

# **MUNICIPAL SOLID WASTE FRANCHISE AGREEMENT**

**BETWEEN**

**CITY OF MADERA, CALIFORNIA**

**AND**

**MID-VALLEY DISPOSAL, LLC**

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## **BETWEEN**

**CITY OF MADERA, CALIFORNIA**

## **AND**

**MID-VALLEY DISPOSAL, LLC**

This Franchise Agreement ("Franchise Agreement") is entered into on \_\_\_\_\_, by and between the City of Madera ("City") and Mid-Valley Disposal, LLC, a California Limited Liability Company ("Franchisee") for the collection, transportation and disposal of Solid Waste and for other services as further specified herein in **EXHIBIT A** and **EXHIBIT B**.

## **RECITALS**

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

**WHEREAS**, pursuant to California Public Resources Code Section 40059 (a), the City Council has determined that that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified Solid Waste enterprise for the collection and recovery of solid waste from all residential, industrial and commercial premises in the City; and

**WHEREAS**, The City and Franchisee entered a Solid Waste and Recycling Services Agreement effective from January 1, 2013, to December 31, 2022 ("Prior Agreement"); and

**WHEREAS**, Franchisee has lawfully conducted solid waste handling operations in the City under the Prior Agreement for several years and has delivered a level of service to its customers commensurate with the highest industry standards.

**WHEREAS**, Franchisee is well-qualified to continue providing that service; and

**WHEREAS**, in order to comply with the mandates of AB 939, subsequent legislation and regulation, the City must have the ability to direct the flow of Solid Waste within the incorporated City for the purposes of reporting, processing, recovery and disposal; and

**WHEREAS**, in 2016, Governor Brown signed into law SB1383 that establishes regulatory requirements for Cities, Generators, Solid Waste facilities, and other entities to support achievement of State-wide reduction in short lived climate pollutants; and

**WHEREAS**, City has requested, and Franchisee has agreed to implement new programs and services related to SB 1383 requirements; and

**WHEREAS**, in order to implement the new programs and services related to SB 1383, Franchisee requires the adjustment of rates to be charged customers in the City of Madera; and

**WHEREAS**, the City and Franchise have engaged in negotiations regarding new SB requirements and an increase in rates as a result of the State's passage of SB 1383; and

**WHEREAS**, the Prior Agreement, as amended, needs to be updated for the collection, transportation and disposal of Solid Waste and for SB 1383 services as further specified in this Agreement.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**SECTION 1 - COVENANTS, REPRESENTATIONS AND WARRANTIES**

A. Covenants, Representations and Warranties of Franchisee

Franchisee hereby makes the following covenants, representations and warranties for the benefit of the City as of the date of this Agreement.

- (1) Franchisee is duly organized and validly existing as a limited liability company in good standing under the laws of the State of California.
- (2) Franchisee has full legal right, power, and authority to execute, deliver, and perform this Agreement, and has duly authorized the execution and delivery of this Agreement.
- (3) Each Person signing this Agreement on behalf of Franchisee has been authorized by Franchisee to do so, and this Agreement has been duly executed and delivered by Franchisee, and constitutes a legal, valid and binding obligation of Franchisee enforceable against Franchisee in accordance with its terms.
- (4) To the best of Franchisee's knowledge, there is no action, suit, or proceeding before any court or governmental entity against Franchisee or affecting Franchisee, wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Franchisee.
- (5) Franchisee has sufficient financial resources to perform all aspects of its obligations hereunder. There has been no material adverse change in Franchisee's or, if applicable, in Franchisee's parent company's, financial circumstances since the date of the most recent financial statements or information, submitted to the City or reviewed by the City at the offices of Franchisee.
- (6) Franchisee has the expert, professional, and technical capability to perform all of its obligations under this Agreement and will maintain the capability at all times during this Agreement's term.
- (7) Prior to providing any service authorized by this Agreement, Franchisee will have provided to the City Manager the security instrument and certificates of insurance required by the Agreement.

- (8) Prior to providing any service authorized by this Agreement, Franchisee will have provided to the City Manager reasonably acceptable proof that the Franchisee has obtained all necessary permits, authorizations and licenses which are required for furnishing such service.
- (9) Franchisee understands and agrees that the City is required to comply with the California Public Records Act.

**B. Covenants, Representations and Warranties of the City**

The City hereby makes the following covenants, representations, and warranties to and for the benefit of Franchisee as of the date of this Agreement:

- (1) The parties executing this Agreement on behalf of the City are duly authorized to do so. This Agreement constitutes the legal, valid and binding Agreement of the City and is enforceable against the City in accordance with its terms.
- (2) To the best of the City's knowledge without having conducted any research, there is no action, suit, or proceeding against the City before any court or governmental entity wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Agreement.
- (3) The City shall comply with the California Public Records and shall reasonably cooperate with Franchisee in preserving the confidentiality of Franchisee's proprietary information, including trade secret information, and preventing its disclosure as authorized by the Public Records Act. It will be the obligation of Franchisee to designate what information it deems to be a trade secret or otherwise in need of protection at the time such information is provided to City. No copies of such proprietary information shall be retained by City as public records under California law. Franchisee shall defend and indemnify City, elected officials, officers, employees, Franchisees, consultants, attorneys, agents and volunteers, including for City attorney fees, staff costs, awards and judgments, for any claims brought against City for failure to produce any requested documentation related to Franchisee and its business in possession of City in accordance with a Public Record's Act.
- (4) The City shall use best reasonable efforts to update and amend applicable provisions of its Municipal Code to the extent the City determines such changes are necessary to conform to this Agreement and to meet its obligations hereunder.

**SECTION 2 - DEFINITIONS**

Whenever any term used in this Franchise Agreement has been defined by AB 939 or in the Municipal Code, the definitions therein, as presently defined and as they may be amended in the future shall apply unless the term is otherwise defined in this Agreement. In the event of conflict between the definition found in AB 939, in the Madera Municipal Code and this Agreement, the definition in this Agreement shall govern all other definitions, while the definition in the Municipal Code shall take precedence over the definition contained in AB 939. The definitions are set forth on the attached and incorporated **EXHIBIT C**.

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## **SECTION 3 - GRANT AND ACCEPTANCE OF EXCLUSIVE FRANCHISE**

### **A. Grant of Franchise**

Pursuant to the provisions of the Municipal Code and pursuant to AB 939, and subject to the terms and conditions of this Agreement (including all extensions or renewals), City hereby grants to Franchisee the sole and exclusive right, privilege, and franchise to provide the Solid Waste Handling services described in **EXHIBIT A** (Provided Services) to this Agreement to all single family units, multifamily units, and commercial, industrial, and institutional premises within the City, and to use the City streets and roads for such purpose. City shall enforce the exclusive rights of Franchisee to provide services within the Franchise Area. By this Agreement and subject to its terms, the City grants the broadest form of exclusive solid waste handling franchise permissible under applicable law including its general municipal police powers and the specific authority given to local agencies by California Public Resources Code Section 40059 to determine aspects of solid waste handling that are of local concern. The foregoing reference to Section 40059 includes the relevant appellate case law interpreting that statute.

### **B. Acceptance of Franchise**

Franchisee agrees to be bound by and comply with all the requirements of this Franchise Agreement. Franchisee waives, terminates and hereby releases any right or claim to serve any part of the City under any prior grant of franchise, contract, license or permit issued or granted by any governmental entity.

### **C. Exceptions to Exclusivity**

The foregoing Grant of Franchise excludes the following:

- (1) Self-Haul. Any Solid Waste otherwise within the Scope of this Agreement which is removed and personally transported from any premises by the owner or occupant who generated the solid waste using his or her own equipment thereof for the purpose of lawfully delivering same to a Solid Waste Facility authorized to receive and handle solid waste. The use of a subcontractor by City is not "self-haul" within the meaning of this exception.
- (2) Gardeners and Landscapers. The collection, transportation and disposal by a gardener or landscaper of green waste or yard trimmings which are generated as an incidental part of providing gardening, landscaping or landscape maintenance services, provided that the gardener or landscaper is not a hauling service or solid waste enterprise, does not separately or additionally charge for the incidental service of removing, transporting or disposing of the green waste or yard trimmings, and utilizes only his or her own employees and equipment to collect, transport and dispose of same.

Sale or Gift of Recyclable Materials. Source separated Recyclable Materials which are either donated or sold by the generator of the materials to a party other than Franchisee. A mere discount or reduction in price of the Franchisee's charges for the handling of such materials is not a sale or donation within the meaning of this Agreement. For purposes of this Agreement, materials shall be deemed "solid waste" within the meaning of California Public Resources Code Section 40191, and shall be regulated as such, whether or not they may be potentially recyclable, in either of the following instances: (a) when the material is mixed or commingled

with other types of solid waste, or (b) where the payment of a fee, charge, or other consideration, in any form or amount, is directly or indirectly solicited or received from the generator by any person or combination of persons in exchange for collection, removal, transportation, storage, processing, handling, consulting, container rental or disposal services ("fee for service" recycling), whether or not arranged by or through a subcontractor, broker, agent, consultant, or affiliate of the provider of such service.

#### **SECTION 4 – TERM AND TERMINATION**

The initial term of this Agreement shall commence at 12:00 a.m. on August 1, 2022 and expire at 12:00 a.m. on June 30, 2032. Prior to the expiration of the term, the Agreement may be extended upon terms and conditions mutually agreeable to City and Franchisee. Termination of this Agreement may also occur pursuant to Section 10 "Failure to Perform and Remedies" of this Agreement.

#### **SECTION 5 - FRANCHISE AREA**

The Franchise Area granted by this Agreement is the legally established geographic limits of the City, as the same now exist or may hereinafter be revised by annexation or otherwise. Franchisee shall perform Solid Waste Handling services pursuant to this Agreement only in such Franchise Area.

#### **SECTION 6 - SERVICES PROVIDED BY FRANCHISEE**

Franchisee shall comply with the following minimum operating requirements shall apply to Grantee, except to the extent any operating requirement is specifically eliminated or modified in **EXHIBIT A**:

##### **A. Employees**

- (1) Each employee or other Person driving Franchisee's vehicle shall at all times have a valid California vehicle operator's license appropriate for the vehicle being driven.
- (2) All Franchisee employees shall wear clean clothing of a uniform type when engaged in collection operations under this Agreement.
- (3) Each employee dealing with Customers, including without limit those engaged in collection or billing, shall at all times behave in a courteous manner.
- (4) Noncompliance with the employee items above are subject to the terms of Section 10, Failure to Perform and Remedies.

##### **B. Hours of Collection**

Franchisee shall not collect Solid Waste within a residential area or within a commercial area which is contiguous to a residential area between the hours of 10:00 P.M. and 5:00 A.M. the next day, or as stipulated in local noise ordinances.

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#### C. Office for Inquiries and Complaints

Franchisee shall maintain an office at some fixed place and keep regular business hours and shall maintain a locally listed telephone number to address inquiries and complaints. Such listing shall be in the Franchisee's name or in the fictitious business name under which Franchisee provides Solid Waste Handling services to the City. This Section shall not require the Franchisee to maintain an office which is different than or separate from the office for inquiries and complaints maintained by Franchisee. If the City receives any customer inquiries and complaints, City will log same and transmit any service requests or complaints to Franchisee electronically or via other mutually agreed upon method

#### D. Records and Reports

Franchisee shall prepare, maintain and provide to the City such records and reports as required in this Agreement, as well as records related to services in this agreement required under any other applicable law.

#### E. Requested Service

Franchisee shall provide Solid Waste Handling services to all Customers within its approved Franchise Area who request such service, except when denial or discontinuance of service is specifically authorized by this Agreement. Such service shall commence within seven (7) working (waste collection) days of the Customer's request.

#### F. Collection Frequency

For health and safety purposes, minimum collection frequency for all Solid Waste Handling Customers shall be once per week, in accordance with Section 17331 of Title 14, California Code of Regulations. Franchisee shall correct any missed collection of a Customer's Solid Waste within two (2) working (waste collection) days of notice thereof unless the next regular collection of such waste is scheduled to occur within three (3) working (waste collection) days of such notice.

#### G. Containers

Containers shall be replaced in its proper place in a neat and orderly manner; any litter spilled from a container by Franchisee's employees while emptying a container shall be cleaned up by Franchisee's employees.

#### H. Noise

In addition to any requirement Franchisee is subject to under applicable law, Franchisee shall not create any noise in excess of what is reasonable and necessary in providing Solid Waste Handling services to its Customers. Further, Franchisee shall actively evaluate and strive to implement noise reduction measures on an ongoing basis, consistent with common industry practice and standards applicable in similar circumstances.

#### I. Collection Equipment

Franchisee shall provide an adequate number of vehicles and equipment to provide the Solid Waste Handling services required under its Franchise Agreement. No vehicle shall be used for the collection and transportation of Solid Waste prior to such initial and/or periodic inspection and



approval by the Department of Public Health, Division of Environmental Health Services to the extent required under the Franchisee's applicable Health and Safety Permit.

All motor vehicles used by Franchisee under its Franchise Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean and in good repair, and shall be uniformly painted. In addition, vehicles must be in compliance with the California Air Resources Board requirements and any other applicable state or federal laws and/or regulations pertaining to the operation of Solid Waste handling equipment.

#### J. Privacy

Franchisee shall strictly observe and protect the rights of privacy of its Customers. Information identifying individual Customers or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless as part of a legitimate inquiry by a governmental unit, or as authorized by a court of law or by statute, or upon written authorization of the Customer. This provision shall not be construed to preclude Franchisee from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939, SB 1383, or the City, provided that no such analysis shall identify any person or connect any person to any particular waste. In addition, Franchisee shall not market, sell, convey, or donate to any Person any list with the name or address of Customers except that Franchisee may provide such lists to authorized employees and authorized representatives of the City as necessary to comply with this Franchise Agreement. Franchisee shall, at all times and consistent with prevailing industry standards, utilize encryption or other security measures reasonably calculated to protect Customer information from unauthorized disclosure.

#### K. Customer Complaints

Franchisee shall respond to customer complaints whether received directly from customers or by customer through City. Franchisee shall designate a government Liaison Person responsible for working with the City to resolve Customer complaints. The name of the Liaison Person and a 24 hour availability telephone number shall be provided to the City Manager. Customer complaints shall be resolved in accordance with Section 10(B) herein, "Resolution of Customer Complaints."

#### L. Property Damage

- (1) Any physical damage caused by the act or omissions of employees, officers, or agents of the Franchisee to private or public property resulting from operations under this Agreement shall be promptly repaired or replaced by Franchisee at Franchisee's sole expense.
- (2) With respect to driving surfaces, Franchisee shall be responsible for damage (excluding normal wear and tear), whether or not paved, resulting from the weight of vehicles providing Solid Waste Handling services on public or private property when it can be demonstrated that such damage is the result of vehicles exceeding speed limits or maximum weight limits set by the State of California or by other negligent operation of vehicles by Franchisee's employees.

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#### M. Gratuities

Franchisee shall not, nor shall it permit any officer, agent, or employee employed by it, to request, solicit or demand, either directly or indirectly, any gratuity for services authorized or required under its Agreement.

#### N. Laws and Licenses

Franchisee shall comply with all federal, state, and City, County or local laws, ordinances, rules, and regulations applicable, from time to time and as amended, to the performance of the Solid Waste Handling services provided under this Franchise Agreement and shall obtain and maintain in full force and effect all licenses and permits necessary to perform such services throughout the term of this Franchise Agreement.

#### O. Services During Strikes, Lockouts or Other Labor Disturbances

In the event of labor strikes, lockouts, or other labor disturbances, Franchisee and City agree to cooperate fully in developing and implementing contingency plans for the continued collection and handling of Solid Waste in order to safeguard public health and avert imminent and substantial threats to public health and safety. Without limitation, these cooperation efforts may include prioritizing the collection of Solid Waste from certain businesses in order to control the accumulation of Solid Waste that may lead to more immediate threats to public health such as putrescible waste, sewage sludge, and manure or other animal waste.

### **SECTION 7 - OWNERSHIP OF SOLID WASTE INCLUDING RECYCLABLE MATERIALS**

Except as otherwise provided in state law, ownership of Solid Waste shall transfer to Franchisee at such time as the Solid Waste is discarded by the Solid Waste Handling service Customer. City makes no claim of ownership to the discarded solid waste.

### **SECTION 8 - WASTE DELIVERY DESIGNATION**

City reserves the right to designate the disposal facility or facilities to which Franchisee shall deliver Solid Waste generated within City and collected by Franchisee pursuant to this Agreement. This designation, when made, shall be subject to the following:

- (1) Solid Waste that Franchisee determines to be suitable for Processing or green composting may be delivered by Franchisee to a Materials Recovery Facility or Designated Source Separated Organic Waste Facility selected by Franchisee, and only the Residual Solid Waste resulting from Processing will be subject to the waste delivery designation.
- (2) If the City Manager or his/her designee directs Franchisee to deliver residual Solid Waste collected pursuant to this Agreement to a Solid Waste Facility that is different from the facility Franchisee is then using for the disposal of such waste, or in amounts that are different than the amount that Franchisee is currently delivering to that facility, and this direction results in increased operating costs to the Franchisee, Franchisee shall be

entitled to a corresponding Fee adjustment to fully compensate Franchisee for the increased costs.

## **SECTION 9 - INDEMNIFICATION AND INSURANCE, AND PERFORMANCE BOND**

### **A. Indemnification of City**

Franchisee shall indemnify, defend, and hold harmless the City, its officers, employees, agents and volunteers ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Franchisee's performance of its obligations under this agreement or out of the operations conducted by Franchisee, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Franchisee's performance of this agreement, the Franchisee shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

#### **Hazardous Waste Indemnification**

Without limiting the generality of the foregoing, if Franchisee is alleged to have, or determined to have, or not disputed allegations that it has negligently or willfully acted or failed to act with respect to the collection, handling or transportation of Hazardous Waste, Franchisee shall indemnify, defend with counsel chosen by City, protect and hold harmless the City and its respective elected officials, officers, employees, contractors, consultants, attorneys, agents, volunteers, assigns, and any successor or successors harmless from and against all claims, actual damages (including, but not limited to, special and consequential damages), natural resources damage, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including, but not limited to, attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its respective officers, employees, agents, or Franchisees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste as to which Franchisee has negligently or willfully acted or failed to act with respect to its collection, handling or transportation at any place where Franchisee stores, handles, transports or disposes of Solid Waste pursuant to this Franchise Agreement. The foregoing indemnity does not extend to liability arising from de minimis amounts of household hazardous waste that Customers may place in solid waste receptacles, and excludes liability arising from City's decision to exercise its waste delivery designation rights under Section 8 of this Agreement. The foregoing indemnity is intended to operate and shall operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, indemnify, and hold the City harmless from liability. This Section 9B shall survive the termination, lapse or any change in the relationship of the Parties hereto.

### **B. Insurance Requirements**

Without limiting Franchisee's indemnification of City, and prior to commencement of Work, Franchisee shall obtain, provide, and continuously maintain at its own expense during the term of

the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

(1) Minimum Scope and Limits of Insurance: Franchisee shall maintain limits no less than:

- i. \$5,000,000 General Liability (including operations, products and completed operations) per occurrence, \$10,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO forms CG 20 10 to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- ii. \$5,000,000 Automobile Liability combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Franchisee arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- iii. Worker's Compensation as required by the State of California and \$1,000,000 Employer's Liability per accident for bodily injury or disease. Franchisee shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.
- iv. \$5,000,000 Franchisee's Pollution Liability per claim. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

(2) Maintenance of Coverage: Franchisee shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Franchisee, his agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

(3) Proof of Insurance: Franchisee shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

(4) Acceptable Insurers: All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a

Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

- (5) Waiver of Subrogation: All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Franchisee, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Franchisee hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.
- (6) Enforcement of Contract Provisions (non estoppel): Franchisee acknowledges and agrees that any actual or alleged failure on the part of the City to inform Franchisee of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.
- (7) Specifications not Limiting: Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Franchisee maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Franchisee.
- (8) Notice of Cancellation: Franchisee agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.
- (9) Self-insured Retentions  
Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.
- (10) Timely Notice of Claims: Franchisee shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Franchisee's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.
- (11) Additional Insurance: Franchisee shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.

#### C. Performance Bonds or Other Security

Franchisee shall furnish to the City without additional charge a corporate surety bond, a letter of credit or other security device acceptable to the City in City's sole discretion, as security for performance under this Franchise Agreement (collectively "Security"). The amount of the Security shall be the lesser of one month's expected Gross Receipts Less Disposal Charge, or Four

Hundred Thousand Dollars (\$400,000.00). Adequate proof of the existence of the Security shall be provided (e.g., a certificate from the surety showing that the bond premiums have been paid in full shall accompany the bond and each renewal thereof). The surety on the bond, the bank on which the letter of credit is drawn and the surety for any other Security device shall be a company acceptable to the City and shall be authorized to do business in the State of California.

D. Modification

The requirements of this Section 9 may be modified or waived in writing by the City upon the request of Franchisee, provided the City reasonably determines such modification or waiver is in the best interest of City and of the public welfare, considering all relevant factors, including acceptable financial guarantees provided by Franchisee or by a parent company of Franchisee.

**SECTION 10 - FAILURE TO PERFORM AND REMEDIES**

The rights of the Franchisee and City upon the failure of either to perform as required under this Agreement shall be as provided below:

A. Administration, Enforcement and Remedies

- (1) If the City Manager determines at any time that the Franchisee's performance of the Solid Waste Handling services authorized/required in this Franchise Agreement, are not in conformity with the provisions of the Franchise Agreement, or applicable federal, state, or local law or regulation, including but not limited to the laws governing collection, transfer, storage and/or disposal of Solid Waste, the City Manager will notify Franchisee in writing of such deficiencies ("Notice of Deficiency").

The Notice of Deficiency may provide a reasonable time within which correction of all noted deficiencies is to be made. Unless a shorter or longer period of time is specified in the notice of deficiency sent by the City Manager, a reasonable time for correction shall be thirty (30) consecutive calendar days from the receipt by the Franchisee of such written notice. If the Franchisee cannot reasonably correct or remedy a noted deficiency within the time specified in the Notice of Deficiency, Franchisee shall notify City immediately to seek a reasonable period for correction. If Franchisee immediately commences to correct or remedy such deficiency within the time set forth in the Notice of Deficiency or the alternative period approved by City and diligently pursues such correction or remedy thereafter Franchisee shall not be deemed to have failed to correct or remedy the Notice of Deficiency. The Parties agree that while uncured defaults of material provisions of the Agreement which present an imminent and substantial threat to public health and safety should result in termination of the Agreement, minor defaults should be the subject of liquidated damages as set forth herein. For purposes of this section, assessment of liquidated damages in total of more than \$10,000.00 in any twelve (12) month period shall be deemed a material breach.

- (2) The City Manager shall review the Franchisee's response to the Notice of Deficiency. If the City Manager determines that the Franchisee has not cured the deficiency or if there is no cure period provided in the Notice of Deficiency given the nature of the deficiency, the City Manager shall either:
  - i. Refer the matter directly to the City Council for decision pursuant to subsection (3) of this Section 10-A; or

- ii. Decide the matter and notify the Franchisee of that decision, in writing.
    - The decision of the City Manager may be to terminate the Franchise Agreement or may be to impose some lesser sanction;
    - The decision of the City Manager shall be final and binding on Franchisee unless the Franchisee files a "Notice of Appeal" with the City Manager within thirty (30) days of receipt of the City Manager's decision. The Notice of Appeal shall be in writing, shall contain a detailed and precise statement of the basis for the appeal.
    - Within fourteen (14) working days of receipt of a Notice of Appeal, the City Manager shall refer the appeal to the City Council for proceedings in accordance with subsection (3) of this Section 10–A.
- (3) Should the City Manager refer the Notice of Deficiency to the City Council in the first instance or if the matter reaches the City Council pursuant to a Notice of Appeal, the City shall set the matter for hearing.
- i. If the City Council sets the matter for public hearing:
    - The City shall give Franchisee, and any interested person requesting the same, ten (10) days written notice of the time and place of the hearing. At the hearing, the City shall consider the report of the City Manager indicating the deficiencies, and shall give the Franchisee or its representatives and any other interested person a reasonable opportunity to be heard.
    - Based on the evidence presented at the public hearing, the City Council shall decide the appropriate action to be taken. If, based upon the record, the City determines that as noted in the Notice of Deficiency the Franchisee's performance of the Solid Waste Handling services authorized/required in this Franchise Agreement, are not in conformity with the provisions of the Franchise Agreement, or constitute a material violation of applicable federal, state, or local law or regulation, including but not limited to the laws governing collection, transfer, storage and/or disposal of Solid Waste, then the City may terminate this Franchise Agreement forthwith if it determines that an imminent and substantial threat to public health and safety has been created as a result of Franchisees' deficiency, or in the case of any other uncorrected breach, it may impose such lesser sanction or sanctions not involving termination as it deems reasonably appropriate. The decision of the City Council shall be final and conclusive.
- (4) Franchisee's performance under this Franchise Agreement is not excused during the period of time prior to the City Manager's or the City Council's final determination, as the case may be, regarding the validity of, and appropriate response to, the deficiencies noted in the Notice of Deficiency.
- (5) In the event Franchisee (i) has received a Notice of Deficiency and fails to perform Solid Waste Handling services; or (ii) has had its Franchise Agreement terminated; the City, reserves the right, in addition to all other rights available to the City, to take any one or combination of the following actions:

- i. To rent or lease from Franchisee, at its respective fair and reasonable rental value, all or any part of the Franchisee's equipment (including collection containers utilized by Customers and office equipment and billing programs), utilized by Franchisee in providing the Solid Waste Handling services required under this Franchise Agreement. The City may rent or lease such equipment for a period not to exceed six (6) months, for the purpose of performing the Solid Waste Handling services, or any part thereof, which Franchisee is (or was), obligated to provide pursuant to its Franchise Agreement. The City may use said rented equipment to directly perform such Solid Waste Handling service or to assign it to some other Franchisee or Person to act on the City's behalf. Franchisee shall be held responsible for the costs to insure the City or its assignee from all liability resulting from the operation of Franchisee's equipment. In the case of equipment not owned by Franchisee, Franchisee shall assign to the City, to the extent Franchisee is permitted to do so under the instruments pursuant to which Franchisee possesses and uses such equipment, the right to possess and use the equipment.
  - ii. As used in this subsection, "reasonable rental value" means the rate for such equipment as listed in the State Division of Transportation publication, "Labor Surcharge and Equipment Rental Rates," in effect at the time the City leases the equipment. If a particular piece of equipment is not listed in said publication or if said publication is not current, the reasonable rental value may be established by the City Manager by any equitable alternative method.
  - iii. If the City exercises its rights under this subsection, the City shall pay or owe Franchisee the reasonable rental value of the equipment so taken for the period of the City's possession thereof. The City may offset any amounts due to Franchisee pursuant to this provision against any amounts due the City from Franchisee.
  - iv. All revenues owed by Customers which are attributable to services performed by or at the direction of the City during City's assumption of Franchisee's Solid Waste Handling duties shall be billed by and paid to the City. To the extent Franchisee receives such revenue after City's assumption of Franchisee's Solid Waste Handling duties, Franchisee shall pay such revenue to City promptly after receipt thereof (or promptly after City has performed the services related to such revenue, if the revenue was received by the Franchisee prior to the City's assumption of duties) and Franchisee shall be deemed to have assigned to City all of Franchisee's right and interest to any such revenues.
- (6) The City rights set forth in this Section 10–A are in addition to, and not in limitation of, any other powers or rights available to the City upon failure of Franchisee to perform its obligations under this Franchise Agreement. Further, by entering into this Franchise Agreement Franchisee acknowledges, admits and agrees, for use as evidence in any proceeding of any nature, and from time to time, that its material violation of any terms of this Franchise Agreement shall cause the City to suffer irreparable injury and damages sufficient to support injunctive relief to enforce the provisions of the Franchise Agreement, and to enjoin the breach thereof. Franchisee hereby agrees that the City may deem the foregoing a stipulation, for any purpose or proceeding.

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## B. Resolution of Customer Complaints

Procedures for resolution of complaints and other disputes shall be as follows:

- (1) Franchisee agrees to use its best efforts to resolve all complaints received by close of business of the second working (waste collection) day following the date on which such complaint is received. (See Office of Inquiries and Complaints section herein). Service complaints may be investigated by City Manager, as necessary to resolve. Franchisee shall provide reasonable cooperation in the event of such investigation. Franchisee shall maintain records listing the date of Customer complaint, the name, address and telephone number of Customer, the nature of the complaint or request, and the date when and nature of the action taken by the Franchisee to resolve the complaint. All such records shall be maintained for at least three (3) years after Franchisee's receipt of the complaint or inquiry and shall be available for inspection by City during all business hours. Service complaints shall be responsibility of Franchisee whether received by City and forwarded to Franchisee, or received directly by Franchisee.
- (2) If the Franchisee fails to cure a complaint, the City Manager shall review the complaint and determine if further action is warranted. The City Manager may request written statements from the Franchisee and Customer, or oral presentations or both written and oral presentations.
- (3) The City Manager shall determine if the Customer's complaint is justified, and if so, what remedy, if any, shall be applied. The remedy provided to the Customer under this Section shall be limited to a refund of Customer charges related to the period of violation of any of the terms of Division 6 of Title 4 of the Code or of the breach of any term of this Franchise Agreement. In addition to any other remedy of City contained in this Agreement, City may impose upon Franchisee liquidated damages of up to one hundred dollars (\$100.00) payable to the City for any single event or series of related events, or actual damages as demonstrated during the resolution procedure.
- (4) The City Manager may delegate the duties under this Section to a designee. The decision of the City Manager or a designee shall be final on any matter of five hundred dollars (\$500.00) or less. In the event of a decision on a matter awarding more than five hundred dollars (\$500.00), Franchisee may seek review pursuant to the Notice of Appeal procedure contained in Section 10-A of this Agreement.

## **SECTION 11 - FRANCHISE TRANSFER**

The rights of the Franchisee in regard to the transferability of its Franchise shall be as set forth below:

- (1) Neither this Franchise Agreement nor any right or privilege granted in this Agreement shall voluntarily or involuntarily be transferred, sold, hypothecated, sublet, assigned or leased, in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein (all collectively referred to herein as "transfer" ), pass to or vest in any Person, except the Franchisee, either by act of the Franchisee or by operation of law, without the prior written consent of the City. Any attempt by Franchisee, or by operation of law, to transfer this Franchise Agreement without the prior written consent of the City shall be void and deemed a material breach of this Agreement.

- (2) This Franchise Agreement shall terminate on any Change in Ownership of Franchisee, unless such Change in Ownership has been consented to, in writing, by the City prior to the effective date of such Change in Ownership.
- (3) The City shall review a request by Franchisee that the City approve a transfer of all or part of Franchisee's interest in this Franchise Agreement, or that the City consent to a Change in Ownership of Franchisee, using such criteria as it deems necessary including, but not limited to, those listed below. The City shall not unreasonably withhold its consent to the transfer of this Franchise Agreement or to any Change in Ownership of Franchisee.

If the Franchisee requests that the City consider and consent to a transfer or a Change in Ownership of Franchisee, the Franchisee or the proposed transferee, as applicable, shall at a minimum meet each of the following requirements:

- i. The Franchisee shall pay the City a maximum of \$50,000.00 for incurred attorney's fees and related administrative and investigation costs necessary to determine the suitability of any proposed transferee or proposed new owners, and to review and finalize any documentation required by City, in its sole and absolute discretion to determine what form of documentation will be used in terms of effecting a proper transfer, as a condition for approving any such transfer or Change in Ownership.
- ii. The Franchisee shall furnish the City with independently audited financial statements of the proposed transferee's operations for the immediately preceding three (3) operating years.
- iii. The Franchisee shall furnish the City with proof satisfactory to City, in its sole and absolute discretion:
  - that the proposed transferee or the proposed management of the Franchisee under the proposed new owner has at least three (3) years of solid waste management experience of a scale equal to or exceeding the scale of operations conducted by Franchisee under this Agreement;
  - that in the last five (5) years, the proposed transferee or any company managed by the proposed new owner (or by the proposed management of the Franchisee under the proposed new owner) has not received any citations, Notice of Violations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any failure to comply with state, federal or local waste management laws, where such failure either: (i) evidences a pattern of disregard for such state, federal or local waste management laws; or (ii) involves actions which endangered the lives or property of any Person. Franchisee shall supply the City with a complete list of such citations, Notices of Violations and censures, if any;
  - that the proposed transferee or any company managed by the proposed new owner (or by the proposed management of the Franchisee under the proposed new owner) has at all times conducted its operations in an environmentally safe and conscientious fashion;

- that the proposed transferee or any company managed by the proposed new owner (or by the proposed management of the Franchisee under the proposed new owner) conducts its solid waste management operations in accordance with sound waste management standards and practices and in full compliance with all federal, state and local laws regulating the collection and disposal of waste;
- of the adequate financial strength of proposed transferee or of the Franchisee under the proposed new ownership; and
- of the ability of the proposed transferee or of the Franchisee under the proposed new ownership to obtain and maintain required insurance and bonds.

## **SECTION 12 - REPORTS**

Franchisee shall provide the City Manager with such reports and information and make its records available for review as provided below:

### **A. General**

- (1) Franchisee shall keep, and, maintain, and furnish copies of such operating records and reports as may be requested by City to ascertain compliance with this Agreement and to support requests for a Fee adjustment. City and Franchisee agree that Franchisee's proprietary information, including trade secrets, whether or not designated as such by Franchisee may be confidential under the California Public Records Act.
- (2) All information required to be kept, maintained or furnished to the City shall be maintained a minimum of five (5) years after the entry of the most recent item therein.

### **B. Reporting Requirements**

During the term of this Franchise Agreement, Franchisee shall submit to the City quarterly, and more often if required by law, information reasonably required by City to meet its reporting obligations imposed by AB 939 and AB 901, as amended, and the regulations implementing each, in a manner acceptable to City. Franchisee agrees to submit such reports and information as reasonably requested by the City. Franchisee agrees to render all reasonable cooperation and assistance to the City in meeting the requirements of the City's source reduction and recycling element and non-disposal facility element.

### **C. Annual and Quarterly Reports**

- (1) Franchisee shall assist City in preparation of all Annual and Quarterly reporting required by CalRecycle, or successor agency, in accordance with this Agreement.
- (2) Quarterly reports shall be submitted forty-five (45) days following the end of each calendar quarter. The quarterly reports shall include:

- i. Amount (in tons) and type of material collected.
- ii. Amount and types of material deposited in the Solid Waste Facility.
- iii. Amount and types of material recycled, processed or diverted.
- iv. Summary assessment of services, and identification of impediments to meeting service requirements.
- v. An annual presentation will be made to the Madera City Council upon an agreed date that is acceptable to both parties.

## **SECTION 13 - COMPENSATION**

### **A. Compensation and Billing**

Each party shall provide/maintain accurate and complete accounting and billing. Either party may request and be entitled to review the other party's accounting and billing related to this Agreement.

- (1) **Billing and Payment.** All requests for service, or for changes in service, shall be processed by City and promptly reported to Franchisee. City shall provide billing services to all residential, commercial and industrial customers who receive service pursuant to this Agreement, except that Drop Box services will be billed and collected by Franchisee.

On a monthly basis, City shall remit to Franchisee the full amount for services provided based on the Fees set forth on **EXHIBIT D**. The monthly compensation payment to Franchisee shall be paid by City within thirty (30) days of the end of the applicable billing cycle.

Each party's accounting and billing shall be accurate and complete. Either party may request and be entitled to review the other party's accounting and billing related to this Agreement.

- (2) **Franchisee's Fees.** Franchisee shall provide solid waste handling and collection services pursuant to this Agreement at the Fees set forth in the attached **EXHIBIT D**, the contents of which are incorporated by this reference. The Franchise Fee shall equal 25.5% of the Residential three standard container Fee and 20% of all other Fees in **EXHIBIT D**, except for contamination Fees. The City may deduct the Franchise Fee from the monthly payment to Franchisee. The **EXHIBIT D** Fees will apply at the inception of this Agreement, and are subject to adjustment as set forth elsewhere herein.

If no Fee has been established for a particular service billed by City, Franchisee and City shall mutually agree on an appropriate charge for that service or service level. If no Rate has been established for a service billed directly by Franchisee, then Franchisee shall determine with Customer the appropriate charge, subject to City approval. Franchisee shall promptly notify City of any new Rates to be billed by Franchisee.

The **EXHIBIT D** Fees are inclusive of all Solid Waste handling services to be provided, including collection, transportation, processing, composting, disposal, and cart and bin costs, and costs associated with moving bins from standard enclosures such distance as is reasonably necessary to empty them (but not including costs associated with moving bins beyond such distance in unusual circumstances or due to special requests by customers). No other charges shall be imposed by Franchisee for such services unless approved by City.

## B. Adjustment to Fees

Franchisee understands and agrees that any adjustment of the Rates is contingent on City's use of such Proposition 218 process as deemed necessary or advisable by the City. If, at any time, a Fee adjustment cannot be implemented for any reason, Franchisee and City shall negotiate in good faith, a reduction of services or Franchise Fee equal to the value of the Rate adjustment that cannot be implemented. If City and Franchisee are unable to reach agreement about such a reduction in services, then Franchisee may terminate this Agreement upon one year's prior written notice to City.

The following annual and special rate adjustments shall be made to the Fees provided for in this Franchise Agreement.

### (1) Annual Cost of Living Adjustment (COLA)

The Fees for years 1 through 5 of the Agreement are shown in **EXHIBIT D** and include an annual cost-of-living-adjustment.

Beginning July 1, 2027, and each July 1 thereafter, the Fee shall be annually adjusted upwards by adding a cost-of-living adjustment (COLA) to the then current Fee. The COLA shall be based on the change in the annual Consumer Price Index (CPI).

An example of the CPI adjustment for July 1, 2021 is shown below:

Annual CPI-U 2019:	295.004
Annual CPI-U 2020:	300.084
Change:	5.080
% Increase:	1.72% (5.080 ÷ 295.004)

### (2) Solid Waste Facility Fee Adjustment

If an increase in the Solid Waste Facility Fee charged to the Franchisee is greater than the COLA in any given year, an adjustment shall be applied to the Fees based on the Disposal Component and shall be effective as of the date of the change of the Solid Waste Facility Fee.

As an example:

2021 fee	\$27.64 per Ton
<u>2020 fee</u>	<u>-26.00 per Ton</u>
Increase	\$1.64 per Ton

Increase, expressed as a percentage:

$$\$1.64 / \$26.00 = 6.31\%$$

Amount of Increase greater than COLA

$$\begin{aligned}\text{Annual COLA} &= 1.72\% \\ 6.31\% - 1.72\% &= 4.59\%\end{aligned}$$

The increase applied to the Fees based on the Disposal Component:

$$4.59\% \times 20.0\% = 0.92\%$$

### (3) Extraordinary Adjustment

The parties acknowledge that there may be infrequent extraordinary events which, although they do not prevent either party from performing, and thus do not implicate the Force Majeure provisions hereof, nevertheless increase the cost of providing service such that Franchisee's compensation and the Fee adjustment mechanism provided in this Agreement result in Franchisee's suffering losses which are substantially outside the commercially reasonable expectations of the parties. The obligation of the parties in such event is to act reasonably toward each other in arriving at an appropriate adjustment in Fees. Accordingly, at its option, Franchisee may apply to the City at any time, but not more frequently than once annually, for an extraordinary Fee adjustment should an event or circumstance arise (including a change in landfill tipping fee) that is not the result of a Change in Law or Change in Service Level which negatively impacts the economic operation of Franchisee and which is in excess of the Fee adjustment resulting from the application of the annual adjustment formula set for in subparagraph (a) above. An interim adjustment in Fees will be deemed justified if it is necessary for the Franchisee to make a substantial change in its operations, or substantial capital expenditure or investment in order to perform its obligations under this Agreement due to the occurrence of an event or circumstance other than a Change in Law or Change in Service Level which is beyond the reasonable control of Franchisee. In the event of such an application for an extraordinary Fee increase, it is understood that the Franchisee shall have the burden of demonstrating to the reasonable satisfaction of City the basis for the extraordinary increased cost.

### (4) Franchise Fee Adjustment

The Franchise Fee adjustment shall be the pass through of one hundred percent (100%) of any increase or decrease in the Franchise Fee, and shall be effective as of the date the Franchise Fee increase or decrease is payable by the Franchisee.

### (5) Change in Scope Level Adjustment

- i. The Fee shall be increased (or decreased) by one hundred percent (100%) of the increase (or decrease) or incremental increase (or incremental decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether fixed or variable) associated with the change in the level of the Solid

Waste Handling services which may be required of, or agreed to by, Franchisee. City shall provide Franchisee ninety (90) days' notice of any requested changes in scope of this agreement. A Change in Scope Adjustment shall be effective on and after the actual date of the requirement to or agreement to change operations which results from the change in service, but, absent the consent of the Manager, not sooner than the effective date of the change in service. In no event shall any Change in Scope Adjustment be effective prior to the City's approval of an amendment to the Franchise Agreement.

- ii. In the event that the City Manager and the Franchisee claiming to be affected by the change in scope cannot agree on either the existence, or the effect on demonstrable costs, of a change in service level, the dispute resolution provisions of Section 13–C (1) shall apply.

#### (6) Change in Law Adjustments

- i. The Fee shall be increased (or decreased) by one hundred percent (100%) of the increase (or decrease) or incremental increase (or incremental decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether fixed or variable) associated with the change in the manner or nature of conducting Solid Waste Handling services necessitated by a Change in Law. A Change in Law Adjustment shall be effective on and after the actual date of the change in operations which resulted from the Change in Law, but, absent the consent of the Manager, not sooner than the effective date of the Change in Law. In no event shall any Change in Law Adjustment be effective prior to the City's approval of an amendment to the Franchise Agreement.
- ii. In the event that the City Manager and the Franchisee claiming to be affected by the Change in Law cannot agree on either the existence, or the effect on demonstrable costs, of a Change in Law, the dispute resolution provisions of Section 13–C (1) shall apply.

#### C. Dispute Resolution Regarding Adjustment to Fees

- (1) Any dispute regarding any Change in Service Level Adjustment or Change in Law Adjustment provided for in 13 above, which cannot be resolved between the Franchisee and City within thirty (30) days of the receipt by City of such documents as City may reasonably request, shall be submitted to a mutually agreed upon expert in the subject matter area of the dispute to resolve the dispute as to either or both: (i) the existence of a Change in Service Level or a Change in Law; and/or (ii) the effect on the Franchisee's demonstrable costs of a Change in Service Level or a Change in Law. The decision of the expert shall be binding on the Franchisee and the City. The cost of the expert shall be borne equally by the Franchisee and the City and the Parties shall pay the expert(s) each party's respective share on demand by the expert(s). If the Franchisee and City cannot mutually agree upon an expert, either may petition the Superior Court of the County of Fresno to have an expert chosen by the court. The City and Franchisee shall each have the right to suggest one expert to the court; the court shall choose one of the suggested experts.

- (2) Any dispute regarding the current Fee schedule or Fee adjustments (except those disputes related to a Change in Service Level Adjustment or Change in Law Adjustment) shall be decided by the City Manager within ten (10) working days after receipt of a written statement from the Franchisee of the nature and basis of the dispute with a request that it be resolved by the City Manager. Franchisee shall have the right to appeal the Manager's decision in writing to the City Council within thirty (30) days after the City Manager has given the Franchisee written notice of the decision. Such appeal shall conform to the appeal provisions set forth in Section 10–A of this Agreement in respect to the form of the Notice of Appeal, the time limits for processing the appeal, and the amount of fees, if any, connected therewith. The City may consider the appeal or refer said appeal to a hearing officer as provided in Section 10–A of this Agreement.
- (3) The most recent Fees approved by the City Manager in effect at the time a dispute is submitted to either the expert or City Manager, as the case may be, shall remain in effect pending resolution of such dispute. The effective date of any dispute resolution, whether retroactive or prospective, shall be determined by the expert, the City Manager, the City or a hearing officer, as appropriate.

#### D. Discontinuance of Service

Franchisee may discontinue service for non-payment of Customer's billing (when directed by City for accounts billed by City, or in the event of non-payment by a Customer billed by Franchisee), or Customer's failure to substantially comply with the requirements of the applicable provisions of state or local law which govern use, storage and collection of Solid Waste in accordance with this Agreement.

### **SECTION 14 - FORCE MAJEURE**

Franchisee shall not be in default under this Agreement in the event that the services provided by the Franchisee are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, severe weather or other catastrophic events which are beyond the reasonable control of Franchisee and which Franchisee could not reasonably be expected to have prevented or controlled. Catastrophic events do not include the financial inability of the Franchisee to perform or failure of the Franchisee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Franchisee.

### **SECTION 15 - OTHER PROVISIONS**

#### A. Independent Contractor

Franchisee shall perform this Agreement as an independent contractor and not as an officer, agent, servant, employee, or volunteer of City. Franchisee is solely responsible for the acts and omissions of its officers, agents, and employees, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Franchisee or a contractual relationship between City and Franchisee's employees.. Neither Franchisee nor its officers,



agents, or employees shall obtain any rights to retirement or other benefits which accrue to City employees. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Franchisee or its agents or employees perform the services under this Agreement.

B. Right to Pass

Franchisee shall have the right to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Solid Waste Handling services pursuant to its Franchise Agreement, so long as it is not in receipt of a written notice revoking permission to pass. Franchisee shall have no rights greater than those then held by City.

C. Compliance with Municipal Code

Franchisee shall comply with provisions of the Municipal Code that are applicable to operations hereunder, and with any and all amendments, from time to time, to such provisions during the Term of this Agreement.

D. Notices

Any notice, information, request or reply ("Notice") required or permitted to be given under the provisions of this Agreement shall be in writing and shall be given or served personally, by mail, or by email. If given or served by mail, such Notice shall be deemed sufficiently given if: (1) (i) deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or (ii) sent by overnight service provided proof of service is available; and (2) addressed to (i) the Franchisee at its most recent address of record with City or (ii) to the Manager at the then-current address of City, as the case may be. If given by email, such Notice shall be deemed sufficiently given if the receiving party confirms receipt. The addresses of the parties at the time of signing this Agreement are:

To City:                      Attn: City Manager  
   City of Madera  
   205 W 4<sup>th</sup> Street  
   Madera, CA 93637

To Franchisee:              Attn: Contract Administrator  
   Mid-Valley Disposal, LLC  
   15300 West Jensen Avenue  
   Kerman, CA 93630

Either party may from time to time designate by Notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or, if mailed, three (3) business days from the date such notice is deposited in the United States mail, or if by facsimile transmission, upon receipt of confirmation of delivery which confirmation may be transmitted by the same means. Service by facsimile transmission shall not be effective unless the original of the document being served is deposited in the United States mail, postage prepaid, within twenty-four (24) hours after the facsimile transmission has been confirmed. Emails shall be deemed effective upon confirmation of receipt.

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E. Exhibits Incorporated

Exhibits A through D are attached to and incorporated in this Agreement by this reference as if fully set forth.

F. Laws and Licenses

City and Franchisee shall, at their own separate costs, comply with all federal, State, and City laws, ordinances, rules, and regulations applicable to the performance of the services hereunder and Franchisee shall obtain and maintain in full force and effect throughout the term of this Agreement all licenses and permits necessary to perform the services hereunder.

G. Governing Law

This Agreement shall be governed by the laws of the State of California, with venue in the Superior Court of the County of Madera or the Federal District Court with jurisdiction over City.

H. Waiver

No waiver by either party of any one or more defaults or breaches by the other party in the performance of this Agreement shall operate or be construed as a waiver of any already established or future defaults or breaches, whether of a like or different character or degree.

I. Counterpart Signatures

This Agreement may be executed in counterpart pages (counterparts), each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become fully executed when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same signature pages of this Agreement. The exchange of copies of this Agreement and of signature pages by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted electronically shall be deemed to be their original signatures for all purposes.

**SECTION 16 - SEVERABILITY**

If any non-material provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

**SECTION 17 - ENTIRE AGREEMENT; AMENDMENT**

This Agreement and its incorporated Exhibits constitute the entire agreement between the parties concerning the subject matter hereof and supersede any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the parties hereto with respect to such subject matter. This Agreement may not be modified or

amended, in whole or in part, except by written agreement signed by both parties hereto. Notwithstanding the forgoing, the parties acknowledge the provisions of "Chapter 6.20, Garbage and Rubbish Disposal" of the City Code as currently enacted are included herein and, further, that if and when such City Code provisions are amended, that the amended provisions shall apply to this Agreement, without any action being required of either party. The City Manager shall provide Notice to Franchisee upon changes to the City Code that require a change in this Agreement.

## **SECTION 18 - CONSTRUCTION OF FRANCHISE**

The parties hereto have negotiated this franchise at arm's length and with advice of their respective attorneys, and no provision contained herein shall be construed against either party solely because it prepared the actual physical Agreement executed by the parties.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date(s) set forth below.

### **CITY OF MADERA**

### **MID-VALLEY DISPOSAL, LLC**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Joseph Kalpakoff, President

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

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

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Natalie Kalpakoff, Secretary

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

ATTEST

\_\_\_\_\_  
Alicia Gonzales, City Clerk

## **EXHIBIT A - PROVIDED SERVICES**

This Exhibit sets forth the level of services to be provided by Franchisee pursuant to its Franchise, and the manner of providing such services which are in addition to the manner of providing services specified in this Agreement.

Franchisee shall provide the Solid Waste Handling services in conformity with all provisions of this Agreement, including:

### **A. Single Family Residential**

- (1) Weekly 3 Cart Service - Unless otherwise required under applicable law or regulation, once per week Franchisee shall collect the Solid Waste (except bulky items and Hazardous Waste), which has been separated, placed, kept, or accumulated in containers at residential units within the Franchise Area and placed at curbside prior to Franchisee's normal weekly collection time. All Solid Waste must be placed within containers at curbside without obstructions so as to permit collection, unless otherwise agreed upon by City and Franchisee. Franchisee shall supply containers, and shall require the use of specific containers as specified in this **EXHIBIT "A."** Franchisee may provide special pickup procedures, above and beyond the services described above, with customers consistent with the Fees paid Franchisee in **EXHIBIT "D."** Franchisee shall notify City immediately of any Changes in Service Level, and similarly, City shall notify Franchisee of any Changes in Service Level.

### **B. Commercial, Industrial, and Multi-Residential**

- (1) Multi-Residential Weekly Service - Unless otherwise required under applicable law or regulation, at least once per week Franchisee shall collect the Solid Waste (including bulky items which have been placed in a closed bin, and excepting metallic White Goods and Hazardous Waste) which have been placed, kept or accumulated for collection in Solid Waste Bins at Multi-Residential Units.
- (2) Commercial and Industrial Weekly Service - Unless otherwise required under applicable law or regulation, at least once per week Franchisee shall collect the Solid Waste which have been placed, kept or accumulated for collection in Solid Waste Bins at commercial units.

### **C. Source Separated Materials – Contamination**

Franchisee shall conduct contamination monitoring as defined in **EXHIBIT B** of this Agreement.

### **D. Construction and Demolition Waste Temporary Drop Box Services**

Franchisee shall provide construction and demolition debris removal, including temporary Drop Box services using Fees reflected in **EXHIBIT D** unless debris is generated by a declared emergency disaster such as floods, fires, earthquake or other such occurrence as deemed meeting the criteria of disaster debris. The City may provide for Rates and services solely for the timely and efficient removal of "disaster debris" with the Franchisee or other qualified public or private entity.

#### E. Holiday Collection Schedules

If a regular collection day falls on a holiday observed by the Solid Waste Disposal Facility, then the collection schedule for the week shall be adjusted so that regular collections occur on the following day for the remainder of the week. For example, when a holiday is observed on a Monday, the regular collections will occur Tuesday through Saturday, so that a customer's collection occurs the day after their normal scheduled collection.

#### F. Special Collection Programs

The following minimum special collection programs shall apply to this Franchise Agreement:

- (1) City Facilities: Franchisee shall provide front load commercial service to the City at no cost for the following City-owned facilities:
  - i. Public Works Yard
  - ii. Madera City Hall
- (2) Franchisee shall participate in the annual community clean-up day by providing a Curbside Pick Up for each residential customer of items placed at curbside. Franchisee will provide pickup of all items not deemed household hazardous waste, up to two cubic yards. This may include, but not be limited to, mattresses and other furniture, yard waste cut to pre-determined dimensions, general residential trash, and other bulky items that would typically require an individual to self-haul to the dump. The City will be responsible for mapping pick-up days with the Franchisee's input and providing all notification and advertising for the event. Franchisee will provide to the City a map of proposed locations for centralized collection of items in roll-off bins for approval in advance of the event.
- (3) Illegal Dumping: At Cities direction, Franchisee agrees to provide targeted clean-up of illegal dumping up to twenty (20) tons annually.
- (4) Battery and Sharps collection: Franchisee shall provide residential battery drop off bins at City Hall. Franchisee shall also provide up to four (4) Sharps collection kiosks at City designated locations.
- (5) Christmas Trees: Franchisee shall collect and dispose of Christmas trees left at curbside by Customers during the three regular pickups following each Christmas day. If a tree is not cut to the appropriate length for disposal, Franchisee will tag the tree with a notification to the customer of why the tree was not removed from curbside.
- (6) Senior and Handicapped Service: When a Customer produces evidence that he or she is at least 65 years of age or a medical practitioner's statement showing that he/she is physically unable to place his/her solid waste bins at the curb for collection, together with his/her affidavit certifying that no able-bodied person under 65 years of age on the premises is available for such purposes, Franchisee will provide walk-in service to such premises.

- (7) Provide free special event containers for City Sponsored Events.
- (8) Provide up to \$5,000.00 per year in Scholarships to graduating seniors from the City.
- (9) Provide up to \$10,000 per year in financial support for the 4<sup>th</sup> of July event.

G. Emergency Disaster Debris Removal Services

- (1) In the event of a declared emergency disaster such as a fire, flood, earthquake, or other such occurrence as deemed meeting the criteria of a disaster in which debris is created, the Franchisee will be given the first right of refusal in its franchise area to offer temporary bin/roll off services using Fees reflected in **EXHIBIT D**, to transport debris to a staging area or disposal facility designated by the Manager.
- (2) During any period of time that Franchisee is unable to service its franchise area during such declared emergency, either for loss of transportation, lack of assistance or an overabundance of debris material or other similar circumstances, the City reserves the right to contract with third-party entities for temporary bin/roll off services, including transportation of debris to a Solid Waste Facility. Franchisee shall notify City when it regains its ability to recommence service in its franchise area and City will, within a reasonable time period, terminate any contract with third-party entities for the same services.
- (3) The City reserves the right to direct roll off bin service to areas that have been designated as critical due to the emergency conditions.

## **EXHIBIT B - SB 1383 COMPLIANCE PROGRAMS**

To support the City in complying with regulations under SB1383, Franchisee shall implement the programs identified in this **EXHIBIT B**. These programs are designed to meet the implementation and education requirements of SB 1383 and help the City achieve annual diversion requirements set by CalRecycle. The City's actual annual diversion rate depends on participation of businesses and residents, their respective adherence to program requirements and local code, the City's enforcement of applicable codes, and the City's implementation of other programs outside the scope of this Agreement. Accordingly, City shall amend or update the City code to incorporate requirements necessary for the implementation of these programs.

### **1. Collection Requirements and Container Labeling**

Franchisee shall provide a 3-container collection program for Solid Waste, Recyclables, and Mixed Organics. Collection containers shall be Grey (MSW), Blue (Recyclables), and Green (Organic Waste). Hardware such as hinges and wheels may be different colors.

New containers or lids placed by Franchisee shall include language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that container. Labels shall clearly indicate items that are prohibited container contaminants for each container.

### **2. Education and Outreach**

To promote public education about recycling requirements, Franchisee shall create public education materials and conduct education programs and activities described in this Section.

Annual Notice: Franchisee shall prepare and distribute to each Generator in the City a mailer that includes information specified in 14 CCR Section 18985.1(a). Such mailer shall be distributed by Franchisee to all Residential and Commercial mailing addresses including individual Multi-Family Dwelling Units. Franchisee shall also make this notice available in an electronic format through the Franchisee's website.

Instructional Service Guide: Franchisee shall prepare a service guide that describes available services, including how to place Containers for Collection, which materials should be placed in each Container and prohibited materials, and provides Collection holidays

Property Owners and Businesses: Franchisee shall annually provide Property Owners and Commercial Business owners with public education materials in electronic format for their distribution to all employees, Franchisees, tenants, and Customers of the properties and businesses. The Franchisee's public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials. A Commercial Business or Multi-Family Property Owner may request these materials more frequently than the standard annual provision if needed to comply with the requirement of 14 CCR Section 18984.10 for Commercial Businesses and Multi-Family Property Owners to provide educational information to new tenants and employees before or within fourteen (14) days of occupation of the Premises. In this case, the Commercial

Business or Multi-Family Property Owner may request delivery of materials by contacting the Franchisee's customer service department not later than two (2) weeks in advance of the date that the materials are needed.

Technical Assistance Program: Franchisee shall provide ongoing technical assistance for Commercial and Multi-family generators that are required to participate in source separated recycling under applicable laws including AB 341, AB 1826, and SB 1383 and corresponding regulations. Technical assistance may include on-site training, instructional guides, printed or electronic materials and other resources that satisfy regulation requirements.

Contamination Monitoring: Franchisee shall perform contamination inspections by utilizing on-board monitoring systems or physical container inspections. For physical container inspections, Franchisee's personnel shall lift the Container lid and observe the contents. For Collection vehicles equipped with a video camera and monitoring system, Franchisee's personnel shall observe, via the hopper video camera and monitoring system, the contents of the Containers as the materials are emptied into the vehicle. Upon finding Prohibited Container Contaminants in a Container, Franchisee shall follow the contamination noticing procedures set forth below.

### **3. Waste Evaluations**

Sampling Method: Franchisee shall, at its sole expense, conduct waste evaluations that meet the requirements of 14 CCR Section 18984.5(c). The Franchisee shall conduct waste evaluations for contaminants using the Standard-Compliance Approach or other methods approved by Cal Recycle at least twice per year and the studies shall occur in two distinct seasons of the year. Franchisee shall provide adequate notice to City of when waste evaluations will occur, and City reserves the right to observe waste evaluations.

Contamination Notifications: If the sampled weight of Prohibited Container Contaminants exceeds twenty-five percent (25%) of the measured sample for any material stream, the Franchisee shall notify City within fifteen (15) working days. Franchisee may perform targeted waste audits to determine the source of contaminants and provide technical assistance to those generators or notify all generators of their obligation to properly source separate materials. The Franchisee may provide this information by placing a written notice on the Generators' Containers or the gate or door of the Premises; and/or by mail, e-mail, or electronic message to the applicable Generators.

Franchisee will coordinate with City to develop procedures regarding alleged violations of these recycling programs.

### **4. Procurement**

At City's option, Franchisee will make available up to 5,300 tons of compost or mulch for City to purchase at market rate to help meet its state-mandated annual procurement required target. Franchisee also agrees to provide City with any available procurement credits from renewable fuel purchases used by vehicles within City.



## **5. Waivers**

The City shall be responsible for granting waivers to commercial or multi-family generators that meet the de minimis requirements subject to the requirements under SB1383, pursuant to 14 CCR Section 1898411, or other requirements that may be specified by City. This includes physical space waivers where services may be impacted.

Franchisee shall provide City with required generator information on services and activity that is needed as part of the waiver application. Franchisee may also assist generators with waiver applications or submit on their behalf.

## **6. Edible Food Recovery**

Franchisee shall provide City with necessary data and reporting to determine which customers are considered tier 1 and tier 2 commercial edible food generators.

At least annually, the Franchisee shall provide Commercial Edible Food Generators with the following information:

- Information about the City's Edible Food Recovery program;
- Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10;
- Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
- Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.

## **7. Reporting**

Franchisee will provide the data or prepare reports required to meet SB1383 requirements which includes:

- The number of generators that receive organic waste collection service
- The number of route reviews conducted for prohibited container contaminants
- The number of times notices, violations, or targeted education materials were issued to generators for prohibited container contaminants.
- The results of waste evaluations performed to meet the container contamination minimization requirements and the number of resulting targeted route reviews
- The number of commercial edible food generators located within the jurisdiction

## **EXHIBIT C - DEFINITIONS**

For the purposes of this Franchise Agreement, the following terms, when used with initial capitalization, shall have the meanings set forth in this Section:

- A. AB 939. "AB 939" means the California Integrated Waste Management Act of 1989, being Division 30 of the California Public Resources Code, commencing with Section 40000 thereof, as it may be amended from time to time.
- B. AB 1826. "AB 1826" means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826," as amended, supplemented, superseded, and replaced from time to time
- C. BULKY WASTE. "Bulky Waste" means discarded furniture (including but not limited to chairs, sofas, mattresses, and rugs); appliances (including but not limited to refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances, and other similar items, commonly known as "white goods"); discarded stereos, televisions, computers, VCR's, and other similar items (commonly known as "Electronic-Waste"); wood waste, tree trunks and large branches if more than six inches in diameter or four feet in length, scrap wood, rocks, sod and earth. Bulky Waste does not include construction and demolition waste, or large items such as car bodies, Jacuzzi tubs or spas, or other items that cannot be handled by two persons. In addition, Bulky Waste does not include waste tires.
- D. CHANGE IN LAW. "Change in Law" means the imposition (or removal), after the establishment of a Fee relative to a Franchise Agreement, of any duty or burden imposed upon the Franchisee in the performance of the Solid Waste Handling services required of it under the Franchise Agreement which is or becomes additional to (or is subtracted from) or different from those duties required or contemplated in its Franchise Agreement, or which must be performed in a different manner from that in which it is initially contemplated to be performed, and which results from any of the following:
  - (1) the enactment, issuance, adoption, repeal, amendment or modification of any federal, state or local law, statute, ordinance or regulation.
  - (2) a regulatory agency or other administrative agency interpreting a regulation, a judicial decision of a federal court interpreting federal law or statute, or a judicial decision of a court having jurisdiction within California interpreting a federal, state or local law, statute, ordinance or regulation, in a manner different from the interpretation which had previously been generally relied upon in California within the solid waste collection and hauling industry.
- E. CHANGE IN LAW ADJUSTMENT. "Change in Law Adjustment" means the adjustment to Fee as determined under the provisions of Section 13-B (6) of this Agreement.
- F. CHANGE IN OWNERSHIP. "Change in Ownership" occurs when either a transaction or event, results in fifty percent (50%) or more of the beneficial ownership of the Franchisee being different than such ownership as of the date of the approval by the

City of the Franchise Agreement or, if applicable, as of the date of the most recent consent of the City to a Change of Ownership. The owners of the beneficial ownership of Franchisee on the date of the approval of the Franchise Agreement or, if applicable, on the date of the most recent consent of the City to a Change of Ownership, shall be referred to in this subsection as an "Initial Owner". A Change in Ownership will be determined by application of the following:

- (1) Any beneficial interest owned by an individual related by blood or marriage to an Initial Owner shall be considered as owned by an Initial Owner in determining if a Change in Ownership has occurred.
- (2) Any public offering of stock where the stock is offered for sale to the general public and does not constitute a private placement shall be disregarded in determining if a Change in Ownership has occurred.
- (3) Sales, transfers, issuances or pledges of non-voting shares of stock will not be considered in determining if a Change in Ownership has occurred, until and unless and only to the extent that such stock is converted into voting shares of stock.
- (4) The pledge of, or any other action taken relative to, voting shares of stock which results in any voting rights of such stock being exercised by other than an Initial Owner shall be considered to be a transfer of such stock for the purposes of determining if a Change in Ownership has occurred.

G. CHANGE IN SCOPE ADJUSTMENT. "Change in Scope Adjustment" means the adjustment to Fee as determined under the provisions of Section 13-B (5) of this Agreement.

H. COMMERCIAL EDIBLE FOOD GENERATORS. "Commercial Edible Food Generator" means a Businesses identified as Tier One and Tier Two edible food generators as defined in 14 CCR Section 18982.

I. CONSUMER PRICE INDEX. "Consumer Price Index" or "CPI" means the Consumer Price Index, All Items, Not Seasonally Adjusted, San Francisco-Oakland-Hayward, California, as published by the U. S. Department of Labor, Bureau of Labor Statistics, Series Id. CUURS49BSA0, Base Date 1982-84=100, or the most similar successor index if this index is no longer published.

J. CITY. "City" means the City of Madera, State of California.

K. CITY SOLID WASTE DISPOSAL SYSTEM. "City Solid Waste Disposal System" means at any particular time, the then-existing Solid Waste Facilities which the City owns, leases or has a contractual right to use.

L. CUSTOMER. "Customer" means any Person receiving Solid Waste Handling services pursuant to this Agreement.

M. DESIGNATED SOURCE SEPERATED ORGANIC WASTE FACILITY: "Designated Source Separated Organic Waste Facility" means a facility identified by Franchisee that meets the definition of 14 CCR Section 18982(a)(33).

- N. DISPOSAL COMPONENT. "Disposal Component" means the portion of the Fee's that apply to Solid Waste Disposal or Processing. The Disposal Component at the effective date of this agreement is equal to Twenty percent (20.0%).
- O. DROP BOX. "Drop Box" means a steel, open-top container holding at least eight (8) cubic yards that rolls off and on a transport truck.
- P. EFFECTIVE DATE. "Effective Date" means August 1, 2022.
- Q. ELECTRONIC WASTE. "Electronic Waste" for purposes of this Agreement means electronic waste materials generated by residential or commercial Customers that render the items hazardous depending upon their condition and density, such as, but not limited to, televisions, computer monitors containing Cathode Ray Tubes (CRTs), cell phones, scanners, fax machines and other items as determined by applicable laws and regulations.
- R. EXCLUDED WASTE. "Excluded Waste" means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, Medical Waste, infectious, regulated radioactive waste, and toxic substances or material that Approved/Designated Facility operator(s) reasonably believe(s) would, as a result of or upon acceptance, Transfer, Processing, or Disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be Disposed of in Class III Landfills or accepted at the Facility by permit conditions, waste that in Franchisee's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Franchisee or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe Collection, Processing, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.
- S. FEE. "Fee" means the inclusive Fee schedule attached to this Agreement as Exhibit "D," which provides the Fees to be paid to Franchisee by City in consideration of the Solid Waste Handling services provided by Franchisee hereunder. The Fees in Exhibit D include a Franchise Fee.
- T. FOOD SCRAPS. "Food Scraps" means all discarded food such as fruits, vegetables, beans, pasta, and other materials accepted at the designated organics processing facility.
- U. FRANCHISE AGREEMENT. "Franchise Agreement" means the Agreement entered into between the City and the Franchisee which authorizes/requires the Franchisee to provide Solid Waste Handling services in a specified Franchise Area.
- V. FRANCHISE FEE. "Franchise Fee" means a defined portion of revenue from rates retained by City as compensation to City for the exclusive right assigned to Franchisee to provide Solid Waste Handling services within the Franchise area.
- W. FRANCHISEE. "Franchisee" means Mid-Valley Disposal, LLC, a California Limited Liability Company.

X. GREEN WASTE. "Green Waste" means discarded Solid Waste consisting of grass clippings, leaves, branches, tree trunks and other vegetative matter not more than six (6) inches in diameter or four (4) feet in length.

Y. GROSS RECEIPTS.

(1) "Gross Receipts" means all monies received by Franchisee for providing the Solid Waste Handling services specified in its Franchise Agreement **EXHIBIT D**.

(2) "Gross Receipts Less Disposal Charges" means Gross Receipts less that part of the monies received by the Franchisee that are collected from Customers for payment of the fee imposed for disposing of the Solid Waste at a Solid Waste Facility.

Z. HAZARDOUS WASTE. "Hazardous Waste" means any waste material or mixture of waste which is toxic, corrosive, flammable, an irritant, a strong sensitizer, or which generates pressure through decomposition, heat or other means, if such waste or mixture of waste may cause substantial personal injury, serious illness or harm to humans, domestic animals or wildlife during or as a proximate result of any disposal of such waste or mixture of wastes as defined in Article 2, Chapter 6.5, Section 25117 of the California Health and Safety Code and Title 22 of California Code of Regulations, Section 66261.3. The terms "toxic," "corrosive," "flammable," "irritant," and "strong sensitizer" shall be given the same meaning as in the California Hazardous Substances Act (Chapter 12, commencing with Section 28740.1, Division 21 of the California Health and Safety Code).

AA. MANAGER. "Manager" means the City Manager of the City of Madera, or designee of City Manager.

BB. MATERIALS RECOVERY FACILITY. "Materials recovery facility" or "MRF" is a facility designed to remove recyclables and other valuable materials from the waste stream collected through a residential, commercial or industrial Solid Waste Handling program that is approved to operate by the appropriate state and local agencies.

CC. MULTI-JURISDICTION LOAD REPORT. "Multi-Jurisdiction Load Report" means a report which sets out the amount, and place of collection, of Solid Waste delivered to the City Solid Waste Disposal System.

DD. ORGANIC MATERIAL. "Organic Material" means Green Waste and Food Waste which are specifically accepted at an organics processing facility. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Solid Waste and Recyclable Material.

EE. PERSON. "Person" includes, without limitation, individuals, associations, clubs, societies, firms, partnerships, joint ventures, sole proprietorships, corporations, limited liability companies, schools, colleges and all governmental agencies and entities.

FF. PROCESSING. "Processing" means the reduction, separation, recovery, conversion or recycling of Solid Waste.

- GG. PROHIBITED CONTAINER CONTAMINANTS. "Prohibited Container Contaminants" means (i) items placed in the Blue Container that are not identified as acceptable Recyclable Materials; (ii) items placed in the Green Container that are not identified as acceptable organic waste; (iii) items placed in the Gray Container that are acceptable to be placed in City's Green Container and/or Blue Container ; and (iv) Excluded Waste placed in any Container.
- HH. RATES. "Rate" or "Rates" means rates charged by City of Madera or by Franchisee, as applicable, to Customers for Solid Waste Handling Services provided.
- II. RECYCLABLE MATERIALS. "Recyclable Materials" means discarded Solid Waste which may be sorted, cleansed, treated, processed, and/or reconstituted, and which is segregated for the purpose of reuse or recycling, including, but not limited to, separated paper, glass, cardboard, plastic, ferrous materials or aluminum.
- JJ. RESIDUAL SOLID WASTE. "Residual Solid Waste" means the solid waste destined for disposal, transformation, further transfer/processing as defined in section 17402(a)(30) or (31) of the California Code of Regulations Title 14, Article 6, which remains after processing has taken place.
- KK. SB 1383. "SB 1383" means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.
- LL. SECURITY. "Security" means a corporate surety bond, a letter of credit or other security device acceptable to City, as provided in Section 9–F.
- MM. SOLID WASTE. Except as provided in sub-subsections (1), (2), (3) and (4), "Solid Waste" means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances (subject to salvage and other special handling requirements under applicable law and regulation), dewatered, treated, or chemically fixed sewage sludge which is not Hazardous Waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, including Recyclable Materials and Green Waste.
- (1) "Solid Waste" does not include Hazardous Waste and does not include low-level radioactive waste regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code.
- (2) "Solid Waste" does not include medical waste (except treated medical waste) which is regulated pursuant to the Medical Waste Management Act (Chapter 6.1 (commencing with Section 25015) of Division 20 of the California Health and Safety Code).

- (3) Solid Waste does not include petroleum or a petroleum product or fraction thereof at reasonably detectable levels, asbestos and, with respect to a particular Solid Waste Facility, any waste or material which a regulatory agency, the Facility's solid waste facility permit or City policy, does not allow to be accepted for transfer, Processing, composting, transformation or disposal at that Facility.
- (4) Solid Waste does not include items which would be Recyclable Materials but for the fact that they are personally separated from other Solid Waste by the generator thereof and are donated or sold to third parties. For purposes of this section, no donation or sale shall be deemed to have occurred in any instance where a generator directly or indirectly pays the third party any sum (including without limit as a consulting fee, container rental or other fees or tangible consideration) either: (i) in lieu of being directly charged for collecting, transporting, processing or recycling such item; or (ii) to offset the payment to the generator for the purported sale of such item to the third party. Nor shall the receipt of a discount of, or reduction in, the disposal service rate on un-segregated Solid Waste containing such an item be deemed to be the donation or sale of such an item to a third party.

NN. SOLID WASTE FACILITY. "Solid Waste Facility" means any facility that is designed to manage any type of Solid Waste and includes transfer, Processing, composting, transformation and disposal facilities.

OO. SOLID WASTE FACILITY FEE. "Solid Waste Facility Fee" means the fee charged for use of a Solid Waste Facility. The Solid Waste Facility Fee is \$24.60 per ton as of the effective date of this agreement.

PP. SOLID WASTE HANDLING. "Solid Waste Handling" means one or more of the following: the collection of Solid Waste from a commercial, residential, construction or industrial source; the transportation of such Solid Waste to a Solid Waste Facility; and the transfer, Processing, composting, transformation or disposal of such Solid Waste at the Solid Waste Facility.

QQ. SPECIAL WASTES. "Special Wastes" means all the items and materials which are designated as such in a Franchise Agreement.

RR. TRANSFORMATION. "Transformation" as used in this Agreement shall have the same meaning as set forth in Public Resources Code Section 40201, as it may be amended from time to time.

## EXHIBIT D – FEES

Customer Classes/Service Type					
	8/1/2022	7/1/2023	7/1/2024	7/1/2025	7/1/2026
<b>Residential</b>					
Three Standard Containers	\$28.72	\$31.60	\$34.76	\$36.49	\$38.32
Add'l Grey	\$11.81	\$12.99	\$14.29	\$15.01	\$15.76
Add'l Green	\$9.80	\$10.78	\$11.86	\$12.45	\$13.07
Add'l Blue	\$8.32	\$9.15	\$10.07	\$10.57	\$11.10
New Residence 3 Cart Start-up Fee	\$241.84	\$266.02	\$292.62	\$307.25	\$322.62
Contamination Fee - 1st occurrence	\$12.00	\$13.20	\$14.52	\$15.25	\$16.01
Contamination Fee - 2nd occurrence	\$24.00	\$26.40	\$29.04	\$30.49	\$32.02
<b>Commercial MSW</b>					
<u>96 Gallon Grey</u>					
1x per week	\$23.75	\$26.13	\$28.74	\$30.17	\$31.68
2x per week	\$45.00	\$49.50	\$54.45	\$57.17	\$60.03
3x per week	\$85.00	\$93.50	\$102.85	\$107.99	\$113.39
<u>2 Cubic Yard</u>					
1x per week	\$90.00	\$99.00	\$108.90	\$114.35	\$120.06
2x per week	\$168.75	\$185.63	\$204.19	\$214.40	\$225.12
3x per week	\$243.75	\$268.13	\$294.94	\$309.68	\$325.17
4x per week	\$300.00	\$330.00	\$363.00	\$381.15	\$400.21
5x per week	\$387.50	\$426.25	\$468.88	\$492.32	\$516.93
<u>3 Cubic Yard</u>					
1x per week	\$127.50	\$140.25	\$154.28	\$161.99	\$170.09
2x per week	\$240.00	\$264.00	\$290.40	\$304.92	\$320.17
3x per week	\$337.50	\$371.25	\$408.38	\$428.79	\$450.23
4x per week	\$405.00	\$445.50	\$490.05	\$514.55	\$540.28
5x per week	\$468.75	\$515.63	\$567.19	\$595.55	\$625.32
<u>4 Cubic Yard</u>					
1x per week	\$157.50	\$173.25	\$190.58	\$200.10	\$210.11
2x per week	\$273.75	\$301.13	\$331.24	\$345.25	\$359.06
3x per week	\$368.75	\$405.63	\$446.19	\$465.07	\$483.68
4x per week	\$481.25	\$529.38	\$582.31	\$608.66	\$633.00
5x per week	\$600.00	\$660.00	\$726.00	\$762.30	\$800.42



<u>6 Cubic Yard</u>					
1x per week	\$195.00	\$214.50	\$235.95	\$247.75	\$260.13
2x per week	\$305.00	\$335.50	\$369.05	\$385.87	\$401.30
3x per week	\$417.50	\$459.25	\$505.18	\$526.00	\$547.04
4x per week	\$562.50	\$618.75	\$680.63	\$714.66	\$750.39
5x per week	\$700.00	\$770.00	\$847.00	\$884.68	\$920.06
*Customer owned compactor rates are 200% of normal rate					
<b>Commercial Recyclables Rates</b>					
<u>96 Gallon Blue</u>					
1x per week	\$11.25	\$12.38	\$13.61	\$14.29	\$15.01
2x per week	\$22.50	\$24.75	\$27.23	\$28.59	\$30.02
3x per week	\$33.75	\$37.13	\$40.84	\$42.88	\$45.02
<u>2 Cubic Yard</u>					
1x per week	\$52.50	\$57.75	\$63.53	\$66.70	\$70.04
2x per week	\$87.50	\$96.25	\$105.88	\$111.17	\$116.73
3x per week	\$127.50	\$140.25	\$154.28	\$161.99	\$170.09
<u>3 Cubic Yard</u>					
1x per week	\$67.50	\$74.25	\$81.68	\$85.76	\$90.05
2x per week	\$121.25	\$133.38	\$146.71	\$154.05	\$161.75
3x per week	\$190.00	\$209.00	\$229.90	\$241.40	\$253.46
<u>4 Cubic Yard</u>					
1x per week	\$83.75	\$92.13	\$101.34	\$106.40	\$111.72
2x per week	\$137.50	\$151.25	\$166.38	\$174.69	\$183.43
3x per week	\$211.25	\$232.38	\$255.61	\$268.39	\$281.81
<u>6 Cubic Yard</u>					
1x per week	\$103.00	\$113.30	\$124.63	\$130.86	\$137.40
2x per week	\$193.75	\$213.13	\$234.44	\$246.16	\$258.47
3x per week	\$262.50	\$288.75	\$317.63	\$333.51	\$350.18
<b>Commercial Organics Rates</b>					
<u>96 Gallon Container</u>					
1x per week	\$16.75	\$18.43	\$20.27	\$21.13	\$21.98
2x per week	\$32.25	\$35.48	\$39.02	\$40.97	\$43.02
3x per week	\$51.50	\$56.65	\$62.32	\$65.43	\$68.70
4x per week	\$68.25	\$75.08	\$82.58	\$86.71	\$91.05
5x per week	\$83.75	\$92.13	\$101.34	\$106.40	\$111.72
<u>2 Cubic Yard Bin</u>					
1x per week	\$69.63	\$76.59	\$84.25	\$88.46	\$92.88
2x per week	\$127.50	\$140.25	\$154.28	\$161.99	\$170.09

3x per week	\$185.50	\$204.05	\$224.46	\$235.68	\$247.46
4x per week	\$243.38	\$267.71	\$294.48	\$309.21	\$324.67
5x per week	\$301.38	\$331.51	\$364.66	\$382.90	\$402.04
Commercial Contamination Fees*					
1st Occurrence - Per Container Cu Yard	\$12.00	\$13.20	\$14.52	\$15.25	\$16.01
2nd Occurrence - Per Container Cu Yard	\$20.00	\$22.00	\$24.20	\$25.41	\$26.68
Overloaded Container - Per Container Cu Yard	\$12.00	\$13.20	\$14.52	\$15.25	\$16.01
*Contamination applies to all three material types					
Roll Off					
Monthly Rent	\$219.17	\$241.09	\$265.20	\$278.46	\$292.38
Pull Charges Per Load	\$262.50	\$288.75	\$317.63	\$333.51	\$350.18
Tonnage Fees	Based on landfill tipping fees				
Miscellaneous**					
Lost Lock Fee	\$18.15	\$19.97	\$21.96	\$23.06	\$24.21
New or Replacement Can	\$64.49	\$70.94	\$78.03	\$81.93	\$86.03
Delivery Charge	\$12.10	\$13.31	\$14.64	\$15.37	\$16.14
**Miscellaneous fees are contractor rates and do not include a franchise fee					