

AGREEMENT BETWEEN THE CITY OF WINTERS AND USA WASTE OF CALIFORNIA, INC. (dba WASTE MANAGEMENT OF WINTERS) FOR THE PROVISION OF INTEGRATED WASTE MANAGEMENT SERVICES

This Franchise Agreement (the "Agreement") is entered into this ___ day of _____, 2017 by and between the CITY OF WINTERS ("CITY") and USA WASTE OF CALIFORNIA, INC. (DBA Waste Management of Winters) ("CONTRACTOR") for Integrated Waste Management Services.

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste and construction debris handling within their jurisdictions; and

WHEREAS, Pursuant to California Public Resources Code Section 40059 (a)(1), the City Council of the City of Winters ("CITY") has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified enterprise for the collection transportation and processing of recycling, green waste, and disposal of solid waste from commercial, residential and industrial premises in the City of Winters; and

WHEREAS, the City Council of the City of Winters declares its intention of maintaining reasonable rates for the collection, transportation, recycling, composting, and disposal of solid waste and construction debris and for providing temporary bin/roll-off services to commercial, industrial and residential properties within City Limits.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. GRANT OF EXCLUSIVE FRANCHISE.

This Agreement grants CONTRACTOR the exclusive right and duty, as provided herein and pursuant to Municipal Code Chapter 8.04 of City of Winters and California Public Resources Code Section 40059 (a)(1), to provide the Collection Services in the Service Area. CITY reserves the right to amend Municipal Code Chapter 8.04 and the terms of this Agreement in any manner necessary for the safety or welfare of the public or to protect the public interests, provided that any such amendment would be subject to Section 17.2.2.3. This Franchise Agreement shall be in force and effect beginning July 1, 2017 within the corporate limits of the CITY as they now or may hereafter exist.

2. DEFINITIONS

Whenever any term used in this Agreement has been defined by Municipal Code Chapter 8.04 of the City of Winters or California Public Resources Code, the definitions in the CITY Ordinance or Public Resources Code shall apply unless the term is otherwise defined in this Agreement.

2.1 AB 939. “AB 939” shall mean the California Integrated Waste Management Act of 1989, as it may be amended from time to time.

2.2 Annual Report. The annual report submitted by the CONTRACTOR to the CITY describing the previously years’ diversion activities, diversion percentages and associated calculations and the description of the diversion activity planned for the upcoming year, if applicable.

2.3 Bin. A metal or plastic container, with a capacity of one (1) cubic yard up to and including eight (8) cubic yards, designed or intended to be mechanically dumped into a loader packer type garbage truck, which is approved for such purpose by the CITY. Bins may also include Compactors that are owned by the MFD or Commercial Service Unit wherein the MFD or Commercial Collection Service occurs.

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

2.5 Brown Goods. Electronic equipment such as stereos, televisions, computers, VCR’s and other similar items.

2.6 Cart. A heavy plastic receptacle with a rated capacity of at least twenty (20) and not more than ninety-six (96) gallons, having a hinged tight-fitting lid and wheels, that is approved by the Contract Administrator for use by Service Recipients for Collection Services under this Agreement.

2.7 CITY. The City of Winters, California.

2.8 CITY Services. CITY Solid Waste Collection Service, CITY Recycling Service, CITY Large Item Cleanup Service, CITY Special Event Collection Service, and CITY Concrete and Asphalt Recycling Service.

2.9 CITY Service Unit. Those CITY properties as set forth in Exhibit 3, which is attached to and included in this Agreement.

2.10 CITY Solid Waste Collection Service. The Collection of Solid Waste from CITY Service Units in the Service Area, which has been generated from normal City operations, and the delivery of that material to a Disposal Facility.

2.11 CITY Recycling Service. The Collection of Recyclable Material from CITY Service Units in the Service Area, which has been generated from normal City operations, and the delivery of that material to a Material Recycling Facility.

2.12 CITY Large Item Cleanup Service. The Collection of up to 480 cubic yards per year of Large Items from CITY Service Units in the Service Area and the delivery of

that material to a Disposal Facility, Material Recycling Facility or Green Waste Processing Facility, as appropriate.

2.13 CITY Concrete and Asphalt Recycling Service. The Collection of concrete and asphalt from the CITY Corporation Yard and the delivery of that material to an appropriate facility for recycling.

2.14 Collection. The process whereby Solid Waste, Organic Waste or Recyclable Materials are removed and transported to a Disposal Facility, Organic Waste Processing Facility or Materials Recycling Facility, as appropriate.

2.15 Collection Services. SFD Collection Service, MFD Collection Service, Commercial Collection Service, CITY Collection Service, and Temporary Container Collection Service.

2.16 Commercial Service Unit. A Premises that is not a SFD or MFD Service Unit, including those on which business, governmental (other than City Service Units), religious, or educational activity is conducted, but excluding businesses conducted on SDF or MFD Service Units which are permitted under applicable zoning regulations and are not the primary use of the property.

2.17 Commercial Collection Service. Commercial Solid Waste Collection Service, Commercial Recycling Service, Commercial Organic Waste Collection Service and Cardboard/Newspaper Drop-Off Service. Commercial Collection Service does not include Temporary Container Collection Service.

2.18 Commercial Organic Waste Collection Service. The Collection of Organic Waste from Bins or Carts, by the CONTRACTOR, from Commercial Service Units in the Service Area, the delivery of those Organic Wastes to a processing facility, and the processing and use of those Organic Wastes.

2.19 Commercial Recycling Service. The Collection of Recyclable Materials by the CONTRACTOR from Commercial Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility, and the processing and marketing of those Recyclable Materials.

2.20 Commercial Solid Waste Collection Service. The Collection of Solid Waste by the CONTRACTOR from Commercial Service Units in the Service Area and the delivery of that Commercial Solid Waste to a Disposal Facility.

2.21 Compactor. Any Roll-Off Container which has a compaction mechanism, whether stationary or mobile.

2.22 Contaminant. Any material mixed with Organic Waste or Recyclable Materials which are not Organic Waste or Recyclable Materials, respectively. For example, regarding Organic Waste, Contaminants would include materials not normally produced from gardens or landscapes such as, but not limited to, brick, rocks, gravel, large quantities of dirt,

concrete, non-organic wastes, oil and wood or wood products, including but not limited to, stumps, diseased elms, and other diseased trees.

2.23 Construction and Demolition Debris. Used or discarded materials resulting from construction, remodeling, repair or demolition operations on any type of structure or surface.

2.24 Contract Year. Each twelve (12) month period from July 1 through June 30, beginning July 1, 2017.

2.25 CONTRACTOR. That person or entity that has obtained from the CITY a contract to provide Collection Services as set forth herein.

2.26 Contract Administrator. That person, or their designee, designated by the CITY to administer and monitor the provisions of this Agreement.

2.27 County. Yolo County, California.

2.28 Disposal Facility. The Yolo County Disposal Site owned by Yolo County or such other facility designated by the City.

2.29 Dwelling Unit. A living space with a kitchen, occupied individually by a renter or owner, in a SFD or MFD Service Unit.

2.30 Electronic Waste. Discarded electronics equipment such as cell phones, computers, monitors, televisions, and other items containing cathode ray tubes (CRT's).

2.31 Exempt Waste. Any and all waste, including but not limited to, Hazardous Waste, the acceptance or handling of which would cause a violation of any permit condition or legal or regulatory requirement, damage or threatened damage to CONTRACTOR's equipment or facilities, or present a substantial endangerment to the health or safety of the public or CONTRACTOR's employees

2.32 Food Waste. Food scraps and trimmings and other putrescible waste that results from food production, preparation, or consumption. Food Waste includes, but is not limited to, meat, fish, dairy, fruit, vegetables, and grains. Food Waste does not include Exempt Waste.

2.33 Franchise. The exclusive rights and privileges granted by this Agreement.

2.34 Garbage. All putrescible waste, which generally includes but is not limited to kitchen and table food waste, animal, vegetative, food or any organic waste, that is attendant with or results from the storage, preparation, cooking or handling of food materials attributed to normal activities of a Service Unit. Garbage must be generated by and at the Service Unit wherein the Garbage is Collected. Garbage does not include those items defined herein as Exempt Waste.

2.35 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 or weighs more than fifty (50) pounds. Green Waste includes plant debris, such as grass clippings, leaves, pruning, weeds, branches, brush, Christmas trees, and other forms of organic waste and must be generated by and at the SFD Service Unit wherein the Green Waste is Collected. Green Waste does not include items herein defined as Exempt Waste or Contaminant.

2.36 Organic Waste Processing Facility. Any facility designed, operated and legally permitted for the purpose of receiving and processing of Organic Waste.

2.37 Hazardous Waste. All substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

2.38 Household Hazardous Waste. "Household Hazardous Waste" (hereinafter referred to as "HHW") means any hazardous waste generated incidental to owning or maintaining a place of residence, but does not include any waste generated in the course of operating a business concern at a residence, (California Health and Safety Code Division 20, Chapter 6.5, §25218(1)(e)).

2.39 Large Item Drop-Off Event: The promotion and operation of one (1) annual event to receive Brown Goods, Electronic Waste, Large Items, White Goods and Universal Waste from MFD and SFD Service Units in the City. Such event will occur at the City-Wide Yard Sale or on a date determined by City Staff.

2.40 Hotel or Motel. A structure or building unit(s) capable of being utilized for residential living where such unit or a group of such units is regularly rented to transients or held out or advertised to the public as a place regularly rented to transients for periods of seven (7) days or less. To meet this definition, the Hotel or Motel must be licensed to operate as such.

2.41 Large Items. Those materials including furniture; carpets; mattresses; White Goods; Brown Goods; clothing; Large Green Waste; or some combination of such items in a container the dimensions of which container does not exceed four feet by four feet by two feet (4' x 4' x 2') and weighing no more than sixty (60) pounds, which are attributed to the normal activities of a SFD or MFD Service Unit. Large Items must be generated by and at the SFD or MFD Service Unit wherein the Large Items are Collected. Large Items do not include items herein defined as Exempt Waste.

2.42 Large Green Waste. Oversized Green Waste such as tree trunks and branches with a diameter of not less than four (4) 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 or MFD Service Unit. Large Green Waste must be generated by and at the SFD or MFD Service Unit wherein the Large Green Waste is Collected.

2.43 Materials Recycling Facility (MRF). Any facility designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Materials for sale.

2.44 MFD Collection Service. MFD Solid Waste Collection Service, MFD Recycling Service, and MFD Organic Waste Collection Service.

2.45 MFD Organic Waste Collection Service. The Collection of Organic Waste by the CONTRACTOR from MFD Service Units, the delivery of those Organic Wastes to a processing facility, and the processing and use of those Organic Wastes.

2.46 MFD Recycling Service. The Collection of Recyclable Materials by the CONTRACTOR from MFD Service Units, the delivery of those Recyclable Materials to a Materials Recycling Facility, and the processing and marketing of those Recyclable Materials.

2.47 MFD Service Unit. A Premises with five (5) or more Dwelling Units, but excluding Hotels and Motels.

2.48 MFD Solid Waste Collection Service. The Collection of Solid Waste by the CONTRACTOR from MFD Service Units and the delivery of that Residential Solid Waste to a Disposal Facility.

2.49 Organic Waste. Food Waste and Green Waste. Organic Waste excludes Large Green Items and Exempt Waste.

2.50 Premises. Any parcel of real property in the Service Area where Solid Waste is generated, deposited, accumulated, or otherwise coming to exist.

2.51 Push Services. A recurring service provided by CONTRACTOR and requested by the Service Recipient, where CONTRACTOR moves a Cart or Bin so that it may be accessed by CONTRACTOR's collection vehicle."

2.52 Recyclable Materials. Those materials which are capable of being recycled (as determined by CONTRACTOR and City) and would otherwise be disposed as Solid Waste hereunder. Recyclable Materials initially include: newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, Kraft brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; small 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 and small scrap (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; mixed plastics such as, plastic containers (1-7), and bottles including containers made of HOPE, LDPE, PET, or PVC; and aseptic containers.

2.53 Temporary Container Collection Service. The Collection of materials, which are generated as a byproduct of activities at that Service Unit, through use of a temporarily

placed Bin or Roll-Off Container, and the delivery of those materials to a disposal or processing facility. Such materials may include, but is not limited to, Construction and Demolition Debris.

2.54 Roll-Off Container. A metal container with a capacity of twenty (20) or more cubic yards that is normally loaded onto a motor vehicle and transported to an appropriate facility.

2.55 Rubbish. Non-putrescible solid wastes such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, plastics, rubber by-products or litter resulting from the normal activities of a Service Unit. Rubbish must be generated by and at the Service Unit wherein the Rubbish is Collected. Rubbish does not include items herein defined as Exempt Waste.

2.56 Service Area. That area within the corporate limits of the City of Winters.

2.57 Service Rates. Amounts charged by CONTRACTOR to Service Recipients for the Collection Services, as initially set forth in Exhibit 1.

2.58 Service Recipient. An individual or company receiving SFD Collection Service, MFD Collection Service or Commercial Collection Service.

2.59 Service Unit. SFD Service Units, MFD Service Units, CITY Service Units and Commercial Service Units.

2.60 SFD Collection Service. SFD Solid Waste Collection Service, SFD Recycling Service, SFD Organic Waste Collection Service, and SFD Large Item Collection Service.

2.61 SFD Large Item Collection Service. Once per year collection of Large Items, by the CONTRACTOR, from SFD Service Units in the Service Area and the delivery of those Large Items to a Disposal Facility, Materials Recycling Facility or such other facility as may be appropriate under the terms of this Agreement. SFD Large Item Collection Service does not include the Collection of Large Items through the Temporary Container Collection Service.

2.62 SFD Organic Waste Collection Service. The Collection of Organic Waste by the CONTRACTOR from SFD Service Units in the Service Area, the delivery of those Organic Wastes to a processing facility, and the processing and use of those Organic Wastes.

2.63 SFD Recycling Service. The Collection of Recyclable Materials by the CONTRACTOR from SFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility, and the processing and marketing of those Recyclable Materials.

2.64 SFD Solid Waste Collection Service. The Collection of Solid Waste by the CONTRACTOR from SFD Service Units in the Service Area and the delivery of that Residential Solid Waste to the Disposal Facility.

2.65 SFD Service Unit. A Premises in the Service Area with four (4) or less Dwelling Units.

2.66 Solid Waste. Garbage and Rubbish resulting from the normal activities of a the SFD, MFD or Commercial Service Unit. Solid Waste must be generated by and at the SFD, MFD or Commercial Service Unit wherein the Solid Waste is Collected, and does not include items defined herein as Exempt Waste.

2.67 Used Oil. Any oil that has been refined from crude oil or has been synthetically produced, and is no longer useful to the SFD or MFD Service Recipient because of extended storage, spillage or contamination with non-hazardous impurities such as dirt or water; or has been used and as a result of such use has been contaminated with physical or chemical impurities. Used Oil does not include transmission fluid.

2.68 Used Oil Filter. Any oil filter that is no longer useful to the SFD or MFD Service Recipient because of extended storage, spillage or contamination with non- hazardous impurities such as dirt or water; or has been used and as a result of such use has been contaminated with physical or chemical impurities.

2.69 White Goods. Inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances, with all Freon removed.

2.70 Universal Waste. Electronics (VCR's, cell phones, radios), batteries, mercury thermostats, fluorescent lights, mercury thermometers, and other products containing mercury or other heavy metals as defined in Title 22 of the California Code of Regulations, Chapter 23 (Standards for Universal Waste Management).

3. ACCEPTANCE: WAIVER.

CONTRACTOR agrees to be bound by and comply with all the requirements of Municipal Code Chapter 8.04 and this Franchise Agreement. CONTRACTOR waives CONTRACTOR'S right to challenge the terms of this Franchise Agreement and Municipal Code Chapter 8.04 under Federal, State or local law or administrative regulation, as such laws and regulations exist as of the date of execution of this Agreement. CONTRACTOR waives any right or claim to serve the CITY or any part of the CITY under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code.

4. SERVICES PROVIDED BY CONTRACTOR

4.1 SFD COLLECTION SERVICE

- (a) **SFD Solid Waste Collection Service.** The CONTRACTOR shall provide SFD Solid Waste Collection Service to all SFD Service Units. CONTRACTOR shall utilize 32-, 64-, and 96-gallon Carts, which shall be collected once per week using an automated collection system; the specific brand of Cart shall be left to the discretion of the CONTRACTOR. The Service Rates for SFD Solid Waste

Collection Services are included in Exhibit 1 to this Agreement. Collections shall be performed along public roads, not in alley ways, and at a location accessible to CONTRACTOR's vehicles. Push Services will be available for a fee as set forth in Exhibit 1. CONTRACTOR will provide to Service Units one free Cart replacement during the term of this Agreement, regardless of cause. Additional Carts will be provided for a fee, unless caused by CONTRACTOR mishandling.

- (b) **SFD Recycling Service.** The CONTRACTOR shall provide SFD Recycling Service to all SFD Service Units. CONTRACTOR shall utilize ninety-sixty (96) gallon recycling Carts, which shall be collected every other week; the specific brand of Cart shall be left to the discretion of the CONTRACTOR. The cost of SFD Recycling Service shall be bundled in the Service Rate for SFD Solid Waste Collection Service, and shall therefore be provided at no additional charge to the customer. The CONTRACTOR shall retain all revenues from the sale of Recyclable Materials.

In order to reduce the cost of the new SFD Recycling Service, the CONTRACTOR may utilize the current Solid Waste Carts in the CITY Service Area as recycling Carts. The CONTRACTOR shall be responsible for re-labeling the existing Carts in a manner that is acceptable to the CITY. Collections shall be performed along public roads, not in alley ways, and at a location accessible to CONTRACTOR's vehicles. Push services will be available for a fee as set forth in Exhibit 1.

- (c) **SFD Organic Waste Collection Service.** The CONTRACTOR shall provide SFD Organic Waste Collection Service to all SFD Service Units. CONTRACTOR shall utilize ninety-six (96) gallon Organic Waste Carts, which shall be collected every other week; the specific brand of Organic Waste Cart shall be left to the discretion of the CONTRACTOR. The cost of the SFD Organic Waste Collection Service shall be bundled in the Service Rate for SFD Solid Waste Collection Service, and shall therefore be provided at no additional charge to the customer. The CONTRACTOR shall retain all revenues from the sale of Organic Waste.

In order to reduce the cost of the new SFD Organic Waste Service, the CONTRACTOR may utilize the current Solid Waste Carts in the CITY Service Area as Organic Waste Carts. The CONTRACTOR shall be responsible for placing a brown lid on such Carts. Collections shall be performed along public roads, not in alley ways, and at a location accessible to CONTRACTOR's vehicles. Push services will be available for a fee as set forth in Exhibit 1. If the CITY desires a separate Food Waste collection program, CONTRACTOR will have the exclusive right to provide such service, and the parties will negotiate appropriate rates and program specifics.

- (d) **Large Item Drop Off Event; SFD Large Item Collection Service.** The CONTRACTOR shall provide one (1) annual drop-off event at the CITY Corporation Yard for the collection of items described in the definition of Large

Item Drop Off Event. The CONTRACTOR shall be responsible for the promotion and operation of the event, and shall provide up to ten 40-yard roll-off boxes for the collection of Large Items at the event.

The CONTRACTOR shall also provide each SFD Service Unit in the CITY with one (1) on-call collection event per year. The CONTRACTOR shall collect, on an on-call basis, up to four (4) cubic yards of Large Items at each household requesting service. Collection dates will be listed on the yearly Calendar. The cost for SFD Large Item Collection Service shall be bundled in the Service Rate for SFD Solid Waste Collection Service, and shall therefore be provided at no additional charge to each residential customer. Collections will be listed on the yearly calendar.

- (e) **Assisted Services.** At no additional cost, WM shall provide assisted service to customers who demonstrate that they are not able to roll their containers to the curbside due to physical impairment. Customers must fill out an application form and provide a doctor's note explaining their circumstance before being considered eligible. WM shall screen applicants and provide service only in cases of legitimate need. Customers must reapply annually.

4.2 MFD COLLECTION SERVICE

- (a) **MFD Solid Waste Collection Service.** The CONTRACTOR shall provide MFD Solid Waste Collection Service to all MFD Service Units. The CONTRACTOR shall be required to furnish the necessary number and size of Bins to accommodate the needs of the MFD Service Unit. The Service Rates for MFD Solid Waste Collection Services shall be set forth in Exhibit 1 to this Agreement. Collections shall be performed at a location accessible to CONTRACTOR's vehicles. Push services will be available for a fee.
- (b) **MFD Recycling Service.** The CONTRACTOR shall provide MFD Recycling Service to all MFD Service Units. The CONTRACTOR shall be required to furnish the necessary number and size of Bins and/or Carts to accommodate the needs of the MFD Service Unit. The cost for MFD Recycling Service shall be bundled in the Service Rate for MFD Solid Waste Collection Service, and shall therefore be provided at no additional charge to the customer. The CONTRACTOR shall retain all revenues from the sale of Recyclable Materials. Collections shall be performed at a location accessible to CONTRACTOR's vehicles. Push services will be available for a fee.
- (c) **MFD Organic Waste Collection Service.** MFD Service Units will be encouraged to comply with AB 1826 (Mandatory Commercial Organics Recycling) by subscribing to Organic Waste Collection Service. The CONTRACTOR will furnish the necessary number and size of Bins and/or Carts to accommodate the needs of the subscribing MFD Service Unit. Rates for this service will be determined by CONTRACTOR. Collections shall be performed at

a location accessible to CONTRACTOR's vehicles. Push services will be available for a fee.

- (d) **MFD Large Item Collection Service.** At no cost, the CONTRACTOR shall provide each MFD Dwelling Unit in the CITY with one (1) on-call collection event per year of up to two (2) cubic yards of Large Items. The method of collection shall be determined by management of the MFD Service Unit and the CONTRACTOR, and. Collections shall be performed at a location accessible to CONTRACTOR's vehicles.

4.3 COMMERCIAL COLLECTION SERVICE

- (a) **Commercial Solid Waste Collection Service.** The CONTRACTOR shall provide Commercial Solid Waste Collection Service to all Commercial Service Units. The CONTRACTOR shall be required to furnish the necessary number and size of Solid Waste Bins or Carts to accommodate the needs of the Commercial Service Unit. The Service Rates for Commercial Solid Waste Collection Service shall be set forth in Exhibit 1 to this Agreement. Collections shall be performed at a location accessible to CONTRACTOR's vehicles. Push services will be available for a fee.
- (b) **Commercial Recycling Service.** The CONTRACTOR shall offer Commercial Recycling Service to all Commercial Service Units. The CONTRACTOR shall be required to furnish the necessary number and size of Bins and/or Carts to accommodate the needs of the subscribing Commercial Service Unit. The cost for Commercial Recycling Service shall be bundled in the Service Rate for Commercial Solid Waste Collection Service, and shall therefore be provided at no additional charge to the customer. The CONTRACTOR shall retain all revenues from the sale of Recyclable Materials. Collections shall be performed at a location accessible to CONTRACTOR's vehicles. Push services will be available for a fee.
- (c) **Commercial Organic Waste Collection Service.** Commercial Service Units will be encouraged to comply with AB 1826 (Mandatory Commercial Organics Recycling) by subscribing to Organic Waste Collection Service. The CONTRACTOR will furnish the necessary number and size of Bins and/or Carts to accommodate the needs of the subscribing Commercial Service Unit. Rates for this service will be determined by CONTRACTOR, although the City may elect to subsidize all or part of such rates. Collections shall be performed at a location accessible to CONTRACTOR's vehicles. Push services will be available for a fee.
- (d) **Commercial Newspaper and Cardboard Drop-Off Service.** The CONTRACTOR shall provide every other week collection of two (2) locking drop-off bins placed in the downtown area for newspaper and cardboard. The CONTRACTOR shall be required to furnish two (2) locking bins for the Commercial Newspaper and Cardboard Drop-Off Service. The CONTRACTOR shall retain all revenues generated from the sale of newspaper and cardboard, and shall provide this service at no additional charge to the CITY. Collections shall be

performed at a location accessible to CONTRACTOR's vehicles. Push services will be available for a fee.

4.4 CITY COLLECTION SERVICE

- (a) **CITY Solid Waste Collection Service.** The CONTRACTOR shall provide CITY Solid Waste Collection Service to CITY Service Units, all of which are described in Exhibit 3. The CONTRACTOR shall be required to furnish the necessary number and size of Bins or Carts to accommodate the CITY Solid Waste Collection activities. CITY Solid Waste Collection Service shall be provided at no additional charge to the CITY. Collections shall be performed at a location accessible to CONTRACTOR's vehicles. Push services will be available for a fee.
- (b) **CITY Recycling Service.** The CONTRACTOR shall provide City Recycling Service to CITY Service Units. The CONTRACTOR shall be required to furnish the necessary number and size of Bins or Carts to accommodate the CITY Recycling Service. The CONTRACTOR shall retain all revenues generated from the sale of Recyclable Materials, and shall provide this service at no additional charge to the CITY. Collections shall be performed at a location accessible to CONTRACTOR's vehicles. Push services will be available for a fee.
- (c) **CITY Large Item Cleanup Service.** The CONTRACTOR shall provide CITY Large Item Cleanup Service at the direction of the CITY. The CONTRACTOR shall be required to provide up to 520 cubic yards per year of Large Item Cleanup Service at the direction of CITY staff. The CITY may elect to use the service to mitigate illegal dumping, for community cleanup projects, or for other projects or services at the direction of CITY staff. This service shall be provided at no additional charge to the CITY. Collections shall be performed at a location accessible to CONTRACTOR's vehicles. Push services will be available for a fee.
- (d) **CITY Special Event Collection Service.** The CONTRACTOR shall provide CITY Special Event Collection Service at the direction of the CITY. The CONTRACTOR shall be required to provide Solid Waste Carts or Recyclable Materials Carts, Solid Waste Bins or Recyclable Materials Bins, or Roll-Off Containers, at up to six (6) CITY sponsored events per year. This service shall be provided at no additional charge to the CITY.

The current level of CITY Special Event Collection Service is as follows:

- Youth Day Event in April = Solid Waste and Recyclable Materials Carts and Solid Waste and Recyclable Materials Bins;
- Earthquake Festival in August = Solid Waste and Recyclable Materials Carts and Solid Waste and Recyclable Materials Bins;
- Creek Cleanup (Once per year) = Two (2) twenty-yard Roll-Off Containers per event
- Special Event Clean Up – date will be determined by City = Two (2) twenty-yard Roll-Off Containers per year

- (e) **CITY Concrete and Asphalt Recycling Service.** The CONTRACTOR shall provide CITY Concrete and Asphalt Recycling Service to CITY Service Units. The CONTRACTOR shall furnish four (4) Roll-Off Containers for placement at the CITY Corporation Yard for the collection of asphalt and concrete. The Roll-Off Containers shall be serviced periodically at the direction of CITY Staff. The material shall be delivered to an appropriate inserts processing or recycling facility, and this service shall be provided at no additional charge to the CITY. This is limited to 10 boxes serviced per year. Collections shall be performed at a location accessible to CONTRACTOR's vehicles. Push services will be available for a fee.

4.5 **TEMPORARY CONTAINER COLLECTION SERVICES.** The CONTRACTOR shall provide Temporary Container Collection Service as requested by Service Units. The Service Rates for such service shall be set forth in Exhibit 1. The CONTRACTOR shall have the exclusive right to provide Temporary Container Collection Service to all Service Units within the Service Area, including to the CITY.

4.6 **OTHER SERVICES**

- (a) **Street Sweeping Service.** The CONTRACTOR shall provide street sweeping service to all CITY streets as described in Exhibit 4. CONTRACTOR may use a subcontractor to provide such services.
- (b) **Large Item Drop-Off Event.** The CONTRACTOR shall promote and operate one (1) annual Large Item Drop-Off Event at the CITY Corporation Yard. The CONTRACTOR shall deliver the material to a facility(s) for processing, recycling, re-use or disposal. This service shall be provided at no additional charge to the CITY or the rate payers.
- (c) **Customer Service and Billing.** The CONTRACTOR shall provide customer service and billing services for all Service Recipients. This service shall be provided at no additional charge to the CITY or the rate payers.

5. PUBLIC EDUCATION AND OUTREACH

CONTRACTOR will have the Outreach Coordinator/Resource available within the community during the transition to respond to questions about recycling and changes in services. CONTRACTOR will provide the following materials and on-going education to Service Recipients to ensure that they understand the goals of the program and the services that are provided under the Agreement. These materials will be provided in English and Spanish.

- Quarterly newsletter
- Public outreach campaign
- Corrective action notices
- Participation in community events
- Presentations at Civic Clubs and Schools

- Monthly City Diversion Reporting

6. REIMBURSEMENT OF CITY EXPENSES.

6.1 Performance Bond. On or before the commencement date of this Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor's faithful performance of its obligations under this Agreement and such bond shall be renewed annually so that the performance bond is maintained at all times during the term. The initial principal sum of the performance bond shall be equal to \$250,000. The premium for the bond described above shall be paid by the Contractor. The bond shall be executed by a corporation authorized to issue surety bonds in the State of California, with a financial condition and record of service satisfactory to the City.

7. FRANCHISE TERM.

The term of this Agreement will commence on July 1, 2017 and expire on June 30, 2027. Twenty-four months prior to any expiration date, the CONTRACTOR may request the CITY to consider an extension of the then-existing term.

8. FRANCHISE TRANSFERABLE; CITY CONSENT REQUIRED

8.1 Except as provided in this Section 8, it is the expressed intent of the Parties to this Franchise Agreement that the rights and privileges granted by this Franchise Agreement shall not be transferred, sold, hypothecated, leased, assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any person, except the Contractor, either by act of the Contractor or by operation of law, nor shall any Change in Control (as defined below) occur, without the prior written consent of City, expressed by resolution. Each of the foregoing transactions, including without limitation a Change in Control, is referred to herein as a "Transfer."

8.2 "Change of Control" means either: (i) the transfer of a majority of the voting securities of Contractor to an entity that is not controlled by Contractor's ultimate parent entity (as defined on the effective date of this Franchise Agreement in 16 CFR § 801.1(a)(3)); or (ii) the transfer of twenty-five percent (25%) or more of the voting securities of the ultimate parent entity of Contractor to or from a single person or entity or groups of persons or entities acting in concert, who already own less than fifty percent (50%) of the voting securities, within any period of 12 consecutive calendar months; provided, however, that no such transfer shall constitute a Change of Control, if, following such transfer, the surviving ultimate parent entity is owned by a large, fluid aggregation of shareholders where no shareholder owns more than ten percent (10%) of the voting securities of the surviving ultimate parent entity (excluding, however, any such shareholder that prior to such transaction owned 10% or more of the voting securities of the ultimate parent entity of Contractor). Without limiting the generality of the foregoing, reorganizations, mergers, consolidations, sales of equity or assets or similar transactions between or among entities owned by the same ultimate parent, including but not limited to Contractor and regardless of which entity is the survivor, do not constitute a "Change

of Control” or a “Transfer.” Provided, however, that the transfer of stock of the Contractor to another refuse company shall not be deemed a “Change in Control” or a “Transfer.”

8.3 It is further understood and agreed that the City's consent to a Transfer may not be unreasonably withheld for a Transfer to a Qualified Transferee. A “**Qualified Transferee**” shall mean a reputable waste management company with financial and technical capabilities to fulfill the obligations under this Franchise Agreement. In reasonably determining whether a proposed Qualified Transferee is “reputable,” the City may consider (i) the company’s history of complying with environmental laws and policies, (ii) the company's performance of solid waste franchises, and (iii) whether the company’s environmental and compliance policies conform to industry standards. In no event shall the City's consent be withheld on the basis of personal taste, convenience or sensibility or because of the City’s desire for better or different commercial terms than those contained in this Franchise Agreement.

9. FRANCHISE FEE.

The Franchise Fee for all business under this franchise shall be 15% of gross revenues (i.e., Service Rate payments received from Service Recipients).

10. FRANCHISE TRANSFER; FEES.

10.1 Any application for a franchise transfer or change in control, as described in Section 8.1, shall be made in the manner prescribed by the CITY Manager. The application shall include the payment and reimbursement to CITY of up to \$15,000 to cover the cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse CITY for all direct and indirect expenses. In addition, the CONTRACTOR shall reimburse the CITY for all costs not covered by the transfer fee. Bills shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within thirty (30) days of receipt.

10.2 These franchise transfer fees are over and above any franchise fees specified in this Franchise Agreement.

11. IMPOSITION OF DAMAGES OR TERMINATION.

11.1 If the CITY Manager determines that CONTRACTOR is in breach of a material provision of this Franchise Agreement or the requirements of Municipal Code Chapter 8.04A, or any applicable Federal, State, or local law or regulation, including but not limited to the laws governing transfer, storage, or disposal of special wastes, the CITY Manager may advise CONTRACTOR, in writing of such deficiencies. Subject to Section 11.7, below, the Manager may, in such written instrument, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be sixty (60) days from the receipt by the CONTRACTOR of such written notice. The CITY Manager shall review the CONTRACTOR'S response and refer the matter to the CITY Council or decide the matter and notify the CONTRACTOR of that decision, in writing. A decision or order of the CITY Manager shall be final and binding on CONTRACTOR if the CONTRACTOR fails to file a "Notice of Appeal" with the CITY Manager within 30 days of

receipt of the CITY Manager's decision. Within ten working days of receipt of a Notice of Appeal, the CITY Manager shall either refer the appeal to the CITY Council for proceedings in accordance with Section 11.3 - 11.4, below, or refer the matter to a hearing officer as provided in Section 12 below.

11.2 The CITY Council, in such case, may set the matter for hearing. The CITY Council shall give CONTRACTOR, and any other person requesting the same, fourteen (14) days written notice of the time and place of the hearing. At the hearing, the CITY Council shall consider the report of the CITY Manager indicating the deficiencies, and shall give the CONTRACTOR, or its representatives and any other interested person, a reasonable opportunity to be heard.

11.3 Based on the evidence presented at the public hearing, the Council shall determine by Resolution whether the Franchise Agreement should be terminated or liquidated damages imposed. If, based upon the record, the CITY Council determines that the performance of CONTRACTOR is in breach of any material term of this Franchise Agreement or impose liquidated damages, as defined below. The decision of the CITY Council shall be final and conclusive, subject to referral of the matter for an administrative hearing pursuant to Section 12, below. CONTRACTOR'S performance under its franchise is not excused during the period of time prior to the CITY Council's final determination as to whether such performance is deficient.

11.4 This right of termination or to impose liquidated damages is in addition to any other rights of CITY upon failure of CONTRACTOR to perform its obligations under this Franchise Agreement.

11.5 Termination of Franchise. The CITY reserves the right to terminate CONTRACTOR'S franchise or impose liquidated damages in the event of any of the following:

- (a) If the CONTRACTOR practices, or attempts to practice any fraud or deceit upon the CITY.
- (b) If the CONTRACTOR becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of CONTRACTOR in a bankruptcy proceeding.
- (c) If the CONTRACTOR fails to perform in full force and effect, the workers compensation, liability, indemnification coverage, or cash bond as required by the Franchise Agreement.
- (d) If the CONTRACTOR violates any orders or violation of any regulatory body having jurisdiction over the CONTRACTOR relative to the Franchise Agreement, provided that the CONTRACTOR may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which no breach of the franchise shall be deemed to have occurred.
- (e) If the CONTRACTOR ceases to provide collection services as required under this Franchise Agreement over all or a substantial portion of its Franchise Area for a

period of seven (7) days or more, for any reason within the control of the CONTRACTOR.

- (f) If the CONTRACTOR willfully fails to make any payments required under the Franchise Agreement and/or refuses to provide the CITY with required information, reports and/or test results in a timely manner as provided in the Franchise Agreement.
- (g) Any other act or omission by the CONTRACTOR which materially violates the terms, conditions or requirements of the Franchise, CITY Ordinance, the California Integrated Waste Management Act of 1989, as it may be amended from time to time or any order, directive, rule or regulation issued there under and which is not corrected or remedied within the time set in the written notice of the violation or if the CONTRACTOR cannot reasonably correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

11.6 Liquidated Damages.

- (a) The City finds, and the CONTRACTOR agrees, that as of the time of the execution of this Franchise Agreement, it is impractical, if not impossible to reasonably ascertain the extent of damages, which shall be incurred by the CITY as a result of a material breach by CONTRACTOR of its obligations under this Franchise Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (I) Substantial damage results to members of the public who are denied services or denied quality or reliable services; (II) Such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Franchise Agreement to individual members of the general public for whose benefit this Franchise Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (III) That services might be available at substantially lower costs than alternative services, and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (IV) The termination of this Franchise Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.
- (b) After providing notice and opportunity to cure as set forth in Section 11.1., the CITY Council may, in its discretion, assess liquidated damages not to exceed the sum of Seven Hundred Fifty Dollars (\$750.00) per day, for each calendar day that no Collection Service is provided by CONTRACTOR in accordance with this Franchise Agreement.
- (c) The CITY finds, and the CONTRACTOR acknowledges and agrees that the above described liquidated damages provisions represent a reasonable sum in light of all the circumstances. Said liquidated damages sums shall be applicable to

each business day of delay during which CONTRACTOR has been found by the CITY Council to be in material default pursuant to this Section. The CONTRACTOR shall pay any liquidated damages assessed by the CITY Council within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the CITY may withdraw them from the performance bond required by Section 6.2, above, order the termination of the franchise granted by this Franchise Agreement, or both.

11.7 Notice and Cure Rights. Notwithstanding any other provision of this Franchise Agreement to the contrary, the CITY shall provide CONTRACTOR with reasonable notice of and a reasonable opportunity to cure any breach of this Franchise Agreement prior to assessing any liquidated or other damages, terminating the Franchise or taking any remedial action permitted by Section 14 of this Agreement or other similar action if the breach is reasonably subject to cure. The CITY may not assess any liquidated or other damages, terminate the Franchise or take other similar action for any breach that is timely cured by CONTRACTOR. CONTRACTOR shall begin cure of any breach of this Franchise Agreement as soon as it receives notice from CITY. CONTRACTOR shall proceed to cure such default as follows:

- (a) As soon as reasonably possible, if the default is such that in the determination of CITY, the health, safety, or welfare of the public is endangered thereby; or
- (b) Within sixty (60) business days of receiving notice of default; provided that if the nature of the default is such that it will reasonably require more than sixty (60) days to cure, CONTRACTOR shall have such additional time as is reasonably needed to expeditiously complete a cure.

12. ADMINISTRATIVE HEARING PROCEDURES.

12.1 Should CONTRACTOR contend that the CITY is in breach of this Franchise Agreement, it shall file a written request with the CITY Manager for an administrative hearing on the allegation, within fourteen (14) days of the alleged breach or of CONTRACTOR'S notice thereof.

12.2 If either the CITY Manager or the CITY Council refers a matter to a hearing officer, or if the CONTRACTOR should allege a breach of the Franchise by the CITY, CITY and CONTRACTOR shall mutually agree on a hearing officer. If agreement is not reached within twenty (20) working days of the filing of the notice of breach, then CITY and CONTRACTOR shall select the hearing officer from a list of potential hearing officers who are retired California Superior Court judges or Appellate Court justices, none of whom are related to parties, prepared by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules. The CITY and CONTRACTOR shall pay in equal amounts the fees incurred for the services of the AAA in performing such service.

12.3 The hearing shall be conducted according to California Code of Civil Procedure Section 1280, et seq. The exclusive venue shall be in Yolo County, California. A hearing officer to whom a matter is referred shall have the authority to (I) order the CITY or CONTRACTOR to undertake remedial action to cure the breach and to prevent occurrence of

similar breaches in the future; (II) Assess damages and/or levy a penalty upon the CITY or the CONTRACTOR consistent with the terms of this Franchise Agreement; or (III) Find there has been no breach. If the hearing officer finds there has been no breach, such a decision precludes the CITY from conducting a default hearing. For any occurrence or series of related occurrences, the penalty shall be reasonably related to the seriousness of the breach of the Franchise Agreement, and may be levied in addition to damages.

12.4 The party losing the hearing shall be liable for the hearing officer's fees.

12.5 Any failure of the CONTRACTOR to comply with the hearing officer's order shall be deemed a material breach of the Franchise Agreement, and may be grounds for termination of the Franchise Agreement.

12.6 The hearing officer shall commence the hearing within thirty (30) days of selection unless the parties and the hearing officer otherwise agree. Any party to the hearing may issue a request to compel reasonable document production from the other party. Disputes concerning the scope of document production and enforcement of document requests shall be subject to agreement by the parties, or if agreement is not reached within twenty (20) days of that document request, then by disposition by order of the hearing officer. Any such document request shall be subject to the proprietary rights and rights of privilege of the parties, and the hearing officer shall adopt procedures to protect such rights. Except as may be otherwise specifically agreed by the parties, no other form of pretrial discovery shall be available to the parties; provided that if either party notifies the hearing officer that a material violation of the franchise or rights in connection therewith is claimed by either party, the provisions of Code of Civil Procedure Section 1283.05 shall apply.

12.7 Neither party may communicate separately with the hearing officer after the hearing officer has been selected. All subsequent communications between a party and a hearing officer shall be simultaneously delivered to the other party. This provision shall not apply to communications made to schedule a hearing or request a continuance.

12.8 Until final decision is entered from the hearing officer proceeding under the foregoing provisions and the time for appeal or other post-judgment petition has expired, the imposition or enforcement of any penalties or sanctions provided in the Franchise Agreement and related to the subject matter of the hearing shall be stayed. The hearing officer may modify or cancel any proposed penalties or sanctions upon finding that the party subject thereto acted with substantial justification or if the interest of justice so require.

12.9 Any party to a hearing may petition the Superior Court in Yolo County, California to confirm, correct, or vacate the award on the grounds stated in the General Arbitration Act. Any proceedings on appeal shall be in accordance with Code of Civil Procedures 1294 and 1294.2.

13. CITY'S ADDITIONAL REMEDIES.

13.1 In addition to the remedies set forth in Section 11 and 12, above, CITY shall have the following rights and remedies in the event of a breach of this Franchise Agreement that is not cured within any applicable cure period as provided in Section 11:

- (a) To rent or lease equipment from CONTRACTOR, at its fair and reasonable rental value and for a period not to exceed 6 months, for the purpose of collecting and transporting waste materials which CONTRACTOR is obligated to collect and transport pursuant to this Agreement. In the case of equipment not owned by CONTRACTOR, CONTRACTOR shall assign to CITY, to the extent CONTRACTOR is permitted to do so under the instruments pursuant to which CONTRACTOR possesses such equipment, the right to possess the equipment. If CITY exercises its rights under this Section, CITY shall pay to CONTRACTOR the reasonable rental value of the equipment so taken for the period of CITY'S possession thereof.
- (b) The right to license others to perform the services otherwise to be performed by CONTRACTOR hereunder, or to perform such services itself; and
- (c) The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach under the terms of this Franchise Agreement by CONTRACTOR, CITY may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of this Franchise Agreement and to enjoin the breach thereof.

14. RIGHTS OF CITY TO PERFORM DURING EMERGENCY.

14.1 Should CONTRACTOR, for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in Section 25.1 "Force Majeure", below, refuse or be unable to provide Collection Services for a period of more than seventy-two (72) hours, and if as a result thereof, Solid Waste and Organic Materials should accumulate in CITY to such an extent, in such a manner, or for such a time that the CITY Manager should find that such accumulation endangers or menaces the public health, safety, or welfare, then in such event CITY shall have the right, upon twenty-four (24) hour prior written notice to CONTRACTOR, during the period of such emergency, to temporarily take possession of any or all equipment of CONTRACTOR previously used in the collection and transportation of such materials to provide temporary services otherwise provided under this Franchise Agreement. CONTRACTOR agrees that in such event it shall fully cooperate with CITY to effect such a transfer of possession for CITY's use.

14.2 CONTRACTOR agrees that, in such event, CITY may take temporary possession of and use all of said equipment without paying CONTRACTOR any rental or other charge, provided that CITY agrees that, in such event, it assumes complete responsibility for the proper and normal use of such equipment. CONTRACTOR further agrees that, in such event, it shall reimburse CITY for any and all costs and expenses, including the cost of CITY employees and/or third party laborers in the performance of emergency services pursuant to this Section, incurred by CITY in taking over possession of the above mentioned equipment and facilities in such manner and to the extent that would otherwise be required of CONTRACTOR under the terms of this Agreement. CITY shall first subtract such reimbursement costs from compensation otherwise due CONTRACTOR under this Agreement, and to the extent such costs exceed those due CONTRACTOR, an itemized statement of costs and expenses shall be submitted for reimbursement to CONTRACTOR. To facilitate reimbursement of costs and expenses to CITY,

CONTRACTOR agrees to assign its right to receive payment from its Customers for services rendered pursuant to this Agreement to the extent that such services have been rendered to said Customers by CITY, and further agrees to allow CITY to collect such payments directly from the Customers. CITY agrees that it shall immediately relinquish possession of all of the above mentioned property to CONTRACTOR upon receipt of written notice from CONTRACTOR to the effect that it is able to resume its normal responsibilities under this Franchise Agreement.

15. PRIVACY.

15.1 CONTRACTOR shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers or the composition or contents of a customer's waste stream shall not be knowingly revealed to any person, governmental unit, private agency, or company outside of CONTRACTOR's normal business practices, unless upon the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude CONTRACTOR from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses, which may be required by AB939. Also, the Collection Services do not include the collection of confidential information protected by HIPAA (e.g., confidential medical records) and similar regulations, and CONTRACTOR shall not be required to handle collected materials as if they were confidential.

15.2 CONTRACTOR shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of customers.

15.3 The rights accorded customers pursuant to this Section shall be in addition to any other privacy right accorded customers pursuant to Federal or State law.

16. REPORTS AND ADVERSE INFORMATION.

16.1 Monthly Report. CONTRACTOR shall submit to CITY a Monthly Report in a form acceptable to CITY on or before the fifteenth (15th) day following the end of each calendar month, which report shall at a minimum include the following information:

- (a) Volume of waste collected by service type (in tons).
- (b) Volume of waste diverted from landfill disposal as the result of CONTRACTOR'S performance of the Recyclable Materials collection program, in manner consistent with the reporting requirements.
- (c) Indication of recycling program participation. Participation rates shall be determined and gathered from sample data gathered on a daily basis.
- (d) A record of Recyclable Materials sold reflecting the quantity or tonnage sold of each category.
- (e) Information compiled concerning customer complaints, along with a brief narrative describing any operational changes made to respond to complaints received and to prevent their reoccurrence in the future; and

- (f) A list of notices issued detailing Recyclable Materials contamination problems and CONTRACTOR'S follow-up actions, including copies of contamination notices and warning letters issued during the month.

16.2 Annual Reports. The CITY shall require that within sixty (60) days after the close of CONTRACTOR'S fiscal year, the CONTRACTOR shall submit a written annual report, in an audible form approved by the CITY, including, but not limited to, the following information:

- (a) A summary of the previous year's (or, in the case of the initial report year, the initial years) activities including, but not limited to, services began or discontinued during the reporting year, and the number of customers for each class of service;
- (b) A report, in a form satisfactory to the CITY, on the CITY'S progress in meeting, and maintaining its ability to meet its goals, under AB939, along with any recommended changes;
- (c) A revenue statement, setting forth quarterly Franchise Fees and the basis for the calculation thereof, certified by an officer of the CONTRACTOR;
- (d) A list of CONTRACTOR'S officers and members of its board of directors if requested by the CITY.
- (e) A list of stockholders or other equity investors holding five percent (5%) or more the voting interest in the CONTRACTOR and any subsidiaries unless CONTRACTOR is a public corporation whose annual reports are publicly available if requested by the CITY.
- (f) A summary of difficult to service areas or customers in the City.

16.3 AB 939, AB 341 and AB 1826 Reporting: CONTRACTOR shall be responsible for the preparation of all reports required under AB 939, AB 341 and AB 1826 and requested by CITY. This shall include development of all data and reports required by the Integrated Waste Management Board. Reports will be prepared and delivered to CITY in a form acceptable to CITY upon the City's request. CONTRACTOR shall indemnify CITY against all requirements and penalties, which may be imposed under the government code based on CONTRACTOR including knowingly inaccurate information in said reporting (as opposed to failure to satisfy the diversion obligations required by AB 939, AB 341 or AB 1826).

16.4 Adverse Information. CONTRACTOR shall provide CITY two copies of all reports, or other material adversely affecting the City of Winters Franchise Agreement, submitted by CONTRACTOR to the EPA, the California Integrated Waste Management Board, or any other Federal or State Agency. Copies shall be submitted to CITY simultaneously with CONTRACTOR'S filing of such matters with said agencies. CONTRACTOR'S routine correspondence to said agencies. CONTRACTOR'S routine correspondence to said agencies need not be automatically submitted to CITY, but shall be made available to CITY upon written request, as provided in Section 26, below:

- (a) The CONTRACTOR shall submit to CITY copies of all pleadings, applications, notifications, communications, and documents of any kind, submitted by the CONTRACTOR to, as well as copies of all decisions, correspondence, and actions by, any Federal, State, and local courts, regulatory agencies, and other government bodies relating specifically to CONTRACTOR'S performance of services pursuant to this Franchise Agreement. Any confidential data exempt from public disclosure by State or Federal law shall be retained in confidence by the CITY and its authorized agents and CITY shall make every reasonable effort to ensure that it is not made available for public inspection, except that CITY shall not incur liability for its inadvertent disclosure of such information.
- (b) CONTRACTOR shall submit to the CITY such other information or reports in such forms and at such times as the CITY may reasonably request or require.
- (c) All reports and records required under this or any other section shall be furnished at the sole expense of the CONTRACTOR.
- (d) A copy of each of CONTRACTOR'S annual and other periodic public financial reports, or where CONTRACTOR is a subsidiary of a public corporation and other entities, as the CITY request, shall be submitted to the CITY within thirty (30) days after receipt of a request.

16.5 Failure to Report. The refusal, failure or neglect of the CONTRACTOR to file any of the reports required herein, or inclusion of any materially false or misleading statement in such reports, shall be considered a breach of this Agreement.

17. COMPENSATION.

17.1 Collection Services. The CONTRACTOR shall be responsible for the billing and collection of payments for all Collection Services. The CONTRACTOR shall charge Service Recipients the Service Rates as initially set forth in Exhibit 1.

- (a) Partial Month Service. If, during a month, a Service Unit is added to or deleted from CONTRACTOR'S Service Area, the CONTRACTOR'S billing shall be pro-rated based on the weekly service rate (weekly service rate shall be the Service Rate established in Exhibit 1 divided by four (4)) times the number of actual weeks in the month that service was provided to the Service Unit.
- (b) Production of Invoices. The CONTRACTOR shall produce an invoice, in a form and format that is approved by the Contract Administrator, for services received under this Agreement in advance but no less than four times per year. The CONTRACTOR'S invoice shall be remitted to the Service Recipient no later than the twentieth (20th) day of the month proceeding the period for which service is being billed.
- (c) Delinquent Service Accounts. Service Recipients will be considered delinquent when CONTRACTOR invoices are unpaid within 30 days of the invoice date. CONTRACTOR may bill to Service Recipients a late payment fee, interest,

returned check charges, as well as all costs associated with bad debt collection (e.g., court costs, attorneys' fees, etc.). In accordance with City Code requiring the City to provide for waste collection services for all residents, the CONTRACTOR may not suspend or terminate service to residential Service Recipients that become delinquent; CONTRACTOR may discontinue services to delinquent Commercial Service Units, though they will not be able to utilize the collection services of third parties. The City will adopt an ordinance to provide for the transfer of CONTRACTOR delinquent charges to the property taxes as a special assessment or property lien. Upon adoption of such ordinance, CONTRACTOR may, on an annual basis, instruct the City to place Service Recipient delinquent balances which are more than 120 days delinquent on the Yolo County property tax roles as a special assessment or property lien. If the City fails to adopt the special assessment/property lien process outlined herein by September 1, 2017, then CONTRACTOR shall have the option to suspend, discontinue or reduce service levels to delinquent Service Recipients.

17.2 Adjustments to Service Rates.

- (a) CPI Adjustment. Commencing on July 1, 2018, and on the same date annually thereafter (the "Adjustment Date"), the Service Rates in Exhibit 1 shall be automatically adjusted by a percentage equal to the percent change in the average Consumer Price Index for All Urban Consumers: Water and sewer and trash collection services, Series ID CUUR0000SEHG ("CPI"), as published by the Bureau of Labor Statistics, for the 12-month period ending nearest, but at least sixty (60) days prior to, the Adjustment Date. At least thirty (30) days prior to the Adjustment Date, Contractor shall notify the City of the CPI adjustment to take effect on the Adjustment Date and shall provide the City with its computations therefore. Adjustments to the Contractor's service rates shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered when making adjustments. An example of an annual adjustment to the Service Rates is set forth in Exhibit 2.

- (b) Adjustments for Extraordinary Circumstances.

The Service Rates set by this Agreement are calculated to pay certain expenses and costs that are of a contingent and uncertain nature. Therefore, in addition to the adjustments provided above, the CONTRACTOR's Service Rates shall, upon written request of CONTRACTOR, be further adjusted on an interim basis for increased expenses or lost revenue associated with performance of the services hereunder due to any one or more of the following causes:

17.2.2.1 changes in Contractor's costs resulting from a Force Majeure event;

17.2.2.2 changes in the scope or method of services provided by Contractor, changes in the Franchise Fee, or other changes or fees required, initiated, or approved by the City (including a change in Disposal Facility);

17.2.2.3 any change in law, statute, rule, regulation, ordinance, order or requirement of any federal, state, regional or local government that is effective after the date this Agreement is first signed;

17.2.2.4 a material fluctuation in the markets or market price for Recyclable Materials, unforeseen increases in the cost of collection, handling, processing, storing, transporting, marketing, or sale or other disposition of Recyclable Materials, the need for increased promotional or educational activities pertaining to recycling or any changes to the definition of “Recyclable Materials” set forth herein;

17.2.2.5 an increase in the cost of disposal;

17.2.2.6 increase in the cost of fuel; or

17.2.2.7 any other extraordinary circumstances or causes or reasons that are not within the reasonable control of Contractor.

If Contractor requests an adjustment due to the extraordinary circumstances set forth above, Contractor shall prepare a Service Rates adjustment request setting forth its calculation of the increase costs or reduced revenue, and accompanying Service Rates adjustment necessary to offset such increased costs/reduced revenue. The City may request any and all documentation and data reasonably necessary to evaluate such request by Contractor, and may retain, at its own expense, an independent third party to audit and review such documentation and such request. If such third party is retained, the City shall take reasonable steps, consistent with state law, to protect the confidential or proprietary nature of any data or information supplied by Contractor. The City shall act within ninety (90) days of receipt of the request from Contractor, and shall either approve or disapprove the request, provided that approval shall not be unreasonably withheld. In the case of an increase in the cost of disposal, the City shall approve the rate request such that Contractor may increase Service Rates at the time when the increased cost of disposal takes effect. Notwithstanding the foregoing, Contractor understands and agrees that City may be required to comply with Proposition 218 and other applicable law granting rate increases. City shall not be in breach of this Agreement if City complies with its obligations under Proposition 218, yet its residents lawfully delay or prevent City from raising or imposing the rates. In such event, City and Contractor shall meet in good faith to consider alternatives and options for Contractor to recoup the lost revenue, in the following order: (i) reduction in Franchise Fees, (ii) reduction in City Services, (iii) reduction in other Collection Services provided hereunder, and (iii) Contractor terminating the Agreement for convenience.

18. ANNUAL REVIEW OF PERFORMANCE, QUALITY OF SERVICE, AND SYSTEM AND SERVICE REVIEW.

18.1 At CITY'S sole option, within ninety (90) calendar days of the first anniversary of the effective date of this Franchise Agreement, and each year thereafter throughout the term of the Franchise Agreement, CITY may hold a public hearing at which the CONTRACTOR shall be present and shall participate, to review the CONTRACTOR'S performance and quality of service, refuse collection and recycling systems, and other services. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

18.2 Within thirty (30) calendar days after the conclusion of the public hearing, CITY may issue a report with respect to the adequacy of performance and quality of service. If any noncompliance with the franchise is found, CITY may direct CONTRACTOR to correct the inadequacies in accordance with Sections 11 and 12, above.

18.3 Annually, or at any time after receiving notice from the CITY, the CONTRACTOR shall, within sixty (60) calendar days, submit a report to CITY indicating the following:

- (a) Changes recommended to improve the CITY'S ability to meet the goals of AB939 and any subsequent legislation.
- (b) Any specific plans for provision of such new services by the CONTRACTOR, or a justification indicating why CONTRACTOR believes that such services are not feasible for the Franchise Area.
- (c) The CITY and CONTRACTOR hereby acknowledge that the CONTRACTOR has based its residential rates in Exhibit 1 and its expectation of meeting AB939 goals, upon the full participation of all residents in the services described herein. The CITY and CONTRACTOR agree to consider reasonable modifications to this Agreement in the event less than adequate participation is achieved.

18.4 Topics for discussion and review at the system and services review hearing shall include, but shall not be limited to, services provided, feasibility of providing new/ services, application of new technologies, customer complaints, rights of privacy, amendments to the Franchise Agreement, developments in the law, new initiatives for meeting or exceeding AB939's goals and regulatory constraints.

18.5 CITY and CONTRACTOR may each select additional topics for discussion at any f systems and services review hearing.

18.6 Not later than sixty (60) days after the conclusion of each system and service review hearing, CITY shall issue a report. CITY may require CONTRACTOR to provide such services within a reasonable time, for reasonable rates and compensation.

19. COLLECTION EQUIPMENT.

19.1 CONTRACTOR shall provide an adequate number of vehicles and equipment for the collection, transportation, recycling, and disposal of waste materials for which it is responsible under this Franchise Agreement. The equipment of CONTRACTOR used under

this Franchise agreement shall be subject to inspection by CITY on a semi-annual basis but shall not be subject to any permit fees therefor.

- (a) All vehicles used by CONTRACTOR under this Franchise Agreement shall be registered with the Department of Motor Vehicles of the State, of California, shall be kept clean and in good repair and shall be uniformly painted. All vehicles used by the Contractor will comply with all State of California air pollution control laws to the extent applicable. Vehicles will be maintained to ensure that there is no hydraulic fluid leaked onto CITY streets. A sufficient supply of parts must be kept on hand to ensure timely and continuous fulfillment of this Franchise Agreement.
- (b) All bins and containers provided shall be kept in a reasonable condition and appearance.
- (c) CONTRACTOR has agreed to name the specific organization that shall provide all of the services under this Franchise Agreement, "Waste Management of Winters," which is a dba for USA Waste of California, Inc. This name shall be used for all correspondence, billing statements, directory listings, references, signs, vehicle identification, etc.
- (d) Solid Waste collection vehicles shall be washed at least once every seven (7) calendar days.
- (e) "(CONTRACTOR Name) Services", a local or toll free telephone number, and vehicle number shall be visibly displayed on all vehicles in letters and figures not less than five inches (5") high.

20. PUBLIC ACCESS TO CONTRACTOR.

20.1 Office Hours. CONTRACTOR'S office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. daily, on all collection days. A representative of CONTRACTOR shall be available for communication with the public during such hours. In the event that normal business problems cannot be rectified over the telephone, a representative of CONTRACTOR shall agree to meet with the public at a location agreeable to CONTRACTOR and the public. Normal office hours telephone numbers shall either be a local or toll free call. CONTRACTOR shall also maintain a local or toll free after hours telephone number for answering service available at said after- hours telephone number during all hours other than normal office hours.

20.2 Service Complaints.

- (a) All Customer complaints shall be directed to CONTRACTOR. CONTRACTOR shall record all complaints received by mail, by telephone, or in person (including date, name, address of complainant, and nature of complaint). CONTRACTOR agrees to use its best efforts to resolve all complaints by close of business (waste collection) day following the date on which such complaint is received. The CITY Manager or the Manager's designee may investigate Service complaints. Unless a settlement satisfactory

to complainant, the CONTRACTOR, and the Manager's designee is reached, the complainant may refer the matter to the CITY Manager for review.

- (b) CONTRACTOR shall maintain records listing the date of consumer complaints, the customer, describing the nature of the complaint or request, and when and what action was taken by the CONTRACTOR to resolve the complaint. All such records shall be maintained and shall be available for inspection by CITY, as described in Section 26. CONTRACTOR shall prepare monthly summaries of consumer complaints. The summaries shall be available and delivered monthly to the CITY Manager or the CITY Manager's designated representative.

20.3 Government Liaison Person. The CONTRACTOR shall designate a "government liaison person" who shall be responsible for working with the CITY Manager or the CITY Manager's designated representative to resolve customer complaints.

21. CUSTOMER SERVICES.

21.1 Approved Vacation Hold: SFD Customers may suspend the Solid Waste and Recyclable Materials component of service for a period of not less than one (1) month. These customers must have their Carts removed and will incur a redelivery charge upon reactivation of their account. Requests for suspension for periods less than one (1) month will be subject to a fee of \$10.00 per request in addition to the redelivery fee. All Customers will continue to be charged for Organic Waste and street sweeping services. City must approve suspension services.

22. RESOLUTION OF DISPUTED CUSTOMER COMPLAINTS.

22.1 The CONTRACTOR shall notify customers of this complaint resolution procedure at the time customers apply for or are provided service.

22.2 A customer dissatisfied with CONTRACTOR'S decision regarding a complaint may ask the CITY to review the complaint. To obtain this review, the customer must request CITY review within 30 days of receipt of CONTRACTOR'S response to the complaint, or within 45 days of submitting the complaint to the CONTRACTOR, if the CONTRACTOR has failed to respond to the complaint. The CITY may extend the time to request its review for good cause.

22.3 Before reviewing the complaint, the CITY Manager shall refer it to the CONTRACTOR. If the CONTRACTOR fails to cure the complaint within ten (10) days, the CITY Manager shall review the customer's complaint and determine if further action is warranted. The CITY Manager may request written statements from the CONTRACTOR and customer, and/or oral presentations.

22.4 The CITY Manager shall determine if the customer's complaint is unresolved, and if so, what remedy, if any, shall be imposed. The remedy under this Section shall be limited to a rebate of customer charges related to the period of breach.

22.5 The CITY Manager may delegate these duties to a designee. The decision of the CITY Manager or his designee shall be final on any matter under Five Thousand Dollars (\$5,000.00). In the event of a decision on a matter awarding Five Thousand Dollars (\$5,000.00) or more, CONTRACTOR may seek review pursuant to Section 13, above.

23. OWNERSHIP OF SOLID WASTE.

23.1 Once Solid Waste, Organic Waste, Recyclable Materials, and Construction and Demolition Debris are placed in Bins, Carts or Roll-offs for collection, ownership shall transfer to CONTRACTOR, subject to the terms of this Franchise Agreement and applicable law. Subject to CONTRACTOR'S duty to meet the source reduction and recycling requirements herein, CONTRACTOR is hereby granted the right to retain, recycle, compost, dispose of, and otherwise use such materials, or any part thereof, in any lawful fashion or for any lawful purpose desired by CONTRACTOR. Subject to the provisions of this Franchise Agreement, CONTRACTOR shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of, or use the Solid Waste, Organic Waste, Recyclable Materials, and Construction and Demolition Debris, or any part thereof, which is disposed of or processed at a disposal site or sites (whether landfill, transformation facility, transfer station, or material recovery facility) shall become the property of the owner or operator of the disposal site or sites once deposited there by CONTRACTOR. At no time does CITY obtain any right of ownership or possession of solid waste placed for collection (except that generated by the CITY), and nothing in this Franchise Agreement shall be construed as giving rise to any inference that CITY has such rights.

CONTRACTOR acknowledges that the CITY may direct the location for disposal of Solid Waste, although a change in location may result in an increase to the Service Rates hereunder.

24. INDEMNIFICATION AND INSURANCE

24.1 Indemnification of CITY. CONTRACTOR agrees that it shall protect, defend with counsel approved by CITY, indemnify, and hold harmless CITY, City Council, its officers, employees, and agents and at no cost to CITY, from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities, including attorney's fees, arising out of or resulting in any way from CONTRACTOR'S exercise of this Franchise, unless such claim is due to the sole negligence or willful acts of the CITY, its officers, employees, agencies, or contractors, or from the CITY'S grant of this Franchise to CONTRACTOR. Subject to the scope of this indemnification and upon demand of the CITY, made by and through the CITY Attorney, the CONTRACTOR shall appear in and defend the CITY and its officers, employees, and agents in any claims or actions, whether judicial, administrative, or otherwise arising out of the exercise of the Franchise Agreement. This provision is in addition to all other provisions of this Agreement and is intended to apply to CONTRACTOR'S actions during the term of this Agreement and survive the end of the term of this Agreement.

24.2 Indemnification of CONTRACTOR. The CITY shall indemnify, defend and hold the CONTRACTOR, its affiliates and their respective officers, directors, employees, and shareholders harmless from and against any and all liabilities, losses, damages, claims,

actions, causes of action, judgments, costs, and expenses (including reasonable attorney's fees) arising from or in any manner related to the sole negligence or willful acts of the CITY, its officers, employees, agents, or contractors. Subject to the scope of this indemnification and upon demand of the CONTRACTOR, made by and through its attorney, the CITY shall appear in and defend the CONTRACTOR and its officers, employees, and agents in any claims or actions whether judicial, administrative, or otherwise arising out of the exercise of the Franchise Agreement.

24.3 Hazardous Substances Indemnification. Except with respect to disposal facilities selected by the CITY pursuant to Section 22, CONTRACTOR shall indemnify, defend with counsel approved by CITY, protect and hold harmless CITY, its officers, employees, agents, assignees, and any successor or successors to CITY'S interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damage, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, CITY or its officers, employees, agents, or Contractors arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes at any place where CONTRACTOR stores or disposes of municipal solid waste or construction debris pursuant to this Franchise Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9607 (e) and California Health and Safety Code Section 5364, to insure, protect, hold harmless, and indemnify CITY from liability. This provision is in addition to all other provisions of this Agreement and is intended to apply to CONTRACTOR'S actions during the term of this Agreement and survive the end of the term of this Agreement.

24.4 AB939 Indemnification. CONTRACTOR agrees to protect, defend, with counsel approved by the CITY, and indemnify CITY against all fines or penalties imposed by the California Integrated Waste Management Board caused by CONTRACTOR'S delays in providing information that prevents CITY from submitting reports required by AB939 in a timely manner.

24.5 Worker's Compensation Insurance. CONTRACTOR shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement full Worker's Compensation Insurance in accord with the provisions and requirements of the Labor Code of the State of California. A certificate of insurance including the required endorsements and evidencing the required coverage shall be filed and maintained with the CITY Clerk throughout the term of this Franchise Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be canceled except after thirty (30) days' prior written notice has been given to CITY, except ten (10) days notice applies to cancellation for non-payment of premium. To the extent of Contractor's indemnity obligations under this agreement, the policy shall also be amended to waive all rights of subrogation against the CITY,

its elected or appointed officials, employees, agents, or Contractors for losses which arise from work performed by the persons insured for the CITY.

24.6 Automobile Liability Insurance. The limits of such insurance coverage, and companies, if any, shall be subject to review. CONTRACTOR shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement a Commercial Form Combined Single Limit Liability (occurrence) policy with a minimum limit of ONE MILLION DOLLARS (\$1,000,000.00). The policy shall provide Pollution coverage for incidents occurring during transportation including the loading and unloading of the vehicle.

24.7 Pollution Control Insurance. CONTRACTOR shall purchase and maintain in force for the duration of the Agreement term insurance for pollution legal liability applicable to bodily injury; property damage, cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any loss arising from the transporter's activity under this Agreement. Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$2,000,000 for claims arising within the CITY. If coverage is written on a claims-made basis, the CONTRACTOR warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement, and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three years beginning from the time that work under this Agreement is completed.

24.8 General Liability Insurance. The limits of such insurance coverage, and companies, if any, shall be subject to review. CONTRACTOR shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement a Broad Form Commercial General Liability (occurrence) policy with a minimum limit of FOUR MILLION DOLLARS (\$4,000,000.00) aggregate and ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property damage. Said insurance shall protect CONTRACTOR and CITY from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operations performed pursuant to this Franchise Agreement, whether such operations be by CONTRACTOR itself, or by its agents, employees, and/or sub-contractors. A certificate of insurance including the required endorsements evidencing the above required insurance coverage shall be filed with the CITY Clerk. All of the following provisions or endorsements are required to be made a part of the insurance policies required by this Section:

- (a) "The CITY, City Council, its employees, agents, Contractors, and officers, are hereby added as additional insureds as respects liability arising out of activities performed by or on behalf of CONTRACTOR."
- (b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the CITY may possess including any self-insured retention the CITY may have, and any other insurance the CITY does possess shall be considered excess insurance and shall not contribute with it."

- (c) "This insurance shall act for each insured, as though a separate policy had been written for each. This, however, shall not act to increase the limit of liability of the insuring company."
- (d) "Thirty (30) days prior written notice shall be given to the CITY in the event of cancellation, except that ten (10) days notice applies to cancellation for non-payment of premium. Such notice shall be sent to the CITY Clerk."

The limits of such insurance coverage, and companies, shall be subject to review and approval by the CITY Manager every year and may be increased at that time and match the coverage provided by the CITY'S own liability insurance policy. The CITY shall be included as an additional insured on all policies by endorsement except with regard to Workers' Compensation. The requirements of this section may be satisfied in whole or in part by CONTRACTOR'S self-insurance program.

Any deductibles or self-insured retentions applicable to any of the above required insurance shall be for the account of the Contractor and paid entirely by Contractor without contribution from the CITY.

24.9 Modification. The insurance requirements provided herein may be modified or waived in writings by the CITY Council upon the request of CONTRACTOR, or in the sole discretion of the CITY provided the CITY Council determines such modification or waiver is in the best interests of CITY considering all relevant factors, including the fact that the parent of CONTRACTOR may be self-insured up to a certain acceptable amount.

25. CONTRACTOR'S BOOKS AND RECORDS; AUDITS.

25.1 CONTRACTOR shall maintain in auditable form all records relating to the services provided hereunder and relevant in determining compliance with the Agreement, including, but not limited to, customer lists, billing records, accounts receivable records, maps, AB939 compliance records, and customer complaints, for the full term of this Franchise Agreement, and an additional period of not less than three (3) years, or any longer period required by law or by the CITY. The CITY shall have the right, upon five (5) business days advance notice, to inspect all maps, AB939 compliance records, customer complaints, and other like materials of the CONTRACTOR which reasonably relate to CONTRACTOR'S compliance with the provisions of the Franchise Agreement. Such records shall be made available to CITY at CONTRACTOR'S regular place of business, but in no event outside the County of Yolo County.

25.2 Should any examination or audit of CONTRACTOR'S records reveal an underpayment of any fee required under this Franchise Agreement, the amount of such underpayment shall become due and payable to CITY with interest at the legal rate of seven percent (7%) not later than fifteen (15) days after written notice of such underpayment is sent to CONTRACTOR by CITY. Should any underpayment of more than three percent (3%) be discovered, CONTRACTOR shall bear the entire cost of the audit.

26. GENERAL PROVISIONS.

26.1 Force Majeure. CONTRACTOR shall not be in default under this Franchise Agreement in the event that any of the Collection Services provided by the CONTRACTOR are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, and fires, strikes, lockouts, and other labor disturbances or other catastrophic events which are beyond the reasonable control of CONTRACTOR. Other catastrophic events do not include the financial inability of the CONTRACTOR to perform or failure of the CONTRACTOR to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the CONTRACTOR. In the event a labor disturbance interrupts the Collection Services by CONTRACTOR as required under this Franchise Agreement, CITY may elect to exercise its rights under Section 14 of this Agreement.

26.2 Independent Contractor. CONTRACTOR is an independent contractor and not an officer, agent, servant, or employee of CITY. CONTRACTOR is solely responsible for the acts and omissions of its officers, agents, employees, Contractors, and subcontractors, if any. Nothing in this Franchise Agreement shall be construed as creating a partnership or joint venture between CITY and CONTRACTOR. Neither CONTRACTOR nor its officers, employees, agents, or subcontractors shall obtain any rights to retirement or other benefits which accrue to CITY employees.

26.3 Pavement Damage. CONTRACTOR shall be responsible for any damage, due to CONTRACTOR'S negligence, to CITY'S driving surfaces or other CITY property, whether or not paved, resulting from overweight vehicles providing refuse collection and temporary bin/roll-off services directly attributable and at the location of bins, roll-offs, and containers on public or private property. CONTRACTOR will not be responsible for damage to new, soft driving surfaces where the CITY or property owner has not notified CONTRACTOR of such.

26.4 Property Damage. Any physical damage to public or private property, or other CITY property caused by the negligent or willful acts or omissions of CONTRACTOR, its employees, agents, or sub-contractors shall be repaired or replaced by CONTRACTOR.

26.5 Right of Entry. CONTRACTOR shall have the right, until receipt of written notice revoking permission to pass is delivered to CONTRACTOR, to enter or drive on any public or private street, court, place, easement, or other private property necessary for the purpose of providing Collection Services pursuant to this Franchise Agreement.

26.6 Law to Govern: Venue. The law of the State of California shall govern this Franchise Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Yolo County. In the event of litigation in U.S. District Court, exclusive venue shall lie in the Eastern District of California.

26.7 Fees and Gratuities. CONTRACTOR shall not, nor may it permit any agent, employee, or sub-CONTRACTOR to request, solicit, or demand either directly or indirectly, any compensation or gratuity for temporary bin/roll-off services and the collection,

transportation, recycling, composting, and disposal of solid waste and construction debris except as otherwise required under this Franchise Agreement.

26.8 Prior Agreement and Amendment. This Franchise Agreement is intended to assist the CITY in carrying out CITY's obligations to comply with the provisions of the California Integrated Waste Management Act of 1989, (AB939) as it from time to time may be amended, and as implemented by regulations of the California Integrated Waste Management Board (Regulations), as they from time to time may be amended. In the event that AB939 or other State or Federal laws or regulations enacted after this Franchise has been enacted, prevent or preclude compliance with one or more provisions of this Franchise Agreement, such provisions of the Franchise shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations; in such event, Section 17.2(e) may apply. Except as otherwise provided herein, no other amendment of this Franchise Agreement shall be valid unless in writing duly executed by the parties.

26.9 Compliance with Franchise Agreement. CONTRACTOR shall comply with those provisions of the Yolo County Code as adopted by the City of Winters, as well as any ordinances, resolutions or regulations enacted by the City of Winters which are applicable and with any and all amendments to such applicable provisions during the term of this Franchise Agreement.

26.10 Notices. All notices required or permitted to be given under this Franchise shall be in writing and shall be personally delivered or sent by email, telecopy (fax), or United States Certified Mail, postage prepaid, return receipt requested, and addressed as follows:

To CITY: John Donlevy
City of Winters
318 First Street
Winters, CA 95694
Attn: City Manager
Fax: (530) 795-1747

To CONTRACTOR: Public Sector Manager
USA Waste of California, Inc.
1333 E. Turner Rd
P.O. Box 241001
Lodi, CA 95241-9501

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

26.11 Savings Clause and Entirety. If any non-material provision of this Franchise Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or un-enforceability of such provision shall not affect the validity and enforceability of any of the remaining provision of the Franchise Agreement. If any material provision of this Franchise

Agreement shall be held to be invalid or unenforceable, the entire Franchise Agreement may be declared by either party to be terminated and void subject to those rights, which may have existed prior to the date of this Agreement.

26.12 Exhibits Incorporated. Exhibits 1 through 3 are attached to and incorporated into this Franchise Agreement by reference.

26.13 Identification Required.

- (a) CONTRACTOR shall provide its employees, and sub-contractors with identification for all individuals who may make personal contact with residents of the CITY.
- (b) The CONTRACTOR shall provide a list of current employees, Contractors and sub-contractors, to the CITY upon request. The CITY may require the CONTRACTOR to notify customers yearly of the form of said identification.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

CITY OF WINTERS

By: _____

Name: _____

Title: _____

USA WATE OF CALIFORNIA, INC.

By: _____

Name: _____

Title: _____

DRAFT

EXHIBIT 1
Service Rates

DRAFT

EXHIBIT 2
Service Rates Adjustment Example

City of Winters
Example Calculation
Exhibit 2

Normal CPI Increase	
96 Gallon Rate*	\$27.34
CPI Increase Percentage	3.89%
CPI Increase	\$1.06
New Rate After Increase	\$28.40

*Service rates include a 15% franchise fee

Extraordinary Rate Increase Example (Disposal Increase)		
Old Disposal Rate Per Ton	\$35.00	A
New Disposal Rate Per Ton	\$45.00	B
Change in Disposal Cost Per Ton	\$10.00	C = B - A
Increase in Disposal Cost Percent	28.57%	D = C / A
CPI Increase	3.89%	E
Disposal Increase minus CPI Increase	24.68%	F = D - E
Example Disposal Cost As Percentage of Total Rate	15.00%	G
Applied Disposal Increase of Total Rate	3.702%	H = F * G

96 Gallon Rate*	\$27.34	I
CPI Increase	\$1.06	J = I * E
Disposal Change	\$1.01	K = I * H
New Rate After CPI and Disposal Increase	\$29.42	L = I + J + K

*Service rates include a 15% franchise fee

EXHIBIT 3
City Service Units

City Services

City Hall

Community Center

Corp Yard including Concrete, Asphalt, C & D, Debris boxes

Fire Station

Police Station

East St Pump Station

Community cardboard front loader in mini park

City Park

Downtown litter/recycle receptacles Main St and Railroad

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EXHIBIT 4
Street Sweeping Services

1. Street Sweeping

Weekly Street Sweeping (November 1 – January 31)
Monthly Street Sweeping (February 1 – October 31)

2. Street Pile Collection

Weekly Green Waste Street Pile Collection (November 1 – January 31)
Monthly Green Waste Street Pile Collection (February 1 – October 31)

*The City will have six additional street sweeping days per contract year to use at their discretion. Any unused street sweeping days will expire at the end of the contract year.

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