**

**FRANCHISE APPLICATION TEMPLATE**

## EXHIBIT D

### INSURANCE REQUIREMENTS

1. Provision of Insurance. Without limiting Franchisee's indemnification of City, and prior to commencement of Work, Franchisee shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Franchisee agrees to provide insurance in accordance with requirements set forth here. If Franchisee uses existing coverage to comply and that coverage does not meet these requirements, Franchisee agrees to amend, supplement or endorse the existing coverage.

2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

3. Coverage Requirements.

A. Workers' Compensation Insurance. Franchisee shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least One Million Dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Franchisee shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement.

B. General Liability Insurance. Franchisee shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, Four Million Dollars (\$4,000,000) general aggregate and Four Million Dollars (\$4,000,000) completed operations aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

C. Automobile Liability Insurance. Franchisee shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Franchisee arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than Ten Million Dollars (\$10,000,000) combined single limit for each accident.

D. Pollution Liability Insurance. Franchisee shall maintain pollution liability insurance covering all of the Franchisee's operations to include onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, non-owned disposal site liability, defense costs, cleanup costs, and pollution conditions that arise from or in connection with the transportation (including loading and unloading) by or on behalf of the Franchisee, of any waste or waste materials. Coverage shall be provided for both sudden and accidental and gradual and continuous pollution events with limits no less than \$5,000,000 each loss and \$10,000,000 in the aggregate. The policy shall not exclude any hazardous materials for which there is an exposure. If all or any portion of the pollution liability coverage is available only on a claims-made basis, then a 10-year extended reporting period shall also be purchased. The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Franchisee performs the Services contemplated by this Agreement or shall specifically allow Franchisee or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Franchisee hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.

B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, but not including professional liability (if required), shall provide or be endorsed to provide that City a its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Franchisee performs the Services contemplated by this Agreement shall be included as additional insureds under such policies.

C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

D. Notice of Cancellation. All policies shall provide City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

A. Evidence of Insurance. Franchisee shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a

waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Franchisee shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

B. City's Right to Revise Requirements. The City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Franchisee sixty (60) days advance written notice of such change.

C. Right to Review Subcontracts. Franchisee agrees that upon request, all contracts with subcontractors or others with whom Franchisee enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such contracts will not impose any liability on City, or its employees. Franchisee shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Franchisee shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

D. Enforcement of Contract Provisions. Franchisee acknowledges and agrees that any actual or alleged failure on the part of the City to inform Franchisee of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

G. City Remedies for Non Compliance. If Franchisee or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Franchisee's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Franchisee or reimbursed by Franchisee upon demand.

H. Timely Notice of Claims. Franchisee shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Franchisee's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

I. Franchisee's Insurance. Franchisee shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Franchise.

## **EXHIBIT E**

### **REQUIRED TASKS FOR IMPLEMENTATION OF DIVERSION PROGRAMS**

A. For purposes of complying with Sections 12 through 14 of this Agreement Franchisee shall complete all of the following to the satisfaction of the City:

1. Franchisee has contacted the Authorized Customer Representative. For purposes of this section, the "Authorized Customer Representative" is the Person who subscribes to and pays for any service provided by the Franchisee and/or for any Municipal Solid Waste Collection or Diversion Services provided by any other entity. The Authorized Customer Representative may be the owner or on-site manager; or if Customer is a corporation with multiple locations and centralized decision-making, the manager with decision-making authority; or in the case of a broker or waste arranger, the Authorized Customer Representative is the Person who has the decision-making authority to subscribe to and pay for Municipal Solid Waste Collection and Diversion Services. Franchisee shall provide written notice of the requirements of the Act and the City Code for the Customer to have in place specified Diversion Program(s) as of the date(s) applicable to that Customer. If applicable, Franchisee shall also provide written notice of the requirements of CalGreen.

2. Franchisee shall estimate the quantities of Municipal Solid Waste, Recyclable Materials, Food Scraps (for businesses), Green Waste/Wood and any other Divertible Materials generated by the Customer, calculate the appropriate number and size of Containers required for storage, calculate the recommended frequency of service to optimize cost for the Customer, prepare a written Diversion Plan containing estimated costs and recommended levels of service, and submit the Plan to the Authorized Customer Representative. Franchisee shall discuss the Plan with the Authorized Customer Representative and obtain the Authorized Customer Representative's approval to implement the finalized Diversion Plan.

3. If the Customer is generating Food Scraps, Franchisee shall provide the Authorized Customer Representative with information on the available edible food donation programs in City including coordinators, vendors and non-profit agencies, as directed by City, and shall factor any applicable edible food donation opportunities into the calculations for sizing of Food Scrap Containers and frequency of Food Scrap Collection service. Franchisee shall cooperate fully and in good faith with all edible food donation efforts of City, all third parties and Customer.

4. If the Customer is already Diverting Recyclable Materials and/or Food Scraps using an in-house program, backhauling, on site processing, self-hauling, or donating or selling materials to a third party, Franchisee shall notify City so City can obtain a completed and signed "Self-Certification Form" for that program. Franchisee shall record the notification to City on the "Exhibit E Tracking Document" described in subpart D herein. City will obtain a completed Self-

Certification Form, evaluate the information provided and take steps to verify the in-house program(s). City will inform the Franchisee of City's decision regarding the adequacy of the in-house program(s).

- (i) In the event City notifies the Franchisee that the in-house program(s) are inadequate, Franchisee shall comply with all the requirements contained in Sections 12, 13, 14 and in this Exhibit E to fully implement all Diversion Programs required by this Franchise.
- (ii) In the event City notifies the Franchisee that some, but not all, of the in-house program(s) are adequate, (a) Franchisee shall be relieved from its responsibility to implement the Diversion Programs targeting materials that are being Diverted by the City-verified in-house program(s) for a period of 12 months; and (b) Franchisee shall comply with all the requirements contained in this Exhibit E to fully implement all Diversion Programs for Recyclable Materials, Food Scraps, Green Waste and Wood Waste not adequately Diverted through the City-verified in-house program(s). At the end of twelve (12) months, Franchisee shall submit a written request to City to determine whether the Customer filed a new Self-Certification Form and whether the City has determined that any of the Customer's in-house program(s) are adequate. If so, Franchisee shall record this in the Exhibit E Tracking Document and shall be relieved from its responsibility to implement the Diversion Programs targeting materials that are being Diverted by the City-verified in-house program(s) for an additional period of 12 months. Franchisee shall continue to provide and maintain all Diversion Programs required by this Franchise for which there is no City-verified in-house program(s). This process shall be repeated by Franchisee annually as long as the Customer is served by the Franchisee at the same premises. In the event a Customer ceases operation of any or all of its in-house program(s) and/or the City makes a determination that any or all of the previously City-verified in-house program(s) are no longer operating or are no longer adequate, then Franchisee shall comply with all the requirements contained in Sections 12, 13, 14 and in this Exhibit E to fully implement all Diversion Programs required by this Franchise.
- (iii) In the event City notifies the Franchisee that the in-house program(s) are adequate, Franchisee shall be relieved from its responsibility to implement the Diversion Programs targeting materials that are being Diverted by the City-verified in-house program(s) for a period of 12 months. At the end of twelve (12) months, Franchisee shall submit a written request to City to determine whether the Customer filed a new Self-Certification Form and whether the City has determined that the in-house program(s) are adequate. If the City determines any or all of the in-house programs are adequate, Franchisee shall record this in the Exhibit E Tracking Document and shall be relieved from its

responsibility to implement the Diversion Programs targeting materials that are being Diverted by the City-verified in-house program(s) for an additional period of 12 months. Franchisee shall continue to provide and maintain all Diversion Programs required by this Franchise for which there is no City-verified in-house program(s). This process shall be repeated by Franchisee annually as long as the Customer is served by the Franchisee at the same premises. In the event a Customer ceases operation of any or all of its in-house program(s) and/or the City makes a determination that any or all of the in-house program(s) are no longer adequate, then Franchisee shall comply with all the requirements contained in Sections 12, 13, 14 and in this Exhibit E to fully implement all Diversion Programs required by this Franchise.

5. If the Customer is using a landscaping company to haul away Green Waste/Wood, Franchisee shall notify City so City can obtain a completed and signed "Landscaper Self-Certification Diversion Form" for Green Waste/Wood at that Premises. Franchisee shall record the notification to City on the Exhibit E Tracking Document. City will obtain a completed Self-Certification Form, and take steps to verify the landscaper program(s). City will inform the Franchisee of City's decision regarding the adequacy of the landscaper program(s).

- (i) In the event City notifies the Franchisee that the landscaper program(s) are inadequate, Franchisee shall comply with all the requirements contained in Section 14 and in this Exhibit E to fully implement all Diversion Programs for Green Waste/Wood required by this Franchise.
- (ii) In the event City notifies the Franchisee that some, but not all, of the landscaper program(s) are adequate, (a) Franchisee shall be relieved from its responsibility to implement the Diversion Programs targeting Green Waste and/or Wood Waste that is being Diverted by the City-verified landscaper program(s) for a period of 12 months; and (b) Franchisee shall comply with all the requirements contained in Section 14 and in this Exhibit E to fully implement all Diversion Programs for Green Waste and/or Wood Waste not adequately Diverted through the City-verified landscaper program(s). At the end of twelve (12) months, Franchisee shall submit a written request to City to determine whether the Customer filed a new "Landscaper Self-Certification Form" and whether the City has determined that any or all of the Customer's landscaper program(s) are adequate. If the City has determined that any or all of the in-house program(s) are adequate, Franchisee shall record this in the Exhibit E Tracking Document and shall be relieved from its responsibility to implement the Diversion Programs targeting Green Waste and/or Wood Waste that are being Diverted by the City-verified landscaper program(s) for an additional period of twelve (12) months. Franchisee shall continue to provide and maintain all Diversion Programs required by this



Franchise for which there is no City-verified in-house program(s). This process shall be repeated by Franchisee annually as long as the Customer is served by the Franchisee at the same premises. In the event a Customer ceases operation of any or all of its landscaper program(s) and/or the City makes a determination that any or all of the previously City-verified landscaper program(s) are no longer operating or are no longer adequate, then Franchisee shall comply with all the requirements contained in Section 14 and in this Exhibit E to fully implement all Diversion Programs for Green Waste and Wood Waste required by this Franchise.

- (iii) In the event City notifies the Franchisee that the landscaper program(s) are adequate, Franchisee shall be relieved from its responsibility to implement the Diversion Programs targeting Green Waste and Wood Waste that are being Diverted by the City-verified landscaper program(s) for a period of twelve (12) months. At the end of twelve (12) months, Franchisee shall submit a written request to City to determine whether the Customer filed a new "Landscaper Self-Certification Form" and whether the City has determined that the landscaper program(s) are adequate. If so, Franchisee shall record this in the Exhibit E Tracking Document and shall be relieved from its responsibility to implement the Diversion Programs targeting Green Waste and Wood Waste that are being Diverted by the City-verified landscaper program(s) for an additional period of twelve (12) months. This process shall be repeated by Franchisee annually as long as the Customer is served by the Franchisee at the same premises. In the event a Customer ceases operation of its landscaper program(s) and/or the City makes a determination that the landscaper program(s) are no longer adequate, then Franchisee shall comply with all the requirements contained in Section 14 and in this Exhibit E to fully implement all Diversion Programs for Green Waste and Wood Waste required by this Franchise.

6. In the event Franchisee has taken all required actions and completed all required tasks in Steps 1 through 5 herein, and the Authorized Customer Representative has refused the service or has refused to implement all of the recommended programs in the Diversion Plan(s) prepared by the Franchisee, the Franchisee shall notify the City of the Customer's refusal. The Franchisee shall request that the City or its agent accompany the Franchisee on a site visit to the Customer's premises to meet with the Authorized Customer Representative to explain the requirements of the Act and the City Code that require implementation of the Diversion Program(s) described in the Plan prepared by the Franchisee and submitted to the Authorized Customer Representative in Step 2. If, after a site visit with the City and the Franchisee, the Authorized Customer Representative continues to refuse to implement the recommended Diversion Program(s) contained in the Plan submitted to the Authorized Customer Representative in Step 2, the Franchisee shall include details about the meeting date, attendees, and the Customer's decision in Franchisee's next monthly Exhibit E Tracking

Document submittal. Franchisee shall fully and completely cooperate with, and reinforce, City's efforts to enforce the City Code and to obtain the Authorized Customer Representative's approval to implement the required Diversion Program(s).

7. In the event City is successful in obtaining the recalcitrant Authorized Customer Representative's approval to implement the required Diversion Program(s), City will notify the Franchisee and the Franchisee shall proceed to implement the Diversion Program(s) as described in the Diversion Plan prepared in Step 2 hereof, by completing implementation Steps 1 through 16 of this Exhibit E.

8. In the event the Customer initially approved the Diversion Program plan prepared by the Franchisee in Step 2, and Franchisee has completed Steps 3, 4 and 5, Franchisee shall proceed to implement Steps 9 through 16.

9. Franchisee shall deliver the appropriate type(s) and size(s) of Containers to the Customer's premises for storage of Single Material Recyclables and Single Stream Recyclable Materials. In the case of a Food Scrap Generator, Franchisee shall also provide the appropriate type(s) and size(s) of Containers for storage and collection of Food Scraps. If the Customer is generating Green Waste/Wood the Franchisee shall provide the appropriate type(s) and size(s) of Containers for storage and collection of Green Waste/Wood.

10. Franchisee shall Collect the Recyclable Materials, Food Scraps, and Green Waste/Wood (as applicable) from the Customer's Containers at the frequency of Collection required to prevent litter, vectors, odors and Contamination of Divertible Materials in Containers and is, at a minimum, performing Collection of Recyclable Materials and Green Waste/Wood at least once each week. In the case of a Food Scrap Generator, Franchisee is Collecting the Food Scraps one (1) to six (6) times each week as needed to prevent litter, vectors, odors and Contamination of Divertible Materials in Containers.

11. Franchisee shall evaluate and reduce the level of the Customer's Municipal Solid Waste Collection service to complement the separate Collection of Recyclable Materials, Green Waste/Wood and Food Scraps. Franchisee shall check back with the Authorized Customer Representative and make at least two (2) additional on-site visits to determine if the initial sizing of the Containers and frequency of service is optimal for the Customer. Franchisee shall recommend appropriate adjustments as needed to the Authorized Customer Representative and implement all adjustments agreed to by the Authorized Customer Representative.

12. Franchisee has provided employee education and training materials to the Customer (or in the case of Multifamily Dwellings, Gated Communities, HOA's and mobile home parks, to all management) explaining (a) the requirements of the Act and of the City Code, (b) the operation of each Diversion Program and (c) specifically what Divertible Materials may be placed in the Recycling

Container(s) and the Green Waste/Wood Containers and what materials are to be placed in the Municipal Solid Waste Container(s). In the case of a Food Scrap generator, Franchisee shall explain what Food Scrap materials are to be placed in the Food Scrap Container. Employee/management training shall include at least one on-site training conducted by the Franchisee for all management and all employees of Customer. If there are multiple shifts, or if management and/or employees work on different days, Franchisee shall conduct multiple trainings until all management and employees have been trained. Internal containers for the Divertible Materials are to be provided by the Customer, pursuant to the City Code. If directed by the City, Franchisee shall provide City-approved training posters, signage, and stickers/labels for the internal Containers showing what materials are allowed in each. Franchisee shall provide training and training materials in English and in any other language requested by the Authorized Customer Representative.

13. Franchisee shall make at least two (2) follow-up site visits to confirm the Diversion Program(s) is/are operating optimally within the first two weeks after program initiation. (These site visits are in addition to the site checks to confirm Municipal Solid Waste quantities and optimization of Municipal Solid Waste service described in Step 11 above.) Franchisee shall respond to the Customer's questions and to any complaints and shall promptly and successfully resolve all questions and complaints.

14. Within ninety (90) days after implementation of each Diversion Program at the premises of the Customer, Franchisee shall ensure that the programs are operating effectively such that the Municipal Solid Waste Container(s) at the premises contain no more than twenty percent (20%) Recyclable Materials and Food Scraps (combined), and the Recyclable Materials Container(s) contain no more than ten percent (10%) Municipal Solid Waste and Food Scraps, combined (if the Customer generates Food Scraps). If the Customer is participating in the Food Scrap Diversion Program, the Food Scrap Container(s) shall contain no more than ten percent (10%) of any non-food materials. If these performance standards are not being achieved, Franchisee shall work with the Customer, Authorized Customer Representative, owner(s), manager(s) and employees as needed to re-train, troubleshoot and otherwise provide technical assistance to ensure the Contamination standards described herein are met.

15. Franchisee shall conduct a minimum of one (1) annual on-site review of the Diversion Plan prepared for the Customer in Step 2, and of each Diversion Program at each Customer, and conduct an annual re-training for all employees, residents and tenants (that meets all of the requirements listed for the initial training required in Step 12). Franchisee has conducted troubleshooting for each Diversion Program and ensure that each Diversion Program is robust and successfully Diverting the targeted materials within the Contamination limits identified in Step 14.

16. In the event the Customer has a functioning Diversion Program that has been implemented by the Franchisee through the completion of all required actions and tasks in steps 1 through 15 and the Diversion Program(s) is not

successfully Diverting all targeted Material(s) and/or is not meeting the Contamination performance standards in Step 14, the non-compliant Customer shall be reported to City on the Exhibit E Tracking Document in the section labeled "Non-Compliant Customers Referred to City for Compliance Action Under Newport Beach Municipal Code". City will contact the Customer concerning the requirements of the Act and the City Code. This may include warnings to the Customer, Notice of Violation, fines and/or other enforcement actions. If the Authorized Customer Representative agrees to take all necessary steps to fully implement the Diversion Program(s) as required by the Act and the City Code, City will refer the Customer back to the Franchisee for additional on-site work, training of the Customer's management and employees, troubleshooting and all Steps in this Exhibit E required to achieve full implementation of the program(s). In such event, the Customer shall be removed from the list of "Non-Compliant Customers Referred to City for Compliance Action Under Newport Beach Municipal Code" in the Exhibit E Tracking Document. If the Authorized Customer Representative continues to refuse to take the steps necessary to fully implement one or more of the required Diversion Programs after City action, the Customer will remain on the Non-Compliant Customer list. In the City's sole discretion, upon receipt of written notice by the City, the Franchisee may be relieved of the responsibility to implement the Diversion Program(s) specified by City, at that non-compliant Customer's premises.

B. In the event there is a change of ownership, management or other change resulting in cessation of a Diversion Program(s) or causing any one of the steps herein to not be fully complied with at all times, Franchisee shall repeat all steps necessary to establish or re-establish a fully implemented Diversion Program. Franchisee shall complete re-establishment of a fully implemented Diversion Program within ninety (90) days of either (i) discovering any malfunction in the Program, or (ii) City or Customer reporting a problem to Franchisee, whichever is earlier.

C. For each Diversion Program required by this Franchise for each Customer, Franchisee shall be responsible for maintaining fully implemented, successfully operating program(s) as described herein, for as long as the Customer is served by the Franchisee. In the event a program malfunctions or is not operating optimally at any time, Franchisee shall repeat all steps included in this Exhibit E that are necessary to re-establish a fully implemented Diversion Program. Franchisee shall accomplish this within ninety (90) days of either (i) discovering any sub-optimal functioning of the Program, or (ii) City or Customer reporting such sub-optimal functioning to Franchisee, whichever is earlier.

D. Franchisee shall submit, as part of Franchisee's monthly reports described in Section 16 of the Franchise, a monthly report describing the status of each step listed herein for each type of Diversion Program, for each Customer and shall include details for each step as follows:

- Details of all Customer interactions for the month (and for prior months) including telephone calls, texts, e-mails, site visits, Authorized Representative and/or other persons contacted

- Dates of all such contacts
- Photos from the site visits and assessments conducted
- Photos of any internal Diversion Programs being conducted by the Customer
- Customer objections
- Log of contamination incidents
- Franchisee staff/representative(s) making the contacts
- Franchisee lead staff person responsible for each Customer's Diversion Program implementation.

With regard to Customers with fully implemented, successfully operating Diversion Programs, the Exhibit E Tracking Document shall include any changes in the program(s) during the preceding month (change of Containers, Container sizes, frequency of Collection) and shall also list the date of Franchisee's next planned site visit to that Customer's premises.

This portion of the monthly report shall be called the "Exhibit E Tracking Document".

E. The Exhibit E Tracking Document shall be filled in on the City-provided electronic template. No other templates or formats will be accepted. Use of any alternate format or template shall result in the monthly report being considered incomplete and inaccurate and the Franchisee shall be subject to assessment of liquidated damages pursuant to Section 24B of the Franchise.

F. Each monthly report shall also include a copy of the Diversion Plan(s) prepared by Franchisee for Customers as described in Step 2 of this Exhibit E, during the preceding month. When Containers for any Diversion Program are delivered, changed or removed, the number, sizes and types of Containers delivered, changed or removed shall be noted in the Exhibit E Tracking Document along with the frequency of service for each Container. All changes in frequency of Collection service for a Diversion Program shall also be noted in the Exhibit E Tracking Document.

G. The City Code provides a process for Customers to request a waiver from the requirements to implement Diversion Program(s) due to lack of available space and/or *de minimus* quantity(ies) of Divertible Materials. In the event a Customer served by Franchisee has applied for such a waiver, Franchisee shall note this in the Exhibit E Tracking Document.

If the waiver is approved by the City, Franchisee shall confirm this with City and shall record this in the Exhibit E Tracking Document. Franchisee shall be relieved of its duty to provide the Diversion Program(s) that are specified in the waiver granted by the City, for the effective dates of the waiver.

Annually thereafter, thirty (30) days prior to the termination date of the waiver, (or in the event of a waiver of less than twelve months, thirty (30) days prior to the termination date of the waiver) Franchisee shall submit a written request to City to determine whether

the Customer applied for, and was granted a new waiver for another twelve (12) month (or shorter) period. If so, Franchisee shall record this in the Exhibit E Tracking Document and shall be relieved of its duty to provide the Diversion Program(s) that are specified in the new waiver granted by the City for the period the new waiver is effective.

This process shall be repeated by Franchisee thirty (30) days prior to the expiration date of each waiver, as long as the Customer is served by the Franchisee at the same premises.

In the event a Customer's request for a waiver is denied by the City, Franchisee shall comply with all the requirements contained in Sections 12, 13 and 14 and in this Exhibit E to fully implement all Diversion Programs required by this Franchise.

## **EXHIBIT F**

### **CONSTRUCTION AND DEMOLITION DEBRIS DIVERSION PROGRAM**

Franchisee shall provide all services necessary to support Customer compliance with, and City's enforcement of, the California Green Building Standards Code requirements for Diversion of Construction and Demolition Debris.

Franchisee's Construction and Demolition Debris Diversion Program shall include, but not be limited to:

(A) Informing all Customers requesting Construction and Demolition Debris hauling services of the requirements of the California Green Building Standards Code;

(B) Providing Containers and/or Bins, Roll Off Boxes, and Compactors as needed for storage and transport of single-material Construction and Demolition Debris, and commingled Construction and Demolition Debris;

(C) Providing Collection service for all Containers on a timely basis, which, at a minimum, complies with Section 11 of the Agreement; and

(D) Working and coordinating with Customer, or customer's recycling coordinator, to ensure a smooth and effective Diversion program and the Diversion of a minimum of sixty-five percent (65%) of all Construction and Demolition Debris generated at each of Customer's job sites (or a higher percentage Diversion if required by the California Green Building Standards Code) for which Franchisee is providing Construction and Demolition Debris Collection service.

Franchisee shall inform Customers utilizing Containers and/or Bins and Roll Off Boxes on a temporary basis, that materials being generated must be Diverted pursuant to the requirements of City Code and the California Green Building Standards Code.