RESOLUTION NO. 3484-18

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR CONSENTING TO ASSIGNMENT OF THE COLLECTION SERVICE AGREEMENT AND AMENDMENT NO. 1 BETWEEN THE TOWN OF WINDSOR AND INDUSTRIAL WASTE & DEBRIS BOX RENTALS, INC., DBA: INDUSTRIAL CARTING FOR NON-EXCLUSIVE TEMPORARY CONSTRUCTION AND DEMOLITION DEBRIS COLLECTION TO N LEASING COMPANY, LLC DBA: REPUBLIC SERVICES AND APPROVE THE ASSIGNMENT AND ASSUMPTION AGREEMENT AND AUTHORIZE ITS EXECUTION BY THE TOWN MANAGER

WHEREAS, on December 6, 2017, Town Council approved a 7-year franchise and Non-Exclusive Temporary Construction and Demolition Debris Collection Service Agreement ("Franchise Agreement") between the Town of Windsor ("Town") and Industrial Waste & Debris Box Rentals, Inc., dba: Industrial Carting ("Industrial Carting") effective January 1, 2018; and

WHEREAS, the Town Council approved a 7-year franchise for the period of January 1, 2018 through December 31, 2025; and

WHEREAS, on June 18, 2018, Industrial Carting informed the Town that Industrial Carting and N Leasing Company, LLC, a Delaware limited liability company, a wholly owned indirect subsidiary of Republic Services, Inc. ("Republic Services") entered into an asset purchase agreement and requested the Town's consent to the assignment; and

WHEREAS, pursuant to the Franchise Agreement, Article 25, no assignment of the Franchise Agreement or any right occurring under the Franchise Agreement shall be made in whole or in part by the Franchisee without the express written consent of the Town; and

WHEREAS, on August 13, 2018, the Town received a copy of the General Conveyance, Assignment and Bill of Sale between Global Materials Recovery Services, Inc., a California corporation, and Industrial Waste & Debris Box Rentals, Inc., a California corporation and N Leasing Company, LLC, a Delaware limited liability company, effective July 2, 2018; and

WHEREAS, Republic Services submitted the required documentation demonstrating the assignee's experience and acknowledging the assignee's commitment to the Town's requirements under the Town's Franchise Agreement; and

WHEREAS, the Asset Purchase Agreement between Industrial Carting and Republic Services provides that the Town will consent to the assignment of the Franchise Agreement on the terms and conditions set forth therein.

NOW, THEREFORE BE IT RESOLVED that the Town Council of the Town of Windsor hereby resolves as follows:

1. The Recitals above are true and correct and are incorporated herein by reference.

2. The aforesaid requests the consent to assignment of the Franchise Agreement to N Leasing Company, LLC dba; Republic Services on such terms as are set forth in the attached Assignment and Assumption Agreement.

3. The Town Council hereby finds that the activity taken by the Town Council is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15301(b)(3), as there is no possibility of a significant effect on the environment.

4. Each section, subsection, clause, sentence, phrase, and other portion of this Resolution is severable, and the Town Council declares that it would have adopted this Resolution and each section, subsection, clause, sentence, phrase or other portion hereof, irrespective of the fact that one or more sections, subsections, clauses, sentences, phrases, or other portions hereof may be held invalid or unconstitutional.

5. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 3rd day of October 2018, by the following vote:

AYES:	**COUNCILMEMBERS FUDGE, MILLAN, SALMON, VICE MAYOR FOPPOLI AND MAYOR OKREPKIE**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**NONE**

BRUCE OKREPKIE, MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK

Attachment:

- **Exhibit A** – Assignment and Assumption Agreement

EXHIBIT A

This Assignment and Assumption Agreement ("Agreement") is entered into as of 4th day of October, 2018, by and among the Town of Windsor ("Town"), Industrial Waste & Debris Box Rentals, Inc., ("Industrial Carting") and N Leasing Company, LLC dba: Republic Services ("Republic Services") (collectively "Parties").

WHEREAS, Town and Industrial Carting are parties to a First Amended and Restated Agreement for Non-Exclusive Temporary Construction and Demolition Debris Services dated as of December 6, 2017 ("Franchise Agreement"); and

WHEREAS, on June 18, 2018, the Town was notified by Industrial Waste & Debris Box Rentals, Inc. of an asset purchase agreement ("Purchase Agreement") with N Leasing Company, LLC dba: Republic Services; and

WHEREAS, Industrial Carting wishes to assign the Franchise Agreement to Republic Services, and Republic Services wishes to accept such assignment; and

WHEREAS, effective July 2, 2018, Global Materials Recovery Services, Inc., a California corporation, and Industrial Waste & Debris Box Rentals, Inc., a California corporation ("Grantors"), for good and valuable consideration and pursuant to that certain Asset Purchase Agreement, dated May 1, 2018 ("Purchase Agreement"), among Grantors, Curtis J. Michelini Sr. and Charles R. Hardin Sr., the sole shareholders of Grantors, and N Leasing Company, LLC, a Delaware limited liability company ("Grantee"), hereby sell, assign, transfer, convey and deliver to Grantee all of Grantors' right, title and interest in all of Assets; and

WHEREAS, the Parties acknowledge that the performance of the Franchise Agreement involves rendering a vital service to Town residents and businesses, and that Town previously selected Industrial Carting to perform the services specified therein based on (1) Industrial Carting's experience, skill and reputation for conducting its waste management operations in a safe, effective, and responsible fashion, at all times in keeping with applicable waste management laws, regulations and good waste management practices, and (2) Industrial Carting financial resources to maintain the required equipment and to support its indemnity obligations to Town under the Franchise Agreement; and

WHEREAS, in accordance with Section 25.1 of the Franchise Agreement, no assignment of the Franchise Agreement or any right occurring under the Franchise Agreement shall be made in whole or in part by the Franchisee without the express written consent of the Town; and

WHEREAS, Town wishes to ensure that payment obligations by Industrial Carting under the Franchise Agreement will be satisfied notwithstanding the transactions contemplated by the Purchase Agreement; and

NOW, THERFORE, in consideration of the mutual benefits accruing to the Parties and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Assignment by Industrial Carting. Subject to and effective as of the Closing, Industrial Carting will assign to Republic Services all of its right, title and interest in and to the Franchise Agreement.

2. Acceptance by Republic Services. Subject to and effective as of the Closing, Republic Services will accept such assignment and will assume all duties and obligations of Industrial Carting under the Franchise Agreement from and after the Closing.

3. Industrial Carting Representations and Warranties. Industrial Carting has full power and authority to execute and deliver this Agreement, and the other documents to be executed and delivered pursuant to this Agreement, and to perform and observe the terms and provisions of this Agreement. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Industrial Carting, and all actions required under the organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

4. Republic Services Representations and Warranties. As a material inducement to the Town's consent to assignment, Republic Services provides the following representations and warranties to Town as of the date Republic Services executes this Agreement:

    a. Republic Services is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. It is qualified to transact business in the State of California and has the corporate power to own its property and carry on its business as now owned and operated and as may be required by the Franchise Agreement.

    b. Republic Services has full corporate power and corporate authority to execute and deliver this Agreement, and the other documents to be executed and delivered pursuant to this Agreement, and to perform and observe the terms and provisions of this Agreement and the Franchise Agreement. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been or will be executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Republic Services, and all actions required under Republic Services organizational documents and the Delaware General Corporate Law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been or will be duly taken.

c. To the best of Republic Services' knowledge, after reasonable investigation, neither the execution or delivery of this Agreement, nor Republic Services' performance of this Agreement or the Franchise Agreement: (i) conflicts with, violates, or results in a breach of any applicable law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which Republic Services is a party or by which Republic Services or any of its properties or assets are bound, or constitutes a default thereunder.

d. To the best of Republic Services' knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Republic Services wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Republic Services of its obligations under this Agreement or the Franchise Agreement or which, in any way, would adversely affect the validity or enforceability of this Agreement or the Franchise Agreement or which would have a material adverse effect on the financial condition of Republic Services or any surety guaranteeing Republic Services' performance under this Agreement and the Franchise Agreement, which has not been waived by the Town in writing.

e. Republic Services' management has at least ten (10) years of waste management experience on a scale equal to or exceeding the sale of operations conducted by Industrial Carting under the Franchise Agreement.

f. In the last five (5) years, Republic Services has not suffered any citations or other adverse action or decision from any federal, state, or local jurisdiction over its waste management operations due to any significant failure to comply with federal, state, or local waste management laws and that Republic Services has provided the Town with a complete list of any citations, adverse actions, and adverse decisions by any court or governmental authority.

g. Republic Services conducts its operations in an environmentally safe and conscientious fashion, in accordance with sound waste management practices, and in full compliance in all material respects with all applicable federal, state, and local laws regulating the collection and disposal of waste.

h. In accordance with Article 4 of the Franchise Agreement the initial maximum customer rates executed under Industrial Carting shall not increase for services provided under the Franchise Agreement.

5. Updated Vehicle Inventory. Republic Services shall provide Town with a Refuse Vehicle Permit from County of Sonoma Department of Health Services for the collection, hauling or transporting of solid waste assigned to Town's franchise, current vehicle registration, and other identifying details as may be requested by the Town, within thirty (30) days.

6. Insurance. Town has reviewed the insurance certificates and endorsements subject to and effective as of the Closing. Republic Services warrants to the Town that such insurance certificates and endorsements satisfy the requirements of the Franchise Agreement.

7. Notice. In accordance with Section 33.01, notices under the Franchise Agreement shall be provided to Republic Services at the following address:

   Republic Services, Inc.
   Rick Downey, Division Manager
   500 Meacham Road
   Petaluma, CA 94952
   Phone: (707) 795-1693
   Email: RDowney@republicservices.com

8. Release and Waiver of Town by Industrial Carting. In exchange for the consideration reflected in this Agreement, including but not limited to release from its obligations under the Franchise Agreement, Industrial Carting, on their own behalf as well as on behalf of their respective corporations, subsidiaries, predecessors, agents, officers, directors, employees, attorneys, representatives and agents, affiliates, policyholders and dbas and any persons acting on their behalf (collectively, "Releasing Parties"), hereby release and discharge the Town, the Town Council, and the Town's agents, officers, employees, attorneys, and representatives (collectively, "Released Parties") from any and all claims, actions, causes of action, rights or obligations, whether known or unknown, suspected or unsuspected, disclosed or undisclosed, whether contingent or liquidated, of every kind, nature and description that Releasing Parties now have or may have against the Released Parties arising from, related to or having any connection with the Franchise Agreement or the performance of services thereunder (all of the foregoing collectively, "Claims"), except claims to enforce the terms of this Agreement.

   In furtherance of this intention, Releasing Parties expressly waive any and all rights that might be claimed by reason of fraudulent inducement and any and all rights under Section 1542 of the California Civil Code with respect to the Released Matters, which provides as follows:

   > A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

   Industrial Carting acknowledges and agrees that this waiver is an essential and material term of this Agreement and without such waiver the Agreement would not have been entered into by Town or Republic Services.

9. Indemnification by Republic Services. Subject to and effective as of the Closing, Republic Services agrees to indemnify, protect, hold harmless and defend (by counsel reasonably

satisfactory to the Town) the Released Parties, from all Claims made by the Releasing Parties in connection with Republic Services' breach of the Franchise Agreement, except to the extent caused by the Town's willful misconduct or gross negligence. The provisions of this section shall survive the expiration or termination of the Franchise Agreement and shall remain in full force and effect. As a material inducement to the foregoing agreement by Republic Services, each of Town and the Releasing Parties represents and warrants to Republic Services that, as of the date it executes this Agreement, it is not aware of any Claims.

10. Town Consent. Town hereby consents to the foregoing assignment and assumption of the Franchise Agreement on the terms and conditions set forth herein.

11. Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

IN WITNESS WHEREOF, this Assignment and Assumption Agreement is entered into as of the date first written above.

TOWN OF WINDSOR

John Jansons
Town Manager

INDUSTRIAL WASTE & DEBRIS BOX RENTALS, INC., DBA INDUSTRIAL CARTING

Curtis Michelini, Sr.
President, Industrial Waste &
Debris Box Rentals, Inc.,
dba Industrial Carting

N LEASING COMPANY, LLC DBA; REPUBLIC SERVICES

Rick Downey
Division Manager
Republic Services, Inc.

Non-Exclusive Temporary Construction and Demolition Debris Collection Service Agreement

Between the
Town of Windsor
And
INDUSTRIAL WASTE & DEBRIS BOX RENTALS, INC.
DBA: INDUSTRIAL CARTING

This 20th day of DEC. 2017

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TOWN OF WINDSOR

This "AGREEMENT" is made and entered into this 20th day of DEC, 2017 ("Effective Date"), by and between the Town of Windsor, a California municipal corporation, (hereinafter referred to as "TOWN") and _____, a California [corporation], (hereinafter referred to as "FRANCHISEE"). INDUSTRIAL WASTE & DEBRIS BOX RENTAL INC DBA: INDUSTRIAL CARTING

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("Act") and subsequent additions and amendments (codified at California Public Resources Code Section 40000 *et seq.*), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste Collection within their jurisdiction; and,

WHEREAS, the State of California (the "State") has found and declared that the amount of Solid Waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the Act, directed the responsible State agency, and all local agencies, to promote disposal site Diversion and to maximize the use of feasible Solid Waste reduction, re-use, recycling, and Composting options in order to reduce the amount of Solid Waste that must be disposed of in disposal sites; and,

WHEREAS, the Town Council of the TOWN (the "Town Council") has determined through a competitive procurement process for Non-Exclusive Temporary Construction and Demolition Debris Collection Service that FRANCHISEE, by demonstrated experience, reputation and capacity, is qualified to provide for the Non-Exclusive Temporary Construction and Demolition Debris Collection Service within the corporate limits of the TOWN; the transportation of such material to appropriate places for processing, recycling, Composting and/or disposal; and the processing of materials; and Town Council desires that FRANCHISEE be engaged to perform such services on the basis set forth in this AGREEMENT; and

WHEREAS, the FRANCHISEE, through its proposal to the TOWN, has proposed and represented that it has the ability and capacity to provide for the Non-Exclusive Temporary Construction and Demolition Debris Collection Service within the corporate limits of the TOWN, the transportation of such material to appropriate places for processing, recycling, Composting and/or disposal; and the processing of materials; and

WHEREAS, this AGREEMENT has been developed by and is satisfactory to the TOWN and the FRANCHISEE.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and consideration contained herein, the TOWN and FRANCHISEE hereby agree as hereinafter set forth:

ARTICLE 1. Definitions

For the purpose of this Collection Service Agreement, hereinafter referred to as "AGREEMENT," the definitions contained in this Article shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Article, the definition of such word or phrase as contained the Town of Windsor Code shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender.

1.01 AB 939. The California Integrated Waste Management Act (California Public Resources Code Sections 40000 et al.) redefined solid waste management in an effort to reduce the volume and toxicity of solid waste that is landfilled and incinerated by requiring local governments to prepare and implement plans to improve the management of waste resources.

1.02 Agreement. This written document and all amendments thereto, between the TOWN and the FRANCHISEE, governing the provision of Non-Exclusive Temporary Construction and Demolition Debris Collection Service as provided herein.

1.03 Agreement Year. Each twelve (12) month period from January 1st to December 31st, beginning January 1, 2018.

1.04 Applicable Law. For purposes of this AGREEMENT, Applicable Laws includes without limitation, AB 341, AB 939, AB 1594, AB 1826, SB 1016 and all amendments and related subsequent legislation.

1.05 Bin. A metal container, with a capacity of one (1) to eight (8) cubic yards of Construction and Demolition Debris, designed or intended to be mechanically dumped into a loader packer type truck that is approved for such purpose by the TOWN.

1.06 Biohazardous or Biomedical Waste. Any waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; including waste resulting from the operation of medical clinics, hospitals, and other facilities processing wastes which may consist of, but not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves.

1.07 CalRecycle. California's Department of Resources Recycling and Recovery (CalRecycle) administers and provides oversight for all of California's state-managed waste handling and recycling programs.

1.08 Change in Law. Any change in (or any new) laws, ordinances, rules, regulations, orders, judgments, decrees, interpretations, decisions or permit requirements, of or by any federal, state or local governmental entity (collectively "Applicable Laws"), applicable on or after the Effective Date.

1.09 Collection Service. See Non-Exclusive Temporary Construction and Demolition Debris Collection Service.

1.10 Commercial Service Unit. Any combination of retail, professional, wholesale and industrial facilities, place of business and other commercial enterprises in the Service Area utilizing a common cart or Bin for the accumulation and set-out of Solid Waste.

1.11 Composting. The controlled biological decomposition of Organic Waste into a specific mixture of decayed organic matter meeting the definition of "compost" in Public Resources Code Section 40116.

1.12 Construction and Demolition Debris. Commonly used or discarded materials removed from construction, remodeling, repair, demolition, or renovation operations on any pavement, house, commercial building, or other structure, or from landscaping. Such materials include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastic pipe, roofing material, carpeting, concrete, wood, masonry, rocks, trees, remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, packaging and rubble resulting from Construction, remodeling, renovation, repair and demolition operations on pavements, houses, commercial buildings and other structures. With the exception of soil, dirt, concrete, and asphalt, Construction and Demolition Debris does not include Garbage and Exempt Waste.

1.13 Container. A Bin or Roll-off Container provided by FRANCHISEE to Service Recipients for the collection of Construction and Demolition Debris.

1.14 County. Sonoma County, California

1.15 Disposal Facility. The Sonoma County Landfill/Transfer System owned by Sonoma County for the disposal of Garbage, Processing Residue, and other materials as appropriate.

1.16 Diversion. Activities that reduce or eliminate the amount of solid waste, garbage, green waste, and construction and demolition debris that is disposed of in a solid waste or other permitted landfill.

1.17 Dwelling Unit. Any individual living unit in a single-family dwelling (SFD) or multi-family dwelling (MFD) structure or building intended for, or capable of being utilized for, residential living other than a hotel or motel.

1.18 Effective Date. The date this AGREEMENT is executed.

1.19 Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, any matter or materials which are not acceptable for disposal at a Solid Waste landfill as defined in the Act and those wastes under the control of the Nuclear Regulatory Commission.

1.20 Food Waste. Food scraps and trimmings and other putrescible waste that result from food production, preparation, cooking, storage, consumption or handling. Food Waste includes but is not limited to: meat, fish and dairy waste, fruit and vegetable waste and grain waste. Food Waste does not include Exempt Waste.

1.21 Franchise Fee. The payment made by FRANCHISEE to TOWN for the privilege of providing Collection Services.

1.22 FRANCHISEE. The other party to this AGREEMENT.

1.23 Garbage. All putrescible and non-putrescible solid, semi-solid and associated liquid waste, as defined in California Public Resources Code Section 40191. Garbage does not include those items defined herein as Construction and Demolition Debris, Green Waste or Exempt Waste.

1.24 Gift. That which is defined, and not exempted, in California Government Code Section 82028 and the gift regulations of the Fair Political Practices Commission at 2 C.C. R Sec 18940 *et seq.,* as may be amended from time to time.

1.25 Green Waste. Any vegetative matter resulting from normal yard and landscaping maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in diameter and fits in the Green Waste Cart utilized by the Service Recipient. Green Waste includes plant debris, such as palm, yucca and cactus, grass clippings, leaves, pruning, weeds, branches, brush, holiday trees, and other forms of vegetative waste and must be generated by and at the Service Unit wherein the Green Waste is collected. Green Waste does not include items herein defined as Garbage or Exempt Waste.

1.26 Gross Revenue. All revenue amounts collected by FRANCHISEE for the provision of Collection Services pursuant to this AGREEMENT, calculated in accordance with Generally Accepted Accounting Procedures (GAAP). The Gross Revenue, for purposes of this AGREEMENT, does not include any revenue generated from the sale of Recyclable Material or Organic Waste, or other receipts from state and local government accounts (e.g. grants, cash rewards and rebates) resulting from the performance of this AGREEMENT.

1.27 Hazardous Waste. Any material which is defined, regulated or listed as a "hazardous", "toxic", a "pollutant", or words of similar import waste under California or United States law or any regulations promulgated pursuant to such law, as such state or federal law or regulations may be amended from time to time; and "designated waste" as defined in California Water Code Section 13173.

1.28 Large Green Waste. Oversized Green Waste such as tree trunks and branches with a diameter of not less than six (6) inches and not more than two (2) feet and a length of not more than five (5) feet in its longest dimension, which are attributed to the normal activities of a SFD, MFD, or Town Service Unit. Large Green Waste must be generated by and at the Service Unit wherein the Large Green Waste is collected.

1.29 Master Operating Agreement ("MOA"). The Agreement for Operation of The Central Landfill and County Transfer Stations Between County of Sonoma and Republic Services of Sonoma County, Inc., including Exhibit I thereto, the Agreement for Operations of Sonoma County Transfer Stations and Material Recovery Facility Between The Ratto Group of Companies, Inc. and Republic Services of Sonoma County, Inc.

1.30 MFD Service Unit. Any combination of Dwelling Units in the Service Area utilizing a common Bin or cart for the accumulation and set-out of Solid Waste.

1.31 Non-Collection Notice. A form developed and used by the FRANCHISEE, as approved by the TOWN, to notify Service Recipients of the reason for non-collection of materials set out by the Service Recipient for collection by FRANCHISEE pursuant to this AGREEMENT.

1.32 Non-Exclusive Temporary Construction and Demolition Debris Collection Service (Collection Service(s)). Temporary collection and processing of non-putrescible Solid Waste by utilizing a Container for the temporary collection of Construction and Debris Materials by a person or company that holds a valid Non-Exclusive Temporary Construction and Demolition Debris Collection Service Agreement from the TOWN and the delivery of that material to permitted and licensed Processing Facility.

1.33 Organic Waste. Those materials which are capable of being composted and which would otherwise be process as Recyclable Material or disposed of as Garbage. Organic Waste includes any vegetative matter resulting from normal yard and landscaping maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in diameter. Organic Waste includes plant debris, such as palm, yucca and cactus, grass clippings, leaves, pruning, weeds, branches, brush, holiday trees, and other forms of vegetative waste. Organic Waste also includes

Food Waste, Stable Matter, and food packaging items such as pizza boxes, paper towels, waxed cardboard and food contaminated paper products. Organic Waste does not include items herein defined as Exempt Waste.

1.34 Processing Facility. The licensed and permitted facility designated by the FRANCHISEE and approved by the TOWN, for the processing of Construction and Demolition Debris, and other materials as appropriate.

1.35 Recyclable Materials. Those materials which are capable of being recycled and which would otherwise be processed as Organic Waste or disposed of as Garbage. Recyclable Materials include newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; scrap and cast aluminum (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); steel including "tin" cans, aerosol cans (empty, non-toxic products) and small scrap (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; plastic bottles (#1-7); aluminum foil and pans; concrete; used motor oil and filters; dry cell household batteries when contained in a sealed heavy-duty plastic bag; and those materials added by the FRANCHISEE from time to time.

1.36 Residuals. Those materials that are a result of Recyclable Material or Organic Waste processing, such as from the operations at a Processing Facility, that cannot be diverted from landfill disposal.,

1.37 Roll-off Container. A metal container with a capacity to hold up to forty (40) cubic yards of Construction and Demolition Debris that is normally loaded onto a motor vehicle and transported to an appropriate facility.

1.38 Service Area. That area within the corporate limits of the Town of Windsor, California.

1.39 Service Recipient. An individual or company receiving Non-Exclusive Temporary Construction and Demolition Debris Collection Service.

1.40 Service Recipient Rate. The dollar amount charged by FRANCHISEE to Service Recipients to receive Collection Service.

1.41 Service Unit. SFD Service Units, MFD Service Units, and Commercial Service Units.

1.42 SFD Service Unit. Any Dwelling Unit in the Service Area utilizing a cart, or any combination of Dwelling Units sharing carts, for the accumulation and set out of Solid Waste.

1.43 Sludge. The accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects.

1.44 Solid Waste. Garbage, Recyclable Materials and Organic Waste resulting from the normal activities of a Service Unit. Solid Waste must be generated by and at the Service Unit wherein the Solid Waste is collected and does not include items defined herein as Exempt Waste.

1.45 SCWMA. The Sonoma County Waste Management Agency.

1.46 Stable Matter. Manure and other waste matter normally accumulated in stables or in livestock or poultry enclosures.

1.47 TOWN. The Town of Windsor, California.

1.48 Town Representative. That person, or their designee, designated by the TOWN to administer and monitor the provisions of this AGREEMENT.

1.49 Waste Delivery Agreement ("WDA"). That certain agreement between the TOWN and Republic Services of Sonoma County dated October 23, 2014.

1.50 Work Day. Any day, Monday through Saturday.

ARTICLE 2. Term of AGREEMENT

2.01 Term. The term of this AGREEMENT is a seven (7)-year period beginning January 1, 2018 and terminating on December 31, 2024.

2.02 Extensions. The FRANCHISEE or TOWN may request one (1) three (3)-year term extension to this original AGREEMENT and, at TOWN's sole option, TOWN may grant FRANCHISEE's request to so extend the term. Under no circumstances shall TOWN be obligated to extend the term, and under no circumstances shall TOWN be obligated to grant the full three (3) years of extension (i.e., an extension for a shorter time period may instead be granted by the TOWN if it chooses). FRANCHISEE or TOWN must request the three (3) year extension by July 1, 2023. In addition, a term extension shall only be granted in the event that at least two (2) Franchisees are eligible for an extension. However, this requirement will not be the sole determinant of whether or not the TOWN grants the extension.

2.02.1 Notification of Eligibility. Beginning on or about July 1, 2021, provided the Town Manager determines that the FRANCHISEE has met all the requirements of the AGREEMENT, including but not limited to the Diversion Requirements set forth in Article 5, the Record Keeping and Reporting Requirements set forth in Article 8, and the Contract Compliance Review per Article 12, the TOWN may offer the FRANCHISEE in writing one (1) or more extensions to the term of this AGREEMENT for an amount of time to be determined by the TOWN, but for no more than an additional three (3) years total. FRANCHISEE shall provide written notice to the TOWN as to whether FRANCHISEE accepts or rejects the TOWN'S offer within twenty (20) Work Days of the date of the offer. If the FRANCHISEE accepts the offer, the FRANCHISEE shall also submit the Extension Administration Fee payment described in Section 2.02.2 below within twenty (20) Work Days of the offer. If FRANCHISEE fails to provide either the written notice or the payment to the TOWN within twenty (20) Work Days, the TOWN's offer of an extension shall be deemed withdrawn.

2.02.2 Extension Administration Fee. If FRANCHISEE accepts the TOWN's offer of extension, the FRANCHISEE shall make a payment to the TOWN to cover the TOWN's actual administrative costs incurred in extending the AGREEMENT. This payment shall be due to the TOWN with the FRANCHISEE's written notice of acceptance described in Section 2.02.1. The total payment amount to the TOWN shall not exceed a total of $5,000 per extension period per FRANCHISEE.

2.03 Maximum Term. The maximum term of the AGREEMENT, including all extensions, shall not extend beyond December 31, 2027.

ARTICLE 3. Services Provided by the FRANCHISEE

3.01 Award of AGREEMENT. Except as otherwise provided in this AGREEMENT, the FRANCHISEE is herein granted a non-exclusive franchise to provide Temporary Construction and Demolition Debris Collection Service within the Service Area. No other Solid Waste or recycling service shall be provided by the FRANCHISEE.

3.02 Limitations to Scope of Non-Exclusive Franchise.

3.02.1 No Collection of Garbage, Recyclable Materials or Organic Waste Carts or Bins from any Service Unit covered under the Collection Service Agreement between the Town of Windsor and Sonoma County Resource Recovery, LLC.

3.02.2 No large items removed from a premise by a property cleanup or maintenance company as an incidental part of the total cleanup or maintenance service offered by the company rather than as a hauling service;

3.02.3 No agricultural waste, stable matter, manure and any other animal by product for use as tallow

3.02.4 No by-products of sewage treatment, including Sludge, ash, grit and screenings;

3.02.5 No Hazardous Waste, regardless of its source;

3.02.6 No Garbage, Recyclable Materials, or Organic Waste removed from premises by a company through the performance of a service that the FRANCHISEE has elected not to provide.

3.02.7 No Garbage, Recyclable Materials, or Organic Waste removed from premises by a company through the performance of a service that all active FRANCHISEES have elected not to provide.

3.03 FRANCHISEE acknowledges and agrees that the TOWN may permit other persons besides the FRANCHISEE to collect any and all types of materials excluded from the scope of this AGREEMENT, as set forth above, without seeking or obtaining approval of FRANCHISEE. If FRANCHISEE can produce evidence that other persons are servicing Garbage, Recyclable Materials, or Organic Waste carts or Bins, or large items in a manner that is not consistent with the TOWN'S Municipal Code or this AGREEMENT, it shall report the location, the name and phone number of the person or company to the TOWN along with FRANCHISEE'S evidence of the violation of the exclusiveness of this AGREEMENT and TOWN shall determine and take appropriate action to enforce the Code and this AGREEMENT.

3.03.1 The scope of this AGREEMENT shall be interpreted to be consistent with Applicable Law, now and during the term of the AGREEMENT. If future judicial interpretations of current law, or new laws, regulations, or judicial interpretations, limit the ability of the TOWN to lawfully provide for the scope of services as specifically set forth herein, FRANCHISEE agrees that the scope of the AGREEMENT will be limited to Temporary Construction and Demolition Debris collection services and materials which may be lawfully provided and that the TOWN shall not be responsible for any lost profits or losses claimed by FRANCHISEE to arise out of limitations of the scope of the AGREEMENT set forth herein. In such an event, it shall be the responsibility of FRANCHISEE to minimize the financial impact of such future judicial interpretations or new or amended laws.

3.04 Service Standards. FRANCHISEE shall perform Collection Services under this AGREEMENT in a thorough and professional manner. Collection Services described in this AGREEMENT shall be performed regardless of weather conditions or difficulty of Collection.

3.05 Hours and Days of Collection.

3.05.1 Collection Services shall be provided, commencing no earlier than 7:00 a.m. and terminating no later than 6:00 p.m., Monday through Friday, and commencing no earlier than 8:00 a.m. and terminating no later than 5:00 p.m. on Saturday, with no service on Sundays. The hours, days, or both of Collection Service may be extended due to extraordinary circumstances or conditions with the prior written consent of the Town Representative.

3.05.2 The TOWN may direct FRANCHISEE to reduce the Collection Service hours in areas around schools to 3:00 p.m., and in high traffic areas during peak commute hours. When the TOWN is conducting road overlay or slurry projects, the TOWN reserves the right to temporarily redirect or restrict FRANCHISEE from collection in the affected areas or temporarily change the Collection Service hours if needed. The hours of Collection Service may be extended due to extraordinary circumstances or conditions with the prior written consent of the Town Representative. If Commercial Service Units are within one hundred (100) feet of SFD or if the TOWN or FRANCHISEE receives repeated noise complaints from residents, the hours of Collection Service for Commercial Service Units may be revisited between the parties in good faith.

3.06 Manner of Collection Service. The FRANCHISEE shall provide Collection Services with as little disturbance as possible and shall leave any Container in an upright position at the same point it was collected without obstructing alleys, roadways, driveways, sidewalks, or mail boxes unless the FRANCHISEE or Service Recipient applies for and the TOWN issues an encroachment permit.

3.07 Temporary Construction and Demolition Debris Containers.

3.07.1 Ownership. Ownership of Containers distributed by the FRANCHISEE shall rest with the FRANCHISEE except in the case of the termination of the AGREEMENT prior to the expiration of the initial term or optional extension term due to the default of the FRANCHISEE. Under such circumstances, the TOWN shall have the right to take possession of the Containers and shall retain such possession until satisfactory arrangements can be made to provide Collection Service using other equipment. Such time of possession, the Town shall not be limited, and regardless of the time of possession, there shall be no monies owing to the FRANCHISEE from the TOWN for the use of the equipment. Upon the receipt of written notice from the TOWN, FRANCHISEE shall submit to the Town Representative an inventory of Containers, including their locations.

3.07.2 Inspection and Cleaning. FRANCHISEE shall inspect all Containers prior to delivery. Containers shall be in safe, clean and sanitary, and in operable condition with working doors, hinges, locking devices, safety devices, floors and side walls without holes, free of material or material build up, and without broken wheels, welds, or ladders that could cause street damage or harm to users.

3.07.3 Graffiti Removal. FRANCHISEE shall remove any and all graffiti within two (2) Work Days of FRANCHISEE being notified by the Town Representative or public. FRANCHISEE shall not deliver a Container without FRANCHISEE information visible or with any graffiti appearing on the Container.

3.08 Labor and Equipment. FRANCHISEE shall provide and maintain all labor, equipment, tools, facility(ies), and personnel supervision required for the performance of FRANCHISEE'S obligations under this AGREEMENT. FRANCHISEE shall at all times have sufficient backup equipment and labor to fulfill FRANCHISEE'S obligations under this AGREEMENT. No compensation for FRANCHISEE'S services or for FRANCHISEE'S supply of labor, equipment, tools, facilities or supervision shall be provided or paid to FRANCHISEE by the TOWN or by any Service Recipient except as expressly provided by this AGREEMENT.

3.09 Transfer, Recycling, and Processing Facilities.

3.09.1 Transfer, Recycling, and Processing Facilities. FRANCHISEE shall select the transfer, recycling, and Processing Facilities. Material collected under this AGREEMENT shall be delivered to permitted and licensed facilities that comply with the CalRecycle regulations under Title 14, Chapter 3, Minimum Standards for Solid Waste Handling and Disposal (Article 5.9 – Sections 17380-17386). Except as set forth below, all material collected as a result of performing Collection Services shall be transported to, and delivered on the same day as collection, to a properly permitted and licensed Disposal, transfer, recycling, or Processing Facility. All material collected will be weighed and documented through a weight ticket using certified scales located at the receiving facility. In the event the recycling, or Processing Facility is closed on a Work Day, the FRANCHISEE shall transport the material at such other legally permitted and licensed facility. FRANCHISEE must assure that all transfer, recycling, and Processing Facilities are properly permitted and licensed to receive material collected under this AGREEMENT. Failure to comply with this provision shall result in the levy of Liquidated Damages as specified in Article 11 of this AGREEMENT and may result in the FRANCHISEE being in default under this AGREEMENT.

3.09.2 FRANCHISEE shall deliver all Residuals from processed Construction and Demolition Debris Collected by FRANCHISEE to the Central Landfill for the term of the Agreement.

3.09.3 Permitted and Licensed Facilities. FRANCHISEE must assure that all disposal, transfer, recycling, or processing facilities selected by FRANCHISEE shall possess all existing permits and approvals by local enforcement agencies for the disposal, transfer, recycling, or processing site to be in full compliance with all regulatory agencies to conduct all operations at the approved location. FRANCHISEE, upon written request from the TOWN, shall arrange for the facilities selected by the FRANCHISEE to provide copies of facility permits, notices of violations, inspection areas or concerns, or administrative action to correct deficiencies related to the operation. Failure to provide facility information shall result in the levy of Liquidated Damages as specified in Article 11 of this AGREEMENT and may result in the FRANCHISEE being in default under this AGREEMENT.

3.09.4 Processing and Disposal. FRANCHISEE shall process and dispose of all material collected from Service Units pursuant to this AGREEMENT in accordance with the following hierarchy:

- Reuse
- Disassemble for reuse or recycling
- Recycle
- Disposal

3.09.5 FRANCHISEE shall not landfill such collected material unless the material cannot be reused or recycled.

3.09.6 TOWN direction of collected material. TOWN reserves the right to direct FRANCHISEE to take collected material pursuant to this AGREEMENT to a designated site or sites for the purpose of permitting persons who will reuse or recycle such material obtain the collected material at no cost.

3.10 Inspections. The TOWN shall have the right to inspect the FRANCHISEE'S facilities or collection vehicles and their contents at any time while operating inside or outside the TOWN.

3.11 Spillage and Litter. The FRANCHISEE shall not litter premises in the process of providing Collection Service or while its vehicles are on the road. The FRANCHISEE shall transport all materials collected under the terms of this AGREEMENT in such a manner as to prevent the spilling or blowing of such materials from the FRANCHISEE'S collection vehicle. The FRANCHISEE shall exercise all reasonable care and diligence in providing Collection Service so as to prevent spilling or dropping of material and shall immediately, at the time of occurrence, clean up such spilled or dropped materials. All Containers will be tarped or covered transporting on TOWN streets.

3.11.1 The FRANCHISEE shall not be responsible for cleaning up sanitary conditions caused by the carelessness of the Service Recipient; however, the FRANCHISEE shall clean up any material or residue that is spilled or scattered by the FRANCHISEE or its employees.

3.11.2 Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the FRANCHISEE'S operations or equipment repair shall be covered immediately with an absorptive material and removed from the street surface to comply with all local, state, and federal agency rules and regulations. The TOWN must be notified of any spill greater than an eighth (1/8) of a cup within two (2) hours upon incident. When necessary, FRANCHISEE shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. To facilitate such cleanup, FRANCHISEE'S vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

3.11.3 The above paragraphs notwithstanding, FRANCHISEE shall clean up any spillage or litter caused by FRANCHISEE within two (2) hours upon notice from the TOWN or public.

3.11.4 In the event damage to TOWN streets is caused by a hydraulic oil spill, FRANCHISEE shall be responsible for all repairs to return the street to the same condition prior to the spill. FRANCHISEE shall also be responsible for all clean-up activities related to the spill. Repairs and clean-up shall be performed in a manner satisfactory to the Town Representative and at no cost to the TOWN.

3.12 Ownership of Materials.

3.12.1 Title to Construction and Demolition Debris material shall pass to FRANCHISEE at such time as said materials are placed in the FRANCHISEE'S collection vehicle.

3.12.2 Title to material collected as part of the TOWN Requested- Clean-up Service or Special Collection Service shall pass to FRANCHISEE at the time the material is placed in the Container or other collection vehicle or container approved for use at the event.

3.13 Hazardous Waste.

3.13.1 Under no circumstances shall FRANCHISEE'S employees knowingly collect Hazardous Waste, or remove unsafe or poorly containerized Hazardous Waste, from a collection Container. If FRANCHISEE determines that material placed in any Container for

collection is Hazardous Waste, or other material that may not legally be accepted at the Disposal Facility or one of the Processing Facilities, or presents a hazard to FRANCHISEE'S employees, the FRANCHISEE shall have the right to refuse to accept such material. The generator shall be contacted by the FRANCHISEE and requested to arrange for proper disposal service. If the generator cannot be reached immediately, the FRANCHISEE shall, before leaving the premises, leave a Non-Collection Notice, which indicates the reason for refusing to collect the material.

3.13.2 If Hazardous Waste is found in a collection Container that poses an imminent danger to people or property, the FRANCHISEE shall immediately notify the Windsor Police Department. The FRANCHISEE shall immediately notify the TOWN of any Hazardous Waste that has been identified.

3.13.3 If Hazardous Waste is identified at the time of delivery to the Disposal Facility, or one of the processing facilities and the generator cannot be identified, FRANCHISEE shall be solely responsible for handling and arranging transport and disposition of the Hazardous Waste.

3.14 Regulations and Record Keeping. FRANCHISEE shall comply with emergency notification procedures required by Applicable Laws and regulatory requirements. All records required by regulations shall be maintained at the FRANCHISEE'S facility. These records shall include waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

ARTICLE 4. Rates, Billing and Payments

4.01 Billing and Collection of Payment. The FRANCHISEE shall be responsible for the billing and collection of payments for all Non-Exclusive Temporary Construction and Demolition Debris Collection Service.

4.02 Production of Invoices. The FRANCHISEE shall produce an invoice, in a form and format that is approved by the Town Representative, for services received under this AGREEMENT. The FRANCHISEE'S invoice shall be remitted to the Service Recipient and will include at a minimum; date of service, material collected, weight collected, and total amount charged.

4.03 Methods of Payment. FRANCHISEE shall provide the means for customers to pay bills through three or more of the following methods: cash, checks, credit cards, internet payment service or automatic withdrawal from bank account.

4.04 FRANCHISEE'S Payments to TOWN. FRANCHISEE shall make payment to the TOWN of such fees as may be specified in this Section.

4.04.1 Franchise Fee. To reimburse TOWN for costs associated with administration of the AGREEMENT and the impacts of the operations on TOWN facilities and resources, and in consideration of the franchise granted to FRANCHISEE by the AGREEMENT, FRANCHISEE shall make the following Franchise Fee payments to the City:

4.04.1.1 Monthly Franchise Fee Payments. FRANCHISEE shall pay TOWN a monthly Franchise Fee payment ("Monthly Franchise Fee Payment") equal to ten percent (10%) of all gross receipts paid by customers and collected under the terms of the AGREEMENT. Payment to TOWN shall be due by 5:00 p.m. PT on the fifteenth (15th) day of the month following the month the revenues are collected. If the 15th day of the month falls on a day that TOWN is closed or a holiday, then the Franchise Fee Payment shall be due on the next business day. Each such payment shall be accompanied by an accounting, which sets forth

FRANCHISEE'S gross receipts collected during the preceding month. Gross receipts shall specifically exclude any revenue from the sale from Recyclable Materials and from grant funding. Failure to pay the correct amount or fees within the required timeline will result in liquidated damages per Article 11.

4.04.2 Reimbursement for the Cost of Procurement. The TOWN requires the Franchisee(s) to reimburse the TOWN up to **Forty-Five Thousand ($45,000)** for the cost of this procurement, divided evenly amongst all Franchisee(s) as determined prior to AGREEMENT execution. The reimbursement is a one-time payment due within thirty (30) days of the Effective Date of this AGREEMENT.

4.04.3 The reimbursement is a one-time payment due within thirty (30) days of the Effective Date of this AGREEMENT. This amount will be shared equally between all Franchisees that are awarded Agreements.

No. of Agreements Awarded	Amount to be paid by each Franchisee
1	$45,000
2	$22,500
3	$15,000
4	$11,250
5	$9,000
6	$7,500
7	$6,429

4.04.4 Penalty for Late Payments. Any payments described in this Section 4.04 or elsewhere in the AGREEMENT that are received by the TOWN after the due date will be assessed a late penalty equal to twenty-five percent (25%) of the original amount due. Failure by FRANCHISEE to pay both the original payment amount and the late penalty within thirty (30) days of written notice of the delinquency by the TOWN will be considered an event of default, and the TOWN may terminate the AGREEMENT immediately.

4.05 No acceptance by TOWN of any payment shall be construed as an accord that the amount is in-fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim TOWN may have against FRANCHISEE for any additional sums payable under the provisions of this AGREEMENT. All amounts paid shall be subject to independent audit and recompilation by TOWN. If, after the audit, such recompilation indicates an underpayment FRANCHISEE shall pay to TOWN the amount of the underpayment and shall reimburse TOWN for all reasonable costs and expenses incurred in connection with the audit and recompilation within ten (10) Work Days of receipt of written notice from TOWN that such is the case. If, after audit, such recompilation indicates an overpayment, TOWN shall notify the FRANCHISEE in writing of the amount of the overpayment, less costs and expenses incurred in connection with the audit and recompilation. FRANCHISEE may offset the amounts next due following receipt of such written notice by the amount specified therein.

ARTICLE 5. Minimum Diversion Requirements

5.01 Tonnage Data. On or before April 15, 2018 and quarterly thereafter during the term of this AGREEMENT, FRANCHISEE shall deliver to TOWN a quarterly report as specified in Section 8.02.1 listing the actual tonnage delivered by the FRANCHISEE to the Disposal or Processing Facility, the tonnage of material discarded or landfilled including residue, the tonnage of material recycled or composted by material type (metal, wood, concrete, Green Waste, etc.) for the preceding quarter, and the number of Service Recipients collected.

5.02 Minimum Diversion Requirements. The FRANCHISEE guarantees delivery of all materials collected during the term of this AGREEMENT to a permitted and licensed Processing Facility, recycler or re-user, for processing. The Processing Facility used or operated by the FRANCHISEE shall operate in accordance with CalRecycle regulations, and divert a minimum of fifty percent (50%) of all Construction and Demolition Debris collected by FRANCHISEE as part of this AGREEMENT prior to disposal.

5.02.1 In the event that the Sonoma County Waste Management Agency ("SCWMA") or authorized jurisdiction within Sonoma County, certifies a Processing Facility(ies) during the term of the AGREEMENT, if directed by the TOWN, the FRANCHISEE guarantees delivery of all materials collected for the remainder of the term of this AGREEMENT to be delivered to a certified Processing Facility.

ARTICLE 6. Collection Equipment

6.01 Equipment Specifications.

6.01.1 General Provisions. All equipment used by FRANCHISEE in the performance of services under this AGREEMENT shall be of a high quality. The collection vehicles shall be designed and operated so as to prevent collected materials from escaping from the vehicles. All collection Containers while driving on TOWN streets shall be tarped, covered, or enclosed with screening material to prevent collected materials from leaking, blowing, or falling from the vehicles. All collection vehicles and Containers shall be watertight and shall be operated so that liquids do not spill during collection or in transit.

6.01.2 Clean Air Vehicles. During the term of this AGREEMENT, to the extent required by law, FRANCHISEE shall provide its collection vehicles in full compliance with local, State and federal clean air requirements as adopted, but not limited to, any other applicable air pollution control laws.

6.01.3 Safety Markings. All Collection equipment used by FRANCHISEE shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and warning flags. All such safety markings shall be subject to the approval of the TOWN and shall be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time.

6.01.4 Collection Vehicle Signage and Painting. Collection vehicles, except reserve equipment used on a temporary basis, shall be painted and numbered consecutively without repetition and shall have the FRANCHISEE'S name, FRANCHISEE'S customer service telephone number, and the number of the vehicle painted in letters of contrasting color, at least three (3) inches high, on each side of each vehicle. No advertising shall be permitted other than the name of the FRANCHISEE. FRANCHISEE shall repaint or discontinue the use of a collection vehicle at the request of the Town Representative to maintain a positive public image as reasonably determined by the Town Representative. Collection vehicle signage may be applied

using stickers instead of paint, but only so long as the stickers are designed for permanent use and are appropriately maintained to ensure a clean appearance.

6.01.5 Signage, Painting, and Cleaning. Containers shall be painted and numbered consecutively without repetition and shall have the FRANCHISEE'S name, FRANCHISEE'S customer service telephone number, and the number of the Container painted in letters of contrasting color, at least three (3) inches high, on at least two (2) sides of each Container. No advertising shall be permitted other than the name of the FRANCHISEE. Such Containers as are provided by the FRANCHISEE shall be steam cleaned by the FRANCHISEE as frequently as necessary so as to maintain sanitary conditions. FRANCHISEE shall repaint or discontinue the use of a Container at the request of the Town Representative to maintain a positive public image as reasonably determined by the Town Representative. Container signage may be applied using stickers instead of paint, but only so long as the stickers are designed for permanent use and are appropriately maintained to ensure a clean appearance.

6.01.6 Collection Vehicle Noise Level. All collection vehicle operations shall be conducted as quietly as possible and must comply with U.S. EPA noise emission regulations currently codified at 40 CFR Part 205, and other applicable State County and TOWN noise control regulations.

6.01.7 Collection Vehicle Size Limitations. Collection vehicles must not exceed a maximum gross vehicle weight of 56,000 pounds (includes both the truck and load weight), no more than 3 axles, and a total load capacity of 40 yards.

6.02 Collection Vehicle Registration, Licensing and Inspection. On or before December 1, 2017, or as soon as practical, and annually thereafter on December 1, during the term of this AGREEMENT, FRANCHISEE shall submit documentation to the Town Representative to verify that each of the FRANCHISEE'S collection vehicles are in compliance with all registration, licensing and inspection requirements of the California Highway Patrol, the California Department of Motor Vehicles, local permitting agency, and any other Applicable Laws or regulations. FRANCHISEE shall not use any vehicle to perform collection services that is not in compliance with applicable registration, licensing, and inspection requirements.

6.03 Equipment and Collection Vehicle Maintenance. FRANCHISEE shall maintain Collection equipment and vehicles in a clean condition and in good repair at all times. All parts and systems of the collection equipment and collection vehicle shall operate properly and be maintained in a condition satisfactory to TOWN. FRANCHISEE shall wash all collection equipment and collection vehicles at least once a Month or more frequently as the TOWN may require. However, in times of drought conditions, upon FRANCHISEE or TOWN notification, washing of collection equipment and vehicles may be suspended.

6.04 Maintenance Log. FRANCHISEE shall maintain a maintenance log for all collection vehicles. The log shall at all times be accessible to TOWN by physical inspection upon request of Town Representative, and shall show, at a minimum, each collection vehicle's FRANCHISEE assigned identification number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance of any additional maintenance, a copy of the most recent BIT inspection report, and description of additional maintenance performed.

6.04.1 Equipment and Vehicle Inventory. As of the Effective Date, and annually thereafter as specified in Section 8.02.2, during the term of this AGREEMENT, FRANCHISEE shall provide to TOWN an inventory of collection vehicles and major collection equipment used by FRANCHISEE for Collection or transportation and performance of services under this AGREEMENT. The inventory shall indicate each collection vehicle by FRANCHISEE assigned

identification number, DMV license number, the most recent BIT inspection report, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of collection vehicles by type, the date of acquisition, the decibel rating and the maintenance status. FRANCHISEE shall submit to the Town Representative, either mail or e-mail, an updated inventory annually to the TOWN or more often at the request of the Town Representative.

6.04.2 Reserve Collection Equipment and Collection Vehicles. The FRANCHISEE shall have available to it, at all times, reserve collection equipment and collection vehicles which can be put into service and operation within one (1) hour of any breakdown. Such reserve collection equipment and collection vehicles shall correspond in size and capacity to the collection equipment used by the FRANCHISEE to perform the contractual duties.

ARTICLE 7. FRANCHISEE'S Office

7.01 FRANCHISEE'S Office. The FRANCHISEE shall maintain an office within Sonoma County that provides a toll-free telephone access to residents and businesses of the TOWN and is staffed by trained and experienced Customer Service Representatives ("CSR's"). Such office shall be equipped with sufficient telephones that all Collection Service related calls received during normal business hours are answered by an employee within five (5) rings, and shall have responsible persons in charge during Collection hours and shall be open during such normal business hours, 8:00 a.m. to 6:00 p.m. on all Work Days. The FRANCHISEE shall provide either a telephone answering service or mechanical device to receive Service Recipient inquiries during those times when the office is closed. Calls received after normal business hours shall be returned and addressed the next Work Day morning.

7.01.1 Emergency Contact. The FRANCHISEE shall provide the Town Representative with an emergency phone number where the FRANCHISEE can be reached outside of the required office hours.

7.01.2 Multilingual/TDD Service. FRANCHISEE shall at all times maintain the capability of responding to telephone calls in English and one (1) other language (Spanish) as the TOWN may direct. FRANCHISEE shall at all times maintain the capability or responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

7.01.3 Service Recipient Calls. During office hours, FRANCHISEE shall maintain a telephone answering system capable of accepting at least five (5) incoming calls at one (1) time. FRANCHISEE shall record all calls including any inquiries, service requests, and complaints into a customer service log.

7.01.4 Incoming Calls. All incoming calls will be answered within five (5) rings. Any call "on-hold" in excess of one and one-half (1.5) minutes shall have the option to remain "on-hold" or to be switched to a message center where Service Recipient can leave a message. FRANCHISEE'S CSR shall return Service Recipient calls.

ARTICLE 8. Record Keeping & Reporting Requirements

8.01 Record Keeping.

8.01.1 Accounting Records. FRANCHISEE shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection Services provided under this AGREEMENT, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit, copy, and inspection. FRANCHISEE shall report Gross Revenues received from provision of the

Collection Services. FRANCHISEE shall maintain and preserve all cash, billing and disposal records for a period of not less than five (5) years following the close of each of the FRANCHISEE'S fiscal years.

8.01.2 AGREEMENT Materials Records. FRANCHISEE shall maintain records of the quantities of Waste Collected from provisions of this AGREEMENT and disposed under the terms of this AGREEMENT, and (ii) Recyclable Materials, by type, collected, processed, sold, donated or given for no compensation, and residue disposed.

8.01.3 Other Records. FRANCHISEE shall maintain all other records reasonably related to provision of Collection Services, whether or not specified in this Article 8 or elsewhere in the AGREEMENT.

8.02 Reporting Requirements. Quarterly reports shall be submitted no later than 5:00 p.m. PT thirty (30) calendar days after the end of the reporting quarter and annual reports shall be submitted no later than 5:00 p.m. PT thirty (30) calendar days after the end of each Agreement Year. If the 15th day of the month falls on a day that TOWN is closed or a holiday, then the report shall be due the on the next business day. Quarterly and annual reports shall be submitted electronically via e-mail to the TOWN and its designated representative on a TOWN approved reporting form.

8.02.1 Quarterly Reports. Quarterly reports to the TOWN shall include:

8.02.1.1 Material Collected Data. A listing of the tonnage collected from all Collection Services, diverted and disposed by the FRANCHISEE at the Disposal and Recycling Facility for the preceding quarter, including the number of pulls.

8.02.1.2 Recycling Data. The number of gross tons collected, processed, and sold or delivered to a recycler (other than Processing Facility) by material type for the preceding quarter. Indicate, by material type (and grade where appropriate), quarterly total of Recyclable Materials processed and sold including facility name and location. Indicate any quantities, by material type, donated or otherwise disbursed without compensation. Indicate quarterly totals and location for Residue disposed.

8.02.1.3 Collection Services. Indicate the number of Service Recipients served within the given period of time

8.02.1.4 Diversion. The diversion figures shall be calculated as the tons of materials collected by FRANCHISEE from the provision of Collection Services in the TOWN that are delivered to the Processing Facility approved by TOWN, or that are otherwise handled in a manner that counts as diversion under applicable CalRecycle regulations (in each case, net of all residue from processing), divided by the total tons of materials collected in the Service Area by FRANCHISEE from the provision of Collection Services for the preceding quarter.

8.02.1.5 Franchise Fee Payments. Indicate the revenue collected and total franchise fees paid to TOWN monthly.

8.02.1.6 Operational Problems and Actions Taken. Indicate instances of property damage or injuries, overweight vehicles, and any loads rejected, reason for rejection and disposition of load after rejection.

8.02.2 Annual Reports. The annual report to the TOWN shall include all quarterly reports in Sections 8.2.1 through 8.2.1.3 summarized by quarter and totaled for the year. The FRANCHISEE shall include a historical comparison of the last Agreement Year and prior years

with a brief explanation on any increases or decreases in tonnage and Diversion figures of all Agreement Years. Annual reports to the TOWN shall also include:

8.02.2.1 A summary of all prior year's Gross Revenue received and Franchise Fees paid.

8.02.2.2 Updated complete inventory of collection vehicles, Containers and major collection/processing equipment, including stationary, rolling stock and Containers by type and size. See Section 6.04.1 for additional inventory reporting requirements.

8.02.2.3 A copy of existing permits and approvals by local enforcement agencies for the Disposal, transfer, recycling or Processing Facilities selected by FRANCHISEE.

8.03 Additional Reporting. The FRANCHISEE shall furnish the TOWN with any additional reports as may reasonably be required by TOWN, such reports to be prepared within thirty (30) days following the reporting period or written notice.

ARTICLE 9. Nondiscrimination

9.01 Nondiscrimination. In the performance of all work and services under this AGREEMENT, FRANCHISEE shall not discriminate against any person on the basis of such person's race, sex, color, national origin, religion, marital status, age, disability, or sexual orientation. FRANCHISEE shall comply with all applicable local, state, and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

ARTICLE 10. Service Inquiries and Complaints

10.01 FRANCHISEE'S Customer Service. All service inquiries and complaints shall be directed to the FRANCHISEE. A representative of the FRANCHISEE shall be available to receive the complaints during normal business hours, as specified in Section 7.01. All service complaints will be handled by the FRANCHISEE in a prompt and efficient manner. In the case of a dispute between the FRANCHISEE and a Service Recipient cannot be resolved accordingly, the matter will be reviewed and a decision made by the Town Representative.

10.01.1 The FRANCHISEE will utilize the Customer Service Log to maintain a record of all inquiries and complaints in a manner prescribed by the TOWN.

ARTICLE 11. Quality of Performance

11.01 Intent. FRANCHISEE acknowledges and agrees that one of TOWN'S primary goals in entering into this AGREEMENT is to ensure that the Collection Services are of the highest caliber, that Service Recipient satisfaction remains at the highest level, that the minimum Diversion levels are achieved, and that materials collected are put to the highest and best use to the extent feasible.

11.02 Service Supervisor. As of the Effective Date and annually thereafter during the term of this AGREEMENT, FRANCHISEE shall provide the TOWN with the name and contact information of the supervisor to be in charge of the Collection Service within the Service Area. At least thirty (30) calendar days prior to replacing the designated supervisor, FRANCHISEE shall notify TOWN in writing of the name and qualifications of the new service supervisor. FRANCHISEE shall insure that such replacement is an individual with like qualifications and experience. The supervisor shall be available to the Town Representative through the use of telecommunication equipment at all times that, FRANCHISEE is providing Collection Services. In

the event the supervisor is unavailable due to illness or vacation, FRANCHISEE shall designate an acceptable substitute who shall be available and who has the authority to act in the same capacity as the supervisor. The service supervisor shall provide the TOWN with an emergency phone number where the supervisor can be reached outside of normal business hours.

11.03 Liquidated Damages. The parties further acknowledge that consistent and reliable Collection Service is of utmost importance to TOWN and that TOWN has considered and relied on FRANCHISEE's representations as to its quality of service commitment in awarding the AGREEMENT to the FRANCHISEE. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if FRANCHISEE fails to achieve the performance standards, or fails to submit required documents in a timely manner, TOWN, and TOWN'S residents and businesses will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages. Therefore, without prejudice to TOWN'S right to treat such non-performance as an event of default under Article 16, the parties agree that the Liquidated Damages amount defined in this Article 11 represent reasonable estimates of the amount of such damages considering all of the circumstances existing on the Effective Date of this AGREEMENT, including the relationship of the sums to the range of harm to TOWN, customers and the community as a whole that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the Liquidated Damages provisions at the time that the AGREEMENT was executed.

FRANCHISEE Initial Here _____

FRANCHISEE agrees to pay (as Liquidated Damages and not as penalty) the following amounts:

Liquidated Damages		
Item		**Amount**
a.	Failure to notify the TOWN within two (2) hours of an incident related to Section 3.11 Spillage and Litter.	$100.00 per incident per Service Recipient.
b.	Failure or neglect to make a good faith effort to completely resolve each complaint within 90 days of receiving the complaint from a Service Recipient or TOWN.	$100.00 per incident per Service Recipient.
c.	Failure to clean up or compensate for spillage or litter caused by FRANCHISEE within 90 Work Days of being notified of the incident.	$300.00 per incident per location.
d.	Failure to repair damage or compensate for damage to customer property caused by FRANCHISEE or its personnel within 90 Work Days of being notified of the incident.	$500.00 per incident per location.

Liquidated Damages		
Item		**Amount**
e.	Failure to repair damage or compensate for damage to TOWN property caused by FRANCHISEE or its personnel within 90 Work Days of being notified of the incident.	$1,500.00 per incident.
f.	Failure to compensate for damage to TOWN streets, not within normal wear and tear, caused by FRANCHISEE or equipment of FRANCHISEE within 90 Work Days of being notified of the incident.	$3,000.00 per incident and the actual cost of repair to TOWN'S satisfaction—no cost to TOWN.
g.	Failure to maintain collection equipment in a clean, safe, and sanitary manner.	$500.00 per incident per day.
h.	Failure to have a collection vehicle operator properly licensed.	$2,500.00 per incident per day.
i.	Failure to maintain office hours as required by this AGREEMENT.	$500.00 per incident per day.
j.	Failure to maintain or submit as specified in the AGREEMENT to TOWN, all documents and reports required under the provisions of this AGREEMENT.	$250.00 per incident per day.
k.	Failure to properly cover materials in collection vehicles.	$500.00 per incident.
l.	Failure to display FRANCHISEE'S name and customer service phone number on collection vehicles and Containers.	$500.00 per incident per day.
m.	Failure to comply with the hours of operation as required by this AGREEMENT.	$1,000.00 per incident per day.
n.	Failure to remove graffiti within two (2) Work Days or delivering a debris box with graffiti on it to a customer.	$500.00 per incident.
o.	Failure to have FRANCHISEE personnel in proper uniform.	$250.00 per incident per day.
p.	Collection vehicles that exceed 56,000 lbs. GVW, 3 axles, or load capacity of greater than 40 yards.	$500.00 per incident
q.	Failure to deliver and process collected materials at Processing Facility prior to delivering Solid Waste to Disposal Facility.	Current Tipping Fee at Sonoma County Landfill System/ton Disposed

Liquidated Damages		
Item		**Amount**
r.	Failure to deliver any collected materials to a properly permitted and licensed Disposal Facility, transfer, or Processing Facility, as appropriate, except as otherwise expressly provided in this AGREEMENT.	$2,500.00 first failure $5,000.00 second failure. 30 day notice of Termination for third subsequent failure.
s.	Failure to meet collection vehicle noise requirements.	$250.00 per incident per day.
t.	Failure to provide facility information requested by the TOWN within five (5) work days	$250.00 per incident per day
u.	Failure to pay Franchise Fee for three (3) consecutive months.	Immediate termination.
v.	Failure to pay correct value of Franchise Fee or failure to pay Franchise Fee by required due date.	25% of amount due.
w.	Failure to pay penalty for incorrectly calculated or late Franchise Fee.	Immediate termination.
x.	Disposal of Residuals at an out of county facility.	Immediate termination.
y.	Failure to maintain or provide required insurance certificates during the term of the Agreement.	Immediate termination.
z.	Failure to cooperate or provide the requested documents for a Performance Review within thirty (30) Work Days.	FRANCHISEE will be considered in Default of AGREEMENT.

11.4. Procedure for Review of Liquidated Damages. The Town Representative may assess Liquidated Damages pursuant to this Article 11 on a monthly basis. At the end of each month during the term of this AGREEMENT, the Town Representative shall issue a written notice to FRANCHISEE ("Notice of Assessment") of the liquidated damages assessed and the basis for each assessment.

11.4.1. The assessment shall become final unless, within ten (10) calendar days of the date of the notice of assessment, FRANCHISEE provides a written request for a meeting with the Town Manager and Town Representative to present evidence that the assessment should not be made.

11.4.2. The Town Representative shall schedule a meeting between FRANCHISEE and the Town Manager or the Manager's designee as soon as reasonably possible after timely receipt of FRANCHISEE'S request for the same.

11.4.3. The Town Manager or the Manager's designee shall review FRANCHISEE'S evidence and render a decision sustaining or reversing the liquidated damages

as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to FRANCHISEE.

11.4.4. In the event FRANCHISEE does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Assessment, the Town Representative's determination shall be final and FRANCHISEE shall submit payment to TOWN no later than that tenth (10th) day.

11.4.5. If monies are owed to FRANCHISEE, TOWN with notification to FRANCHISEE, will deduct the liquidated damages from amounts otherwise due to FRANCHISEE.

11.4.6. TOWN'S assessment or collection of liquidated damages shall not prevent TOWN from exercising any other right or remedy, including the right to terminate this AGREEMENT, for FRANCHISEE'S failure to perform the work and services in the manner set forth in this AGREEMENT.

ARTICLE 12. AGREEMENT Compliance

12.01 Selection and Cost. The TOWN may conduct a "Compliance Review" of the FRANCHISEE'S performance and compliance with the requirements of this AGREEMENT during the term of this AGREEMENT, including prior to an extension. At the discretion of the TOWN, Compliance Reviews may occur every two (2) years, or as deemed necessary. The Compliance Reviews will be performed by a qualified firm under contract to the TOWN. The TOWN shall have the final responsibility for the selection of the firm but shall seek and accept comments and recommendations from the FRANCHISEE. The FRANCHISEE shall be responsible for the cost of the Compliance Review, up to a maximum of **Ten Thousand Dollars ($10,000.00)** per Compliance Review. CONTRACTOR will reimburse TOWN thirty (30) days from TOWN submitting invoice or request to CONTRACTOR for reimbursement.

12.02 Purpose. The Compliance Review shall be designed to meet the following objectives:

12.02.1 Verify that Franchise Fees, and other fees required under this AGREEMENT, have been properly calculated and paid to the TOWN.

12.02.2 Verify FRANCHISEE'S compliance with the reporting requirements and performance standards of this AGREEMENT.

12.03 FRANCHISEE'S Cooperation. FRANCHISEE shall cooperate fully with the review and provide all requested data, including operational data, financial data, and other data requested by the TOWN within thirty (30) Work Days. Failure of the FRANCHISEE to cooperate or provide the requested documents in the required time shall be considered an event of default.

12.04 AGREEMENT Actions. Whenever action and/or approval by the TOWN is required under this AGREEMENT, the Town Manager or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Town Manager determines in his or her discretion that such action or approval requires referral to the Town Council for consideration.

ARTICLE 13. Performance Bond

13.01 Performance Bond. The AGREEMENT must be executed and a performance bond must be furnished by the FRANCHISEE within ten (10) calendar days from the date TOWN awards and executes the Agreement; otherwise, the bid bond shall be forfeited to the TOWN. The

FRANCHISEE shall furnish to the TOWN, and keep current, a performance bond in a form that is acceptable to the TOWN, for the faithful performance of this AGREEMENT and all obligations arising hereunder in the amount of **Ten Thousand Dollars ($10,000.00)**.

13.01.1 The performance bond shall be executed by a surety company that is acceptable to the TOWN, and is included on the list of surety companies approved by the Treasurer of the United States.

13.02 Letter of Credit. As an alternative to the performance bond required by Section 13.01, at TOWN'S option, FRANCHISEE may deposit with TOWN an irrevocable letter of credit in an amount as set forth in Article 13.01, acceptable to the TOWN in form and content and issued by an FDIC insured banking institution chartered to business in the state of California, in the TOWN'S name, and callable at the discretion of the TOWN. Nothing in this Article 13 shall in any way obligate the TOWN to accept a letter of credit in lieu of the performance bond.

ARTICLE 14. Insurance

14.01 Insurance Policies. FRANCHISEE shall secure and maintain throughout the term of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from or in connection with FRANCHISEE'S performance of work or services under this AGREEMENT. FRANCHISEE'S performance of work or services shall include performance by FRANCHISEE'S employees, agents, representatives and subcontractors.

14.01.1 Minimum Scope of Insurance. Insurance coverage shall be at least this broad:

14.01.1.1 Insurance Services Office Form No. G0 0002 or, if approved by TOWN, its equivalent, covering Comprehensive General Liability and Insurance Services Office Form No. GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

14.01.1.2 Insurance Services Office Form No.CA 0001covering Automobile Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage shall also include code 8, "hired autos" and code 9 "non-owned autos."

14.01.2 Workers' Compensation Insurance as required by the California Labor Code and Employers Liability Insurance and/or Errors and Omissions.

14.01.3 Hazardous Waste and Environmental Impairment Liability Insurance.

14.01.4 Employee Blanket Fidelity Bond.

14.02 Minimum Limits of Insurance. FRANCHISEE shall maintain insurance limits no less than:

14.02.1 Comprehensive General Liability: **Ten Million Dollars ($10,000,000.00)** combined single limit per occurrence for bodily injury, personal injury, and property damage.

14.02.2 Automobile Liability: **Ten Million Dollars ($10,000,000.00)** combined single limit per accident for bodily injury and property damage.

14.02.3 Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of **Three Million Dollars ($3,000,000.00)** per accident.

14.02.4 Employee Blanket Fidelity Bond. Employee Blanket Fidelity Bond in the amount **of Five Hundred Thousand Dollars ($500,000.00)** per employee, covering dishonesty, forgery, alteration, theft, disappearance, destruction (inside or outside).

14.02.5 Hazardous Waste and Environmental Impairment Liability: **Three Million Dollars ($3,000,000.00) each occurrence/Ten Million Dollars ($10,000,000.00)** policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available without involvement of TOWN, automatically broaden in its form of coverage to include legislated changes in the definition of waste material and/or irritants, contaminants or pollutants. This policy shall stipulate this insurance is primary and no other insurance carried by TOWN will be called upon to contribute to the loss suffered by the FRANCHISEE hereunder and waive subrogation against the TOWN and other additional insured's.

14.03 Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to, and approved by, TOWN.

14.04 Endorsements. The policies are to contain, or be endorsed to contain, the following provisions:

14.04.1 The TOWN, its officers, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of FRANCHISEE; products and completed operations of FRANCHISEE; and with respect to liability arising from work or operations performed by or on behalf of the FRANCHISEE including material parts or equipment furnished in connection with such work or operations; Pollution and/or Asbestos Pollution.

14.04.2 FRANCHISEE'S insurance coverage shall be primary insurance as respects TOWN, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the TOWN, its officers, officials, employees, agents, or volunteers shall be excess of the FRANCHISEE'S insurance and shall not contribute with it.

14.04.3 Each insurance policy required by this clause shall be occurrence-based, or an alternative form as approved by the TOWN and shall be endorsed to state that coverage shall not be cancelled by the Insurer except after thirty (30) days prior written notice has been given to the TOWN.

14.04.4 The FRANCHISEE'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

14.04.5 The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier act endorsement (MCS-90) TL 1005, TL 1007 and /or other endorsements required by federal or state authorities.

14.04.6 Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the TOWN, its officers, officials, employees, and volunteers for losses arising from work performed by the Grantee for the TOWN.

14.04.7 All Coverage. Each insurance policy required by this clause shall be occurrence-based or an alternate form as approved by the TOWN and endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the TOWN.

14.04.7.1 Any failure to comply with reporting provisions of the policies shall not affect FRANCHISEE'S obligations to TOWN, its officers, officials, employees, agents, or volunteers.

14.04.7.2 The TOWN, it's officers, officials, agents, employees and volunteers shall be named as additional insured on all policies.

14.05 Acceptability of Insurers. Insurance is to be placed with insurers acceptable to the TOWN.

14.06 Verification of Coverage. FRANCHISEE shall furnish TOWN with original certificates and with amendatory endorsements effecting coverage required by this clause. The endorsements are to be signed by a persons authorized by the Insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the TOWN, unless the insurer will not use the TOWN's forms. All endorsements are to be received and approved by the TOWN before work commences. As an alternative to the TOWN's forms, the Franchisee's insurer may provide complete copies of all required insurance policies, including endorsements effecting coverage required by these specifications.

14.07 Subcontractors. FRANCHISEE shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

14.07.1 Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the TOWN.

Town of Windsor
Risk Management
9291 Old Redwood Highway, Building 300
Windsor, CA 95492

14.08 Modification of Insurance Requirements. The insurance requirements provided in this AGREEMENT may be modified or waived by the TOWN, in writing, upon the request of FRANCHISEE if the TOWN determines such modification or waiver is in the best interest of TOWN considering all relevant factors, including exposure to TOWN.

14.09 Rights of Subrogation. All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against TOWN, its officers, officials, employees, and volunteers for losses arising from work performed by FRANCHISEE for the TOWN under this AGREEMENT, with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above-described insurance. FRANCHISEE shall ensure that any companies issuing insurance to cover the requirements contained in this AGREEMENT agree that they shall have no recourse against TOWN for payment or assessments in any form on any policy of insurance. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event of an Occurrence, Claim or Suit' as it appears in any policy of insurance in which TOWN is named as an additional insured shall not apply to TOWN.

ARTICLE 15. Indemnification

15.01 Indemnification of the TOWN. FRANCHISEE shall defend, indemnify and hold harmless, to the fullest extend allowed by law, TOWN, its officers, officials, employees, volunteers agents and assignees (indemnities), from and against any and all loss, liability, penalties, forfeitures, claims, demands, actions, proceedings or suits, in law or in equity, of every kind and

description, (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from or in any way connected with: (i) the operation of the FRANCHISEE, it agents, employees, FRANCHISEEs, and/or subcontractors, in excising the privileges granted to it by this AGREEMENT; (ii) the failure of the FRANCHISEE, it agents, employees, FRANCHISEEs, and/or subcontractors to comply in all respects with the provisions and requirements of this AGREEMENT, Applicable Laws, ordinances and regulations, and/or applicable permits and licenses; and (iii) the acts of FRANCHISEE, its agents, employees, FRANCHISEES, and/or subcontractors in performing services under this AGREEMENT for which strict liability is imposed by law. The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, action, suite injury, death, or damage is also caused in part by any of the indemnitees' negligence. FRANCHISEE's indemnity obligations under all sections of this Article 15 shall survive the expiration or earlier termination of this AGREEMENT.

15.02 The FRANCHISEE'S obligation to defend, hold harmless, and indemnify shall not be excused because of the FRANCHISEE'S inability to evaluate Liability or because the FRANCHISEE evaluates Liability and determines that the FRANCHISEE is not liable the claimant. The FRANCHISEE must respond within thirty (30) days to the tender of a claim for defense and indemnity by the TOWN, unless this time has been extended by the TOWN. If the FRANCHISEE fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due the FRANCHISEE under the by virtue of this AGREEMENT as shall reasonably be considered necessary by the TOWN, may be retained by the TOWN until disposition has been made or the claim or suit for damages, or until the FRANCHISEE accepts or ejects the tender of defense, whichever occurs first. With respect to third party claims against the FRANCHISEE, the FRANCHISEE waives any and all rights of any type to express or implied indemnity against the Indemnities.

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

15.04 FRANCHISEE agrees to protect, indemnify, hold harmless, and defend TOWN with counsel selected by FRANCHISEE and approved by TOWN, to pay all attorneys' fees, and to indemnify and hold TOWN harmless from and against all fines or penalties imposed by CalRecycle if the Diversion goals specified in California Public Resources Code Section 41780 as of the date hereof and hereafter throughout are not met by the TOWN with respect to the

materials collected by FRANCHISEE and if the lack in meeting such goals are attributable to the failure of the FRANCHISEE to implement and operate the recycling or Diversion programs or undertake the related activities required by this AGREEMENT.

15.05 Consideration. It is specifically understood and agreed that the consideration inuring to the FRANCHISEE for the execution of this AGREEMENT consists of the promises, payments, covenants, rights, and responsibilities contained in this AGREEMENT.

15.06 Obligation. The execution of this AGREEMENT by the FRANCHISEE shall obligate the FRANCHISEE to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must also be complied with as set forth in Article 14 above.

15.07 Subcontractors. The FRANCHISEE shall require all subcontractors to enter into an AGREEMENT containing the provisions set forth in the preceding subsection in which AGREEMENT the subcontractor fully indemnifies the TOWN in accordance with this AGREEMENT.

15.08 Exception. Notwithstanding Sections 15.01, 15.02 and 15.03 of this AGREEMENT, FRANCHISEE'S obligation to indemnify, hold harmless and defend TOWN, its officers and employees shall not extend to any loss, liability, penalty, plain, damage, action or suit arising or resulting from acts or omissions constituting willful misconduct or sole negligence on the part of the TOWN its officers or employees.

15.09 Damage by FRANCHISEE. If FRANCHISEE'S employees or subcontractors cause any injury, damage, or loss to TOWN property, including but not limited to TOWN streets or curbs, FRANCHISEE shall reimburse TOWN for TOWN'S cost of repairing such injury, damage, or loss. Such reimbursement is not in derogation of any right of TOWN to be indemnified by FRANCHISEE for any such injury, damage, or loss. With the prior written approval of TOWN, FRANCHISEE may repair the damage at FRANCHISEE'S sole cost and expense. Damage to TOWN streets shall not include normal wear and tear caused by collection vehicles.

ARTICLE 16. Default

16.01 Termination. The TOWN may terminate this AGREEMENT, except as otherwise provided below in this Article, by giving the FRANCHISEE thirty (30) calendar days advance written notice, to be served as provided in Article 33, upon the determination of any one of the following events:

16.01.1 The FRANCHISEE shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

16.01.1.1 By order or decree of a Court, the FRANCHISEE shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the FRANCHISEE, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) calendar days after the entry thereof, any notice of default shall be and become

null, void and of no effect; unless such stayed judgment or order is reinstated in which case, said default shall be deemed immediate; or

16.01.2 By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of the FRANCHISEE, and such possession or control shall continue in effect for a period of sixty (60) calendar days; or

16.01.3 The FRANCHISEE has defaulted, by failing or refusing to pay in a timely manner the Liquidated Damages or other monies due the TOWN and said default is not cured within thirty (30) calendar days of receipt of written notice by TOWN to do so; or

16.01.4 The FRANCHISEE has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied and said default is not cured within thirty (30) calendar days of receipt of written notice by TOWN to do so; or

16.01.5 In the event that the monies due the TOWN under Article 4 or any unpaid Liquidated Damages owed to the TOWN under Article 11 are the subject of a judicial proceeding, the TOWN may, at its option, call the Performance Bond, or hold the FRANCHISEE in default of this AGREEMENT; or.

16.01.6 The FRANCHISEE has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this AGREEMENT, including but not limited to satisfactory conformance with the requirements of Article 3 and Article 11 hereof, the service levels prescribed herein, or any of the rules and regulations promulgated by the TOWN pursuant hereto, or by wrongfully failing or refusing to comply with the instructions of the Town Representative relative thereto; provided that said default is not cured within thirty (30) calendar days of receipt of written notice by the TOWN to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) calendar days following receipt by the FRANCHISEE of written demand from the TOWN to do so, the FRANCHISEE fails to commence the remedy of such default within said thirty (30) calendar days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof. In any dispute concerning failure to remedy or diligence in pursuing a cure, the FRANCHISEE shall have the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time. However, notwithstanding anything contained herein to the contrary, for the failure of the FRANCHISEE to provide Collection Services for a period of three (3) consecutive Work Days, on the fourth (4th) Work Day the TOWN may secure the FRANCHISEE'S equipment, records and other property used or useful in providing Collection Services under this AGREEMENT in order to provide interim Collection Services until such time as the matter is resolved and the FRANCHISEE is again able to perform pursuant to this AGREEMENT; provided, however, if the FRANCHISEE is unable for any reason or cause to resume performance at the end of thirty (30) calendar days all liability of the TOWN under this AGREEMENT to the FRANCHISEE shall cease and this AGREEMENT may be deemed terminated by the TOWN, and the TOWN shall retain equipment, records and other property used in providing Collection Services on an interim basis unit the TOWN has made other suitable arrangements for the provision of Collection Services, which may include award of the AGREEMENT to another FRANCHISEE.

16.01.7 In the event that the AGREEMENT is terminated, FRANCHISEE shall furnish the TOWN with immediate access to all of its business records related to its customer and billing accounts for collection services.

16.02 Violations. Notwithstanding the foregoing and as supplemental and additional means of termination of this AGREEMENT under this Article, in the event that FRANCHISEE'S record of performance shows that FRANCHISEE has frequently, regularly or repetitively defaulted in providing Collection Services, and, after written default notices from TOWN, has not timely cured such defaults within the applicable cure periods set forth in Section 16.01.6, TOWN in its sole discretion may determine that FRANCHISEE is a "habitual violator", in which case FRANCHISEE shall be deemed to have waived the right to any further notice or grace period to correct any subsequent default.

16.02.1 TOWN shall thereupon issue FRANCHISEE a final warning citing the circumstances for such determination, and any single default by FRANCHISEE of whatever nature, subsequent to FRANCHISEE's receipt of such warning, shall be grounds for immediate termination of the AGREEMENT.

16.02.2 In the event of any such subsequent default, TOWN may terminate this AGREEMENT upon giving of final written notice to FRANCHISEE, such termination to be effective upon the date specified in TOWN written notice to FRANCHISEE, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and FRANCHISEE shall have no further rights hereunder.

16.02.3 Immediately upon the specified date in such final notice CONTRACTOR shall proceed to cease any further performance under this Agreement.

16.03 Effective Date. In the event of the aforesaid events specified above, and except as otherwise provided in said subsections, termination shall be effective upon the date specified in the TOWN'S written notice to the FRANCHISEE and upon said date this AGREEMENT shall be deemed immediately terminated and upon such termination all liability of the TOWN under this AGREEMENT to the FRANCHISEE shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other Franchisees for the operation of the herein specified services. The FRANCHISEE's AGREEMENT terminated due to failure to perform shall reimburse the TOWN all direct and indirect costs of providing interim Collection Services until a new appointed Franchisee is determined.

16.04 Immediate Termination. TOWN may terminate this AGREEMENT immediately upon written notice to FRANCHISEE in the event FRANCHISEE fails to provide and maintain the performance bond as required by this AGREEMENT, FRANCHISEE fails to obtain or maintain insurance policies endorsements as required by this AGREEMENT, FRANCHISEE fails to provide the proof of insurance as required by this AGREEMENT, or FRANCHISEE offers or gives any Gift prohibited by TOWN administrative policy.

16.05 Termination – Delivery of material to a facility that is not properly permitted or licensed to accept material. The TOWN may terminate this AGREEMENT with thirty (30) days written notice in the event the FRANCHISEE delivers material collected under this AGREEMENT to a facility that is not properly permitted or licensed to accept the material collected under this AGREEMENT. The TOWN may terminate this AGREEMENT within thirty (30) day written notice in the event the FRANCHISEE fails to execute TOWN approved facility(ies) or use of out of County facility as specified and approved in the APPLICATION.

16.06 Termination Cumulative. TOWN'S right to terminate this AGREEMENT is cumulative to any other rights and remedies provided by law or by this AGREEMENT.

16.07 Reinstatement after Termination. Should this AGREEMENT be terminated by the TOWN, the FRANCHISEE or any company acquired by, or sold to the FRANCHISEE shall not be eligible to re-apply for reinstatement to provide Collection Services until after the term of all awarded agreements have expired.

ARTICLE 17. Modifications to the Agreement

17.01 AGREEMENT Modifications and Changes in Law. The TOWN and the FRANCHISEE understand and agree that the California Legislature has the authority to make comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this AGREEMENT. The FRANCHISEE agrees that the terms and provisions of the Town of Windsor Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this AGREEMENT and the Service Recipients of the FRANCHISEE located within the Service Area. In the event any future Change in Law, modifications to the Town of Windsor Code, or directed changes by the TOWN materially alters the obligations of the FRANCHISEE, then the affected compensation as established under this AGREEMENT shall be adjusted. Nothing contained in this AGREEMENT shall require any party to perform any act or function contrary to law. The TOWN and FRANCHISEE agree to enter into good faith negotiations regarding modifications to this AGREEMENT which may be required in order to implement changes in the interest of the public welfare or due to Change in Law. When such modifications are made to this AGREEMENT, the TOWN and the FRANCHISEE shall negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the FRANCHISEE due to any modification in the AGREEMENT under this Article. The TOWN and the FRANCHISEE shall not unreasonably withhold AGREEMENT to such compensation adjustment.

17.01.1 FRANCHISEE acknowledges and agrees that TOWN may permit other Franchisees, contractors or companies besides FRANCHISEE to provide additional Collection Services.

ARTICLE 18. Legal Representation

18.01 Acknowledgement. It is acknowledged that FRANCHISEE and TOWN each were, or had the opportunity to be, represented by counsel in the preparation of, and contributed equally to the terms and conditions of, this AGREEMENT and, accordingly, the rule that an agreement shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

ARTICLE 19. Financial Interest

19.01 Representation. FRANCHISEE warrants and represents that no elected official, officer, agent or employee of the TOWN has a financial interest, directly or indirectly, in this AGREEMENT the compensation to be paid under it and, further, that no TOWN employee who acts in the TOWN as a "purchasing agent" as defined in the appropriate Section of California Statutes, nor any elected or appointed officer of the TOWN, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or

proprietor of the FRANCHISEE and, further, that no such TOWN employee, purchasing agent, TOWN elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the FRANCHISEE. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the FRANCHISEE.

ARTICLE 20. Franchisee's Personnel

20.01 Personnel Requirements. The FRANCHISEE shall employ and assign qualified personnel to perform all services set forth herein. The FRANCHISEE shall be responsible for ensuring that its employees comply with all Applicable Laws and regulations and meet all Federal, State, and local requirements related to their employment and position.

20.01.1 The TOWN may request the transfer of any employee of the FRANCHISEE who materially violates any provision hereof, or who is wanton, negligent, or discourteous in the performance of his duties.

20.01.2 FRANCHISEE'S field operations personnel shall be required to wear a clean uniform shirt bearing the FRANCHISEE'S name. FRANCHISEE'S employees, who normally come into direct contact with the public, including drivers, shall bear some means of individual photographic identification such as a name tag or identification card.

20.01.3 Each driver of a collection vehicle shall at all times carry a valid California driver's license and all other required licenses for the type of collection vehicle that is being operated.

20.01.4 Each driver of a collection vehicle shall at all times comply with all applicable state and federal laws, regulations, and requirements.

20.01.5 FRANCHISEE'S employees, officers, and agents shall at no time be allowed to identify themselves or in any way represent themselves as being employees of the TOWN.

20.01.6 The FRANCHISEE'S name and the customer service telephone number shall be properly displayed on all collection vehicles.

ARTICLE 21. Exempt Waste

21.01 The FRANCHISEE shall not be required to Collect or dispose of Exempt Waste, but may offer such services. All such Collection and disposal of Exempt Waste is not regulated under this AGREEMENT, but if provided by the FRANCHISEE shall be in strict compliance with all Federal, State, and local laws and regulations.

ARTICLE 22. Independent Franchisee

22.01 In the performance of services pursuant to this AGREEMENT, FRANCHISEE shall be an independent FRANCHISEE and not an officer, agent, servant or employee of TOWN. FRANCHISEE shall have exclusive control of the details of the services and work performed and over all persons performing such services and work. FRANCHISEE shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Neither FRANCHISEE nor its officers, employees, agents, contractors, or subcontractors shall obtain any right to retirement benefits, Workers' Compensation benefits, or any other benefits which accrued to TOWN employees and FRANCHISEE expressly waives any claim it may have or acquire to such benefits.

ARTICLE 23. Laws to Govern

23.01 The law of the State of California shall govern the rights, obligations, duties, and liabilities of TOWN and FRANCHISEE under this AGREEMENT and shall govern the interpretation of this AGREEMENT.

ARTICLE 24. Consent to Jurisdiction

24.01 The parties agree that any litigation between TOWN and FRANCHISEE concerning or arising out of this AGREEMENT shall be filed and maintained exclusively in the Superior Court of Sonoma County, State of California, or in the United States District Court for the Northern District of California, as applicable pursuant to their respective jurisdiction. Each party consents to service of process in any manner authorized by California law.

ARTICLE 25. Assignment

25.01 No assignment of this AGREEMENT or any right occurring under this AGREEMENT shall be made in whole or in part by the FRANCHISEE without the express written consent of the TOWN. The TOWN shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the FRANCHISEE. Any assignment of this AGREEMENT made by the FRANCHISEE without the express written consent of the TOWN shall be null and void and shall be grounds for the TOWN to declare a default of this AGREEMENT and immediately terminate this AGREEMENT by giving written notice to the FRANCHISEE, and upon the date of such notice this AGREEMENT shall be deemed immediately terminated, and upon such termination all liability of the TOWN under this AGREEMENT to the FRANCHISEE shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors, the FRANCHISEES, or any other person or company for the service which is the subject of this AGREEMENT. In the event of any assignment, the assignee shall fully assume all the liabilities of the FRANCHISEE.

25.02 The use of a subcontractor to perform services under this AGREEMENT shall not constitute delegation of FRANCHISEE'S duties provided that FRANCHISEE has received prior written authorization from the Town Representative to subcontract such services and the Town Representative has approved a subcontractor who will perform such services. FRANCHISEE shall be responsible for directing the work of FRANCHISEE'S subcontractors and any compensation due or payable to FRANCHISEE'S subcontractor shall be the sole responsibility of FRANCHISEE. The Town Representative shall have the right to require the removal of any approved subcontractor for reasonable cause.

25.03 For purposes of this Article when used in reference to FRANCHISEE, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of at least fifty-one percent (51%) of FRANCHISEE'S assets dedicated to service under this AGREEMENT to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of FRANCHISEE to a third party provided said sale, exchange or transfer results in a change of control of FRANCHISEE (with control being defined as ownership of more than fifty percent (50%) of FRANCHISEE'S voting securities); (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling AGREEMENT, escrow arrangement, liquidation, subcontracting or lease-back payments, or other transaction which results in a change of control of FRANCHISEE; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this AGREEMENT, appointment of a receiver taking possession

of FRANCHISEE'S property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of control of FRANCHISEE.

25.04 FRANCHISEE acknowledges that this AGREEMENT involves rendering a vital service to TOWN'S residents and businesses, and that TOWN has selected FRANCHISEE to perform the services specified herein based on (i) FRANCHISEE'S experience, skill and reputation for conducting and management of operations in a safe, effective, and lawful fashion, at all times in keeping with applicable environmental laws, regulations and best management practices as governed by Federal, State, and local governments, and (ii) FRANCHISEE'S financial resources to maintain the required equipment and to support its indemnity obligations to TOWN under this AGREEMENT. TOWN has relied on each of these factors, among others, in choosing FRANCHISEE to perform the services to be rendered by FRANCHISEE under this AGREEMENT.

ARTICLE 26. Compliance with Laws

26.01 In the performance of this AGREEMENT, FRANCHISEE shall comply with all Applicable Laws, regulations, ordinances, and codes of the Federal, State, and local governments, including without limitation the Code of the Town of Windsor.

26.02 TOWN shall provide written notice to FRANCHISEE of any planned amendment to the Town of Windsor Code that would substantially affect the performance of FRANCHISEE'S services pursuant to this AGREEMENT. Such notice shall be provided at least thirty (30) calendar days prior to the Town Council's approval of such an amendment.

ARTICLE 27. Permits and Licenses

27.01 FRANCHISEE shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this AGREEMENT. FRANCHISEE shall provide proof of such permits, licenses, or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the Town Representative.

27.02 FRANCHISEE shall ensure that all facilities selected by the FRANCHISEE obtain, at their own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this AGREEMENT. FRANCHISEE shall ensure that facilities used by the FRANCHISEE provide proof of such permits, licenses, or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses, and approvals upon the request of the Town Representative.

ARTICLE 28. Ownership of Written Materials

28.01 All reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by FRANCHISEE that are expressly required by this AGREEMENT or produced by FRANCHISEE at the request of the TOWN for use under this AGREEMENT, whether developed directly or indirectly by TOWN or FRANCHISEE shall be and shall remain the property of TOWN without limitation or restrictions on the use of such materials by TOWN. FRANCHISEE shall not use such materials in connection with any project not connected with this AGREEMENT without the prior written consent of the Town

Representative. This Article 28 does not apply to ideas or concepts described in such materials and does not apply to the format of such materials.

ARTICLE 29. Waiver

29.01 Waiver by TOWN or FRANCHISEE of any breach for violation of any term covenant or condition of this AGREEMENT shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant, or condition. The subsequent acceptance by TOWN of any fee, tax, or any other monies which may become due from FRANCHISEE to TOWN shall not be deemed to be a waiver by TOWN of any breach for violation of any term, covenant, or condition of this AGREEMENT.

ARTICLE 30. Prohibition Against Gifts

30.01 FRANCHISEE represents that FRANCHISEE is familiar with TOWN'S prohibition against the acceptance of any Gift by a TOWN officer or designated employee. FRANCHISEE shall not offer any TOWN officer or designated employee any Gifts prohibited by the TOWN.

ARTICLE 31. Point of Contact

31.01 The day-to-day dealings between the FRANCHISEE and the TOWN shall be between the FRANCHISEE and the Town Representative.

ARTICLE 32. Conflict of Interest

32.01 FRANCHISEE shall comply with TOWN requirements for conflict of interest and will file all required disclosure statements.

ARTICLE 33. Notices

33.01 Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the TOWN:

Town Manager
Town of Windsor
In-person: 9291 Old Redwood Highway, Building 300
In-writing: P.O. Box 100
Windsor, CA 95492
Phone: (707) 838-5355
E-mail: kowens@townofwindsor.com

As to the FRANCHISEE:

Name _____
D.B.A (if applicable) _____
Title _____
Company _____
Address _____
TOWN, State, Zip Code _____
Phone _____
Fax: _____
E-Mail: _____

33.02 Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice.

33.03 Notice by TOWN to FRANCHISEE of a collection or other Service Recipient problem or complaint may be given to FRANCHISEE orally by telephone at FRANCHISEE'S local office with confirmation sent as required above by the end of the Work Day.

ARTICLE 34. Franchisee's Records

34.01 FRANCHISEE shall maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Service Recipients for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to FRANCHISEE pursuant to this AGREEMENT.

34.02 FRANCHISEE shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

34.03 Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit, at any time during regular business hours, upon written request by the Town Representative, the Town Attorney, Town Auditor, Town Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to TOWN for inspection at the TOWN offices when it is practical to do so. Otherwise, unless an alternative site is mutually agreed upon, the records shall be available at FRANCHISEE'S address indicated for receipt of notices in this AGREEMENT.

34.04 Where TOWN has reason to believe that such records or documents may be lost or discarded due to the dissolution, disbandment or termination of FRANCHISEE'S business, TOWN may, by written request or demand of any of the above named officers, require that custody of the records be given to TOWN and that the records and documents be maintained in Town Hall. Access to such records and documents shall be granted to any party authorized by FRANCHISEE, FRANCHISEE'S representatives, or FRANCHISEE'S successor-in-interest.

ARTICLE 35. Entire Agreement

35.01 This AGREEMENT and the Exhibits attached hereto constitute the entire AGREEMENT and understanding between the parties hereto, and it shall not be considered

modified, altered, changed, or amended in any respect unless in writing and signed by the parties hereto.

ARTICLE 36. Severability

36.01 If any provision of this AGREEMENT or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this AGREEMENT and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

ARTICLE 37. Right to Require Performance

37.01 The failure of the TOWN at any time to require performance by the FRANCHISEE of any provision hereof shall in no way affect the right of the TOWN thereafter to enforce same. Nor shall waiver by the TOWN of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

ARTICLE 38. All Prior Agreements Superseded

38.01 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, contracts and understandings applicable to the matters contained in this AGREEMENT and the parties agree that there are no commitments, agreements, contracts or understandings concerning the subject matter of this AGREEMENT that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this AGREEMENT shall be predicated upon any prior representations, agreements, or contracts, whether oral or written.

ARTICLE 39. Headings

39.01 Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this AGREEMENT.

ARTICLE 40. Representations and Warranties of FRANCHISEE

The FRANCHISEE, by acceptance of this AGREEMENT, represents and warrants the conditions presented in the Article 40.

40.01 Corporate Status. The FRANCHISEE is a {corporation} duly organized, validly existing and in good standing under the laws of the State of California ("State"). It is qualified to transact business in the State and has the power to own its properties and to carry on its business as now owned and operated and as required by this AGREEMENT.

40.02 Corporate Authorization. FRANCHISEE has the authority to enter this AGREEMENT and perform its obligations under this AGREEMENT. The Board of Directors of FRANCHISEE (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this AGREEMENT. The Person signing this AGREEMENT on behalf of FRANCHISEE represents and warrants that they

have the authority to do so. This AGREEMENT constitutes the legal, valid, and binding obligation of the FRANCHISEE.

40.03 AGREEMENT Will Not Cause Breach. To the best of FRANCHISEE'S knowledge after responsible investigation, the execution or delivery of this AGREEMENT or the performance by FRANCHISEE of its obligations hereunder does not conflict with, violate, or result in a beach: (i) of any law or governmental regulation applicable to FRANCHISEE; or (ii) any term or condition of any judgment, order, decree, of any court, administrative agency, or other governmental authority, or any AGREEMENT or instrument to which FRANCHISEE is a party or by which FRANCHISEE or any of its properties or assets are bound, or constitutes a default hereunder.

40.04 No Litigation. To the best of FRANCHISEE'S knowledge after responsible investigation, there is no action, suite, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against FRANCHISEE wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate would:

40.04.1 Materially adversely affect the performance by FRANCHISEE of its obligations hereunder;

40.04.2 Adversely affect the validity or enforceability of this AGREEMENT; or

40.04.3 Have a material adverse effect on the financial conditions of FRANCHISEE, or any surety or entity guaranteeing FRANCHISEE'S performance under this AGREEMENT.

40.05 No Adverse Judicial Decisions. To the best of FRANCHISEE'S knowledge after responsible investigation, there is no judicial decision that would prohibit this AGREEMENT or subject this AGREEMENT to legal challenge.

40.06 No Legal Prohibition. To the best of FRANCHISEE'S knowledge after reasonable investigation, there is no Applicable Law in effect on the date FRANCHISEE signed this AGREEMENT that would prohibit the FRANCHISEE'S performance of its obligations under this AGREEMENT and the transactions contemplated hereby.

40.07 FRANCHISEES Statements. The FRANCHISEES proposal and other supplemental information submitted to the TOWN, which the TOWN has relied on in awarding and entering this AGREEMENT, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

40.08 FRANCHISEE'S Investigation. FRANCHISEE has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the AGREEMENT and the work to be performed hereunder. FRANCHISEE has taken such matters into consideration in entering this AGREEMENT to provide services in exchange for the compensation provided for under the terms of this AGREEMENT.

40.09 Ability to Perform. FRANCHISEE possesses the business, professional, and technical expertise to Collect, Transport, and Process the Construction and Demolition Debris

material generated in the TOWN. FRANCHISEE possesses the ability to secure equipment, facility(ies), and employee resources required to perform its obligations under this AGREEMENT.

40.10 Voluntary Use of Disposal Location. The FRANCHISEE, without constraint and as a free-market business decision in accepting this AGREEMENT, agrees to use the Disposal Facility for the purposes of disposing of all Solid Waste Collected in the TOWN. Such decision by FRANCHISEE in no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or any definition thereof.

ARTICLE 41. Effective Date

This AGREEMENT shall become effective as of the Effective Date, having been properly executed by the TOWN and the FRANCHISEE, and the FRANCHISEE shall begin Non-Exclusive Temporary Construction and Demolition Debris Collection Service, as covered herein, as of January 1, 2018.

IN WITNESS WHEREOF, the TOWN and the FRANCHISEE have executed this AGREEMENT on the day and year first written above.

TOWN OF WINDSOR

1-2-18

(Name)
Town Manager

Camille Kyger

(Name)
Assistant Town Manager/Administrative Services Director

Company Name

Industrial Waste & Debris Box Rentals, Inc., dba Industrial Carting

Curtis Michelini

Company Representative/Title President

Town of Windsor Business License No. 005674

The foregoing AGREEMENT has been reviewed and approval is recommended:

Resolution No. 2017 - 3416
Approved by Town Council

Approved as to Form:

Robin Paige Donoghue 1/3/18

(Name) Date
Town Attorney

2853446.1