

ORIGINAL

CLASS I  
NON-EXCLUSIVE  
FRANCHISE AGREEMENT  
BETWEEN THE  
CITY OF SAN DIEGO  
AND  
WARE DISPOSAL CO., INC.  
FOR  
SOLID WASTE  
MANAGEMENT SERVICES

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CLASS I NON-EXCLUSIVE FRANCHISE AGREEMENT  
FOR SOLID WASTE MANAGEMENT SERVICES

This CLASS I NON-EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES [Agreement] is entered into by and between the City of San Diego [City] and Ware Disposal Co., Inc. [Franchisee] and is effective the 1st day of January 1, 2023.

**RECITALS**

WHEREAS, on September 18, 2000, pursuant to San Diego City Charter sections 103 and 105 and San Diego Municipal Code section 66.0108, the City and the Franchisee entered into the Class I Non-Exclusive Franchise Agreement For Solid Waste Management Services which is on file in the Office of the City Clerk as Document No. OO-18849 [2000 Agreement]; and

WHEREAS, the parties entered into ten subsequent amendments to the 2000 Agreement, which has resulted in a set of documents close to 100 pages long; and

WHEREAS, the Franchisee is in compliance with the requirements of the 2000 Agreement, as amended; and

WHEREAS, the State of California has, through enactment of AB 939 and subsequent related legislation including, but not limited to: The Jobs and Recycling Act of 2011 (AB 341); the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826); and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed CalRecycle and all local agencies to promote a reduction in landfill Disposal of Solid Waste and to maximize the use of waste reduction, re-use, Recycling, and composting options in order to reduce the amount of material that must be Disposed; and

WHEREAS, SB 1383 and its implementing regulations establish regulatory requirements for jurisdictions, generators, haulers, Solid Waste facilities, and other entities to support achievement of State-wide Organic Waste Disposal reduction targets, which necessitate further amendments to the Franchise granted by the City to Franchisee; and

WHEREAS, in order to consolidate, update, and amend the 2000 Agreement, as amended, the City and the Franchisee wish to enter into this Agreement, which entirely supersedes the 2000 Agreement and all amendments thereto; and

WHEREAS, the execution and delivery of this Agreement by the Franchisee was duly authorized by Resolution of its Board of Directors on \_\_\_\_\_, 2022:

NOW THEREFORE, the City and the Franchisee, in consideration of the premises above stated and the terms, conditions, covenants, and agreements contained herein, do hereby agree as follows:

## **ARTICLE 1 DEFINITIONS**

### **AB 341**

“AB 341” means California Assembly Bill 341 approved by the Governor and filed with the Secretary of State on October 6, 2011, which amended and/or added Public Resources Code Sections 40004, 41730, 41731, 41734, 41734.5, 41735, 41736, 41780.01, 41780.02, 41800, 42926, 44004, and 50001 and Chapter 12.8 (commencing with section 42649) to Part 3 of Division 30, as they may be amended from time-to-time.

### **AB 876**

“AB 876” means California Assembly Bill 876 approved by the Governor and filed with the Secretary of State on October 8, 2015, which added Public Resources Code Section 41821.4, as it may be amended from time-to-time.

### **AB 901**

“AB 901” means California Assembly Bill 901 approved by the Governor and filed with the Secretary of State on October 15, 2015, which amended and/or added Public Resources Code sections 41821.5, 41821.6, 41821.7, and 41821.8, as they may be amended from time-to-time.

### **AB 939**

“AB 939” means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

### **AB 939 Fee**

“AB 939 Fee” means the fee established, and modified from time-to-time, by the City Council pursuant to San Diego Municipal Code section 66.0134 and authorized by California Public Resources Code section 41901, as it may be amended, modified, renumbered, supplemented, replaced, or superseded from time-to-time.

### **AB 1594**

“AB 1594” means California Assembly Bill 1594 approved by the Governor and filed with the Secretary of State on September 28, 2014, which amended Public Resources Code Sections 40507 and 41781.3., as they may be amended from time-to-time.

### **AB 1826**

“AB 1826” means California Assembly Bill 1826 approved by the Governor and filed with the Secretary of State on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, as it may be amended from time-to-time.

### **AB 1826 Business**

“AB 1826 Business” means a business, as defined in Public Resources Code Section 42649.8(a), which is subject to the requirements of AB 1826.

### **Affiliate**

“Affiliate” means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Franchisee by virtue of direct or indirect ownership interest or common management. An Affiliate shall include a business in

which Franchisee owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in the Franchisee and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Franchisee. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

**Agreement**

"Agreement" means this Class I Non-Exclusive Franchise Agreement between the City and the Franchisee for the Collection, and subsequent transfer, transportation, and Recycling or Disposal of Commercial and certain residential Solid Waste, including all exhibits and attachments, and any amendments hereto.

**Back-haul**

"Back-Haul" means generating and transporting Solid Waste to a destination owned and operated by the owner, occupant, or operator of a premises using the owner's, occupant's, or operator's own employees and equipment.

**Bin**

"Bin" means a metal or plastic Container with hinged lid(s) and, in some cases, with wheels serviced by a front-end loading Collection vehicle with a Container capacity of one (1) to six (6) cubic yards, including Bins with compactors attached to increase the capacity of the Bin. Bins are also known as dumpsters.

**California Integrated Waste Management Act**

"California Integrated Waste Management Act" means Public Resources Code, Section 40000 et seq.

**CalRecycle**

"CalRecycle" means the State of California's Department of Resources Recycling and Recovery (formerly known as the California Integrated Waste Management Board or CIWMB), or its successor.

**Cart**

"Cart" means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated Collection vehicle and with a Container capacity of no less than twenty (20) gallons and no greater than ninety-six (96) gallons, with the exception that a Cart smaller than twenty (20) gallons may be used for Collection of source separated food waste.

**City and City Council**

"City" means the City of San Diego, a municipal corporation, and all the territory lying within the municipal boundaries of the City, as presently existing or as such boundaries may be modified during the term of this Agreement, and its elected Mayor and employees as described in section 10.11. "City Council" means the elected Council Members of the City.



**Class I Franchise**

A "Class I Franchise" is a non-exclusive Franchise granted to a Franchisee to Collect a maximum of 75,000 tons of Solid Waste per year within the City. For the purpose of determining the eligibility of a Solid Waste Collection enterprise to be granted a Class I Franchise, the annual tonnage of Solid Waste Collected in the City by that enterprise, its parent company, and all affiliates shall be combined.

**Class II Franchise**

A "Class II Franchise" is a non-exclusive Franchise granted to a Franchisee to Collect more than 75,000 tons of Solid Waste per year within the City.

**Collect/Collection**

"Collect" or "Collection" means to take physical possession and transport Solid Waste within the City.

**Collection Route**

"Collection Route" means the designated itinerary or sequence of stops for a Collection vehicle for a particular Solid Waste and Customer type.

**Commercial**

"Commercial" means nonresidential and includes, but is not limited to, mercantile, institutional, governmental, and industrial.

**Containers**

"Containers" means a receptacle for collecting and storing materials pending Collection. Containers include, but are not limited to, cans, Bins, Carts, Roll-Off boxes, compactors, buckets, re-usable bags, or other storage receptacles.

**Construction and Demolition Waste**

"Construction and Demolition Waste" means waste generated from construction, remodeling, repair, alteration, and/or demolition activities and which may include a mixture of concrete, asphalt, wood, metals, bricks, dirt, rocks, and other inert Solid Waste.

**Customer**

"Customer" means a Person who voluntarily subscribes to the Franchisee's Collection services and provides payment for the Collection services provided to the premises.

**Department**

"Department" means the Environmental Services Department of the City of San Diego or its successor.

**Director**

"Director" means the City of San Diego, Environmental Services Director or a duly authorized representative.

**Discarded Materials**

"Discarded Materials" means Refuse, Recyclable Material, and/or Organic Waste discarded by a Customer. For the purposes of this Agreement, Discarded Materials shall only include the Discarded Materials placed by the Customer, or on the Customer's behalf, for the purpose of Collection by Franchisee.

**Disposal**

“Disposal” or “Dispose” means the final disposition of any Solid Waste at a permitted landfill or other permitted Solid Waste Facility.

**Disposal Site(s)**

“Disposal Site(s)” means the permitted Solid Waste Facility or Facilities for the ultimate Disposal of Solid Waste Collected by Franchisee.

**Edible Food**

“Edible Food” has the same meaning as in title 14, section 18982(a)(18) of the California Code of Regulations, as it may be amended.

**Environmental Laws**

“Environmental Laws” means all Environmental Laws and all other laws, rules, regulations, and requirements regarding public health, safety, and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902, et seq.; the Federal Clean Water Act, 33 USC §1251, et seq.; the Toxic Substances Control Act, 15 USC §2601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the Carpenter Presley Tanner Hazardous Substance Account Act, California Health and Safety Code §25300, et seq.; the Porter Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §25249.5, et seq.; all as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

**Facility**

“Facility” means any plant or site, owned, leased, maintained, operated, or used by Franchisee for purposes of performing under this Agreement.

**Food Material**

“Food Material” means material originally acquired for animal or human consumption, including that from a “food facility” as defined in California Health and Safety Code section 113789. Food material does not include “agricultural material” as defined in the California Code of Regulations, title 14, section 17852.

**Food Recovery**

“Food Recovery” has the same meaning as in title 14, section 18982(a)(24) of the California Code of Regulations, as it may be amended.

**Franchise**

“Franchise” means the special right granted by City as authorized in the San Diego City Charter, the San Diego Municipal Code, and this Agreement to operate on public property in the City as a nonexclusive enterprise for the Collection, and subsequent transfer, transportation, and Disposal or Recycling of Solid Waste. Franchise includes Class I Franchises and Class II Franchises.

**Franchisee**

“Franchisee” means any Person that holds a valid, unrevoked, and un-expired City-granted non-exclusive Class I Franchise or Class II Franchise to operate on public property in the City an

enterprise for the Collection and subsequent transfer, transportation and Disposal or Recycling of Solid Waste.

**Franchisee Designated Facilities**

“Franchisee Designated Facilities” means Facilities to which Franchisees will transport Recyclable Material, Organic Waste, or Refuse for purposes of performing under this Agreement including, but not limited to, Disposal Sites, MRFs, and transfer, Recycling, and composting facilities.

**Franchise Fee**

“Franchise Fee” means the fee imposed on Franchisees for the value of the franchise granted by the City, pursuant to San Diego Municipal Code sections 66.0107 and 66.0118 as they currently exist and may be amended. The Franchise Fee shall be established from time-to-time by resolution of the City Council and is imposed solely on the Franchisee and not on any individual Customer of Franchisee.

**Green Material**

“Green Material” means any plant material that is either separated at the point of generation, or separated at a centralized facility that employs methods to minimize contamination. Green material includes, but is not limited to, yard trimmings, manure, untreated wood wastes, paper products, and natural fiber products. Green material does not include food material, treated wood waste, mixed demolition or mixed construction debris.

**Hazardous Substance**

“Hazardous Substance” shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as “Hazardous Substances”, “hazardous materials”, “Hazardous Wastes”, “toxic waste”, “pollutant” or “toxic substances” or similarly identified as hazardous to human health or the environment in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated there under to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental laws currently existing or hereinafter enacted, including, without limitations, friable asbestos, polychlorinated biphenyls (“PCBs”), petroleum, natural gas and synthetic fuel products, and by-products.

**Hazardous Waste**

“Hazardous Waste” means 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 remodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency, pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated there under.

**Manager**

“Manager” means the City Manager of the City of San Diego, or a duly authorized representative, who may also be the Environmental Services Director except in the case of all appeals of the Director’s decision.

**Materials Recovery Facility (MRF)**

"Materials Recovery Facility" or “MRF” means a permitted facility where Solid Waste is sorted, separated or otherwise processed for the purpose of Recycling or reuse.

**Medical Waste**

“Medical Waste” means any waste which is generated or has been used in the diagnosis, treatment or immunization of human beings or animals, or research pertaining thereto, and shall include, but not be limited to, bio-hazardous and medical waste, or other waste as defined by federal, state, or local law.

**Multi-Family Dwelling Unit**

“Multi-Family Dwelling Unit” means any premises, four units or more, that is serviced in a manner similar to Commercial property (Bin or debris box), but used for residential purposes (not including hotels or motels), irrespective of whether residence therein is transient, temporary, or permanent.

**Organic Waste**

“Organic Waste” means Solid Waste containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Green Material, landscape and pruning waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges. Notwithstanding the foregoing, “organic waste” shall have the same meaning as in title 14, section 18982(a)(46) of the California Code of Regulations, as it may be amended.

**Person**

“Person” means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the City and County of San Diego, towns, cities, and special purpose districts.

**Premises**

“Premises” means any land or building in the City where Solid Waste is generated or accumulated.

**Prohibited Container Contaminants**

“Prohibited Container Contaminants” means the following: (i) Solid Waste placed in the Recyclable Material Container that is not identified as designated Recyclable Material or that are not identified as acceptable materials for the City’s Collection program; (ii) Solid Waste placed in the Organic Waste Container that is not identified as designated Organic Waste or that is not identified as acceptable for the City’s Collection program; (iii) Recyclable Material placed in the Refuse or Organic Waste Container; (iv) Organic Waste placed in the Refuse or Recyclable Material Container; and (v) Excluded waste placed in any Container.

**Recyclable**

“Recyclable” means a material which can be processed into a form suitable for reuse through reprocessing or remanufactured consistent with the requirements of AB 341, AB 939, AB 1826, and SB 1383.

**Recyclable Material**

“Recyclable Material” means residential or Commercial source-separated by-products of some potential economic value, set aside, handled, packaged, or offered for Collection in a manner different from Refuse.

**Recyclable Materials Collector**

“Recyclable Materials Collector” means an enterprise that Collects Recyclable Material within the City. A Recyclable Materials Collector shall not be authorized to Collect any material that contains greater than ten (10) percent by volume of Refuse.

**Recycle or Recycling**

“Recycle” or “Recycling” means the process of separating for Collection, Collecting, treating, and/or reconstituting Recyclable Material that would otherwise be discarded without receiving compensation, and returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The Collection, transportation or Disposal of Solid Waste not intended for, or capable of reuse is not Recycling. For purposes of this Agreement, Recycling does not include use of Solid Waste for conversion to energy.

**Refuse**

“Refuse” means Solid Waste destined for Disposal Sites. The definition of Refuse in this section does not alter the definition of “refuse” in San Diego Municipal Code section 66.0127.

**Residential Refuse**

“Residential Refuse” means the Refuse Collected by the City described in the People’s Ordinance at San Diego Municipal Code Section 66.0127(c)(1).

**Rigid Plastics**

“Rigid Plastics” means plastic materials marked 1-7 (as indicated in the figure below) including, but not limited to: (a) all plastic beverage containers labeled "CA redemption value" or "CA cash refund"; (b) containers for food and beverage such as milk, soda, water, salad dressings, and for cooking; (c) jars and canisters for other products such as peanut butter, mayonnaise, and aspirin; (d) containers for cleaning products such as detergents, bleach, soap, shampoo, and drain cleaners; and (e) any other plastic items such as toys, tools, storage boxes, plant pots, and buckets. Rigid plastics do not include PVC pipe, expanded polystyrene foam (EPS) food containers, compostable plastics, plastic film, or bags.



**Roll-Off Box**

“Roll-Off Box” means an open-top metal Container or closed compactor box serviced by a roll-off truck and with a Container capacity of 10 to 50 cubic yards. Roll-off boxes are also known as drop boxes or debris boxes.

**SB 1383**

“SB 1383” means California Senate Bill 1383 approved by the Governor and filed with the Secretary of State on September 19, 2016, which added sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code and Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code.

**Self-Haul**

“Self-Haul” means the process of personally, or through one’s own full-time employees, Collecting, transporting, and delivering one’s own Solid Waste for Disposal or Recycling.

**Service Level**

“Service Level” means the total weekly cubic yards of service capacity calculated by multiplying the number of a Customer’s Containers by the cubic-yard capacity of the Customer’s Container(s) by the frequency of Collection service.

**Solid Waste**

“Solid Waste” means all putrescible and non-putrescible solid and semi-solid wastes, including garbage, trash, Refuse, “refuse” as defined in San Diego Municipal Code section 66.0127, rubbish, Construction and Demolition Waste, metallic discards, Organic Waste, animal solid or semi-solid wastes, and other solid or semi-solid wastes. “Solid Waste” does not include Hazardous Waste, Hazardous Substances, Medical Waste, or the Recyclable Materials specified in San Diego Municipal Code Section 66.0109(c), as it may be amended from time to time

**Tier One Commercial Edible Food Operator**

“Tier One Commercial Edible Food Generator” has the same meaning as in title 14, section 18982(a)(73) of the California Code of Regulations, as it may be amended.

**Tier Two Commercial Edible Food Operator**

“Tier Two Commercial Edible Food Generator” has the same meaning as in title 14, section 18982(a)(74) of the California Code of Regulations, as it may be amended.

**Waste Generator**

“Waste Generator” means any Person whose act or process produces Solid Waste or whose act first causes Solid Waste to become subject to regulation.

**ARTICLE 2  
REPRESENTATIONS AND WARRANTIES  
OF THE FRANCHISEE**

**2.1 Corporate Status**

Franchisee is an enterprise duly organized, validly existing, and in good standing under the laws of the State of California. It is qualified to transact business in the State of California, maintains a valid City business license, and has the corporate power to own its properties and to carry on its business as required by this Agreement.

**2.2 Corporate Authorization**

Franchisee has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Franchisee (or the owner or shareholders if necessary) have taken all actions required by law, its articles of incorporation, and its bylaws or otherwise to authorize the

execution of this Agreement. The Person signing this Agreement on behalf of Franchisee has authority to do so.

### **ARTICLE 3 TERM OF AGREEMENT**

#### **3.1 Grant and Acceptance of Franchise**

Subject to Sections 3.5 and 4.1, the City hereby grants to Franchisee a non-exclusive Class I Franchise with the right and privilege to use the City streets and rights-of-way to Collect and subsequently, transfer, transport, and Dispose of or Recycle a maximum of 75,000 tons per year of Solid Waste kept, accumulated, or generated in the City that is offered for Collection to Franchisee in accordance with this Agreement and the San Diego Municipal Code.

The grant of authority to Collect Solid Waste is limited by San Diego Municipal Code Section 66.0127 which requires the City to Collect certain Solid Waste.

Franchisee hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

#### **3.2 Effective Date of Agreement and Term of Franchise**

The effective date of this Agreement shall be January 1, 2023 [Effective Date]. The term of this Franchise granted to Franchisee shall be for ten (10) years beginning with the Effective Date of January 1, 2023 through December 31, 2032, inclusive. The term of this Agreement shall coincide with the term of the Franchise granted to Franchisee. Any separate agreements between Franchisee and its Customers shall automatically terminate upon the termination of this Agreement.

#### **3.3 Extension Term**

Beginning January 1, 2027, and annually thereafter, a one (1) year extension shall be applied to the term of this Franchise, upon approval of the City Council by ordinance, so that, if duly approved, the remaining term of the Franchise would be seven (7) years, unless otherwise terminated in accordance with this Agreement including any amendments thereto. Also, the City reserves the right to meet and confer with the Franchisee to revise the terms of the Agreement and any amendments thereto beginning January 1, 2027, and annually thereafter. The extension, if any, shall be contingent upon, among other things, the Franchisee having satisfied all performance requirements of the Agreement and all amendments thereto including, but not limited to, having provided the City with all required documents and having brought all Franchise Fee and AB 939 Fee accounts and other accounts with the City current.

If Franchisee does not agree with the revised terms of the Agreement, then Franchisee will have the right to a public hearing by the City Council regarding the contractual dispute (See Section 9.2 for procedural requirements to have the matter heard by the City Council.)

#### **3.4 Conditions to Effectiveness of Agreement**

The obligation of the City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to Franchisee's satisfaction of each and all of the conditions set out in A - D below, each of which may be waived in whole or in part by the City.

- A. *Accuracy of Representations.* The representation and warranties made by Franchisee in Article 2 of this Agreement are true and correct on and as of the Effective Date.
- B. *Absence of Litigation.* There is no litigation pending on the Effective Date in any court challenging the award of execution of this Agreement or seeking to restrain or enjoin its performance.
- C. *Furnishing of Insurance and Bonds.* Franchisee has furnished evidence of the Insurance and bonds required by Article 8 of this Agreement.
- D. *Effectiveness of City Council Action.* The City's Ordinance authorizing the Manager to execute this Agreement shall have become effective pursuant to California law and the San Diego City Charter prior to the Effective Date.

### **3.5 Limitations to Scope**

This Franchise shall not include the items listed in this section 3.5. The granting of this Franchise shall not preclude the items listed below from being delivered to or Collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City which is otherwise required by law:

- A. All Residential Refuse Collected on public streets in the City which the City is obligated to Collect under San Diego Municipal Code section 66.0127.
- B. Reserved
- C. Recyclable Materials in San Diego Municipal Code Section 66.0109(c), as it may be amended from time to time.
- D. Beverage containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, California Public Resources Code, §14500, et seq.
- E. Green Material removed from a premises by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service.
- F. Solid Waste that is generated at any premises and which is removed and transported personally by the owner or occupant of such premises (or by the owner's or occupant's full-time employees) to a licensed solid waste management facility, transfer station, Recycling facility or Disposal Site in a manner consistent with the San Diego Municipal Code and other applicable laws.
- G. Construction and Demolition Waste removed from a premises by a licensed demolition or construction contractor using its own employees and its own or rented equipment as an incidental part of a total service offered by that contractor rather than as a hauling service. (Construction and Demolition Waste Collected by a Franchisee, including all such waste and debris collected by Franchisee on behalf of a construction or demolition contractor, shall be subject to the Franchise Fee unless the material qualifies as Recyclable Materials under San Diego Municipal Code Section 66.0109(c), as it may be amended from time-to-time. Construction and Demolition Waste Collected and transported to a Disposal Site, a Materials Recovery Facility, or any other Facility where the material is subsequently



sorted or separated from other Solid Waste for Recycling or reuse, is considered Solid Waste and subject to the Franchise Fee.)

- H. Hazardous waste or Medical Waste regardless of its source.
- I. By-products of sewage treatment, including sludge, sludge ash, grit, and screenings.
- J. Residue or non-processible waste from a Solid Waste management facility, including Materials Recovery Facility, composting facility, and transformation facilities.
- K. Animal waste and remains for use as tallow.
- L. Municipal corporations and other governmental agencies using their own vehicles engaged in the Collection and subsequent transportation and Recycling or Disposal of Solid Waste within the City.
- M. Solid Waste or debris removed from residential or Commercial property by a Person engaged in the business of cleaning residential or Commercial property, when the Solid Waste and debris removed consists of by-products of the cleaning services provided and the removal is an incidental part of the total cleaning services offered by that Person rather than just a hauling service.
- N. Solid or semi-solid by-products of food or beverage processing that are Collected for use as livestock feed including, but not limited to, spent brewery grains and fruit pulp, which are removed from a premises by the owner or occupant of the premises, or by the owner's or occupant's full-time employees, or by a Person Collecting the by-products for their direct use.
- O. Liquid by-products of food or beverage processing including, but not limited to, used cooking oil and pumpings from grease traps, which are source-separated from food material and Refuse for the purpose of Disposal or Recycling. This exclusion does not include liquefied or slurried food material.
- P. Edible Food Collected for the purpose of distribution for human consumption or Self-Hauled to a Food Recovery organization or Food Recovery service for the purpose of Food Recovery pursuant to San Diego Municipal Code Section 66.0719.

Franchisee acknowledges and agrees that the City may permit other Persons besides Franchisee to Collect any or all types of Solid Waste, including those listed in this section without seeking or obtaining approval of Franchisee under this Agreement.

This grant to Franchisee of a Class I Non-Exclusive Franchise, with the right and privilege to Collect and subsequently, transfer, transport, and Dispose of or Recycle Solid Waste shall be interpreted to be consistent with local, state, and federal laws, now and during the term of the Franchise. The scope of this non-exclusive Franchise shall be limited by current and developing state and federal laws with regard to Solid Waste handling, franchising, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment of new laws, or developing legal trends limit the ability of the City to lawfully franchise the scope of services as specifically set forth herein, Franchisee agrees that the scope of this Franchise will be limited to those services which may be lawfully provided for under this Agreement.

### **3.6 Ownership of Solid Waste**

Once Solid Waste is placed in Containers and the Containers are properly placed for Collection, ownership and the right to possession shall transfer directly from the Waste Generator to the Franchisee by operation of this Agreement unless otherwise agreed to by the Waste Generator and the Franchisee. Subject to the provisions of this Agreement, the Franchisee shall have the right to retain any benefit resulting from its right to keep, Recycle, Dispose of, or use the Solid Waste which it Collects. For purposes of this Agreement, Solid Waste which the Franchisee delivers to a Facility shall be deemed the property of the owner or operator of the Facility once the Facility accepts the Solid Waste from the Franchisee.

### **3.7 Conversion to Class II Franchise**

If at any time during the term of this Agreement, or extension thereof, Franchisee collects more than 70,000 tons of Solid Waste per year within the City of San Diego, as determined through a review of Franchisee's four most recent quarterly franchise reports, Franchisee may request that its Class I Franchise and Agreement be converted to a Class II Franchise and Agreement. If the Franchisee collects more than 75,000 tons of Solid Waste per year, as determined through a review of Franchisee's four most recent quarterly franchise reports, Franchisee shall request that its Class I Franchise and Agreement be converted to a Class II Franchise and Agreement within sixty (60) calendar days of written notice by City that Franchisee's tonnages have exceeded the Class I tonnage limitation. Both permissive and mandatory Franchise conversion applications shall be made and reviewed in accordance with the processes described in San Diego Municipal Code sections 66.0112 and 66.0114 respectively and are subject to City Council approval.

Notwithstanding San Diego Municipal Code Section 66.0114 which authorizes applications for franchises to be accepted only during designated application periods, applications for the conversion of a Class I Franchise to a Class II Franchise may be submitted at any time Franchisee meets the criteria listed above and must be submitted within sixty (60) calendar days of the written notice from the City described above. Conversion of a Class I Franchise to a Class II Franchise shall not be unreasonably refused.

## **ARTICLE 4 AGREEMENT**

### **4.1 Grant of Agreement**

The City hereby grants to the Franchisee a non-exclusive Class I Solid Waste Collection Franchise authorizing the Franchisee to engage in the business of Collecting, and subsequently transferring, transporting, and Disposing or Recycling of a maximum of 75,000 tons per year of Commercial and certain residential Solid Waste kept, accumulated, or generated in the City and to use the public streets and rights-of-way in the City for such purpose. The Franchise includes the authority to Collect, transfer, transport, and Dispose of or Recycle Solid Waste from multi-family residences and from residences located on private streets. The Franchise excludes Solid Waste the City is required to Collect under the People's Ordinance codified at San Diego Municipal Code section 66.0127 and other items described in Section 3.5 above.

This grant is pursuant to the Franchisee's application for the Franchise, which application is incorporated herein by this reference. The Franchisee is subject to the terms and conditions specified in Sections 103 & 105 of the Charter of the City, the provisions of Chapter 6, Article 6, Sections 66.0101 et seq. of the San Diego Municipal Code as currently enacted and as may be amended, modified, renumbered, supplemented, replaced, or superseded from time-to-time, the

terms and conditions specified in all related ordinances and resolutions, all Environmental Laws, the terms and conditions of this Agreement and all amendments thereto, and the representations and assurances in Franchisee's application for the Franchise.

Franchisee shall comply with the City Recycling Ordinance [City Recycling Ordinance], codified as San Diego Municipal Code Sections 66.0701 – 66.0718, the Construction and Demolition Debris Diversion Deposit Program Ordinance [C&D Ordinance], codified as San Diego Municipal Code Sections 66.0601 – 66.0610, as currently enacted and as may be amended from time-to-time, and all applicable laws and regulations including, but not limited to, AB 341, AB 876, AB 901, AB 939, AB 1594, AB 1826, SB 1383, and other current or future federal, State, or local regulations, as amended. Franchisee shall ensure that Recyclable Material Collection and Recycling services and Organic Waste Collection and Recycling services are available to all Customers serviced by Franchisee.

Collection Routes shall be designed so as not to cross two or more jurisdictional boundaries and for the purpose of this Franchise, shall be located exclusively within the City's jurisdictional boundary to the extent practical by operations of Franchisee. In the event Franchisee demonstrates to the Director it is unable to meet this requirement, the Franchisee shall use an allocation method as determined by the Director to properly allocate the tonnage within each multi-jurisdictional load to the appropriate jurisdictions. Additionally, the Franchisee shall provide to the Director with each quarterly tonnage report information deemed necessary by the Director in order to validate the tonnages reported by the Franchisee including, but not limited to, for each multi-jurisdictional load: 1) number of Collection points, Container size, and frequency of Collection, by jurisdiction, and 2) total tonnage of each multi-jurisdictional load.

#### **4.2 Franchise Fees**

Franchisee agrees to pay to the City a Class I Franchise Fee, equal to \$1.00 per ton less than the Council approved Franchise Fee payable by Class II Franchisees, on all Solid Waste Collected in the City, regardless of the location of the Disposal Site. The Franchise Fee may be modified in the amount and manner of payment at any time during the term of this Agreement by a resolution of the City Council. Notwithstanding the above, for purposes of calculating the Franchise Fee owed to the City, Recyclable Material specified in Municipal Code Section 66.0109(c), as it may be amended from time-to-time, will not be counted as Solid Waste so long as the material is source-separated at the point of generation and is diverted from Disposal in accordance with AB 939 guidelines. Material of potential economic value mixed with Solid Waste, Collected, and transported to a Materials Recovery Facility or any other Facility where the material is subsequently sorted or separated for the purpose of Recycling or reuse, shall be counted as Solid Waste and subject to the Franchise Fee.

#### **4.3 Franchise Fee Payment**

- A. *City of San Diego Invoice.* Following the end of each calendar year quarter, the Franchisee shall receive from the City an invoice specifying the amount, by weight, of Solid Waste Collected within the City and Disposed of at the Miramar Landfill during the quarter. Franchisee shall, for the same period, specify on the invoice the amount of Solid Waste, by weight, Collected in the City and transported to Facilities other than the Miramar Landfill.
- B. *Timing of Franchise Fee Payments.* On or before the twentieth (20<sup>th</sup>) day of each month following the end of a calendar year quarter, during the term of this Agreement, the Franchisee shall remit to the City Treasurer a sum of money, as provided in Section 4.2,

as a Franchise Fee payment for the tonnages Collected in the City during the preceding quarter. Payments must be paid in full and clearly identified by having the City of San Diego's invoice copy attached and/or invoice number specified on the check, money order, or electronic payment. Payment received after the due date will be considered delinquent and subject to penalties including late fee assessments and/or revocation of Franchise privileges. If the Franchise Fee payment is not received by the City Treasurer's Office on or before the twentieth (20<sup>th</sup>) day of any month following the end of a calendar year quarter, the Franchisee shall pay to the City a late payment fee in an amount equal to ten percent (10%) of the amount owing for the quarter. The Franchisee shall pay an additional one percent (1%) owing on any unpaid balance for each month or part thereof following the initial thirty (30) day period the Franchise Fee remains unpaid. The City may lawfully include any Franchise Fees and/or penalties remaining unpaid in the amounts which the Franchisee may owe the City for Disposal fees.

#### **4.4 AB 939 Fee**

The Franchisee shall pay to the City an AB 939 Fee in accordance with the resolution adopted by the City Council. Franchisee agrees that, at any time during the term of this Agreement, the City Council may by resolution modify the amount, method of calculation, and manner of payment of the AB 939 Fee and may modify the types or amounts of Solid Waste subject to the AB 939 Fee. In the event the City Council modifies the AB 939 Fee, the Franchisee shall pay to the City an AB 939 Fee as modified by City Council resolution.

Unless otherwise modified by City Council resolution, effective on July 1 of each year, the Franchisee shall pay to the City an adjusted AB 939 Fee in the amount calculated using the AB 939 Fee Adjustment Formula set forth below. The adjusted AB 939 Fee shall apply to all Solid Waste generated in the City that is Collected by the Franchisee and to all Solid Waste the Franchisee Disposes at the Miramar Landfill, regardless of the location of origin of the Solid Waste. Notwithstanding the foregoing, the AB 939 Fee will not be charged more than once per ton of Solid Waste.

#### **AB 939 Fee Adjustment Formula**

Effective each July 1, the per ton amount of the AB 939 Fee shall be automatically adjusted based on the annual change in the Consumer Price Index (CPI), described below, rounded up to the nearest \$1.00, as set forth in the following formula:

AB 939 Fee per ton x Consumer Price Index Change = adjusted AB 939 Fee per ton

"Consumer Price Index" or "CPI" refers to the index for all Urban Consumers, Los Angeles/Riverside/Orange County as published by the United States Department of Labor Statistics in the publication Consumer Price Indices. For purposes of the above formula, the CPI Change will be based on the change in the CPI from February of the prior year to February of the year the adjustment is being made. For purposes of the above formula, the CPI Change will be expressed as a percentage. For example, a 2% increase in the CPI from February of the prior year to February of the current year will be stated as 102%. If the CPI is no longer published, or is otherwise unavailable, then a new index or appropriate benchmark will be applied upon City Council approval.

#### **4.5 AB 939 Fee Payment**

- A. *City of San Diego Invoice.* Following the end of each calendar year quarter, the Franchisee shall receive from the City an invoice specifying the amount, by weight, of Solid Waste that the Franchisee delivered to the Miramar Landfill during the preceding quarter. The Franchisee shall, for the same preceding quarter, specify on the invoice the total amount of Solid Waste, by weight, that the Franchisee Collected in the City and delivered for Disposal or Recycling to Facilities other than the Miramar Landfill.
- B. *Timing of AB 939 Fee Payments.* On or before the twentieth (20th) day of each month following the end of a calendar year quarter, the Franchisee shall remit to the City Treasurer the full amount due the City in AB 939 Fees, calculated in accordance with Section 4.4, for (i) Solid Waste Collected in the City and (ii) Solid Waste Disposed to the Miramar Landfill during the preceding quarter. Payments must be made in full and must be clearly identified by having the City of San Diego's invoice copy attached and/or invoice number specified on the check or money order. If the AB 939 Fee payment is not received by the City Treasurer's Office on or before the twentieth (20th) day of any month following the end of a calendar year quarter, the payment shall be considered delinquent and shall be subject to penalties and interest as allowed by law. Failure to pay AB 939 Fees in full by the due date also may result in revocation of Franchise privileges.

### **ARTICLE 5 SOLID WASTE COLLECTION SERVICES**

#### **5.1 General**

The work to be done by Franchisee pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Franchisee of the duty to furnish all others, as may be required, whether enumerated or not.

The work to be done by Franchisee pursuant to this Agreement shall be accomplished in a manner so that the residents and Commercial enterprises receiving services from Franchisee are provided reliable, courteous and high-quality Collection and/or diversion services at all times. The enumeration of, and specification or requirements for, particular aspects of service quality shall not relieve Franchisee of the duty of accomplishing all other aspects in the manner provided in this Article, whether such other aspects are enumerated elsewhere in the Agreement or not. A Franchisee may refuse service to any Customer for failure to pay his/her bill or for any substantial refusal to comply with the requirements to Section 66.0126 of the Municipal Code or with Collection rules and regulations after giving the Customer an opportunity to comply. The Director shall be notified of these service refusals concurrently with the Customer.

#### **5.1.1 Waste Generator Compliance**

The Franchisee shall assist the City in determining the degree to which the Franchisee's Customers are in compliance with Recyclable Material and Organic Waste Recycling requirements including, but not limited to, the requirements in SB 1383 and their implementing regulations, as well as the San Diego Municipal Code. Pursuant to Section 5.4.2, the Franchisee shall support residential and Commercial diversion activities by facilitating Customer compliance with the City's minimum Container capacity requirements specified in the Container and Signage Guidelines established by the Manager.

## **5.2 Collection System**

The Franchisee shall provide all Customers with at least the following three (3) types of Containers for separating Solid Waste: (i) Recyclable Material Container(s), (ii) Organic Waste Container(s), and (iii) Refuse Container(s). The Franchisee shall Collect Organic Waste and Refuse weekly. The Franchisee shall Collect Recyclable Material at least once every other week. At Franchisee's option, the Franchisee may use split Containers or provide Customers with additional Containers for sorting Solid Waste materials, such as adding separate Food Waste Collection Containers.

The Franchisee shall ensure that Container Collection points do not impede the flow of traffic and do not result in aesthetic degradation of an area.

## **5.3 Reserved**

### **5.4 Recyclable Material Recycling**

The Franchisee shall comply with the City Recycling Ordinance and shall provide Recyclable Material Collection services to all Customers receiving Refuse Collection services from Franchisee. For Customers who make additional arrangements for the Collection of designated Recyclable Materials in accordance with the City Recycling Ordinance but still receive Refuse Collection services from Franchisee, the Franchisee must provide Recyclable Materials Collection Containers that meets a minimum service level as defined in the Container and Signage Guidelines established by the Manager.

Specific requirements under the City Recycling Ordinance include, but are not limited to, San Diego Municipal Code Section 66.0709 – Delivery of Recyclable Materials to Recycling Facility and San Diego Municipal Code Section 66.0711 – Reports from Franchisees and Certified Recyclable Materials Collectors. Payment for Recycling services is the responsibility of the Customer.

The Franchisee shall notify all its Customers twice per year, at a minimum, of the Customer's responsibilities under the City Recycling Ordinance. The Franchisee must obtain advance approval from the City to ensure such notifications meet all applicable requirements. Approval will not be unreasonably withheld. As required by Section 7.6(C) of this Agreement, the Franchisee shall provide documentation to the City quarterly to verify the notifications have been sent. Upon the Franchisee's request, the City will provide education and outreach to any Franchisee Customer that has failed to comply with the City Recycling Ordinance to ensure the Customer understands the City's Recycling requirements.

The Franchisee's failure to meet its obligations under this Section 5.4 shall be considered a default under Article 9 of this Agreement.

#### **5.4.1 Organic Waste Recycling**

Franchisee shall comply with the City Recycling Ordinance and shall provide Organic Waste Collection services, including food waste, to all Customers receiving Refuse Collection services from Franchisee. For customers who make other arrangements for the Collection of designated Organic Waste in accordance with the City Recycling Ordinance but still receive Refuse Collection services from Franchisee, the Franchisee must provide Organic Waste Collection Containers that meet a minimum service level as defined in the Container and Signage Guidelines established by the Manager.

Specific requirements under the City Recycling Ordinance include, but are not limited to, San Diego Municipal Code Section 66.0709 – Delivery of Recyclable Materials to Recycling Facility, San Diego Municipal Code Section 66.0711 – Reports from Franchisees and Certified Recyclable Materials Collectors. Payment for Recycling services is the responsibility of the Customer.

Once a year, at a minimum, the Franchisee shall notify all Customers receiving Solid Waste Collection services from the Franchisee of the Customer’s responsibilities under AB 1826 and SB 1383. The Franchisee must obtain advance approval from the City to ensure such notifications meet all AB 1826 and SB 1383 requirements. Approval will not be unreasonably withheld. As required by Section 7.6(C) of this Agreement, the Franchisee shall provide documentation to the City quarterly to verify the notifications have been sent and shall identify which properties receive Organic Waste Recycling services from the Franchisee. Containers provided by the Franchisee to Customers for storage of Organic Waste (front load dumpsters and rolling carts of all sizes) shall be equipped with attached, plastic, lockable lids that are securely fitted and flush with the Container opening.

**5.4.2 Recycling Minimum Diversion Requirements**

Annual Minimum Diversion Requirements. Except as otherwise provided in this Agreement, Franchisee shall meet the following minimum diversion requirements for each calendar year:

Minimum Diversion %	Calendar Year
25%	2016
29%	2017
35%	2018
43%	2019
50%	2020

The City shall annually review the annual minimum diversion requirements to determine whether the then applicable requirements remain adequate.

Contract Opener regarding Annual Minimum Diversion Requirements. The parties acknowledge that Recycling markets can be difficult to predict and that State diversion requirements are subject to change. Thus, the City reserves the right to meet and confer with the Franchisee to revise the terms of the Agreement regarding annual diversion requirements to address issues such as Recycling market stabilization, implementation of State Legislation, and potential future State Legislation that impacts overall waste diversion requirements which would directly or indirectly affect the City. The Franchisee shall meet and confer with the City at the City’s request and negotiate in good faith revisions to annual diversion requirements. If the Franchisee does not agree with the revised terms of the Agreement, then Franchisee will have the right to a public hearing by the City Council regarding the contractual dispute (See Section 9.2 for procedural requirements to have matter heard by City Council.)

Calculation of Annual Minimum Diversion Requirements. The City shall calculate the Franchisee’s diversion rate, as described below, using the tonnages Disposed submitted by the Franchisee in its Quarterly Reports. The City shall, upon the Franchisee’s request, consider third party Recycling arranged by, or Recycling conducted by, Franchisee’s Customers in calculating Franchisee’s diversion rate (hereinafter “credit”). For calendar years 2023 and 2024, the maximum allowed credit shall be limited to 15% of the required 50% minimum diversion level. Beginning calendar year 2025, the maximum allowed credit shall be 10% of the required 50% minimum diversion level.

The Franchisee must submit the request for a credit to the City annually. In its request, the Franchisee must identify each Customer property subject to the request, and provide organized and complete supporting documentation satisfactory to the City. The City shall provide a fillable credit request form and guidelines, both approved by the Director. The Franchisee’s annual credit request is due at the same time as the Franchisee’s Quarterly Report for the fourth quarter of the prior calendar year (January 20th). The City shall not unreasonably withhold diversion credit upon the Franchisee’s submission of satisfactory documentation of third party Recycling arranged by, or Recycling conducted by, the Franchisee’s customers.

The following formula shall be used to calculate the Franchisee’s annual diversion rate:

“Disposed Tons Reported” means the total Disposed tonnage reported by Franchisee for the calendar year

“Diverted Tons Reported” means the total tonnage diverted for Recycling reported by Franchisee for the calendar year

“Total Tons Reported” means Disposed Tons Reported + Diverted Tons Reported

“Initial Diversion Rate” means Recycled Tons Reported / Total Tons Reported

“Third Party Recycled Tonnage” means the total City-approved tonnage that is Recycled for Franchisee’s customers by anyone other than the Franchisee for the calendar year

“Adjusted Diverted Tonnage” means Diverted Tons Reported + Third Party Recycled Tonnage

“Adjusted Total Tonnage” means Total Tons Reported + Adjusted Diverted Tonnage

“Adjusted Diversion Rate” means Adjusted Diverted Tonnage / Adjusted Total Tonnage

The following is a hypothetical example of the application of the formula for calculating the Initial Diversion Rate and Adjusted Diversion Rate:

Disposed Tons Reported	7,000 tons
Diverted Tons Reported	3,000 tons
Total Tons Reported	10,000 tons
Initial Diversion Rate (3,000 tons / 10,000 tons)	30.00 %



Third Party Recycled Tonnage	500 tons
Adjusted Diverted Tonnage	3,500 tons
Adjusted Total Tonnage (10,000 tons + 500 tons)	10,500 tons
Adjusted Diversion Rate (3,500 tons / 10,500 tons)	33.33%

Corrective Actions and Liquidated Damages. The Franchisee shall be in compliance with the annual minimum diversion requirements if either:

- a. Franchisee achieves the minimum diversion rate for the applicable calendar year;
- or
- b. Franchisee's diversion rate is within 2% of the minimum diversion rate for the applicable calendar year and the following is satisfied:
  - (i) within 30 calendar days of receiving the City's notification thereof, Franchisee prepares and submits a corrective action plan to the City that documents Franchisee's actions to achieve the next annual minimum diversion requirement; and
  - (ii) the City approves Franchisee's corrective action plan.

The Franchisee's failure to achieve compliance with the annual minimum diversion requirements, as described in this Section, may result in the assessment of liquidated damages by the City, and Franchisee may be required to prepare and submit a corrective action plan as described directly above. The assessment of any and all liquidated damages is at the City's sole discretion. A second occurrence of failure to achieve compliance may require a presentation by Franchisee to City Council.

Franchisee and the City acknowledge that Franchisee's failure to perform as specified in this Section shall result in damages to the City. Franchisee and the City further acknowledge that it is, and will continue to be, impractical or extremely difficult to ascertain and determine the exact amount of those damages that the City will suffer. Therefore, Franchisee and the City agree that the liquidated damages amounts listed in the table below represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of the Agreement including, but not limited to, the relationship that the sums have to the range of harm to the City that reasonably could be anticipated and anticipation that proof of actual damages would be impractical or extremely difficult to ascertain. The table below applies through calendar year 2022. For 2023, no Liquidated Damages will be applied, but Franchisee must submit and carry out a compliance plan if compliance is not achieved. Any Liquidated Damages applied for calendar year 2024 would be considered a 1<sup>st</sup> ever occurrence. All subsequent years would follow the table. Franchisee agrees to pay as liquidated damages and not as a penalty the amounts set forth in the table below:

Occurrence	Liquidated Damages
1 <sup>st</sup> ever occurrence	\$20/ton, for every ton under the full compliance requirement
2 <sup>nd</sup> ever occurrence	\$25/ton, for every ton under the full compliance requirement
3 <sup>rd</sup> and subsequent occurrences	\$30/ton, for every ton under the full compliance requirement

In the event that Franchisee does not meet its obligations under this Section, it shall be considered a default under Article 9 of this Agreement.

### **5.4.3 Recycling Infrastructure**

The Franchisee shall certify annually as part of its Narrative Annual Report (Section 7.4.A), that it has access to necessary infrastructure (owned or contracted) for Recyclable Material, Organic Waste, and Refuse Collected by the Franchisee to achieve the Recycling requirements contained in Sections 5.4 and 5.4.1 (above) and the annual minimum diversion requirements contained in Section 5.4.2 (above) throughout the Term of the Agreement. If the Franchisee does not own or operate one or more of the Franchisee Designated Facilities, Franchisee shall enter into an agreement with the owner or operator of such Facility(ies) to secure a capacity guarantee that meets these requirements and achieves the annual minimum diversion requirements in Section 5.4.2.

### **5.5 Collection Standards**

- A. *Care of Private Property.* Reasonable care shall be used by Franchisee's employees in handling all privately owned collection containers and enclosures, and all damage caused by the negligence or carelessness of the Franchisee's employees shall be promptly adjusted with the owner thereof.
- B. *Noise.* All Solid Waste Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County and City noise level regulations. Solid Waste Collection operations shall not be conducted in or adjacent to residential areas prior to 6:00AM or after 7:00 PM. Notwithstanding the foregoing, Franchisees shall maintain the same Collection operations start times as City Collection Forces. Solid Waste Collection operations may be conducted in commercial and industrial areas during hours permitted by the San Diego Municipal Code or in mixed use areas during times authorized in a variance granted by the City's Noise Administrator.
- C. *Record of Non-Collection.* When any Solid Waste is not Collected by the Franchisee because such Solid Waste fails to meet the requirements of the San Diego Municipal Code or the Agreement, Franchisee shall leave a tag, on which is indicated the reasons for refusal to Collect the Solid Waste as well as the Franchisee's address, phone number and business hours.
- D. *Delivery of Recyclable Material and Organic Waste to Recycling Facility.* Franchisee shall comply with San Diego Municipal Code Section 66.0709.

### **5.6 Litter Abatement**

- A. *Minimization of Spills.* During the Collection or transportation process, the Franchisee shall minimize litter spills during Collection in the immediate vicinity of any Solid Waste Container.
- B. *Clean Up.* During the Collection or transportation process, the Franchisee shall clean up any and all litter spilled during the Collection process.
- C. *Covering of Loads.* Franchisee shall cover all open debris boxes and compactor openings during transport from one Collection site to another (over major materials), to the Disposal Site or to the Recycling facility. No Solid Waste shall be transported to the Disposal Site or Recycling facility in vehicle hoppers.

### **5.7 Collection, Transportation, and Diversion of Solid Waste**

The City reserves the right, upon a determination of the City Council, that the public interest requires a Collection, transportation, or diversion program different from what Franchisee has established, to require Franchisee to make changes that would include, but not be limited to, a change in its Collection or diversion operations.

### **5.8 Equipment**

- A. *General.* All vehicles used by Franchisee in providing Solid Waste services shall be registered with the California Department of Motor Vehicles and shall meet or exceed all legal standards. Franchisee agrees to maintain all of its Collection vehicles in compliance with the provisions of the California Vehicle Code.
- B. *Vehicle Identification.* Franchisee's name, local telephone number, and a unique vehicle identification number designated by Franchisee for each vehicle shall be prominently displayed on all vehicles. Additionally, every vehicle used for Collection in the City shall prominently display an identification decal provided by the City, designating the Franchisee as such. Such decal shall be effective for the term of the Agreement and shall be removed if the Franchise is terminated or the vehicle is sold, transferred or taken out of service.
- C. *Bin Identification.* Franchisee's name, local telephone number and unique identification number shall be placed on all front load bins, roll-off boxes used for storage and Collection within the City. Residential style automated Collection carts shall contain, at a minimum, the Franchisee's name and a distinct logo or identification number.
- D. *Cleaning and Maintenance.*
1. General. Franchisee shall maintain all of its properties, facility(ies), and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times. Each truck shall be designed so that Solid Waste, oil, or grease will not blow, fall, or leak out of the truck onto the street. All Solid Waste shall be transported by means of vehicles equipped with watertight bodies fitted with close fitting covers.
  2. Cleaning. Vehicles used in the Collection of Solid Waste shall be washed on a regular basis so as to present a clean appearance and minimize odors.
  3. Inventory. Franchisee shall annually furnish to City a current vehicle inventory.
  4. Storage. Franchisee shall arrange to store all vehicles and other equipment at location(s) in accordance with City's applicable zoning regulations, if stored within the City.
- E. *Operation.* Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Franchisee shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.
- F. *CARB Regulations.* All vehicles subject to CARB regulations that are used by Franchisee in providing Solid Waste management services under this Agreement shall be

in compliance with California Air Resources Board regulations for Diesel Particulate Matter Control Measure for On-road Heavy-duty Diesel-fueled Residential and Commercial Solid Waste Collection Vehicles. Any new or replacement vehicles acquired after the date of this Agreement shall meet the then applicable engine emission requirements.

- G. *Alternative Fuel Vehicles.* All fleet packer vehicles used by Franchisee to provide Solid Waste Collection services under this Agreement must be Alternative-Fuel Heavy Duty Vehicles by July 1, 2025. All roll-off trucks used by Franchisee to provide Solid Waste Collection services under this Agreement must be Alternative-Fuel Heavy-Duty Vehicles by July 1, 2028. For the purposes of this section, Alternative-Fuel Heavy-Duty Vehicle shall mean heavy-duty vehicle or engine that uses compressed or liquefied natural gas, liquefied petroleum gas, methanol, electricity, fuel cells, or other advanced technologies that do not rely on diesel fuel or gasoline.
- H. *Renewable Natural Gas (RNG) Usage Credit.* If RNG is used to fuel some or all of Franchisee's Alternative-Fuel Heavy-Duty Vehicles and such RNG was either: (1) procured from a publicly-owned treatment works (POTW) that receives Organic Waste generated in California and meets other requirements specified in 14 CCR Section 18993.1(h), or (2) derived from Organic Waste that has been diverted from Disposal and Processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to Recycle Organic Waste and meets 14 CCR Section 18993.1(h) requirements, then Franchisee agrees that the City has the right to report this RNG usage City towards the City's fulfilment of its annual recovered Organic Waste product procurement target defined in accordance with 14 CCR Section 18993.1. Franchisee shall maintain records of the amount of the above-described RNG that Franchisee purchased and shall report this information in accordance with Section 14 CCR Sections 18993.1, 18993.2(a)(4) and 18995.2, if applicable.

#### **5.9 Franchisee-Provided Solid Waste Containers**

- A. *General.* Containers used for storage of Solid Waste shall be designed and constructed to be watertight and prevent the leakage of liquids. All Containers shall prominently display the name and telephone number of the Franchisee.
- B. *Cleaning, Painting, Maintenance.* Franchisee shall replace, clean or repaint all Containers as needed so as to present a clean appearance. Franchisee shall make a good faith effort to do the same upon 48 hours notice by Director. When Franchisee paints any of its Containers, it shall paint Containers with colors that conform to the colors specified in Section 5.9 (G) and the Container and Signage Guidelines established by the Manager.
- C. *Container Standards.* Franchisee shall comply with the Container and Signage Guidelines established by the Manager.
- D. *Bin and Container Size Requirements.* Franchisees offering front load bin service and/or automatic lift Container service shall provide Recyclable Material, Organic Waste, and Refuse Containers in at least the sizes listed below upon request. Franchisee may also offer additional sizes to meet specific needs of its customers.

Front load bins: capacities of 2.0 cubic yard (cy), 3.0 cy, 4.0 cy, and 6.0 cy

Residential style automated collection carts: approximate capacities of 32 gallons, 64 gallons, and 96 gallons

- E. *Containers for use Indoors, Outdoors in Public/Common Areas, and at Special Events.* Franchisees offering front load bin service and/or automatic lift Container services are encouraged to provide Refuse, Recyclable Material, and Organic Waste Collection Containers suitable for indoor uses (i.e. under desks, in common areas, etc.), outdoor public/common areas, and for special events upon request.
- F. *Container Signage Requirements.* Franchisee shall provide Container signage for all Containers currently serviced by Franchisee, and any Containers that will be placed into service, in accordance with the following requirements:
1. Carts, Bins, Roll-Off Boxes, and other Containers provided by Franchisee to Customers to store Discarded Materials pending Collection shall be clearly identified as “RECYCLING ONLY”, “ORGANIC WASTE ONLY”, or “TRASH ONLY”, as applicable. Franchisee may use more specific signage such as “FOOD WASTE ONLY”, “GREEN WASTE ONLY”, or “CLEAN WOOD ONLY” upon City approval. Bin and Roll-Off signage shall be at least 12” x 18” or equivalent surface area and be affixed to the front and both sides of each Container. Franchisee shall submit all proposed signage for the Director’s approval prior to use.
  2. Carts, Bins, Roll-Off Boxes, and other Containers provided by Franchisee to Customers to store Discarded Materials pending Collection also shall display a label, imprinted text or graphic images indicating the primary Discarded Materials that shall be placed in the Container and the primary Discarded Materials that are Prohibited Container Contaminants in that Container. Franchisee shall submit all proposed signage for the Director’s approval prior to use.
  3. All Containers purchased on or after January 1, 2022, must display the signage described above. For front load Bins in inventory prior to January 1, 2022, the Franchisee shall comply with the signage requirements above in accordance with the following timelines: fifty percent (50%) of all front load Bins by December 31, 2023; and one hundred percent (100%) of all front load Bins by December 31, 2024.
- G. *Container Color Requirements.* Carts, Bins, and Roll-Off Boxes, and other Containers provided by Franchisee to Customers to store Recyclable Material, Organic Waste, or Refuse pending Collection shall meet the following color requirements. The Franchisee shall submit the Container colors to the Director for review and approval at least thirty (30) calendar days prior to Franchisee’s procurement of Containers and/or prior to painting of Containers. Notwithstanding this subsection, the Franchisee is not required to replace functional Containers, including Containers purchased prior to January 1, 2022, that do not meet the following color requirements prior to the end of the useful life of those Containers or prior to January 1, 2036, whichever comes first, except for Bins and Roll-Off Containers as described below:
1. Carts. The lids and bodies of Recyclable Material Carts shall be blue. The lids and bodies of Organic Waste Carts shall be green. The lids and bodies of the Refuse Carts shall be black or gray. If Franchisee provides separate food waste Collection, the lid and bodies of the food waste carts shall be brown.

2. Bins and Roll-Off Boxes.

- a. Recyclable Material Containers. The body of the Recyclable Material Container shall be blue and the lid shall be either blue, gray or black.
  - b. Organic Waste Containers. The body of the Organic Waste Container shall be green and the lid shall be either green, gray or black.
  - c. Refuse Containers. The body of the Refuse Container shall be gray or black and the lid shall be gray or black.
  - d. Food Waste Containers. The body of the Food Waste Container shall be brown and the lid shall be either brown, gray or black.
  - e. Exception for bodies of existing, metal front load Bins. Bodies of Bins must be painted the colors specified above upon repair of containers, when returned to the storage yard, between Customers, or no later than December 31, 2024.
  - f. Exception for bodies of existing, plastic front load Bins. Bodies of existing plastic front load Bins may be different than the colors specified above provided that Franchisee obtains approval of the color of the bodies from the Director by March 1, 2023. Those plastic front load Bins that were in service prior to January 1, 2022 and remain in service must comply with the Container color requirements prior to January 1, 2036.
  - g. Exception for bodies of Roll-Off Boxes. Bodies of Roll-Off Boxes used for different types of Refuse, Recyclable Material, and Organic Waste may be a color that is different than the colors specified above provided that Franchisee obtains approval of the color of the bodies from the Director by March 1, 2023. Nevertheless, all Roll Off Boxes must comply with the Container color requirements by January 1, 2036.
3. Split Containers. The Franchisee shall submit the proposed Container lid and body colors for Split Carts and Split Bins to the Director for approval at least thirty (30) calendar days before Franchisee's procurement of such Containers. Container colors shall conform to the Container color requirements in section 5.9G.

- H. *Compostable Plastics and/or Use of Plastic Bags.* Compostable plastics in the Organic Waste Container and the use of plastic bags in the Organic Waste Container for the Collection of Organic Waste are not required under Franchise Agreement and will not be accepted at Miramar Greenery.

Acceptance of compostable plastics, which meet the ASTM D6400 standard for compostability or standards as otherwise described in 14 CCR Section 18984.1(a)(1)(A), in the Organic Waste Container or plastic bags for Organic Waste in the Organic Waste Containers must not inhibit the ability of the jurisdiction to comply with the requirements of Section 6.4, Container Contamination Minimization. If Franchise allows Customers to place compostable plastics in the Organic Waste Container, Franchisee must provide the Director with a letter from each facility servicing the Franchisee stating that the facility accepts and recovers the material. If Franchise allows Customers to place plastic bags in

the Organic Waste Container, Franchisee must provide the Director with a letter from each Facility servicing the Franchisee stating that the Facility can process and remove plastic bags when it recovers source separated Organic Waste. The Franchisee must provide the letter to the Director annually with the Franchisee's Annual Narrative Report. Franchisee must clearly inform its Customers about the acceptability of compostable plastics and plastic bags by Customer type.

#### **5.10 Personnel**

- A. *Driver Qualifications.* All drivers shall be trained and qualified in the operation of Collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.
- B. *Safety Training.* Franchisee shall provide suitable operational and safety training and safety equipment, including but not limited to gloves, hard hats, and safety clothing (i.e. safety vests, reflective material wear) for all of its employees who utilize or operate vehicles or equipment for Collection of Solid Waste, or who are otherwise directly involved in such Collection.
- C. *Employee Conduct.* Franchisee shall use its best efforts to ensure that all employees present have a neat appearance and conduct themselves in a courteous manner in their dealing with Customers and the general public. Employee uniforms or apparel shall identify employees as employed by Franchisee.
- D. *General Training.* Upon Franchisee's request, the City will facilitate training for Franchisee staff on an as-needed basis for relevant City waste management programs and requirements.

#### **5.11 Hazardous Waste**

Franchisee agrees to establish and vigorously enforce an educational program which will train Franchisee's employees in the identification and proper handling of Hazardous Waste. Franchisee's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly Dispose of such Hazardous Wastes at a Recycling facility or Disposal Site.

If the Franchisee determines that Solid Waste placed in any Container for Collection or delivered to any Facility is Hazardous Waste, or infectious waste or other waste that may not legally be Disposed of at the Disposal Site or presents a hazard to Franchisee's employees, the Franchisee shall have the right to refuse to accept such waste. The Franchisee shall contact the Customer and request the Customer to arrange for proper Disposal.

If the Hazardous Waste is delivered to a City Disposal Site before its presence is detected and the Customer cannot be identified after the best efforts of the City and Franchisee to identify the Customer, the City shall arrange for its proper Disposal at the expense of Franchisee. This expense shall be limited to the direct Disposal cost of any manifested load required to remove the Hazardous Waste. Alternatively, Franchisee will have 5 business days after receipt of written notice to make its own arrangements for the removal of the Hazardous Waste subject to City review and approval of such arrangements.

**ARTICLE 6**  
**OTHER COLLECTION-RELATED SERVICES**

**6.1 Service Complaints**

Franchisee agrees to maintain a written log of all oral and written service complaints registered with the Franchisee from Customers within the City during the term of the Franchise. Franchisee shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints. Franchisee shall retain records of all service complains for a minimum of one (1) year and make copies available to City upon request.

**6.1.5 SB 1383 Complaints**

In the event that Franchisee receives a complaint about an activity that may be in violation of SB 1383 regulatory requirements, Franchisee shall document the information and shall provide this information in a brief written report to the Director within seven (7) calendar days of receipt of the complaint. Franchisee also shall provide the Director with a quarterly summary report of SB 1383 non-compliance complaints in accordance with Section 7.6(D). Franchisee shall maintain the records of SB 1383 non-compliance complaints for at least one (1) year from the date of the complaint on a form or log that details all such complaints Franchisee received.

**6.2 Non-Discrimination**

Franchisee shall not discriminate in the provision of service or the employment of persons engaged in performance of the Agreement on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, material status, or gender of such persons or as otherwise prohibited by law. Franchisee's charges for all services shall be non-discriminatory and uniform for equal services rendered.

**6.3 Report Accumulation of Solid Waste: Unauthorized Dumping**

Franchisee shall cooperate with the City in its efforts to provide a clean environment by directing its drivers to note (1) the addresses of any premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and (2) the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Franchisee shall deliver the address or description of such observations to the Director in a timely manner in order to protect public health, safety, and welfare.

**6.4 Container Contamination Minimization**

Franchisee must comply with the following Container Contamination Collection Route Review requirements to minimize Prohibited Container Contaminants:

- A. *Container Contamination Collection Route Review.* Beginning on or before January 1, 2023, and by January 1 annually thereafter, Franchisee shall randomly inspect a representative sample of its Customers Containers for Prohibited Container Contaminants on each Collection Route, including Organic Waste, Recyclable Material, and Refuse Collection Routes. The City reserves the right to review and approve the Franchisee's contamination monitoring approach.

Container inspections shall be performed by Franchisee through visual inspection of the contents of the Containers. If Franchisee wants to perform the Collection Route reviews using mechanical inspection methods, such as the use of cameras, Franchisee shall seek the Director's advance approval of its proposed inspection methods.



If Franchisee observes contamination in a Recyclable Material Container or Organic Waste Container (whether through its Collection Route review or otherwise), Franchisee may Dispose of the Container's contents.

- B. *Contamination Noticing and Fees.* If the Franchisee observes Prohibited Container Contaminants (whether through its Collection Route review or otherwise) in any Customer Container, the Franchisee shall (i) leave a contamination notice on the Customer's Container, gate, or door; and/or (ii) mail, email, or electronically message the Customer about the requirements to properly separate Discarded Materials; and (iii) provide instructions on proper separation of Discarded Materials. The format of the contamination notice must be approved by Director. For Customers issued a contamination notice, Franchisee shall reinspect Containers for Prohibited Container Contaminants within sixty (60) days of issuance of the contamination notice.
- C. *Notice of Contamination Report to City.* The Franchisee shall provide the City a written report of Collection Route reviews conducted during each month of the quarter, if any. This report shall include: the number of Collection Route reviews conducted; the number of Containers monitored; and any Customers identified to have Prohibited Container Contaminants, including the Customer's service address, billing address, the date contamination was observed, a description of what action was taken, and photographic evidence of the violation (if any photographic evidence was documented by Franchisee). The Franchisee shall provide copies of the written reports to the City on a quarterly basis, pursuant to Section 7.6(B).

#### **6.5 Education and Outreach**

- A. *Customer Notifications.* Franchisee shall prepare and distribute notifications to all Customers, as required per sections 5.4 and 5.4.1, to inform Customers of their responsibilities under the City Recycling Ordinance, AB 1826, and SB 1383. Each notice shall include information on regulations governing Discarded Materials, Hazardous Waste, and toxic waste; City and State requirements to properly separate Recyclable Material and Organic Waste (including applicable requirements of the San Diego Municipal Code, AB 341, AB 1826, and SB 1383); instruction on properly separating materials; prevention of Solid Waste generation; on-site and community composting; Self-Haul requirements; benefits of methane reduction from reducing Landfill Disposal; Edible Food Recovery requirements; environmental impacts associated with the Disposal of Organic Waste; methods of Organic Waste recovery used by the Franchisee; Franchisee's technical assistance point of contact; a link to the Franchisee's website for more education resources; and any other information required by the City or by State regulations (e.g., SB 1383 education requirements). Notifications are subject to compliance review and advance approval by the Director. Franchisee may comply with these requirements through preparation, printing, and mailing of semi-annual notices or monthly, quarterly, or twice annual newsletters that provide the required information. Electronic distribution of the notices by Franchisee may be acceptable subject to review and approval by the Director.
- B. *Minimum Language Requirements.* Franchisee shall comply with the requirements of 14 CCR Section 18985.1 when preparing and distributing educational information required by this Section, which may include providing the educational information in a language or languages other than English that is spoken by a substantial number of Waste Generators in the City, as determined by the Director. Franchisee shall comply with the

requirements in this subsection 6.5(B) within 30 days of the Effective Date of this Agreement. Upon City request, the Franchisee shall provide materials in additional or alternative languages throughout the Term of the Agreement, if needed, in response to shifting demographics within the City; updates to State requirements or applicable law and regulations; or any other reason deemed necessary by the City

- C. *Web Site.* Franchisee shall develop and maintain a website (or webpage) that is specifically dedicated to the City of San Diego to provide Customers with detailed service information. Franchisee shall make the notices required by sections 5.4 and 5.4.1 available for viewing and downloading through the Franchisee's website. In addition to service information, the Franchisee shall include information on City programs, including a link to the City's Food Recovery program webpage, and other City webpages upon request of the Director. The website or webpage shall be accessible by the public. Franchisee shall update the website regularly so that information provided is current.
- D. *Technical Assistance.* Franchisee shall designate a Point of Contact (POC) to provide "Recycling Technical Assistance" to its Customers and provide the POC's contact information to the City. The POC shall be knowledgeable about the requirements of the City Recycling Ordinance, C&D Ordinance, all other City waste diversion programs and requirements, and all applicable State laws and regulations including, but not limited to, AB 341, AB 1826, and SB 1383. The POC shall provide technical assistance to Customers of Franchisee to support Customer compliance with Recyclable Material and Organic Waste diversion requirements specified in San Diego Municipal Code Sections 66.0701 et seq.. The POC shall provide waste reduction assistance including site visits and meetings with a Customer's representative that has knowledge about and influence or authority over the Customer's Collection services and service levels.

## **6.6 Food Recovery Program**

- A. *General.* The Franchisee shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of Food Recovery program efforts in the City.
- B. *Tier One and Tier Two Commercial Edible Food Generators.* Franchisee shall assist the City in identifying SB 1383 Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators for the purpose of the Food Recovery program. Specifically, no later than March 1, 2023, and semi-annually thereafter pursuant to Section 7.5(A)(d), Franchisee shall provide the City with a list of its Commercial Customers that qualify or appear to qualify as Tier One Commercial Edible Food Generators or Tier Two Commercial Edible Food Generators.
- C. *Food Recovery Capacity Planning Assistance.* Franchisee shall perform annual examinations of Commercial Collection Routes to identify Commercial Customers that generate Edible Food and estimate the potential quantities of Edible Food that may be recovered and report findings to the City semi-annually pursuant to Section 7.5(A)(e). The report shall include the number of Commercial Edible Food generator Customers participating in a Food Recovery program, the number of Commercial Edible Food generator Customers not participating in a Food Recovery program, and the reasons for participation or non-participation if gathered during the examination.

- D. *Website Content.* Franchisee shall include Food Recovery program information on the Franchisee's website, in accordance with Section 6.5 (C), including a link to the City's Food Recovery program webpage.

## ARTICLE 7 RECORDS AND REPORTS

### **7.1 General**

Franchisee agrees to maintain and report to the Director such accounting, statistical and other records or documentation related to its performance under this Agreement and as necessary for the City to: 1) fulfill its obligations under AB 939, AB 341, AB 1826, and SB 1383 as it exists on the date of execution of this Agreement and as it may be amended from time-to-time, and other applicable laws and regulations; 2) meet its Solid Waste program management needs and reporting requirements; and 3) reconcile the accuracy of Franchise Fee payments and AB 939 Fee payments as described in Sections 4.2 and 4.4 respectively.

By the twentieth (20th) of each month following the end of a calendar year quarter, Franchisee shall submit to the Director quarterly reports. Quarters end on March 31, June 30, September 30, and December 31 of each calendar year. For the Container contamination review report in Section 7.6(B) and education and outreach report in Section 7.6(C), a change in the reporting frequency to a longer period will be considered for Franchisees in compliance with the reporting requirements in the Agreement, as determined by the reporting compliance in the first two reporting years from the Effective Date of this Agreement.

Semi-annual reports shall be submitted by Franchisee to the City on March 1 of each year (reporting Customer information for December 31) and on September 1 of each year (reporting Customer information for June 30). Annual reports shall be submitted in compliance with Section 7.4.

Franchisee shall submit reports using the report form(s) and or format(s) approved by the Director and provided to Franchisee in accordance with Section 10.10 Notices. Franchisee may propose report formats that are responsive to the needs of the City. The format of each report shall be approved by City. With the written direction or approval of the City, and after Franchisee is given an opportunity to review and comment, the records and reports to be maintained and provided by Franchisee may be adjusted in number, format, or frequency.

Each report shall include a certification executed by an authorized officer of the Franchisee, in substance, as follows: "I declare, under penalty of perjury, that this statement is made by me, and that I am authorized to make such statement on behalf of Franchisee and, to the best of my knowledge and belief it is a true, correct and complete statement made in good faith for the time period stated herein."

Franchisee shall retain copies of all Collection, Recycling, and Disposal records for a minimum of three (3) years, following the City's receipt of final payment under this Agreement, unless the City agrees in writing to an earlier disposition, for inspection and verification by the City or its agents, at any reasonable time upon request, and shall cooperate with the City in any audits or investigations of such information. If Franchisee discontinues providing Solid Waste Collection services in the City then, within 30 days thereof, the Franchisee shall provide all records of

Disposal and/or Recycling of all Solid Waste Collected in the City. Records shall be in chronological order and organized in a form which is readily and easily interpreted.

All reports shall be submitted to: City of San Diego  
Environmental Services Department  
Attention: Franchise Administrator  
9601 Ridgehaven Court, Suite 320  
San Diego, CA 92123-1636

Failure of Franchisee to comply with the reporting requirements as set forth in this section shall result in a late penalty charge of Two Hundred Fifty (\$250) dollars for each month or part thereof past the due date. Franchisee's repeated failure to submit reports, and/or failure to submit reports on time, may result in additional penalties and/or revocation of the Franchise at the discretion of the Manager.

### **7.2 Audit and Inspection by City**

At a mutually agreed upon time during normal business hours, but within five (5) working days of the initial request, Franchisee shall make available to the City for examination at reasonable locations within the City/County of San Diego only the Franchisee's data and records with respect to the matters covered by this Agreement. Franchisee will permit the City Treasurer to audit, examine, and make excerpts or transcripts from such data and records, and make audits of all data relating to all matters covered by this Agreement. Franchisee shall maintain such data and records in an accessible location and condition for a period of not less than three years following the City's receipt of final payment under this Agreement unless the City agrees in writing to an earlier disposition.

In the event a City audit discloses that the Franchise Fee for the audited period(s) has been underpaid in excess of five percent (5%) of the total required fee, then Franchisee shall pay the City the cost of the audit. Failure to provide the City Treasurer with access to the records required to conduct audits under this Agreement are a breach of this Agreement subject to revocation of this Franchise.

### **7.3 Solid Waste Composition Studies**

Franchisee agrees to cooperate with the City on all future Solid Waste composition studies, at no additional cost to the City; including but not limited to, modification of Collection Routes or Collection of individual accounts identified by the Director for the purposes of obtaining desired waste composition data.

Franchisee further agrees to deliver a reasonable number of targeted loads to a nearby location or locations specified by the Director as reasonably agreed by Franchisee for purposes of conducting waste composition analysis.

### **7.4 Annual Reporting**

A. *Narrative Annual Report.* Franchisee shall prepare and submit to the City, due at the same time as Franchisee's Quarterly Report for the fourth quarter of the prior calendar year (January 20th), a narrative annual report that provides the following information:

- a. A description of Collection services Franchisee provides to its Customers. (Upon any change in service types, Franchisee shall submit an updated report to the City.) The report shall include:

1. Collection method(s);
  2. Geographical area for each Collection method;
  3. Compostable plastics. If allowed, submit annual written notification from each Facility indicating that the Facility recovers that material;
  4. Plastic bags. If used for the Collection of Organic Waste, submit annual written notification from Facility indicating that the Facility can Process and remove plastics bags when it recovers source-separated Organic Waste;
  5. List of Collection Routes by each Collection service type;
  6. Total number of Customers by Collection service type;
  7. Container colors by Container types;
  8. Container sizes per type of Customer;
  9. Description of the Container Contamination Collection Route Review process;
  10. Description of the compliance review process
- b. Franchisee Designated Facilities. The Franchisee shall designate the Facilities for the receipt and handling of Recyclable Material, Organic Waste, and Refuse it Collects. Facility information shall include the following:
1. Facility "Contact" Information;
  2. Facility Type;
  3. Materials to be delivered to Facility;
  4. Estimated Tonnage by material type; and
  5. Recycling and Disposal Reporting System number of each facility that receives Organic Waste
- c. Diversion programs, activities and efforts conducted by Franchisee during the prior calendar year to achieve the applicable annual minimum diversion requirement.
- d. Franchisee's planned diversion programs, activities, and efforts in order to achieve the upcoming annual minimum diversion requirement.
1. Certification that Franchisee has access to necessary infrastructure capacity (owned or contracted) to achieve the upcoming annual minimum diversion requirements.
- e. Additional outreach provided by Franchisee to Customers during the prior calendar year regarding the requirements of the City Recycling Ordinance and AB 1826, the Recycling levels/performance improvements by Customers, and Franchisee's waste reduction activities.
- f. List of properties that received Organic Waste Recycling services from Franchisee during the prior calendar year.
- B. *Exemptions from Franchise Fees.* Franchisee shall prepare a report to certify all the Recyclable Material and Organic Waste that Franchisee serviced during the period from July 1 through June 30 of the immediately preceding twelve-month period, which Franchisee claims as exempt from the Franchise requirement under section 66.0109(c) (1), was sold or donated by a person. The report is due at the same time as Franchisee's Quarterly Report for the second quarter of the prior calendar year (July 20<sup>th</sup>). Franchisee's certification shall include:
- (1) The name and address of each Person that sold or donated Recyclable Material to Franchisee;
  - (2) The date(s) that Franchisee Collected the sold or donated Recyclable Material from the Person;

- (3) The total amount of sold or donated Recyclable Material, measured in tons, that Franchisee Collected from each Person; and
- (4) A written statement, signed by each Person, certifying that the Person sold or donated the Recyclable Material to Franchisee.

### **7.5 Semi-Annual Reporting**

- A. *Customer Subscription Data Report.* As part of Franchisee's semi-annual reporting requirements under San Diego Municipal Code Section 66.0711 and Customer compliance verification requirements, Franchisee shall provide Customer subscription data to the Department, by March 1 and September 1 of each year, on a form or using a format prescribed by the Director which documents the following:
- a. List of properties serviced by Franchisee that do not subscribe to Franchisee's Recycling services and which do not subscribe to third party Recycling services or Recycle by Self-Hauling.
  - b. List of properties serviced by Franchisee that are subject to the Organic Waste Recycling requirements of AB 1826 and SB 1383 that have not subscribed to Organic Waste Recycling services from Franchisee and which do not subscribe to third party Organic Waste Recycling services or Recycle their Organic Waste by self-hauling.
  - c. List of properties serviced by Franchisee that, pursuant to the City Recycling Ordinance, do not subscribe to adequate Recyclable Material and Organic Waste Recycling Services or which fail to demonstrate compliance with minimum container capacity requirements.
  - d. List of properties serviced by Franchisee that qualify or appear to qualify as Tier One or Tier Two Commercial Edible Food generators
  - e. List of Commercial properties serviced by Franchisee that appear to be Edible Food generators with estimate of the potential quantities of Edible Food.

### **7.6 Quarterly Reporting**

- A. *Tonnage Report.* Franchisee shall submit a Tonnage Report quarterly to include total quantities in tons of Discarded Materials Collected, transferred, Recycled, and Disposed by the Franchisee listing Tonnage separately by:
1. Material type, which shall include, at a minimum, separate reporting of Refuse, Recyclable Material, Green Material, Food Waste, mixed Organic Waste (Green Material and Food Waste), and any other type of Discarded Material separately Collected by Franchisee (For example, mixed Construction and Demolition Waste, dirt, rock, metals, cardboard, wood waste, salvageable materials, etc.);
  2. Franchisee-Designated Facility(ies);
  3. Diversion level for the quarter and cumulative diversion year-to-date as calculated pursuant to section 5.4.2., reported in the Quarterly Report; and
  4. Fee calculations.
- B. *Container Contamination Collection Route Review.* Franchisee shall submit a Container Contamination Collection Route Review report for all Collection Route reviews conducted pursuant to Section 6.4 of this Agreement. For each Collection Route review, Franchisee shall provide the Collection Route number, date of Collection Route review, total number of Customers on the Collection Route, number of Containers on the Collection Route, number of Containers inspected, calculated percentage of Containers inspected, the number of contamination notices, violations or targeted education materials

provided to Customers, and a list of Customers (including account name, service address, and billing address) that received contamination notices. Additionally, Franchisee shall provide: the account name of each Customer inspected, a description of the Collection Route review process, dates of inspections, names of the Person(s) who conducted the inspections, results of the inspections and actions taken, and any supporting evidence such as pictures. Franchisee shall provide copies of all contamination notices (organized by Collection Route and date) and any actions taken against Customers (e.g., non-Collection of contaminated Discarded Materials). Franchisee also shall provide documentation of the total number of Containers Disposed of due to observation of Prohibited Container Contaminants.

Additionally, Franchisee shall provide a list of Customers that were assessed a contamination fee, and such list shall include the Customer name or account name, Customer service address, Customer billing address, and reason for the assessment of the contamination fee.

C. *Education and Outreach Requirements.* Franchisee shall include all relevant documents supporting its compliance with education and outreach requirements required by Section 6.5 including, but not limited to:

1. Copies of the information provided, including: flyers, brochures, newsletters, invoice messaging, and website and social media postings.
2. The date, and to whom the information was disseminated or direct contact made. If Franchisee provides mass distribution through mailings, or bill inserts, it shall provide the date, a copy of the information, and the type and number of accounts receiving the information.

D. *SB 1383 Non-compliance Complaints.* For complaints received by Franchisee from Persons alleging a violation of SB 1383 regulations, the Franchisee shall submit the following information:

1. Total number of SB 1383-noncompliance complaints received in the quarter listed by month.
2. A summary of complaints received, including copies of documentation submitted to the City pursuant to Section 6.1, which shall at a minimum include the following information:
  - i. The complaint as received;
  - ii. The name and contact information of the complainant, if the complaint is not submitted anonymously;
  - iii. The identity of the alleged violator, if known;
  - iv. A description of the alleged violation including location(s) and all other relevant facts known to the complainant;
  - v. Any relevant photographic or documentary evidence submitted to support the allegations in the complaint; and,
  - vi. The identity of any witnesses, if known.

E. *RNG Usage.* Documentation of usage of RNG during the quarter.

**7.7 Other Reporting**

- A. *Non-Operational Facilities.* If the Franchisee notified the City of an emergency condition at one of its Franchisee Designated Facilities pursuant to Narrative Annual Report, Franchisee shall report the number of days the Franchisee-Designated Facility's emergency condition or closure was in effect, a description of the equipment failure or operational restriction, as well as the number of Tons that were Disposed as a result of said waiver. As necessary, this report shall be submitted to the City on the twentieth (20) day following the end of each month.

**ARTICLE 8  
INDEMNITY, INSURANCE, BOND**

**8.1 Indemnification of City**

- A. *Indemnification generally.* Separate and distinct from the insurance and default provisions found in this Agreement, Franchisee agrees to defend, with counsel to be agreed upon by both parties, indemnify, and hold harmless, the City and its agents, officers, servants, and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the City's employees, agents or officers which arise from, or are connected with, or are caused or claimed to be caused by acts or omissions of Franchisee, or their agents, officers or employees, in the performance of the non-exclusive Franchise Agreement, or in performing the work or services therein, and all costs and expenses of investigating and defending against same; provided, however, that Franchisee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, active negligence, or sole willful misconduct of the City, its agents, officers, or employees.
- B. *Hazardous Materials Indemnification.* For Solid Waste Collected by Franchisee and transported to a non-City landfill, Franchisee shall indemnify, defend, with counsel to be agreed upon by both parties, protect and hold harmless the City, its officers, employees, agents, assigns and any successor or successors to the City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, 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, the City or its officers, employees, or agents 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 government action) concerning any Hazardous Substance or Hazardous Waste at any Disposal or processing facility where Solid Waste is or has been transported, transferred, processed, stored, Disposed of or has otherwise come to be located by Franchisee or its activities pursuant to this Agreement resulting in a release of any Hazardous Substance into the environment.
- C. *Additional Information.* Without limiting the substance of this indemnification, the foregoing indemnity is intended to operate as an agreement pursuant to 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA,"



also known as "Superfund," 42 USC §9607(e), and California Health and Safety code §25364, to defend, protect, hold harmless and indemnify the City from all forms of liability under CERCLA, other applicable statutes or common law for any and all matters addressed in this provision. This provision shall survive the expiration of the term of this Agreement.

The requirements of Section 8.1B need not be separately insured or bonded by Franchisee. The only security for the performance of Section 8.1B are the bonds required by Section 8.3. The City accepts the otherwise unsecured indemnification covenant of Franchisee set forth in this Section.

Any other indemnification agreement covering the same subject matter of which the City is beneficiary shall be primary to the indemnification agreement of this Section.

- D. *City Provided Indemnification.* Notwithstanding anything to the contrary in this Agreement, upon the Effective Date of the Agreement, the City shall indemnify, defend with counsel to be agreed upon by both parties, protect and hold harmless Franchisee, its officers, directors, employees, agents, assigns and any successors to the Franchisee's interest, from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, 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, Franchisee or its officers, employees or agents arising from or attributable to any repair, cleanup or detoxification or reparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to government action) concerning any hazardous substance or hazardous waste arising from any Disposal Site owned by the City, including without limitation the Miramar Landfill.
- E. *Additional Information/City Indemnification.* Without limiting the substance of this indemnification, the foregoing indemnity is intended to operate as an agreement pursuant to 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); also known as "Superfund," 42 USC §9607(e), and California Health and Safety code §25364, to defend, protect, hold harmless and Indemnify Franchisee from all forms of liability under CERCLA, other applicable statutes or common law for any and all matters addressed in this provision. This provision shall survive the expiration of the term of this Agreement.

## **8.2 Insurance**

- A. *Minimum Scope of Insurance.* Coverage shall be at least as broad as:
1. Comprehensive General Liability and Insurance Services Office covering Broad Form Comprehensive General Liability.
  2. Automobile Liability Policy with coverage for pollution liability.
  3. Worker's compensation insurance as required by the Labor Code of the State of California and Employer's Liability insurance.

- B. *Minimum Limits of Insurance.* Franchisee shall maintain limits no less than:
1. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
  2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
  3. Worker's Compensation and Employers Liability: Worker's Compensation limits of \$1,000,000 as required by the Labor Code of the State of California.
- C. *Deductibles and Self-Insured Retentions.* Any significant deductibles or self-insured retentions must be declared to and approved by the City Risk Manager. At the option of the City's Risk Manager, either: the insurer shall reduce or eliminate such deductibles or self insured retentions as respects the City, its officials, employees, agents or volunteers; or the Franchisee shall procure an additional letter of credit or bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.
- D. *Other Insurance Provisions.* The policies are to contain, or be endorsed to contain, the following provisions:
1. General Liability and Automobile Liability Coverages
    - a. Franchise shall obtain, and during the term of this Agreement, shall maintain policies of liability, automobile liability, public liability, general liability and property damage insurance from an Insurance Company authorized to be in business in the State of California, in an insurable amount of no less than \$1,000,000 for each occurrence. The insurance policies shall provide that the policies shall remain in full force during the life of this Agreement and shall not be cancelled, terminated or allowed to expire without thirty (30) days prior written notice to the City from the insurance company.
    - b. The City shall be named as an additional insured on these policies.
    - c. The Franchisee's insurance coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of Franchisee's insurance and shall not contribute to it.
    - d. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees or volunteers.
    - e. Coverage shall state that the Franchisee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  2. Worker's Compensation and Employers Liability Coverage:

The insurer shall agree to waive all rights and subrogation against the City, its officials, employees and volunteers for losses arising from work performed by the Franchisee in the City.

- E. *Acceptability of Insurers.* The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports, of size category VII or larger and a rating classification of A or better.
- F. *Required Endorsements.* Each insurance policy shall contain appropriate endorsements, as specified by the City.
- G. *Delivery of Proof of Coverage.* Simultaneously with the execution of this Agreement, Franchisee shall furnish the City certificates of each policy of insurance required hereunder, in form and substance satisfactory to the City. Renewal certificates shall be furnished to the City upon each policy renewal to demonstrate maintenance of the required coverages throughout the term of the Agreement.

### **8.3 Faithful Performance Bond**

Simultaneously with the execution of this Agreement and all extensions of the Agreement, Franchisee shall file with the City and at all times thereafter maintain in full force and effect throughout the term of the Franchise and all extensions thereof; at the Franchisee's sole expense, a corporate surety bond payable to the City, executed by a corporation authorized to transact surety insurance in the State of California. The principal sum of the bond shall be forty thousand dollars (\$40,000). The bond shall be renewed annually, and conditioned upon the faithful performance of the Franchisee, and upon the further condition that in the event the Franchisee shall fail to comply with any one or more of the provisions of the Agreement, waste delivery agreement, AB 939 provisions, late fees, penalties, or fines, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the City as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Franchisee, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond, such condition to be a continuing obligation for the duration of the Franchise and thereafter until the Franchisee has liquidated all of its obligations with the City which may have arisen from the acceptance of the Franchise by the Franchisee or from the Franchisee's exercise of any privilege granted by San Diego Municipal Code Chapter 6, Article 6. The bond shall provide that thirty (30) calendar days' prior written notice of intention not to renew, cancellation, or material change shall be given to the City.

In lieu of the corporate surety bond described above, and at the City Manager's sole discretion, the Franchisee may deposit an irrevocable letter of credit in favor of the City issued by a financial institution authorized to do business in the State of California, open a certificate of deposit in the name of the City at a financial institution authorized to do business in the State of California, or deposit cash with the City Treasurer in the amount of forty thousand dollars (\$40,000). The first two alternatives described in this paragraph shall be made through a financial institution and in a form approved by the City Manager.

**ARTICLE 9**  
**DEFAULT AND REMEDIES**

**9.1 Events of Default**

Each of the following shall constitute an event of default (“event of default”) hereunder:

- A. *Failure to Perform.* Franchisee fails to perform any of its material obligations under this Agreement, as it may be amended from time to time.
- B. *Misrepresentation.* Any misrepresentation or disclosure made to the City by the Franchisee in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- C. *Seizure or Attachment.* There is a seizure or attachment of (other than a prejudgment attachment), or levy affecting possession on, the operating equipment and facilities of Franchisee so as to substantially impair the Franchisee’s ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within seventy-two (72) hours, excluding weekends and holidays.
- D. *Financial Insolvency.* Franchisee files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debt or relief, or other similar law now or hereafter in effect, or consents to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Franchisee or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) for any part of the Franchisee’s operating assets or any substantial part of the Franchisee’s property, or makes any general assignment for the benefit of the Franchisee’s creditors, or shall fail generally to pay the Franchisee’s debts as they become due or shall take any action in furtherance of any of the foregoing.
- E. *Court Decisions.* Any court having jurisdiction shall enter a decree or order for relief in respect of the Franchisee, in any involuntary case brought under any bankruptcy, insolvency, debt or relief or similar law now or hereafter in effect, or the Franchisee shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestration (or similar official) of the Franchisee or for any part of the Franchisee’s operating equipment or assets, or order the winding up or liquidation of the affairs of Franchisee.
- F. *Fraud or Deceit.* If the Franchisee practices, or attempts to practice, any fraud or deceit upon the City.
- G. *Failure to Maintain Coverage.* If the Franchisee fails to provide or maintain in full force and effect the insurance and/or indemnification coverage as required by this Agreement.
- H. *Violations of Regulation.* If the Franchisee violates any permits, orders or filing of any regulatory body having jurisdiction over the Franchisee which violation or noncompliance materially affects the Franchisee’s ability to perform under this

Agreement; provided that the Franchisee may contest any such permits, orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise shall be deemed to have occurred during the pendency of the proceedings or appeal, to the extent the Franchisee is able to adequately perform during that period.

- I. *Acts or Omissions.* Any other act or omission by Franchisee which materially violates the terms, conditions, or requirements of this Agreement, AB 939, as it may be amended from time-to-time, SB 1383, as it may be amended from time-to-time, or an order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Franchisee cannot reasonably correct or remedy the breach within the time set forth in such notices, if the Franchisee should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- J. *Termination of Service.* In the case of a breach related to the above sections, and the breach continues for more than thirty (30) calendar days after written notice from the Director for the correction thereof, provided that where such breach cannot be cured within such thirty (30) day period, the Franchisee shall not be in default of this Agreement if Franchisee shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and it continues such performance diligently until completed.

## **9.2 Dispute Resolution**

A Franchise may be suspended or revoked by the Manager when the Franchisee violates any provision of this Agreement or any rule or regulation promulgated by the Manager. Written notice of suspension or revocation of the Franchise shall be served personally or by registered or certified mail, postage prepaid, to the last place of business or residence of the Franchisee and the Franchisee shall cease operations under this license within ten (10) calendar days after receipt of said notice unless the Franchise has been reinstated by the Manger or an appeal hearing before the City Council is requested by the Franchisee prior to expiration of said ten (10) calendar day period. In the event that such an appeal hearing is requested, said Franchisee may continue Collecting, transporting, and Disposing of or Recycling Solid Waste until the City Council has rendered its decision on the suspension or revocation of the Franchise. Any Person whose Franchise has been revoked or suspended has the right to an appeal hearing before the City Council. A request in writing shall be made to the City Clerk within ten (10) calendar days after receipt of notice of suspension or revocation, and the appeal hearing shall be held no later than fourteen (14) calendar days following the receipt of the written request. Written notice of the time, date, and place of the appeal hearing shall be given by the City Clerk to the Franchisee and to the Manger. The City Council shall render its decision within fifteen (15) calendar days after the close of the appeal hearing, and its decision shall be final.

## **9.3 Right to Terminate Upon Default**

Upon a default by Franchisee, and after the completion of the process described in Section 9.2, the City shall have the right to terminate this Agreement without need for any additional hearing, suit or legal action.

## **9.4 City's Remedies Cumulative: Specific Performance**

The City's right to terminate the Agreement under Section 9.2 is not exclusive, and the City's termination of the Agreement shall not constitute an election of remedies. Instead, they shall be

in addition to any and all other legal and equitable rights and remedies which the City may have. By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the lead time required to effect alternative service, and the rights granted by the City to the Franchisee, the remedy of damages for a breach hereof by the Franchisee may be inadequate and the City shall be entitled to injunctive relief.

#### **9.5 Excuse from Performance**

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other "acts of God," war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or their contracted job action conducted by Franchisee's employees or directed at Franchisee is not an excuse from performance and Franchisee shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events; provided, that in the case of labor, unrest or job action directed at a third party (e.g., Customer) over whom the Franchisee has no control, the inability of the Franchisee to make Collections due to the unwillingness or failure of the third party to provide reasonable assurance of the safety of Franchisee's employees while making Collections or to make reasonable accommodations with respect to Container placement and point of delivery, time of Collection or other operating circumstances to minimize any confrontation with pickets or the number of persons necessary to make Collections shall, to that limited extent, excuse performance and provided further that the foregoing excuse shall be conditioned on the Franchisee's cooperation in making Collection at different times and in different locations.

The party claiming excuse from performance shall, within two (2) working days after such party has notice of such cause, give the other party notice of the facts constituting such cause and assert its claim to excuse under this Section. Notwithstanding the foregoing, the Franchisee in the event of a catastrophic event shall comply with the City's emergency preparedness plan.

In the event that either party validly exercises its rights under this Section, the parties hereby waive any claim against each other for any damages sustained thereby.

Notwithstanding the foregoing, however, (1) the existence of an excuse from performance will not affect the City's rights under this Section; and (2) if the Franchisee is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days or more, other than as the result of third party labor disputes where service cannot be provided for reasons described earlier in this Section, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) working days notice, in which case the provisions of Section 9.2 will apply.

#### **9.6 Appropriately Assessed Fines for Non-Performance**

The requirements contained in this Agreement are of the utmost importance for the public health, safety, and well-being of residents and Commercial enterprises in the City, and for compliance with applicable law and regulations including State diversion requirements. Non-performance by Franchisee of the terms of this Agreement may impact diversion goals and could potentially lead to fines from CalRecycle. In the event the City is assessed fines by CalRecycle for Franchisee's non-compliance of State-mandated requirements, the City will identify the responsible Franchisee(s) who's acts or omissions caused the City's non-compliance and proportionately assess fines to Franchisee.

**ARTICLE 10**  
**OTHER AGREEMENTS OF THE PARTIES**

**10.1 Relationship of Parties**

The parties intend that the Franchisee shall perform the services required by this Agreement as an independent Franchisee and not as an officer, agent, or employee of the City nor as a partner of or joint venture with the City. No employee or agent of the Franchisee shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Franchisee shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all persons performing such services. Franchisee shall be solely responsible for the acts and omissions of its officers, employees, subcontractors, and agents. Franchisee officers, employees, agents, or contractors shall not obtain any rights to retirement benefits, worker's compensation benefits, or any other benefits which accrue to the City's employees by virtue of their employment with the City.

Franchisee agrees that this Agreement is not made in the interests of, or on behalf of, any undisclosed Person, partnership, Franchisee, association, organization, or corporation. Franchisee has not directly or indirectly colluded, conspired, connived or agreed with any Person, partnership, Franchisee, association, organization, or corporation to secure any advantage against the City.

**10.2 Compliance with the Law**

In providing services under this Agreement, Franchisee shall at all times, at its sole cost, comply with all applicable laws of the United States, the State of California, the County of San Diego, and the City and with all applicable regulations promulgated by any federal, state, regional or local administrative and regulatory agency, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

**10.3 Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California and the United States.

**10.4 Jurisdiction**

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Agreement is made in and will be performed in the City of San Diego, County of San Diego and the State of California. Federal courts may have jurisdiction over certain lawsuits arising from this Agreement and these should be brought and concluded within the federal system.

**10.5 Assignment**

Franchisee acknowledges that this Agreement involves rendering a vital service to City residents and businesses, and that the City has franchised Franchisee to perform the services specified herein based on (1) Franchisee's experience, skill, and reputation for conducting its Solid Waste management and/or Recycling operations in a safe, effective and responsive fashion, at all times in keeping with applicable waste management laws, regulations and good Solid Waste management practices, and (2) Franchisee's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Franchisee to perform the services to be rendered by the Franchisee under this Agreement.

Any Franchise granted pursuant to this division is a privilege to be held in trust by the original Franchisee. A Franchise issued under this division shall not be transferred, sold, leased, assigned, relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the prior approval of the City Council. This restriction includes, but is not limited to, the transfer of ownership of the Franchise, or a majority of the ownership or control of the Franchise, or the conveyance of a majority of the Franchisee's stock to a new controlling interest.

The Franchisee shall provide the City with ninety (90) calendar days advance written notice of its intent to transfer, sell, lease, assign, relinquish or delegate its Franchise to another Person. Franchises shall become void upon abandonment of the same by the Franchisee. The City Council shall not unreasonably withhold approval of a Franchise assignment, provided that such assignment does not unreasonably impact competition and the assignee is qualified to perform its obligations as required by this Franchise Agreement and any implementing City ordinances. Notwithstanding the above, no Franchise shall be approved to be transferred, assigned or otherwise conveyed to another party unless and until all City accounts are current and no monies are owed to the City by the existing Franchisee.

#### **10.6 Binding on Successors**

The provisions of this Agreement shall inure to the benefit to and be binding on the successors and permitted assigns of the parties.

#### **10.7 Parties in Interest**

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Person other than the parties to it and their representatives, successors, and permitted assigns.

#### **10.8 Waiver**

The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

The subsequent acceptance by either party of any monies which become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Agreement.

#### **10.9 Franchisee's Investigation**

Franchisee has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by the Franchisee.

#### **10.10 Notice**

All notices, demands, requests, proposals, approvals, consents, and other communications which this Agreement requires, authorizes or contemplates shall, except as otherwise specifically provided, be in writing and shall be effective when personally delivered to a representative of the parties at the address below, or deposited in the United States mail, first class postage prepaid, return receipt requested, addressed as follows:

If to the City:

Attention: City of San Diego  
Environmental Services Director



9601 Ridgehaven Court, Suite 210  
San Diego, CA 92123-1636

If to the Franchisee: Ware Disposal Co., Inc.  
Judith Ware  
P.O. Box 1318  
Santa Ana, CA 92702

The address to which communications may be delivered may be changed from time-to-time by a notice given in accordance with this Section.

#### **10.11 Representative of the Parties**

As allowed by the San Diego Municipal Code, all actions to be taken by the City related to this Agreement shall be taken by the Manager except as provided below. The Manager may delegate, in writing, authority to other City officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. Franchisee may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

- A. The Director shall be responsible for administration of this Agreement on behalf of the City.
- B. The Director may delegate authority to an appropriate City employee or other appropriate person.
- C. The Manager reserves to himself or herself all discretionary and administrative authority not otherwise expressly delegated pursuant to this Agreement. Whenever this Agreement requires approval by the City, the approval may be given by the Manager.

Franchisee shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Franchisee in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his/her authority to the Franchisee. The City may rely upon action taken by such designated representative as action of the Franchisee unless they are outside the scope of authority delegated to him/her by the Franchisee as communicated to the City.

#### **10.12 Declared State of Emergency**

In the event that an authorized official declares a State of Emergency within any geographic area of the City, as authorized in Chapter 7, Division 1, Title 2 of the California Government Code (California Emergency Services Act) or U.S. Public Law 81-920 (Federal Civil Defense Act of 1950), the City will have the right to exercise all privileges and perform all services required under this Agreement, but will not be required to make prior notification to the Franchisee.

#### **10.13 Notice**

This Agreement does not affect the rights or obligations of the parties under Section 49520 through 49524 of the Public Resources Code.

#### **10.14 Non-Discrimination in Contracting for City Service**

City shall not discriminate between Class I and Class II Franchisees in the bidding, evaluating and/or awarding of contracts for Solid Waste Collection services at City Facilities.

#### **10.15 Franchise Fee Acknowledgement**

Franchisee acknowledges that the Franchise Fee is an obligation imposed on Franchisee and is not an obligation imposed on any individual Customer of Franchisee. Franchisee shall not

represent to any Customer that the City is imposing a Franchisee Fee on individual Customers of Franchisee.

#### **10.16 AB 939 Fee Acknowledgement**

Franchisee acknowledges that the AB 939 Fee is an obligation of the Franchisee paid as partial consideration for the Franchise and is not an obligation imposed on any individual Customer of Franchisee. Franchisee shall not represent to any Customer that the City is imposing an AB 939 Fee on individual Customers of Franchisee.

#### **10.17 Drug-Free Workplace**

The Franchisee agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17 which is incorporated into this Agreement by this reference. As provided in Exhibit "A," the Franchisee shall certify to the City that it will provide a drug-free workplace and:

- A *Franchisee's Notice to Employees.* The Franchisee shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of the prohibition.
- B *Drug-Free Awareness Program.* The Franchisee shall establish a drug-free awareness program to inform employees about all of the following: (i) The dangers of drug abuse in the work place; (ii) The policy of maintaining a drug-free work place; (iii) Available drug counseling, rehabilitation, and employee assistance programs; and (iv) The penalties that may be imposed upon employees for drug abuse violations.
- C *Posting the Statement.* In addition to Subsection (A) above, the Franchisee shall post the drug-free policy in a prominent place.
- D *Subcontractor's Agreements.* The Franchisee further certifies that each contract for subcontractor services for this Agreement shall contain language that binds the subcontractor to comply with the provisions of Sections 2.A(1) through (3) of Council Policy 100-17. The Franchisee and any of its subcontractors shall be individually responsible for their own drug-free work place program.

#### **10.18 ADA Certification**

Franchisee shall comply with all applicable accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Franchisee shall comply with the most restrictive applicable requirement (i.e., that which provides the most access). The Franchisee shall also comply with the City's Americans With Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04 which is incorporated into this Agreement by this reference. Franchisee further covenants that any subcontract agreement for this Agreement shall contain language which indicates the subcontractor's agreement to abide by the provisions of the City Council Policy 100-04 and any applicable access laws and regulations.

#### **10.19 Non-Discrimination Requirements**

- A. *Compliance with the City's Equal Opportunity Contracting Program.* The Franchisee shall comply with the City's Equal Opportunity Contracting Program Contractor Requirements as provided in Exhibit "B" to this Agreement. The Franchisee shall not

discriminate against any employee or applicant for employment on any basis prohibited by law. The Franchisee shall provide equal opportunity in all employment practices. The Franchisee shall ensure that its subcontractors comply with the City's Equal Opportunity Contracting Program Contractor Requirements. Nothing in this Section shall be interpreted to hold the Franchisee liable for any discriminatory practice of its subcontractors.

- B. *Non-Discrimination Ordinance.* The Franchisee shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. The Franchisee shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. The Franchisee understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, or other sanctions. The Franchisee shall ensure that this language is included in contracts between the Franchisee and any subcontractors, vendors and suppliers.
- C. *Compliance Investigations.* Upon the City's request, the Franchisee agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Franchisee has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Franchisee for each subcontract or supply contract. The Franchisee further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517]. The Franchisee understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions.

## **ARTICLE 11 MISCELLANEOUS AGREEMENTS**

### **11.1 Entire Agreement**

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

### **11.2 Section Headings**

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

### **11.3 References to Laws**

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

### **11.4 Interpretation**

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

**11.5 Amendment**

This Agreement may not be modified or amended in any respect except by a written agreement duly approved and signed by the parties.

**11.6 Severability**

If any nonmaterial provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

**11.7 Counterparts**

This Agreement may be executed in counterparts each of which shall be considered an original.

**11.8 Exhibits**

Each of the Exhibits identified is attached hereto and incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or representatives.

CITY OF SAN DIEGO

FRANCHISEE

By: *Erik Dargan*  
ERIK K. DARGAN  
Jay Goldstone  
Chief Operating Officer

By: *Judith Ware*  
Name: Judith Ware  
Title: President

Date: 01-23-23

Date: 9/19/22

I HEREBY APPROVE the form of the foregoing Agreement this 26<sup>th</sup> day of January 2022. 3 NO

MARA W. ELLIOTT, City Attorney

By: *Nicole M. Denow*  
Nicole M. Denow  
Deputy City Attorney

0-21560

**COUNCIL POLICY**

SUBJECT: DRUG-FREE WORKPLACE/CITY CONTRACTORS  
POLICY NO.: 100-17  
EFFECTIVE DATE: May 20, 1991

BACKGROUND:

The issue of substance abuse, the misuse of both legal and illegal drugs, has been identified as a major problem. It is well documented that substance abuse in the workplace can negatively impact employee performance, worker safety and the safety of the general public.

PURPOSE:

It is the intent of the City Council that the City of San Diego take a leadership role in addressing the issue of drug abuse in the workplace. It is the purpose of this policy to establish the requirement that all City construction contractors, consultants, grantees and providers of non-professional services agree to comply with this Drug-Free Workplace Policy.

POLICY:

Section 1. Definitions

- A. "Drug-free workplace" means a site for the performance of work done in connection with a contract let by City of San Diego for the construction, maintenance, or repair of any facility or public work by an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this section.
- B. "Employee" means the employee of a contractor directly engaged in the performance of work pursuant to a contract as described in Section 2.
- C. "Controlled substance" means a controlled substance in schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. Sec. 812).
- D. "Contractor" means the department, division, or other unit of a person or organization responsible to the contractor for the performance of a portion of the work under the contract.

Section 2. City Contractor Requirements

- A. Every person or organization awarded a contract or grant by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace by doing all of the following:
  - (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

**COUNCIL POLICY**

- (2) Establishing a drug-free awareness program to inform employees about all of the following:
  - (a) The dangers of drug abuse in the workplace.
  - (b) The person's or organization's policy of maintaining a drug-free workplace.
  - (c) Any available drug counseling, rehabilitation, and employee assistance programs.
  - (d) The penalties that may be imposed upon employees for drug abuse violations.
- (3) Posting the statement required by subdivision (1) in a prominent place at contractors main office. For projects large enough to necessitate a construction trailer at the job site, the required signage would also be posted at the job site.
- B. Contractors shall include in each subcontract agreement language which indicates the subcontractor's agreement to abide by the provisions of subdivisions (1) through (3) inclusive of Section 2A. Contractors and subcontractors shall be individually responsible for their own drug-free workplace programs.

HISTORY:

Adopted by Resolution R-277952 05/20/1991

**Article 2: Administrative Code**

**Division 27: Equal Employment Opportunity Outreach Program**

**§22.2701 Purpose & Intent**

The overall objective of the City’s Equal Employment Opportunity (“EEO”) Program is to ensure that contractors doing business with or receiving funds from the City will not engage in unlawful discriminatory employment practices prohibited by State or Federal law. Such employment practices include, but are not limited to, the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship.  
*(Amended 5-1-1995 by O-18173 N.S.)*

**§22.2702 Definitions**

Unless stated otherwise, the following definitions apply to this Division:

“City” means The City of San Diego and those agencies, boards, commissions and corporations authorized to act on behalf of, or as an agent for, the City of San Diego.

“Contract” means an agreement to provide labor, materials, supplies or services in the performance of a contract, franchise, concession or lease granted, let or awarded by or on behalf of the City.

“Contractor” means any person, firm, partnership, corporation, or combination thereof, who is selected to enter into, or actually enters into a contract with department heads and officers empowered by law to enter into contracts on behalf of the City for public works or improvements to be performed, or for a franchise, concession or lease of property, or for goods, services or supplies to be purchased, at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of, or collected by, the City.

“Equal Employment Opportunity Plan” means a document prepared by a Contractor in accordance with a form and format supplied by the City which describes the Contractor’s plan of action.

“Gender” means the character of being male or female.

“Program Manager” means the Program Manager for the City’s Equal Opportunity Contracting Program or his or her designee.

“Work Force Analysis” means a comparison of a Contractor’s Work Force Report with applicable County Labor Force Availability Data.

“Work Force Report” means a report, in a format supplied by the City but compiled by the Contractor, of the Contractor’s total work force which indicates the number of males and females in each identified ethnic group by occupational category.  
*(Amended 5-1-1995 by O-18173 N.S.)*

**§22.2703 Scope**

Except as provided in Section 22.2704, this Division applies to all Contractors except:

- (a) Contractors and subcontractors who do less than a total of \$10,000 worth of business with the City during the preceding twelve (12) months or who have less than a total of fifteen (15) employees, except that Contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring.
- (b) Contracts to which any City (other than The City of San Diego), county, district or other political subdivision, or any joint powers authority created under authority of law, or other public entity, or any other group or combination of the foregoing acting as a unit, is a party.
- (c) Nonprofit charitable, educational, or religious associations or corporations, as evidenced by records on file with the City to be compiled for purposes of this Division in accordance with procedures established by the City Manager.
- (d) Emergency Contracts, if a written partial or full waiver is granted by the City Manager, except that Contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring. The City Manager may grant a partial or full waiver from the requirements of this Division for an emergency contract only to the limited extent necessary in order to expedite the award of such Contract. For purposes of this Section, the term “emergency” has the same meaning as in San Diego City Charter section 94.

*(Amended 5-1-95 by O-18173 N.S.)*



**§22.2704 Mandatory Nondiscrimination Contract Clause**

Notwithstanding the provisions of Section 22.2703, every Contract shall contain a nondiscrimination clause which shall read as follows:

Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a prime contractor liable for any discriminatory practice of its subcontractors.

*(Amended 5-1-1995 by O-18173 N.S.)*

**§22.2705 Duty to Submit Reports**

- (a) If a Contract is competitively solicited, after the lowest responsible bidder has been determined and prior to the execution of the contract, the apparent low bidder shall submit to the Equal Opportunity Contracting Program a Work Force Report, on a City form, or an Equal Employment Opportunity Plan approved by the Program Manager.

If a Contract is not competitively solicited, the Contractor shall submit to the Equal Opportunity Contracting program a Work Force Report or an Equal Employment Opportunity Plan approved by the Program Manager prior to tendering the signed Contract documents to the City for signature.

- (b) Staff will conduct a work force analysis on all Work Force Report submittals to determine whether or not an Equal Employment Opportunity Plan is required. If an Equal Employment Opportunity Plan is required, the Contractor will submit a plan for approval by the Program Manager.
- (c) Any Equal Employment Opportunity Plan approved by the City shall not include quotas, goals or timetables for increasing women and minority employment and will not require terminating or laying off existing employees.
- (d) If the apparent low bidder or Contractor does not submit either a Work Force Report or Equal Employment Opportunity Plan as required by this section, for purposes of awarding the Contract only, the City Manager will ensure an administrative hearing is conducted by an independent hearing officer to determine if the contract should be awarded in accordance with City, State, and Federal law.

*(Retitled to "Duty to Submit Reports" and amended 5-1-1995 by O-18173 N.S.)*

**§22.2706 Duty To Comply With Equal Employment Opportunity Plan**

A Contractor for whom an Equal Employment Opportunity Plan has been approved by the City shall use best efforts to comply with that Equal Employment Opportunity Plan.

*(Retitled to "Duty To Comply With Equal Employment Opportunity Plan" and amended 5-23-1995 by O-18173 N.S.)*

**§22.2707 Reviews**

(a) The Program Manager shall conduct periodic reviews of Contractors to ensure that unlawful discrimination is not being practiced and Equal Employment Opportunity Plans are implemented.

(b) If the City Manager determines, after review, that the Contractor has not implemented their Equal Employment Opportunity Plan and/or practices unlawful discrimination and corrective action has not occurred by the Contractor after sufficient notice, the City Manager may recommend termination of the contract and debarment to the City Council.

*(Retitled to "Reviews" and amended 5-1-1995 by O-18173 N.S.)*

**§22.2708 Policies And Procedures**

The City Manager shall promulgate policies and procedures necessary to implement this Division.

*(Retitled to "Policies And Procedures" and amended 5-1-1995 by O-18173 N.S.)*

**Article 2: Administrative Code**

**Division 35: Nondiscrimination in Contracting**

*(“Nondiscrimination in Contracting”  
added 4-10-2000 by O-18785 N.S.)*

**§22.3501 Purpose and Intent**

This Division is intended to further the *City’s* policy not to engage in business with *business firms* that discriminate in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability by providing a procedure for receiving, investigating, and resolving complaints of *discrimination* filed against *business firms* that have submitted a bid or proposal for, have been selected to engage in, or are engaged in doing business with the *City*.

*(“Purpose and Intent” added 4-10-2000 by O-18785 N.S.)  
(Amended 5-5-2015 by O-20480 N.S.; effective 6-4-2015.)*

**§22.3502 Definitions**

All terms defined in this Division appear in italics. For purposes of this Division:

*Appeals Officer* means an individual appointed by the City Manager to conduct hearings on appeals of decisions issued by the *Hearing Officer*.

*Business firm* means any *person*, firm, partnership, corporation, or other business entity or combination thereof, including any *financial institution*, prime contractor, subcontractor, supplier, or vendor, that has submitted a bid or proposal, has been selected to do business, or is doing business with the *City*, including selling or leasing supplies, or goods, or providing construction, financial, professional, or other services, for a fee.

*City* means the City of San Diego and those agencies, boards, commissions, and corporations authorized to act on behalf of, or as agent for, the City of San Diego.

*Contract* means an agreement with any *person* let by or on behalf of the City for that *person* to provide labor, materials, goods, supplies, or services. It includes *major public works contracts* and *minor public works contracts* as defined in Section 30.3003 of this Municipal Code.

*Director* means the Deputy Director responsible for the *program*, or his or her representative.

*Discrimination* means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or treatment of a *business firm* because of the race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, disability, or any other form of unlawful discrimination regarding the characteristics of its employees or owners.

*Financial institution* means any *person* or entity engaged in the business of lending money, guaranteeing loans, extending credit, securing bonds, providing venture or equity capital, or that offers financial services in connection with *City* projects. *Financial institution* includes banks, savings and loans, venture capital companies, insurance companies, bonding companies, mortgage companies, credit unions, and brokers.

*Hearing Officer* means an individual appointed by the City Manager to conduct hearings under this Division.

*Person* has the same meaning as in Municipal Code section 11.0210.

*Program* means the Equal Opportunity Contracting Program or its successor.

*Subcontract* means an agreement for the performance of a particular portion of work to be performed under a *contract* with the *City*.

(Amended 9-3-2002 by O-19095 N.S.)

(Amended 5-5-2015 by O-20480 N.S.; effective 6-4-2015.)

### §22.3503 **Scope**

This Division applies to all *business firms*, *contracts*, and *subcontracts*, but does not apply to *contracts* to which any city (other than the *City*), county, district, or other political subdivision, or any joint powers authority created under authority of law, or other public entity, or any other group or combination of the foregoing acting as a unit, is also a party.

(“Scope” added 4-10-2000 by O-18785 N.S.)

### §22.3504 **Nondiscrimination Policy**

It is the policy of the City of San Diego not to accept bids or proposals from, nor to engage in business with, any *business firm* that has discriminated on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, disability, or any other form of unlawful discrimination in its solicitation, selection, hiring, or treatment of another business.

(“Nondiscrimination Policy” added 4-10-2000 by O-18785 N.S.)

(Amended 5-5-2015 by O-20480 N.S.; effective 6-4-2015.)

**§22.3505 Complaints of Discrimination**

Any *person* may file an administrative complaint with the *Director* stating facts showing or tending to show that a *business firm* has engaged in *discrimination* against one or more other businesses. Within ten business days, the *Director* shall notify the *business firm* against whom the complaint was filed that a complaint has been received.

(“*Complaints of Discrimination*” added 4-10-2000 by O-18785 N.S.)

**§22.3506 Investigation of Complaints**

The *Program*’s investigative unit shall review and investigate *discrimination* complaints filed under this Division.

(“*Investigation of Complaints*” added 4-10-2000 by O-18785 N.S.)

**§22.3507 Initial Findings and Recommendations**

Based upon the investigative unit’s review and investigation, the *Director* shall make an initial non-binding finding of each allegation stated in the complaint, that either:

- (a) the investigation produced sufficient evidence to find that the alleged *discrimination* did take place (“sustained”);
- (b) the investigation failed to produce sufficient evidence to find whether the alleged *discrimination* took place (“not sustained”);
- (c) the investigation produced sufficient evidence to find that the alleged *discrimination* did not take place (“unfounded”);
- (d) the investigation produced sufficient evidence to establish that the complainant knowingly made one or more false or frivolous allegations (“false or frivolous”);
- (e) the allegation has been settled or otherwise resolved with the agreement of the interested parties; or
- (f) the allegation has been withdrawn.

The *Director* shall recommend to the City Manager, or his or her representative appropriate action to be taken. That action may include additional investigation of the complaint, sanctions, remedies or other action consistent with this Division. The initial non-binding findings and recommendations shall be made by the *Director*

within 120 calendar days of receipt of the complaint. The City Manager may extend this time limit at the request of the *Director* and for good cause or if the parties agree to mediate the complaint pursuant to Division 11, Article 2 of Chapter 1. The *Director* shall notify the complainant and the *business firm* within five business days of the initial findings and recommendations, including an explanation of the reasons justifying the initial findings.

*(“Initial Findings and Recommendations” added 4-10-2000 by O-18785 N.S.)*

### §22.3508 Hearings

- (a) If the *Director* determines that one or more allegations are sustained, the *business firm* against whom the allegations were made shall be entitled to an administrative hearing on the allegations and an opportunity to participate in the administrative hearing. The *business firm* must request an administrative hearing within fifteen calendar days of notice of the initial findings. The hearing shall be held before a *Hearing Officer* within sixty calendar days of issuance of the *Director*'s initial findings.
- (b) Based upon the evidence presented at the administrative hearing, and within thirty calendar days of the hearing, the *Hearing Officer* may affirm or reject the initial findings and recommendations, may substitute different findings and order appropriate remedies, or may return the case to the *Director* for further investigation and findings.
- (c) Except where they conflict with this Division or the rules and regulations established by the City Manager pursuant to this Division, the hearing shall be conducted pursuant to the administrative enforcement hearing procedures set forth in Division 4, Article 2 of Chapter 1.

*(“Hearings” added 4-10-2000 by O-18785 N.S.)*

### §22.3509 Remedies

When a complaint is sustained, the *Hearing Officer* shall order any one or more of the following actions:

- (a) Any remedy provided by law or agreed to by the *business firm*;
- (b) Recommendation to the City Manager and City Attorney for debarment of the *business firm* from bidding and contract awards on City projects for a period of not more than three years, according to the procedures set forth in Division 8, Article 2 of Chapter 2;

- (c) Suspension or termination of any current *contract* between the *business firm* and the *City*; or,
- (d) Referral of the matter for criminal prosecution, if appropriate under the circumstances.  
(“*Remedies*” added 4-10-2000 by O-18785 N.S.)

**§22.3510 Sanctions For The Filing Of A False or Frivolous Complaint**

If the *Director* determines that one or more allegations of a complaint are false and that the complainant knew them to be false when filed, or that one or more of the allegations of a complaint are so frivolous that they are wholly without merit, the *Director* may refuse to review or investigate any complaint filed under this Division by the same complainant for a period of up to three years. The *Director* may also recommend monetary sanctions against the complainant in the amount of the costs incurred by the *City* for the investigation and review of the false or frivolous complaint.

(“*Sanctions For The Filing Of A False or Frivolous Complaint*” added 4-10-2000 by O-18785 N.S.)

**§22.3511 Appeals**

A *business firm* against whom a complaint has been filed or a complainant may appeal the decision of the *Hearing Officer* by filing a request for an appeal in writing with the City Manager within ten calendar days from service of the notice of the decision. The City Manager, or his or her representative, shall within ten calendar days of receipt, grant or deny the request for an appeal. If the request for an appeal is denied, the *Hearing Officer’s* decision shall be the final administrative decision. If the request for an appeal is granted, the City Manager shall designate an *Appeals Officer* to hear the appeal. The appeal shall be heard and the *Appeals Officer* shall render a final administrative decision within forty-five calendar days of granting the request for an appeal. Except where they conflict with this Division or the rules and regulations established by the City Manager pursuant to this Division, the appeal hearing shall be conducted pursuant to the administrative enforcement hearing procedures set forth in Division 4, Article 2 of Chapter 1.

(“*Appeals*” added 4-10-2000 by O-18785 N.S.)

**§22.3512 Mandatory Nondiscrimination Contract Clause**

Every *contract* and *subcontract* shall contain a nondiscrimination clause that reads as follows:

Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

*(“Mandatory Nondiscrimination Contract Clause” added 4-10-2000 by O-18785 N.S.)  
(Amended 5-5-2015 by O-20480 N.S.; effective 6-4-2015.)*

**§22.3513 Contractor Bid Requirements**

All requests for bids or proposals issued by the *City* shall include the following language:

As part of its bid or proposal, Bidder shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Bidder in a legal or administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

*(“Contractor Bid Requirements” added 4-10-2000 by O-18785 N.S.)*

**§22.3514 Contract Disclosure Requirements**

Every *contract* issued by the *City* shall include the following language:

Upon the City’s request, Contractor agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City’s Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions.

*(“Contract Disclosure Requirements” added 4-10-2000 by O-18785 N.S.)*



**§22.3515 Other Legal Remedies**

The remedies provided by this section are in addition to any other statutory, legal, or equitable remedies that may be available and are not intended to be exclusive.  
*("Other Legal Remedies" added 4-10-2000 by O-18785 N.S.)*

**§22.3516 Non-Interruption of Performance**

The filing, investigation, hearing, and appeal of a complaint under this Division shall not hinder or affect the award of, performance of, or payment on a *contract* prior to a final administrative decision that establishes a violation.  
*("Non-Interruption of Performance" added 4-10-2000 by O-18785 N.S.)*

**§22.3517 Policies and Procedures**

The City Manager shall establish such rules and regulations as may be necessary to implement this Division.  
*("Policies and Procedures" added 4-10-2000 by O-18785 N.S.)*

#56  
11/01/22

(O-2023-59)

ORDINANCE NUMBER O- 21560 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 14 2022

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE EXECUTION OF AMENDMENTS TO THE NON-EXCLUSIVE SOLID WASTE MANAGEMENT FRANCHISE AGREEMENTS FOR SOLID WASTE COLLECTION SERVICES PROVIDED IN THE CITY BY PRIVATE FRANCHISED HAULERS.

WHEREAS, in September 2000, a two-tier Non-Exclusive Solid Waste Collection Franchise system was established to reflect the difference in market share served by the private franchised haulers (Franchisees); and

WHEREAS, by ordinance, the San Diego City Council (City Council) granted solid waste collection franchises to, and authorized execution of franchise agreements with, the Class I and Class II Franchisees listed on the attached Exhibit A; and

WHEREAS, the City of San Diego (City) and Franchisees entered into non-exclusive solid waste management franchise agreements, which have been amended at various times by ordinance (Agreements); and

WHEREAS, the Short-Lived Climate Pollutants Bill of 2016 (S.B. 1383) and its implementing regulations establish regulatory requirements for jurisdictions, generators, waste haulers, solid waste facilities, and other entities to support achievement of statewide organic waste disposal reduction targets; and

WHEREAS, City staff have met with the Franchisees regarding the proposed amendments; and

WHEREAS, the City and Franchisees desire to modify the Agreements to include organic waste collection services and other requirements in accordance with S.B. 1383; modify the term of the Agreements; establish a cap for third-party diversion credit allowances; restart the

timeline for determining liquidated damages for failing to meet diversion requirements; include the City's required general contract language for drug-free workplace, ADA certification and non-discrimination requirements; add and clarify definitions; and make non-substantive changes, such as deleting phased implementation dates that have already passed; and

WHEREAS, the City and the Class I Franchisees listed in the attached Exhibit A desire to merge the Agreements, including all amendments, into one controlling document titled, "Class I Non-Exclusive Franchise Agreement Between the City of San Diego and [Franchisee] For Solid Waste Management Services," attached to the Staff Report as Exhibit B; and

WHEREAS, the City and the Class II Franchisees listed in the attached Exhibit A desire to merge the Agreements, including all amendments, into one controlling document titled "Class II Non-Exclusive Franchise Agreement Between the City of San Diego and [Franchisee] For Solid Waste Management Services," attached to the Staff Report as Exhibit C; and

WHEREAS, on March 17, 2022, the Environment Committee unanimously recommended approval of this item; and

WHEREAS, under San Diego City Charter section 103, no franchise or extension thereof may be authorized except by ordinance approved by a two-thirds majority vote of City Council; and

WHEREAS, the Office of the City Attorney has drafted this ordinance based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor or his designee is authorized to execute, for and on behalf of the City, amendments to the franchise agreements with the Class I Franchisees listed on the attached Exhibit A, under the terms and conditions set forth in the Class I Non-Exclusive

Franchise Agreement Between the City of San Diego and [Franchisee] For Solid Waste Management Services, on file in the Office of the City Clerk as Document No. OO- 21560-1.

Section 2. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, amendments to the franchise agreements with the Class II Franchisees listed on the attached Exhibit A under the terms and conditions set forth in the Class II Non-Exclusive Franchise Agreement Between the City of San Diego and [Franchisee] For Solid Waste Management Services, on file in the Office of the City Clerk as Document No. OO- 21560-2.

Section 3. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from \_\_\_\_\_ and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Nicole M. Denow  
Nicole M. Denow  
Deputy City Attorney

NMD:cm  
09/27/2022  
Or.Dept: ESD  
Doc. No. 3100188

ATTACHMENT: Exhibit A, City of San Diego, Non-Exclusive Solid Waste Collection Franchisees

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 01 2022.

ELIZABETH S. MALAND  
City Clerk

By Kristell Medina  
Deputy City Clerk

Approved: 11/10/22  
(date)

Todd Gloria  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

**EXHIBIT A**

**CITY OF SAN DIEGO  
NON-EXCLUSIVE SOLID WASTE COLLECTION  
FRANCHISEES**

CLASS I  
FRANCHISEES

Allan  
Company  
Debris Box  
Diamond Solid Waste  
Services John Smith  
Earthworks, Inc.  
Ware Disposal Co., Inc.

CLASS II  
FRANCHISEES

EDCO Disposal Corporation

- Daily Disposal Service
- EDCO Disposal Corporation
- EDCO Waste & Recycling Services, Inc
- Express Waste & Recycling
- Sani-Tainer, Inc.
- Webco Sanitation

Republic Services (Allied)

- Dependable Disposal & Recycling
- Republic Services (Allied)
- Tayman Industries, Inc.

Waste Management of San Diego

- Coast Waste Management, Inc.
- Moor Refuse, Inc.
- USA Waste of California, Inc.
- Waste Management of San Diego

Passed by the Council of The City of San Diego on NOV 01 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 14 2022.

AUTHENTICATED BY:

TODD GLORIA  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Kristeel Medina, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on OCT 10 2022, and on NOV 14 2022.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Kristeel Medina, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21560

Passed by the Council of The City of San Diego on November 01, 2022, by the following vote:

**YEAS:** CAMPBELL, WHITBURN, MONTGOMERY STEPPE, VON WILPERT,  
CATE, CAMPILLO, & ELO-RIVERA.

**NAYS:** NONE.

**NOT PRESENT:** LACAVA , MORENO.

**RECUSED:** NONE.

AUTHENTICATED BY:

**TODD GLORIA**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

By: Krystell Medina, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. **O-21560** (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **October 10, 2022**, and on **November 14, 2022**.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(SEAL)

By: Krystell Medina, Deputy