RESOLUTION NO. 2016-149

A RESOLUTION OF INTENTION BY THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, TO GRANT A NON-EXCLUSIVE FRANCHISE FOR ROLL-OFF COLLECTION SERVICES WITHIN THE CITY OF FRESNO AND SET A DATE FOR PUBLIC HEARING

WHEREAS, pursuant to Article XIII of the Charter of the City of Fresno, proceedings for the establishment of non-exclusive roll-off collection franchises may be instituted by the legislative body by Resolution of Intention to adopt an Ordinance granting the franchises;

WHEREAS, this Council, as a legislative body of the City of Fresno ("City"), hereby determines that it is in the best interest of the City that this Council institute proceedings for the establishment of non-exclusive roll-off collection services franchises pursuant to the Charter in order to facilitate the placement of roll-off collection services contractors on the City of Fresno Department of Public Utilities' Roll-Off Collection List;

WHEREAS, Red Bin Services and JPA Construction Clean-Up Services, Inc., are recommended as franchisees based on the qualitative and quantitative selection criteria that were established; and

WHEREAS, this Resolution effectuates the terms and conditions set forth in the form of the Franchise Agreements executed by the City and the contractors.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The above recitals are true and correct.

Date Adopted: 08/18/2016
Date Approved: 08/18/2016
Effective Date: 08/18/2016

2. A non-exclusive roll-off franchise is proposed to be established under the terms of Article XIII, "Franchises" of the City Charter.

3. The City Council hereby finds and determines that the grant of a non-exclusive roll-off franchise for roll-off collection services to Red Bin Services and JPA Construction Clean-Up Services, Inc, is in the public interest. The franchises granted herein are awarded, from the date of final passage of the franchise ordinance until June 30, 2021, provided that the provisions of this Resolution, Non-Exclusive Franchise Agreement, and the Code have been agreed to in writing by the Grantee and the Grantee has executed the Non-Exclusive Franchise Agreement and the City received and approved the insurance and documents required by such agreement.

4. The grant of this non-exclusive franchise will be expressly subject to and in compliance with all terms and conditions of the Non-Exclusive Franchise Agreement.

5. The Grantees shall during the term of its franchise pay to the City the franchise fee set forth from time-to-time by Council Resolution, as well as all other applicable taxes, fees and charges payable by the Contractors.

6. The form of the Non-Exclusive Franchise Agreement attached hereto is incorporated by reference and hereby approved. The Director of the Department of Public Utilities ("Director") is authorized to execute the same on behalf of the City. The Director is further authorized to execute amendments to such Non-Exclusive Franchise Agreement consistent with the purpose and intent of the franchise ordinance, subject to review and approval by the City Attorney's Office.

7. A public hearing on the granting of a non-exclusive franchise shall be held at 10:00 a.m., or as soon thereafter as practical on Thursday, September 1, 2016, at the

regular meeting of the City Council, Fresno City Hall, 2600 Fresno Street, Fresno, California 93721. The hearing may be continued from time to time as permitted by the Code.

8. At the time and place set forth in this Resolution for the public hearing, any interested person may appear and be heard, and the testimony of all interested persons for or against the granting of the franchise will be heard and considered. Any protest may be made either orally or in writing. All written protests shall be filed with the City Clerk on or before the time fixed for the public hearing, and written protest may be withdrawn in writing at any time prior to the conclusion of the hearing.

9. The City Clerk is hereby directed to publish a Notice of the hearing as defined in Section 1301 of the Charter of the City of Fresno, in the form required by the Charter, within fifteen days of the passage of this Resolution, in a newspaper of general circulation within the City. Said Notice shall be published at least ten days prior to the date of the hearing.

10. At the conclusion of the hearing, if the Council decides to grant the non-exclusive roll-off collection franchise, it shall adopt an ordinance granting the franchise on the terms and conditions specified in this Resolution.

* * * * * * * * * * * * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 18th day of August, 2016.

AYES : Baines, Brand, Brandau, Quintero, Soria, Caprioglio
NOES : None
ABSENT : Olivier
ABSTAIN : None

YVONNE SPENCE, CMC
City Clerk

BY: Yvonne Spence
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

BY: 8/24/16
Brandon M. Collet Date
Deputy

Attachment: Non-Exclusive Franchise Agreements

J.P.A Construction Clean-Up Service Inc.
P.O. Box 505
Santa Ana, CA 92702-0505
Phone: (714) 953-6705 * Fax (714) 953-6703

CITY OF FRESNO INCORPORATED OCT. 12, 1885

April 20, 2016

Public Utilities Director
City Of Fresno
2600 Fresno Street, Room 3065
Fresno, CA 93721-3624
(559) 621-8000

To Whom it May Concern,

Please find attached my application for a Non-Exclusive Franchise Agreement for Roll-Off Collection in the City of Fresno. We were looking for an effective date of 04/30/2016.

The application is being submitted on behalf of :

J.P.A. Construction Clean-Up Service, Inc.
Jose P. Arvizu – President / Secretary
P.O. Box 505
Santa Ana, CA 92702-0505
Tel: (714) 953 - 6705
Fax: (714) 953 – 6703
jpaccs@hotmail.com

Thank you for your time and consideration on this matter.

Sincerely,

Jose P. Arvizu
President / Secretary

2. **Qualification Information:**

A. **Description of Applicant:**

Residential

1. Jose P. Arvizu
   12152 Trask Avenue Apt #67
   Garden Grove, CA 92843
2. N/A
3. N/A

Business

J.P.A. Construction Clean-Up Svc, Inc.
P.O. Box 505
Santa Ana, CA 92702-0505

B. **Experience:**

J.P.A. Construction Clean-Up Service, Inc. has been operating since March 1, 2002. We have provided hauling services for both large and small size construction/demolition companies in and around Southern California including Orange and Los Angeles Counties. We have 6 roll-off trucks and approximately 100 roll-off containers that provide services.

C. **Municipal References:**

Mike Byrne / Public Works
One Civic Center Drive
P.O. Box 19575
Irvine, CA 92623 – 9575
(949) 724-6357
mbyrne@ci.irvine.ca.us

Mike Balliet Consulting
26351 Tarrasa Lane
Mission Viejo, CA 92691
(949) 837-3618
mballiet61@gmail.com

D. **Customer References:**

LDR Golden
Steve McLain / President
25108 Marguerite Pkwy A-360
Mission Viejo, CA 92692
(949) 441-9922
smclain@ldrgolden.com

Absolute Abatement
Chuck Bailey/ Owner
8433 Chetle Ave.
Santa Fe Springs, CA 90670
(562) 945-4700
chuck@absoluteabatement.net

OC Demolition

Jeff McClard / Owner

1906 Kilmer Drive

Placentia, CA 92870

(714) 713-8850

E. **Proof Of Insurance:**

See Attached

F. **Litigation, Regulatory Actions, and Liquidated Damages:**

N/A

G. **Criminal History:**

N/A

3. **Operations Information:**

A. **Diversion Plan:**

When a customer calls for hauling, we discuss the type of materials and determine which are recyclable. We assign and follow-up to ensure that the proper containers are used for the recycling options determined. We ensure that the materials are picked up and correctly diverted to the proper recycling sites.

B. **Vehicles:**

1996 Volvo Roll-Off

Body Type: Roll-Off

Body Capacity: 2

Axles: 3

Vehicle License #: 7H02404

Vehicle Weight: 50,000

C. **Roll-Off Containers:**

6 - 40 cubic yard containers

6 - 10 cubic yard containers

D. **Collection Schedule:**

On call

E. **Permitted Materials to be Collected:**

Concrete, Dirt, Metal, Drywall, Wood, Organic Materials

F. **Processing and Disposal Facilities:**

C&D:	Kroeker 4627 S. Chestnut Ave. Fresno, CA 93725 (559) 237-3764
Green Waste & Wood:	Green Valley Recycling 2365 E. North Ave. Fresno, CA 93725 (559) 266-2650
Metals:	S & A Recycling 3489 S. Chestnut Ave. Fresno, CA 93725 (559) 237-6677

G. **Hazardous Waste Procedures:**

We do not deal with any hazardous waste.

H. **Customer Service Plans:**

922 E. 4th Street

Santa Ana, CA 92701

7am-6pm M-F

(800) 635-2054

I. **Billing Services:**

Our billing cycle is on the 15th of every month for all work performed from the 1st through the 14th and the last day of the month for all work performed from the 15th through the last day.

All payments are applied through our accounting software Quikbooks and are entered into the system and applied the day that they are received.

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/28/2016

CITY OF FRESNO INCORPORATED OCT 12, 1885

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

RTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

AU Insurance Services
10825 Old Mill Rd
Omaha, NE 68154

(877)234-4420

CONTACT NAME:
PHONE (A/C, No, Ext): (877)234-4420 FAX (A/C, No): (877)234-4421
E-MAIL ADDRESS:
PRODUCER CUSTOMER ID #

INSURED

J.P.A. Construction Clean-Up Services, Inc.
dba J.P.A. Construction Clean-Up Services, Inc.
PO Box 505
Santa Ana, CA 92702-0505

CTL 1273 1157764

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: California Insurance Co.	38865
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY							
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	CLAIMS MADE / OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	POLICY / PROJECT / LOC						PRODUCTS - COMP/OP AGG	$
								$
	AUTOMOBILE LIABILITY							
	ANY AUTO						COMBINED SINGLE LIMIT (Ea accident)	$
	ALL OWNED AUTOS						BODILY INJURY (Per person)	$
	SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS						PROPERTY DAMAGE (Per accident)	$
	NON-OWNED AUTOS							$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS MADE						AGGREGATE	$
	DEDUCTIBLE							$
	RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X WC STATUTORY LIMITS / OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N: Y	N/A		46-866524-01-03	02/22/2016	02/22/2017	E.L. EACH ACCIDENT	$ 1,000,000
	(Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach Acord 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

DIrector of Public Utilities City of Fresno
2600 Fresno Street
Fresno, CA 93721

Attn: Project Manager

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE: 0D78336

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ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 04/20/16

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
ROSALIO PLATA INSURANCE SERVICES
2712 N GRAND AVE
SANTA ANA CA 92705

CONTACT NAME: Sergio Delgado
PHONE (A/C, No, Ext): 714-532-1999 FAX (A/C, No): 714-532-3338
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Topa Insurance Co.	18031
INSURER B: Colony Insurance Co.	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
JPA CONSTRUCTION CLEAN-UP SERVICES INC.
PO BOX 505
SANTA ANA CA 92702

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	✓ COMMERCIAL GENERAL LIABILITY ✓ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ✓ POLICY ☐ PRO-JECT ☐ LOC OTHER:	X		MP4158595	01/22/16	01/22/17	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1000000 $ 100000 $ 5000 $ 1000000 $ 2000000 $ INCL.
A	AUTOMOBILE LIABILITY ANY AUTO ✓ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS	X		COM0113841-01	04/18/16	04/18/17	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1000000
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☐	N / A				PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

** Directors Of Public Utilities City of Fresno, Had been added as additional Insured and Certificate Holder **

CERTIFICATE HOLDER

Directors Of Public Utilities City of Fresno
2600 Fresno Street
Fresno CA 93721

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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DEPARTMENT OF PUBLIC HEALTH
Environmental Health Division
PO Box 11800, Fresno, CA 93775-1800
559.600.3271
environmentalhealth@co.fresno.ca.us
www.fcdph.org

SOLID WASTE VEHICLE INSPECTION FORM

HAULER INFORMATION							
Name:	JPA Construction Clean up SVC			Phone:	714-953-6705		
Address:	11082 S. Cedar	City:	Fresno	State:	CA	Zip:	93725
Vehicle Type:	☐ Packer	☐ Side Loader	☐ Front Loader	☐ Rear Loader	☒ Other		
Vehicle Licenses #:	7H02404						
Truck #							
Bin #	40-611						

C	V	C=Compliance V=Violation
X		**14 CCR 17341 EQUIPMENT CONSTRUCTION**
		~~VEHICLE~~ CONSTRUCTION INFORMATION - Roll off bin ☑ Durable. ☑ Easily cleanable. ☑ Designed for safe handling. ☑ Constructed to prevent loss of wastes during collection and transportation. ☐ Vehicle used to collect and transport wet or liquid wastes leak resistant. VEHICLE MAINTENANCE ☐ Vehicle maintained in good condition. ☐ Cleaned at a frequency and in a manner so as to prevent the propagation or attraction of vectors and creation of nuisances. ☐ Hydraulics maintained.
		14 CCR 17342 EQUIPMENT SAFETY
		☐ Vehicle constructed and maintained to minimize health and safety hazards to collection personnel and the public. Vehicle provides required safety devices: ☐ Fire Extinguisher ☐ Brake Lights ☐ Turn Signals ☐ Lights ☐ Horn ☐ Seat Belts ☐ First Aid Kit ☐ Back-up Alarm ☐ Mirrors ☐ Reflective Warning Triangles
X		**14 CCR 17343 EQUIPMENT PARKING**
		Designated off-street parking provided for equipment
X		**14 CCR 17344 IDENTIFICATION OF OPERATOR**
		Vehicle clearly marked with name of agency or firm operating the vehicle
X		**14 CCR 17345 INSPECTION OF EQUIPMENT**
		Equipment available for inspection

VIOLATIONS/CORRECTIVE ACTIONS REQUIRED	Date
Acting permit until paper permit is mailed.	

Received by:	[signature]	Date:	04-19-16
Inspector:	[signature]	Date:	4-19-16

NON-EXCLUSIVE FRANCHISE AGREEMENT

BETWEEN

THE CITY OF FRESNO

AND

JPA Construction Clean-up Svc, Inc.

FOR

ROLL-OFF COLLECTION SERVICES

_____, ~~2011~~ 2016

NON-EXCLUSIVE FRANCHISE AGREEMENT
BETWEEN
THE CITY OF FRESNO
AND
JPA Construction Clean-up Svc, Inc.
FOR ROLL-OFF COLLECTION SERVICES

This non-exclusive franchise agreement (Agreement) is made and entered into this _____ day of _____, 20_____, by and between the City of Fresno, a municipal corporation, (City) and JPA Construction Clean-up Svc, Inc. (Contractor.)

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

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

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

WHEREAS, the Act requires local agencies to divert 50% of discarded materials from landfills; and,

WHEREAS, the City Council established goals of achieving 75% diversion by 2012 and zero waste status by 2025 on June 26, 2007, and approved a Zero Waste Strategic Action Plan on February 11, 2009; and

WHEREAS, the City finds that reusing, Recycling, and Composting Recyclable Materials, Organic Materials, and Construction and Demolition Debris (C&D) and beneficial use or composting of Organic Materials is essential to further the City's efforts to reduce Solid Waste Disposal and comply with the Act and the City's zero waste goals; and

WHEREAS, pursuant to the powers granted the City as a charter city by Article XI, Section 5(a) of the California Constitution and Article XIII of the Fresno City Charter, the City has determined that the public health, safety, and well-being require that a franchise agreement defining non-exclusive rights be awarded to qualified companies to provide for the roll-off container collection of Permitted Materials

except for collection of materials excluded in the City's Municipal Code, and other services related to meeting requirements of the Act; and

WHEREAS, the City requires all haulers providing Roll-Off Collection services for Permitted Materials in the City to obtain a non-exclusive franchise in order to regulate this business, ensure its orderly operation, achieve its diversion goals, and to minimize the potential for adverse effects it may have on the local environment; and

WHEREAS, the City Council has determined through an application process that the Contractor, by demonstrated experience, reputation, and capacity, is qualified to provide for the Roll-Off Container Collection of Permitted Materials within the corporate limits of the City and the Transportation of such material to appropriate places of Recycling, Processing, and/or Disposal, and can provide insurance consistent with the City's requirements. The City Council desires that Contractor be engaged to perform such services on the basis set forth in this Agreement; and

WHEREAS, Contractor intends to use the City's streets, alleys, other public rights-of way, and infrastructure to provide Roll-Off Collection services to the City's residents and businesses; and

WHEREAS, the City intends to receive just and reasonable fees from the Contractor for City's administration of the Agreement and for Contractor's use of the City streets, alleys, other public rights-of-way, and infrastructure which the City may lawfully impose and the companies are obligated to pay; and,

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Article and shall be capitalized throughout this Agreement:

"Act" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.

"Agreement" means this Agreement between the City and Contractor for Roll-Off Container Collection, Processing, and Disposal of Permitted Materials including all exhibits, and any future amendments hereto.

"Applicable Law" means all Federal, State, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over the Roll-Off Container Collection, Transportation, Recycling, Processing, and Disposal of Permitted Materials that are in force on the Effective Date and as they may be enacted, issued, or amended during the Term of this Agreement.

"Approved C&D Processing Site" means the processing site specified in Exhibit D, which was selected by Contractor and approved by the City.

"Approved Disposal Site" means a Disposal Site selected by the Contractor or its Subcontractor(s) and approved by the City for Disposal of residue from Approved Processing Site(s). Approved Disposal Site(s) are listed in Exhibit D.

"Approved Organics Processing Site" means the processing site specified in Exhibit D, which was selected by Contractor and approved by the City.

"Approved Processing Site(s)" means the Approved C&D Processing Site, Approved Organics Processing Site, and/or Approved Recyclables Processing Site.

"Approved Processor" means the operator of an Approved Processing Site.

"Approved Recyclables Processing Site" means the processing site specified in Exhibit D, which was selected by Contractor and approved by the City.

"**Bin**" means a container with capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels, that is typically serviced by a front end-loading Collection vehicle.

"Business Days" mean days during which City offices are open to do business with the public.

"**Cart**" means a plastic container with a hinged lid and wheels that is typically serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 64, or 96 gallons (or similar volumes).

"C&D" means Construction and Demolition Debris.

"Change in Law" means any of the following events or conditions that have a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Effective Date of any Applicable Law; or

b. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the City or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

"City" means the City of Fresno, California, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the Term.

"City's Municipal Code" means the City of Fresno Municipal Code.

"Collect" or **"Collection"** means the act of collecting Permitted Materials and other material at the place of generation in the City.

"**Commercial**" shall mean of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

"Compactor" means a mechanical apparatus that compresses materials into a container, which container may be detachable. For the purposes of this Agreement, Compactors shall include only Compactors with container capacities of ten (10) to fifty (50) cubic yard that are serviced by Roll-Off Collection Trucks.

"**Compost**" or "**Composting**" includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost Product.

"**Compost Product**" means the product resulting from the controlled biological decomposition of Organic Materials that are Source Separated from the Solid Waste stream, or which are separated at a centralized facility.

"Construction and Demolition Debris (C&D)" means materials resulting from construction, remodeling, repair, cleanup, or demolition operations that are not hazardous as defined in California Code of Regulations, Title 22 Section 66261.3. This term includes, but is not limited to, asphalt, concrete, cement concrete, brick, lumber, gypsum wallboard, concrete board, cardboard, and other associated packaging, roofing material, ceramic tile, carpeting, plastic pipe and steel, as well as vegetative matter resulting from land clearing and landscaping including but not limited to rock, soil, tree stumps. Construction and Demolition Debris excludes putrescible wastes.

"Contractor" , means JPA Construction Cleanup LLC (insert contractor's name), a Corporation (insert corporation, sole proprietorship, partnership as appropriate) organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies, and Subcontractors.

"Contractor Party(ies)" shall mean Contractor, officers, directors, management employees, or fiscal employees (where "management employee" means any employee with direct or indirect responsibility for direction and control over the Contractor's activities under this Agreement and "fiscal employee" means an employee with direct or indirect responsibility and control duties relating to financial matters under this Agreement).

"Criminal Activity" means those activities described in Section 12.12.1.

"Customer" means the Person whom Contractor submits billing invoice to and collects payment from for Collection services provided.

"Designated Disposal Site" means the American Avenue Landfill at 18950 W American Avenue in Tranquility, California for the purposes of Disposing Solid Waste.

"Designated Waste" means non-Hazardous Wastes that may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal Sites or Class III Disposal Sites pursuant to a variance issued by the California Department of Health Services.

"Director" shall mean the Public Utilities Director of the City or an authorized representative of the Public Utilities Director.

"Discarded Materials" means Solid Waste, Recyclable Materials, Organic Materials, or C&D placed by a Generator in a receptacle and/or at a location that is designated for Collection pursuant to the City's Municipal Code.

"Disposal or Dispose (or variation thereof)" means the final disposition of Solid Waste at a Disposal Site.

"Disposal Site" means a facility for ultimate Disposal of Solid Waste.

"Diversion" means activities that reduce or eliminate the amount of Solid Waste from Solid Waste Disposal including, but not limited to, Recycling, and Composting.

"Drop Box" means an open-top container with capacity from six (6) to fifty (50) cubic yards that is used for Collection of Permitted Materials and that is serviced by a Roll-Off Collection Truck. Drop Boxes with capacities of less than ten (10) cubic yards may only be used for the purposes of Collecting C&D. A Drop Box, which is also known as a roll-off box and/or debris box, is a type of Roll-Off Container.

"Effective Date" means the date set forth in the introductory paragraph of this Agreement.

"Federal" means belonging to or pertaining to the national general government of the United States.

"Food Scraps" means those discarded materials that will decompose and/or putrefy including (i) all kitchen and table food waste, (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs, (iii) discarded paper that is contaminated with Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat and fish waste; and, (v) non-Recyclable paper or contaminated paper. Food Scraps are a subset of Organic Materials.

"Franchise Fee" means the fee paid by Contractor to City for the privilege to hold the non-exclusive rights granted by this Agreement.

"Generator" means any Person whose act or process produces Permitted Materials, or whose act first causes Permitted Materials to become subject to regulation.

"Green Waste Material" means any materials generated from the maintenance or alteration of public, commercial, or residential landscapes that will decompose and/or putrefy including, but not limited to, yard clippings, grass, leaves, shrub/tree trimmings or prunings (less than 4" in diameter), brush, flowers, weeds, dead plants, small pieces of unpainted and untreated wood, and other types of organic waste. For the purposes of this Agreement, such materials shall be Source Separated and placed by a Generator in a receptacle and/or at a location that is designated for Collection. Green Waste Material is a subset of Organic Materials.

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

"Holidays" are defined as New Year's Day, Thanksgiving Day, and Christmas Day.

"Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments, as defined in Health and Safety Code Section 25117.5.

"Liquidated Damages" means the amounts due by Contractor to City for failure to meet specific quantifiable standards of performance as described in Section 11.4 and Exhibit A.

"Organic Materials" means those discarded materials that will decompose and/or putrefy including Green Waste Material and Food Scraps such as, but are not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with Food Scraps, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No discarded material shall be considered to be Organic Materials, unless such material is Source Separated from Solid Waste, Recyclable Materials, C&D, or other materials.

"Parent Company" refers to a company owning more than fifty percent (50%) of the shares of another company (subsidiary) or a company that has management control over such subsidiary.

"Party or **Parties"** refers to the City and Contractor, individually or together.

"Permitted Materials" refers to Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D. Permitted Materials excludes Source Separated Food Scraps.

"Person(s)" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Fresno, and special purpose districts.

"Premises" means any land or building in the City where Permitted Materials are generated or accumulated.

"Processing" means to prepare, treat, or convert through some special method.

"Processing Site" means any plant or site used for sorting, cleansing, treating, or reconstituting Permitted Materials for the purpose of making such material available for reuse.

"**Putrescible Waste**" means Solid Wastes originated from living organisms and their metabolic waste products and from petroleum, which contains naturally produced organic compounds and which are

biologically decomposable by microbial and fungal action into the constituent compounds of water, carbon dioxide and other simpler organic compounds.

"Rates" means the charges and fees Contractor bills and collects from each Customer receiving service pursuant to this Agreement.

"Recyclable Materials" means those Discarded Materials that the City Code permits, directs and/or requires Generators to set out in Recyclables Materials containers for Collection for the purpose of Recycling. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Solid Waste and Organic Materials. Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, soap boxes, cereal and other similar food boxes); chipboard; cardboard; paper milk cartons; glass containers of any color (including glass bottles and jars all colors); aluminum cans; fabric softener containers; steel, tin or bi-metal cans; plastic containers (clear or green plastic soda and water bottles, plastic containers and bottles and plastic bags with no. 1, 2 or 3 on the bottom); and food containers from potato salad, pasta salad, whipped cream, etc.

"Recycle or Recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, or thermally destroying solid waste.

"Residential" shall mean of, from, or pertaining to a single-family Premises, multi-plex, or multi-family Premises including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, cooperative apartments, and yacht harbors and marinas where residents live aboard boats.

"Roll-Off Container" means a Drop Box or Compactor used for Collection of Permitted Materials and serviced by a Roll-off Collection Truck. Roll-Off Containers with capacities of less than ten (10) cubic yards may only be used for the purposes of Collecting C&D.

"Roll-Off Collection Truck" means a collection vehicle with a mechanical device such as a winch that pulls or loads a Roll-Off Container onto the truck bed or attached trailer and separately transports each Roll-Off Container to a Disposal Site or Processing Site.

"Solid Waste" means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder and those Discarded Materials that the City Code requires Generators within the City to set out for Collection. Excluded from the definition of Solid Waste are C&D, Hazardous Waste, Infectious Waste, Designated Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, "Solid Waste" may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Section 41500 and 41802 of the California Public Resources Code.

"Source Separated" means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Processing, Composting, recovery, or reuse.

"State" means the State of California.

"Subcontractor" means a party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor's fulfillment of its obligations under this Agreement.

"Term" means the Term of this Agreement, including extension periods if granted, as provided for in Article 3.

"Ton" means a unit of measure for weight equivalent to 2,000 standard pounds where each pound contains 16 ounces.

"Tonnage" means the total weight in Tons Collected, Recycled, Composted, Diverted, or Disposed of, as the context requires.

"Transportation" means the act of transporting or state of being transported.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

2.1 REPRESENTATIONS AND WARRANTIES

The Contractor, by execution of this Agreement, represents and warrants the following to City, for the purpose of inducing City to enter into this Agreement and to consummate the transactions contemplated hereby:

A. **Corporate Status.** Contractor is duly organized, validly existing and in good standing under the laws of the State. It is qualified to transact business in the City and State and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

B. **Authorization.** Contractor has the authority to enter this Agreement and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary), sole proprietor, or partners have taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of Contractor represents and warrants that they have authority to do so and the corporate secretary's certificate in Exhibit B confirms this. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

C. **Agreement Will Not Cause Breach.** To the best of Contractor's knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by Contractor of its obligations hereunder does not conflict with, violate, or result in a breach: (i) of any law or governmental regulation applicable to Contractor; (ii) any term or condition of any judgment, order, or decree of any court, administrative agency or other governmental authority; or, (iii) any Agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitute a default thereunder.

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

1. Materially adversely affect the performance by Contractor of its obligations hereunder;

2. Adversely affect the validity or enforceability of this Agreement; or

3. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

E. **No Adverse Judicial Decisions.** To the best of Contractor's knowledge after reasonable investigation, there is no judicial decision that would prohibit this Agreement or subject this Agreement to legal challenge.

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

G. **Contractor's Statements.** The Contactor's Application and any other supplementary information submitted to the City, which the City has relied on in entering this Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

H. **Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Contractor has considered such matters in entering this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.

I. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to Collect, Transport, Recycle, Process, and Dispose Permitted Materials generated in the City. Contractor possesses the equipment, facility(ies), and employee resources required to perform its obligations under this Agreement.

ARTICLE 3
TERM OF AGREEMENT

3.1 EFFECTIVE DATE

Contractor may provide the Roll-Off Container Collection, Transportation, Recycling, Processing, Composting, and Disposal services authorized by this Agreement commencing on the Effective Date.

3.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

The obligation of City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which may be waived, in written form, in whole or in part by City.

A. **Accuracy of Representations.** The representations and warranties made in Article 2 of this Agreement are true and correct on and as of the Effective Date.

B. **Absence of Litigation.** There is no litigation pending on the Effective Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.

C. **Furnishings of Insurance.** Contractor has furnished evidence of the insurance required by Article 10 that is satisfactory to the City.

D. **Effectiveness of City Council Action.** The City Council action approving this Agreement shall have become effective and all Parties shall have signed the Agreement pursuant to Applicable Law prior to or on the Effective Date, provided that no restraining order of any kind has been issued.

3.3 INITIAL TERM

The initial Term of this Agreement shall commence on the Effective Date and continue in full force for five (5) years, until June 30, 2016. The Term may be extended pursuant to Section 3.4 or terminated early in accordance with Section 11.2.

3.4 OPTION TO EXTEND

Subject to City Council approval, the City shall have the option to extend this Agreement for an additional term of up to five (5) years. If the City extends the Agreement, it shall give written notice to Contractor at least one hundred eighty (180) calendar days prior to expiration of the Initial Term. The City's written notice shall specify the number of years by which it elects to extend the Term of this Agreement and the revised expiration date of the Agreement. Any such extension shall not become effective unless Contractor agrees to the extension, in writing, at least one hundred fifty (150) calendar days prior to expiration of the Initial Term.

ARTICLE 4
SCOPE OF AGREEMENT

4.1 SCOPE OF AGREEMENT

This non-exclusive franchise, granted to Contractor, authorizes Contractor to Collect, Transport, Recycle, Process, Compost, and Dispose of Permitted Materials placed by Residential or Commercial Generators in Roll-Off Containers for Collection, provided that the Customer has voluntarily arranged for Contractor to provide Collection services.

The Contractor shall be responsible for the following services:

A. Collecting Permitted Materials placed by each Customer in a Roll-Off Container for Collection as requested by Customer.

B. Providing each Customer, upon delivery of Roll-Off Container, a printed list that specifies the materials that cannot be placed in the Roll-Off Container (i.e., Hazardous Wastes) and a list of acceptable Recyclable Materials, Organic Materials, and C&D that may be placed in the Roll-Off Container.

C. Transporting Collected Solid Waste to the Designated Disposal Site and transporting other materials to an Approved Processing Site.

D. Furnishing all labor, supervision, vehicles, Roll-Off Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement.

E. Paying all expenses related to provision of services required by this Agreement including, but not limited to, Franchise Fees, taxes, regulatory fees, Collection costs, Transportation costs, Processing costs, Disposal costs, utilities, etc.

F. Providing all services required by this Agreement in a thorough and professional manner so that residents, businesses, and the City are provided timely, reliable, courteous and high-quality service at all times.

G. Performing all services in substantial accordance with this Agreement at all times using best industry practice for comparable operations.

H. Complying with Applicable Law.

I. Performing or providing all other services necessary to fulfill its obligations under this Agreement.

J. Diverting a minimum of 50% of the C&D Collected from Disposal. The Diversion rate shall be calculated each month based upon the weights of C&D Collected and Diverted.

K. Diverting a minimum of 70% of the Recyclable Materials Collected from Disposal. The Diversion rate shall be calculated each month based upon the weights of Recyclable Materials Collected and Diverted.

L. Diverting a minimum of 90% of the Organic Materials Collected from Disposal. The Diversion rate shall be calculated each month based upon the weights of Organic Materials Collected and Diverted.

The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not relieve Contractor of the duty of accomplishing all other aspects necessary to fulfill its obligations under this Agreement whether such requirements are enumerated elsewhere in the Agreement or not.

4.2 LIMITATIONS TO SCOPE

The scope of the Agreement shall be non-exclusive. Permitted Materials may be Collected and Transported by other Persons provided that such Persons do so in accordance with the City's Municipal Code, including but not limited to the following:

A. **Permitted Materials Collected by Other Non-Exclusive Franchise Haulers.** Permitted Materials Collected by a party that has executed a Non-Exclusive Franchise Agreement with the City for Roll-Off Container Collection Services.

B. **Permitted Materials Collected by City.** Permitted Materials collected by the City's municipal collection operation including: (1) materials Collected using equipment, such as Carts and Bins, not regulated by this Agreement (2) materials Collected from City facilities, and special events and venues sponsored by the City, which may be Collected in Carts, Bins, or Roll-Off Containers by the City's municipal collection operation or City crews.

C. **Donated Recyclable Materials.** Recyclable Materials Generated in the City that are Source Separated and donated by the Generator to youth, civic, charitable, or other nonprofit organizations.

D. **Materials Hauled by Owner or Occupant, or its Contractor.** Permitted Materials that are removed from any Premises and are Transported to a Disposal Site or Processing Site by (i) the Owner or Occupant of such Premises, (ii) by full-time employee of Owner or Occupant that uses the Owner's or Occupant's equipment to transport materials; or (iii) by a construction or demolition contractor performing construction or demolition work at the Premises, whose removal of the Permitted Materials is incidental to the service being performed (as defined in Section 6-205(f)(iii) of the City's Municipal Code) and such contractor removes materials at no additional or separate fee using contractor's employees and contractor's equipment.

E. **Green Waste Material.** Private collection of Green Waste Material resulting from landscaping or gardening service performed by the person collecting such materials.

F. **Other Recyclable Materials**. Private collection by any person or company that transports Recyclable Materials through use of its own vehicle(s), and receives no compensation for such Collection or Transportation.

G. **Materials from Public Schools and Other Government Facilities**. The removal of any materials generated by public schools, cities, the County, or federal facilities (with the exception of those facilities subject to 42 U.S.C. Section 6961(a)).

4.3 CITY'S RIGHT TO GRANT MULTIPLE NON-EXCLUSIVE AGREEMENTS

The City may grant to an unlimited number of additional Persons similar non-exclusive franchise agreements for Roll-Off Container Collection, Transportation, Recycling, Processing, Composting, and Disposal of Permitted Materials.

4.4 CITY'S RIGHT TO EXCLUDE NEWLY ANNEXED TERRITORY FROM SCOPE OF FRANCHISE

The City reserves the right to exclude territory that is annexed into the corporate limits of the City subsequent to the Effective Date from the scope of this franchise.

4.5 AGREEMENT CONSISTENT WITH APPLICABLE LAW

This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law, now and during the Term. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the City to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial interpretations or new laws.

4.6 OWNERSHIP OF MATERIALS

Once Permitted Materials are placed in a Roll-Off Container for Collection by Contractor, ownership and the right to possession of such materials shall transfer directly from the Customer to Contractor.

On a short-term basis not to exceed more than five (5) calendar days per year, City may obtain ownership or possession of Permitted Materials placed in the Roll-Off Container for Collection, for purposes of waste characterization studies, upon written notice to Contractor of its intent to do so. However, nothing in this Agreement shall be construed as giving rise to any inference that City has such ownership or possession unless such written notice has been given to Contractor.

4.7 NOTIFICATION TO CITY OF NON-FRANCHISED HAULERS

If Contractor can produce evidence that other Persons are Collecting Permitted Materials and do not have rights to do so as granted by non-exclusive franchise agreement with the City or otherwise, or in a manner that is not consistent with the City's Municipal Code, Contractor shall notify the City in writing, within ten (10) calendar days of Contractor witnessing such circumstances. The Contractor's notice shall include the name and telephone number of the Person or company Collecting Permitted Materials (if known), the date the Contractor witnessed the event, the location of the Roll-Off Container along with Contractor's evidence of the violation of the rights granted by this non-exclusive franchise.

ARTICLE 5
COLLECTION, PROCESSING, AND DISPOSAL SERVICES

5.1 COLLECTION

Contractor is hereby authorized to Collect Permitted Materials from residents and businesses in the City using Roll-Off Containers. Contractor shall Collect Permitted Materials from Customers that voluntarily subscribe to or request Roll-Off Container Collection services from Contractor. Contractor shall provide its Customers with a Roll-Off Container for Permitted Materials Collection or shall allow its Customers to provide a Roll-Off Container. Contractor shall Collect Permitted Materials from Premises as frequently as scheduled by Contractor or as mutually agreed with Customer, but not less than once a week for Solid Waste and Organic Materials. Contractor shall provide requested service to its Customers and shall charge Customers for service at Rates mutually agreed by Customer and Contractor.

Contractor shall Transport Solid Waste Collected pursuant to this Agreement to the Designated Disposal Site and other materials to an Approved Processing Site that has been selected by the Contractor and approved by the City. The Approved Processing Site(s) must be able to demonstrate Diversion rates in accordance with Sections 4.1 and 5.3.

Contractor may enter into contracts with Customers for Collection services provided that in no case shall the term of such contracts extend beyond the Term of this Agreement, and provided that in the event the City terminates this Agreement the contracts with any and all Customers shall terminate on the termination date of this Agreement.

5.2 PROCESSING AND MARKETING SERVICES

A. **Processing.** Contractor agrees to Transport and deliver (i) all C&D it Collects in the City to the Approved C&D Processing Site, (ii) all Recyclable Materials it Collects in the City to the Approved Recyclable Processing Site, and (iii) all Organic Materials it Collects in the City to the Approved Organics Processing Site. Residue from the C&D, Recyclable Materials, and Organics Processing and Composting activities shall be Disposed of by Contractor or its Approved Processor at an Approved Disposal Site selected by Contractor in accordance with Section 5.4. Contractor selected the Approved Processing Site(s) and Approved Disposal Site(s), which are identified in

Exhibit D. Contractor shall permit or arrange for the City to inspect the Approved Processing Site(s) and observe operations at any time during the Term.

Contractor or its Approved Processor(s) shall possess all permits and approvals necessary for use of the Approved Processing Site(s) in full regulatory compliance. Contractor shall, upon City request, provide or request from its Approved Processor(s) and provide copies of notices of violation or permits to the City. Upon request of the City, Contractor shall provide a certified statement from its Approved Processor(s) documenting its Diversion rate.

If Contractor elects to use a Processing Site(s) that is different than the Approved Processing Site(s) specified in Exhibit D, it shall request written approval from the City sixty (60) calendar days prior to use of the site and obtain the City's written approval no later than ten (10) calendar days prior to use of the site.

If Contractor is unable to use an Approved Processing Site due to an emergency or sudden unforeseen closure of the Approved Processing Site, Contractor may use an alternative Processing Site provided that (i) the Contractor provides verbal and written notice to the City within twenty-four (24) hours of use of an alternative Processing Site, and (ii) the alternative Processing Site is fully permitted and in compliance with all Applicable Laws. The written notice shall include a description of the reasons the Approved Processing Site is not feasible and the period of time Contractor proposes to use the alternative Processing Site. Contractor shall use the alternative Processing Site for no more than twenty-four (24) hours without obtaining City's written approval.

B. **Marketing.** The Contractor or its Approved Processor shall be responsible for marketing C&D, Recyclable Materials, and Organic Materials Collected in the City and Diverted. Contractor and/or its Approved Processor may retain all revenues generated from the sale of Permitted Materials that are Diverted.

Upon request, Contractor or its Approved Processor shall provide proof (in the form of sales receipts showing end-user) to the City that all C&D, Recyclable Materials, and Organic Materials Diverted are marketed for Recycling or reuse in such a manner that materials shall be considered as Diverted in accordance with the State regulations established by the Act. All residual material from the Processing activities that is not marketed for use shall be accounted for as Disposal Tonnage at a permitted Disposal Site. No Permitted Material shall be transported to a domestic or foreign location if Solid Waste Disposal of such material is its intended use.

Contractor or its Approved Processor shall provide the City, upon written request, with a list of broker/buyers it uses to market C&D, Recyclable Materials, and Organic Materials Diverted. City may audit brokers or buyers to confirm that materials are being Recycled and Diverted from Disposal. If Contractor becomes aware that a broker or buyer has illegally handled or Disposed of material generated by the City or elsewhere, Contractor shall immediately inform the City and terminate its contract or working relationship with such party immediately.

C. **Processing and Marketing Costs**. Contractor shall pay all costs associated with Processing and marketing of Permitted Materials including payment of any gate fees charged at the Approved Processing Sites.

5.3 DIVERSION REQUIREMENT

Contractor shall Divert from landfill disposal at least (i) 50% by weight of all C&D it Collects within the City, (ii) 70% by weight of all Recyclable Materials it Collects within the City, and (iii) 90% by weight of all Organic Materials it Collects within the City during each calendar month by Processing, Recycling, or Composting some or all of the C&D, Recyclable Materials, and Organic Materials Collected.

If Contractor fails to meet the Diversion requirements stated in the preceding paragraph during a calendar month, the City may terminate the Agreement in accordance with Section 11.5.

5.4 DISPOSAL

A. **Disposal of Solid Waste Collected**. Contractor shall Transport all Solid Waste Collected in the City to the Designated Disposal Site, which the City specifies shall be the American Avenue Landfill in Tranquility, California. Contractor shall pay all costs associated with Transporting and Disposal of Solid Waste including payment of any gate fees charged at the Designated Disposal Site.

B. **Disposal of Processing Residue**. Contractor shall, or shall require its Approved Processor to, Dispose of residue from Processing of C&D, Recyclable Materials, and Organic Materials Collected within the City, that are not Diverted through Processing activities, by Transporting the residue to an Approved Disposal Site specified in Exhibit D, which is lawfully authorized to accept such material.

C. **Permitted Site**. Contractor or its Approved Processor shall only Dispose of materials at a permitted Disposal Site that is in full regulatory compliance. Contractor, or its Approved Processor, shall keep or confirm all existing permits and approvals necessary for use of the Disposal Site(s) in full regulatory compliance. Contractor shall, upon request, provide copies of notices of violation or permits to the City.

D. **Compliance with Regulations**. Contractor shall observe and comply with all regulations in effect at the Designated Disposal Site and Approved Disposal Site(s) and cooperate with the operator thereof with respect to delivery of Solid Waste, including directions to unload Collection vehicles in designated areas, accommodating operations and maintenance activities, and complying with Hazardous Waste exclusion programs.

E. **Disposal at Approved Site**. Contractor, or its Approved Processor, shall not Dispose of such residue by depositing it on any public or private land, in any river, stream, or other waterway, or in any sanitary sewer or storm drainage system or in any other manner which violates Applicable Laws. Contractor, or its Approved Processor, selected the Approved Disposal Site(s) for residue Disposal specified in Exhibit D. Contractor shall arrange for the City to inspect the Approved Disposal Site(s) and observe operations at any time during the Term.

F. **Alternative Disposal Site**. If Contractor, or its Approved Processor, elects to use a Disposal Site(s) that is different than the Approved Disposal Site(s) listed in Exhibit D, it shall request written approval from the City 60 calendar days prior to use of the site and obtain the City's written approval no later than 10 calendar days prior to use of the site.

If Contractor, or its Approved Processor, is unable to use the Approved Disposal Site due to an emergency or sudden unforeseen closure of the Approved Disposal Site, Contractor, or its Approved Processor, may use an alternative Disposal Site provided that (i) the Contractor provides verbal and written notice to the City within twenty-four (24) hours of use of an alternative Disposal Site, and (ii) the alternative Processing Site is fully permitted and in compliance with all Applicable Laws. The written notice shall include a description of the reasons the Approved Disposal Site is not feasible and the period of time Contractor, or its Approved Processor, proposes to use the alternative Disposal Site. Contractor shall use the alternative Disposal Site for no more than twenty-four (24) hours without obtaining City's written approval.

5.5 BILLING

Contractor shall bill all Customers and collect billings in accordance with Contractor-established Rates, which are set in a manner consistent with provisions of Section 9.3. The Contractor shall prepare, mail, and collect bills (or shall issue written receipts for cash payments) for Collection services provided by Contractor. Contractor shall be responsible for collection of payment from Customers with past due accounts.

Contractor shall maintain copies of all billings and receipts, each in chronological order, for five (5) years after expiration or termination of this Agreement. Contractor shall retrieve and make available to the City copies of the billings and receipts within five (5) days of the Director's written request for the billings and receipts. The Contractor may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

5.6 CUSTOMER SERVICE

Contractor shall maintain a business office within the City or within a reasonable distance of the City limits approved by the Director. The business office shall staff at least one customer service representative capable of accepting payments from Customers, answering service questions, and resolving Customer service issues. Contractor shall have a toll-free Customer service telephone number and shall have staff available to answer calls from at least 8:00 a.m. to 6:00 p.m., Monday through Friday. An answering machine shall record Customer calls and voice messages between 6:00 p.m. and 8:00 a.m.

ARTICLE 6
STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT, AND PERSONNEL

6.1 OPERATING DAYS, HOURS, AND SCHEDULES

A. **Days and Hours of Collection**

1. **Residential Premises.** Delivery or Collection of a Roll-Off Container to or from Residential Premises shall only occur between the hours of 6:00 a.m. and 6:00 p.m., any day of the week.

2. **Commercial Premises.** Delivery or Collection of a Roll-Off Container to or from Commercial Premises that are 200 feet or less from Residential Premises shall only occur between the hours of 6:00 a.m. and 6:00 p.m., any day of the week. Delivery or Collection of a Roll-Off Container to or from Commercial Premises that are more than 200 feet from Residential Premises shall only occur between the hours of 5:00 a.m. and 7:00 p.m., any day of the week. The Director may require modifications to hours for delivery and Collection from Commercial Premises to resolve noise complaints, and, in such case, the Director may change the allowable operating hours.

3. **Exceptions.** In the event of an unforeseen circumstance, the Contractor may deliver or Collect a Roll-Off Container from Residential or Commercial Premises that are 200 feet or less from Residential Premises between the hours of 5:00 a.m. and 10:00 p.m., upon prior written approval from the Director.

4. **Failure to Comply.** If the Contractor fails to comply with the Collection hours described in this Section, the Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit A.

6.2 COLLECTION STANDARDS

6.2.1 Instructions to Customer

Contractor shall instruct Customers as to any preparation of Permitted Materials necessary prior to placing in the Roll-Off Container. Contractor shall, in written form, inform all Customers as to the acceptable materials that can be included in the Roll-Off Container and any unacceptable materials to be excluded from Collection.

6.2.2 Care of Private Property

Contractor shall not damage private property. Contractor shall ensure that its employees: (i) close all gates opened in making Collections, unless otherwise directed by the Customer; (ii) do not cross landscaped areas; and (iii) do not climb or jump over hedges and fences.

City shall refer complaints about damage to private property to Contractor. Contractor shall repair all damage to private and public property caused by its employees to its previous condition.

6.2.3 Litter Abatement

A. **Minimization of Spills.** Contractor shall use due care to prevent vehicle oil and vehicle fuel from being spilled or scattered during Collection and Transportation operations. If any Permitted Materials are spilled or scattered during Collection or Transportation operations, the Contractor shall promptly clean up all spilled and scattered materials.

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, hot load (combustion of material in the truck), accidental damage to a vehicle, or unless approved by the City.

If Contractor fails to perform some or all of the requirements described in this Section, the Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit A.

B. **Clean-Up**. Each Collection vehicle shall carry protective gloves, a broom, and shovel at all times for cleaning up litter and absorbent material for cleaning up liquid spills. The Contractor shall discuss instances of repeated spillage not caused by it with the Customer of the Premises where spillage occurs, and Contractor shall report such instances to City. If the Contractor has attempted to have a Customer stop creating spillage but is unsuccessful, the City will attempt, upon notice by the Contractor, to rectify such situation with the Customer.

C. **Covering of Loads**. Contractor shall cover all Roll-Off Containers at the pickup location before Transporting materials to prevent Permitted Materials from escaping during Transportation.

6.2.4 Noise

All Collection operations shall be conducted as quietly as possible and shall conform to Applicable Law. Contractor will promptly resolve any Complaints of noise during the morning or evening hours of the day to the satisfaction of the City. In the event of repeat occurrences of noise levels in excess of 75 db(A), the Contractor shall pay Liquidated Damages in accordance with Section 11.4 and Exhibit A.

6.3 VEHICLE REQUIREMENTS

A. **General.** Vehicles used to provide services under this Agreement shall be kept in a safe, neat, clean, and operable condition at all times. If Contractor fails to keep Collection vehicles in a safe and sanitary condition, the Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit A.

B. **Specifications.** Contractor shall register all vehicles with the California Department of Motor Vehicles. All such vehicles shall comply with California Environmental Protection Agency (EPA) noise emission and air quality regulations and other applicable noise control regulations.

C. **Vehicle Identification.** Contractor's name, local telephone number, and a unique identification number for each vehicle used to provide services under this Agreement, shall be prominently displayed on all vehicles, in letters and numbers that are a minimum of 4 inches high. Contractor shall not place the City's logo on its vehicles.

D. **Cleaning and Maintenance**

1. **Cleaning.** Collection vehicles shall be thoroughly washed and thoroughly steam cleaned as frequently as necessary to present a clean appearance of the exterior and interior compartment of the vehicle.

2. **Maintenance.** Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operating properly. Contractor shall perform all scheduled maintenance

functions in accordance with the manufacturer's specifications and schedule or in accordance with California Highway Patrol standards, whichever are more stringent. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage, and shall make such records available to the City upon request to the extent necessary to perform the inspections described in Sections 6.3.F and 6.8.

3. **Repairs.** Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause, so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

4. **Storage.** Contractor shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with City's applicable zoning regulations.

E. **Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions for vehicles and roads. Contractor shall have each Collection vehicle weighed at each Approved Processing Sites or Designated Disposal Site to determine the unloaded weight ("tare weight") of the vehicle, and the total loaded weight of each load delivered to the Approved Processing Sites and Designated Disposal Site.

F. **Vehicle Inspection.** City may inspect vehicles at any time to determine compliance with the requirements of this Agreement. Contractor shall make vehicles available to the City and/or Fresno County Health Department for inspection, at any frequency City reasonably requests.

6.4 ROLL-OFF CONTAINER REQUIREMENTS

A. **General.** All Roll-Off Containers shall meet applicable Federal, State, City and local regulations for safety.

B. **Specifications**

1. **Prevent Leakage**. If the type of materials placed in the container may result in leakage of liquids, Contractor shall take precautions to prevent the leakage of liquids. In accordance with Section 17315 of Chapter 3 of Title 14 of the California Code of Regulations, Roll-Off Containers used to Collect garbage and putrescible materials and/or garbage and putrescibles mixed with rubbish shall be non-absorbent, water-tight, vector-resistant, durable, easily cleanable, and shall be designed for safe handling and the containment of refuse.

2. **Provision of Sufficient Capacity**. In accordance with Section 17315 of Chapter 3 of Title 14 of the California Code of Regulations, Containers for garbage and rubbish should be of an adequate size and in sufficient numbers to contain without overflowing, all the refuse that a household or other establishment generates within the designated removal period.

3. **Use of Containers with Less than Ten (10) Cubic Yards of Capacity.** Roll-Off Containers with capacities of less than ten (10) cubic yards may only be used for the purposes of Collecting C&D.

C. **Roll-Off Container Identification.** All Contractor-provided Roll-Off Containers shall prominently display the Contractor's name, local telephone number, a unique Roll-Off Container identification number, and a list of acceptable materials. As appropriate, Roll-Off Containers shall be labeled for: Solid Waste, Recyclable Materials, Organic Materials, or C&D. Such labeling may be temporary labeling in the form of magnetic or detachable signs.

If Contractor fails to comply with the provisions of this Section 6.4, the Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit A.

D. **Cleaning, Painting, and Maintenance.** All Roll-Off Containers shall be maintained in a safe, serviceable, and functional condition. Contractor shall steam clean and repaint all Roll-Off Containers at least every two years, or more frequently, to present a clean, graffiti-free appearance.

E. **Roll-Off Container Inspections.** City may inspect Roll-Off Containers at any time to determine compliance with sanitation requirements. Contractor shall make Containers available to the City at any frequency it requests. The City shall have the right to prohibit the use of any Roll-Off Container that fails to comply with the provisions in this Section 6.4.

F. **Abandoned Roll-Off Containers.** Contractor shall not Abandon any Roll-Off Container used to provide Permitted Materials Collection services under this Agreement. If the Contractor Abandons a Contractor-owned Roll-Off Container, City may remove the Roll-Off Container and Process and Dispose of the contents. If the City removes a Roll-Off Container Abandoned by Contractor, the City may charge Contractor for the City's costs incurred removing such Roll-Off Container, Transporting, Processing, and Disposing of its contents, and/or the cost of storing such Roll-Off Container. Contractor shall reimburse the City for such costs within fourteen (14) calendar days of the date of the City's invoice to the Contractor for such costs. If the Contractor does not pay the invoice amount within fourteen (14) days, the City shall become the Roll-Off Container owner if the invoice stated the City's intent to become the Container owner in lettering of at least 12 point font.

For the purposes of this Section 6.4.F, "Abandon" means the following:

1. Contractor's failure to remove a Contractor-owned Roll-Off Container within five (5) calendar days of receiving a written request from a Customer or the City or within five (5) calendar days after the termination of the customer service agreement between Contractor and the Customer, or
2. Contractor's failure to remove a Contractor-owned Roll-Off Container within ten (10) calendar days upon expiration or termination of this Agreement, except in the case where Contractor has been granted an extension of the Term of the Agreement or Contractor has been granted a subsequent agreement authorizing Contractor to Collect and transport the type or types of materials for which the Roll-Off Container was used pursuant to this Agreement.

6.5 PERSONNEL

A. **General.** Contractor shall furnish such qualified drivers, maintenance, supervisory, Customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.

B. **Driver Qualifications.** All drivers shall be trained and qualified in the operation of Collection vehicles, and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use the Class B California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

C. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment or who are otherwise directly involved in such Collection, Disposal, or Processing. Contractor shall train its employees involved in Collection to identify, and not to collect, Hazardous Waste or Infectious Waste. Upon the City's request, Contractor shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.

D. **Employee Conduct and Courtesy.** Contractor shall use its best efforts to ensure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection employees to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures and shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit A.

E. **Employee Identification.** While performing services under this Agreement, all of the Contractor's employees performing field service shall be dressed in clean clothes and shall wear badges that include the employee's name and/or employee number, and Contractor's name, as approved by the City.

6.6 HAZARDOUS WASTE INSPECTION AND HANDLING

A. **Response to Hazardous Waste Identified during Collection.** If Contractor determines that material placed in any Roll-Off Container for Collection is a Hazardous Waste that may not legally be Disposed of at a Disposal Site or handled at the Processing Site, or presents a hazard to Contractor's employees, the Contractor shall refuse to accept such material. The Contractor shall contact the Customer and request the Customer to arrange proper Disposal. If the Generator cannot be reached immediately, the Contractor shall, before leaving the Premises, leave a tag at least two inches by six inches (2" x 6") in size, which indicates the reason for refusing to Collect the material and lists a phone number for obtaining information on proper disposal of the Hazardous Waste. Under no circumstances shall Contractor's employees knowingly Collect Hazardous Waste.

If Hazardous Waste is found in a Roll-Off Container that could possibly result in imminent danger to people or property, the Contractor shall immediately notify the City's Fire Department using the 911 emergency number.

The Contractor shall notify the City of any Hazardous Waste identified in Roll-Off Containers or left at any Premises within 24 hours of identification of such material.

B. **Response to Hazardous Wastes Identified at Disposal Site or Processing Site.** The Contractor, or its Approved Processor, or Disposal Site operator shall provide load checkers and equipment operators at the Processing or Disposal Site(s) to identify Hazardous Wastes for storage in approved, on-site, hazardous materials storage container(s). Contractor shall make reasonable efforts to identify and notify the Customer. Contractor shall arrange for removal of the Hazardous Wastes by permitted haulers in accordance with Applicable Laws and regulatory requirements.

If the Hazardous Wastes delivered to a Disposal Site or Processing Site by Contractor before its presence is detected, and the Generator cannot be identified or fails to remove the material after being requested to do so, the Contractor shall arrange for its proper Disposal. The Contractor may make a good faith effort to recover the cost of Disposal from the Generator, and the cost of this effort, as well as the cost of Disposal shall be chargeable to the Generator.

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

6.7 NON-DISCRIMINATION

Contractor shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, natural origin, ancestry, religion, gender, marital status, sexual orientation, age, physical or mental disability in violation of any Applicable Law.

6.8 COMMUNICATION AND COOPERATION WITH CITY

A. **Communications.** If requested, the Contractor shall meet with the City or its agent to discuss service issues.

B. **Inspection by City.** The City, or its designated representatives, shall have the right to observe and review Contractor operations, Processing Sites and Disposal Sites used by Contractor, and enter Contractor's Premises for the purposes of such observation and review during reasonable hours without advance notice.

C. **Cooperate with City-Initiated Studies.** Contractor shall cooperate with and assist the City or its agent with the performance of City-initiated studies of Permitted Materials such as, but not limited to, waste characterization and composition studies.

ARTICLE 7
RECORD KEEPING AND REPORTING

7.1 GENERAL

7.1.1 Maintenance of Records

Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with and to meet the reporting and Permitted Materials program management needs of City, the Act and other Applicable Laws, and the requirements of this Agreement.

This Article is intended to highlight the general nature of records and reports to be maintained by Contractor, and their minimum content. This Article is not meant to comprehensively define what the records and reports are to be and their content. With the written direction by or approval of City, the records and reports to be maintained and provided by Contractor in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency. Records and reporting may be revised to reflect current record keeping and reporting requirements.

To the extent such requirements are set out in this and other Articles of this Agreement, they shall not be considered limiting or necessarily complete.

7.1.2 Retention of Records

Unless otherwise required in this Article, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or earlier termination. Records and data shall be in chronological order and readily and easily interpreted.

7.1.3 Inspection of Records

The City, its auditors and other agents, shall have the right, during regular business hours, to inspect specific documents or records required by this Agreement or any other similar records or reports of the Contractor that the City shall deem, at its sole discretion, necessary to evaluate the Contractor's performance provided for in this Agreement. The City may make copies of any documents it deems relevant to this Agreement. The City shall provide Contractor written notice at least three (3) Business Days prior to any inspection of these records, and Contractor shall retrieve and make available to the City the requested documents and records at that time.

The City reserves the right to inspect records for the purposes of auditing the Contractor's reports, reported Diversion level, and fee payments to the City. If an audit conducted by the City, or its representatives, finds: (i) that the Contractor has made any intentional misrepresentation with respect to the fees dues to the City (e.g., Franchise Fees or other fees due to the City) in an amount greater than $1,000 or 10% of the fees due to the City during the period covered by the audit, whichever is greater, or (ii) that the Diversion level is 5% different than the Diversion level reported by the Contractor, then in addition to any other remedies available to the City, Contractor shall reimburse the City for the City's costs incurred in the performance of the audit. Such reimbursement shall be paid by Contractor, along with any underpaid fees and Liquidated Damages required by Section 11.4 and Exhibit A, within thirty (30) calendar days of the date the City notifies the Contractor of the amount due.

7.1.4 Record Security

Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as fire, theft, and earthquake. Electronically maintained data and records shall be protected and backed-up.

7.2 RECORDS

7.2.1 Financial and Operational Records

Contractor shall maintain accurate and complete accounting records containing the underlying financial and operating data relating to and showing the basis for computation of all revenues associated with providing Permitted Materials Collection, Transportation, Processing, Recycling, Composting, and Disposal services. The accounting records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied.

At a minimum, the following operational records shall be maintained by Contractor for City relating to:

A. Customer account information and billing records;

B. Tonnage of material Collected by type (e.g., Solid Waste, Recyclable Material, Organic Material, or C&D) listed by Processing Site or Disposal Site where such materials were delivered. Where possible, information is to be separated by Residential and Commercial Customers.

C. Tonnage of Recyclable Materials, Organic Material, and C&D Diverted from Disposal by Contractor and supporting documentation.

D. Diversion level, which shall equal Tonnage Diverted by Contractor divided by the Tonnage Collected by Contractor multiplied by 100, listed separately by month for the previous quarter. Tonnage Diverted shall reflect Permitted Materials Processed less residue Disposed.

E. Residue levels of Processed or Composted materials.

F. Weight tickets from (i) Designated Disposal Site documenting the Tonnage of Solid Waste Collected within the City and delivered to the Designated Disposal Site; (ii) Processing Sites documenting the Tonnage of Permitted Materials Collected within the City and delivered to the Approved Processing Sites; and, (iii) Approved Disposal Sites documenting the Tonnage of residue delivered to Approved Disposal Sites by vehicle, date, and time.

G. End use and markets for recovered materials.

Contractor shall make records available to the City upon request.

7.2.2 Customer Records

Contractor shall maintain accurate and complete records containing the number and types of accounts served by the Contractor. The records shall contain, at a minimum, the Customers name, type of business, phone number, address of Roll-Off Container delivery and Collection location, date of delivery and Collection, itemized listing of services performed, type of Permitted Material Collected, Tonnage

Collected, and the amount charged to provide services. The information shall be provided to the City upon request.

7.2.3 CERCLA Defense Records

City views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, the City regards its ability to prove where Permitted Materials Collected by the Contractor are taken for Processing, Recycling, Composting, Transfer, or Disposal, as well as where they are not taken, to be matters of concern. Contractor shall maintain, retain and preserve records which can establish where Permitted Materials Collected were Processed, Composted, and Disposed (and therefore establish where they were not). This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. Contractor shall provide these records to City (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.

7.3 GENERAL REPORTING REQUIREMENTS

The format of each report shall be approved by City. Contractor may propose report formats that are responsive to the objectives. Contractor agrees to mail a copy of all reports and submit all reports on computer discs, by e-mail, or by modem in a format compatible with City's software and computers at no additional charge. Contractor will provide a certification statement, under penalty or perjury, by the responsible Contractor official, that the report being submitted is true and correct to the best knowledge of such official after their reasonable inquiry.

Contractor shall submit monthly reports within fifteen (15) calendar days of the end of each month. If Contractor does not submit the monthly reports by the dates required in this Article, Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit A.

Contractor shall submit (via mail and e-mail) all reports to:

Solid Waste Division Manager
City of Fresno
1325 El Dorado Street
Fresno, CA 93706

7.4 MONTHLY REPORT

The monthly report shall present the following information.

A. **Total Tonnage.** Total Permitted Materials Tonnage Collected by Contractor within the City during the previous quarter, listed separately by material type and by month.

B. **Diverted Tonnage.** Permitted Materials Tonnage Collected by Contractor within the City that was Diverted during the previous quarter, listed separately by material type and by month.

C. **Disposed Tonnage.** Permitted Materials Tonnage Collected by Contractor within the City that was Disposed during the previous quarter, listed separately by month.

D. **Diversion Level.** Tonnage Diverted by Contractor divided by the Tonnage Collected by Contractor multiplied by 100, listed separately by month for the previous quarter. Tonnage Diverted shall reflect Permitted Materials Processed less residue Disposed.

E. **C&D**. Tonnage generated from construction and demolition permitted sites, noting the permit number, the site address, the Tonnage hauled, the date hauled, and the facilities to which the material was hauled.

F. **Disposal and Processing Locations.** Contractor shall provide a list of the names and addresses of where Permitted Materials Collected within the City during the previous quarter was Diverted and Disposed. Such list shall include the amount of Permitted Materials Tonnage Diverted and/or Disposed at each location during the previous quarter, listed separately by material type and by month.

G. **Revenues.** Gross revenues (e.g. cash receipts) earned on all Roll-Off Container Collection, Transportation, Processing, Recycling, Composting, and/or Disposal services provided to Customers within the City during the previous quarter, listed separately by month.

H. **Insurance.** Updated insurance certificates.

I. **Account Information.** In table format, the number of Customers within the City limits served and number of Roll-Off Containers serviced per month listed by Roll-Off Container type (Drop Box or Compactor), Roll-Off Container size, and listed separately by Permitted Material type, and regularly schedule service and unscheduled (on-call) service.

J. **Contractor Officers and Board Members.** Provide a list of Contractor's officers and members of its board of directors (only required with the December monthly report each year, or in the event of a change in the officers or board members).

The City reserves the right to request additional reports from Contractor, and upon City's request, Contractor shall provide information required above for the time period requested by the City. It is the desire of the City to track the above required information on an ongoing basis throughout the term of this Agreement.

7.5 AB 939 COUNTY SURCHARGE REPORTING

Contractor acknowledges that City is a party to that certain AB 939 Memorandum of Understanding with the County of Fresno and various other jurisdictions dated January 6, 2008 (the "AB 939 MOU"), and further acknowledges having received and reviewed a copy of the AB 939 MOU. The Parties agree that Contractor is a "Jurisdiction's Hauler", as that term is used in Part IV, Section H of the AB 939 MOU. Contractor shall comply with all requirements of Part IV, Section H of the AB 939 MOU that are applicable to a Jurisdiction's Hauler, including but not limited to submittal of reports and payment of the AB 939 Surcharge (as that term is defined in the AB 939 MOU).

ARTICLE 8
FRANCHISE FEES AND OTHER FEES

8.1 GENERAL

Contractor shall collect the fees described in this Section from Customers through Contractor's regular billings and remit collected amounts to City on a monthly basis as described in Section 8.5.

8.2 FRANCHISE FEE

In consideration of the exclusive rights provided Contractor herein, Contractor shall pay Franchise Fees to the City each month equal to 10% of actual gross Rate revenues (e.g. cash receipts) remitted to Contractor by Customers for services provided by Contractor under this Agreement.

8.3 OTHER FEES

The City may set "other" additional fees, as it deems necessary. The amount, time, and method of payment and adjustment process will be set in a manner similar to that for other fees described in this Article.

8.4 ADJUSTMENT TO FEES

City may adjust the fees established in this Article annually at any time during the Term of this Agreement.

8.5 PAYMENT SCHEDULE AND LATE FEES

On or before the 20th day of each month during the Term of this Agreement, Contractor shall remit to City Franchise Fees and other fees as described in this Article. If such remittance is not paid to the City on or before the 20th day of any month, Contractor shall pay, in addition to the amount owed to City, 2% of the amount owing for that month; plus an additional 2% owing on any unpaid balance for each following thirty (30) calendar day period the fee remains unpaid

Each monthly remittance to City shall be accompanied by a statement itemizing each fee paid; detailing calculation of all fees; stating actual gross revenues (e.g. cash receipts) for the monthly period collected from all operations conducted or permitted by this Agreement, and stating the number and size of Containers serviced by Contractor for the monthly period. Each remittance including all supporting documentation shall be provided to:

Attn: City Controller, Finance Department
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3624

8.6 OVERPAYMENT OF FEES

If Contractor believes it has paid Franchise Fees or other fees as described in this Article, in excess of the fees due to the City, Contractor may submit a request for refund to the Director. If proof of overpayment is satisfactory to the Director, the Director shall authorize the City to refund the overpayment to the Contractor. Contractor shall not apply any overpayment as a credit against any Franchise Fee or other amounts payable to the City, unless specifically authorized to do so by the Director in writing.

8.7 NON-CITY FEES; AB 939 COUNTY SURCHARGE

Pursuant to Section 7.5, Contractor shall pay the County of Fresno an AB 939 surcharge as applicable in accordance with the AB 939 MOU.

ARTICLE 9
CONTRACTOR'S COMPENSATION AND RATES

9.1 CONTRACTOR'S COMPENSATION

Contractor's compensation for performance of all its obligations under this Agreement shall be: (i) actual Rate revenues paid to Contractor (e.g. cash receipts) by Customers that obtained Contractor's Collection services less fees dues to the City in accordance with Article 8, and (ii) revenues generated by the sale of Collected materials Diverted from Disposal.

Contractor's compensation provided for in this Article shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, Processing, Composting, and Disposal fees, regulatory fees, City fees, taxes, insurance, bonds, overhead, operations, profit and all other things necessary to perform all the services in the manner required by this Agreement.

If Contractor's costs are more than Contractor's compensation, Contractor shall not be compensated for the difference in costs and revenues. If Contractor's costs are less than Contractor's compensation, Contractor shall retain the difference.

9.2 CITY'S RIGHT TO SET MAXIMUM RATES

The City reserves the right to establish maximum Rates for Permitted Materials Collection services provided under this Agreement in the event that: (a) there are three or fewer companies holding non-exclusive franchise agreements for Collection of Permitted Materials, or (b) the Rates charged by the companies holding non-exclusive franchise agreements for Collection of Permitted Materials are no longer comparable to those of other jurisdictions, as reasonably determined by City. If the City chooses to exercise its right to set maximum Rates, City shall notify Contractor at least 180 calendar days prior to the date that maximum Rates become effective. In such case, City will set maximum Rates with

consideration of reasonable and necessary costs for Collection, Processing, Composting, and Disposal and with the intention of setting maximum Rates that will enable parties, including the Contractor, that have executed Non-Exclusive Franchise Agreements with the City for Roll-Off Container Collection Services the ability to recover reasonable and necessary costs and a reasonable profit.

9.3 CONTRACTOR'S RATES

Contractor shall set the Rates it charges its Customers for Roll-Off Collection services. The Contractor's Rates shall not exceed City-established maximum Rates, if the City exercises its rights under Section 9.2.

ARTICLE 10
INDEMNITY AND INSURANCE

10.1 INDEMNIFICATION

Contractor shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City and each of its officers, officials, employees, volunteers, and agents (collectively, indemnitees) from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all 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 without limit attorneys' expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitees arising from or attributable to the acts or omissions of Contractor whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

Contractor's duty to defend and indemnify herein shall include Damages arising from or attributable to any operations, repairs, clean-up or detoxification, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste Collected in the City. Contractor shall be required to indemnify the City for the costs for any claims arising from the Processing, Composting, or Disposal of Permitted Materials, including, but not limited to, claims arising under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The foregoing is intended to operate as an agreement to defend and indemnify and hold harmless indemnities to the full extent permitted for liability pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364.

In addition, Contractor's duty to defend and indemnify herein includes all fines and/or penalties imposed by the California Department of Resources Recycling and Recovery, subject to the restrictions set forth in Public Resources Code Section 40059.1, if the requirements of the Act are not met by the Contractor with respect to the Permitted Materials Collected under this Agreement, and such failure is due to Contractor delays in providing information that prevents Contractor or City from submitting reports required by the Act in a timely manner.

This provision will survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by City to contribution or indemnity from third parties.

10.2 INSURANCE

10.2.1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

A. Insurance Services Office Commercial General Liability coverage.
   1. Personal injury
   2. Contractual liability

B. Insurance Services Office covering Automobile Liability, code I "any auto".

A. Worker's Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Such other insurance coverages and limits as may be required by the CITY.

10.2.2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

A. General Liability: $1,000,000 each occurrence for bodily injury and property damage; $1,000,000 for personal and advertising injury; $2,000,000 products and completed operations aggregate, and $2,000,000 general aggregate. If Commercial General Liability insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

B. Automobile Liability: $1,000,000 per accident for bodily injury and property damage.

C. Workers' Compensation: Workers' compensation limits as required by the Labor Code of the State of California.

D. Employer's Liability: $1,000,000 each accident for bodily injury.
   $1,000,000 disease each employee.
   $1,000,000 disease policy limit.

E. Pollution Legal Liability: $1,000,000 per claim/occurrence and $2,000,000 aggregate for bodily injury, property damage, and remediation of contaminated site.

10.2.3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

10.2.4 Other Insurance Provisions

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

A. General Liability and Automobile Liability Coverages

1. The City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers. The automobile liability is endorsed to contain MCA-90 coverage.

2. The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or volunteers.

4. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officers, employees, and volunteers for losses arising from work performed by the Contractor for the City.

C. All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 calendar days' prior written notice by certified mail, return receipt requested, has been given to the City.

10.2.5 Acceptability of Insurers

The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

10.2.6 Verification of Coverage

Contractor shall furnish Contractor's insurance agent a copy of these specifications, and direct the agent to provide the City with certificates of insurance and with original endorsements affecting coverage required by this clause. Issuance of documentation indicates the Contractor's insurance complies with these provisions. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences. The City may require complete, certified copies of all required insurance policies, at any time.

10.2.7 Required Endorsements

A. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty calendar days' prior written notice shall be given to the City of Fresno in the event of cancellation, reduction in coverage, or non-renewal of this policy."

Director of Public Utilities
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3620

B. The Commercial General Liability, Business and Automobile Liability, and Pollution Legal Liability policies shall contain endorsements in substantially the following form:

1. "Thirty calendar days' prior written notice shall be given to the City of Fresno in the event of cancellation, reduction in coverage, or non-renewal of this policy."

   Director of Public Utilities
   City of Fresno
   2600 Fresno Street
   Fresno, CA 93721-3620

2. "The City of Fresno, its officers, employees, and agents are additional insureds on this policy."

3. "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City of Fresno, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

4. "Inclusion of the City of Fresno as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Contractor's liability as set forth in the policy beyond the amount shown or to which the Contractor would have been liable if only one party had been named as an insured."

10.2.8 Delivery of Proof of Coverage

Simultaneously with the execution of this Agreement, Contractor shall furnish the City certificates of each policy of insurance required hereunder, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If the City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City.

Renewal certificates will be furnished annually to City to demonstrate maintenance of the required coverages throughout the Term.

10.2.9 Other Insurance Requirements

A. If any services are delegated to a Subcontractor, the Contractor shall require such Subcontractor to provide statutory Workers' Compensation insurance and employer's liability insurance for all of the Subcontractor's employees engaged in the work in accordance with Sections 10.2.2.C and 10.2.2.D and 10.2.4.B. The liability insurance required by Section 10.2.2.A shall cover all Subcontractors or the Subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 10.2.

B. If at any time during the life of the Agreement or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, Contractor shall be in breach of the Agreement until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this Section shall in any way relieve Contractor of its responsibilities under this Agreement.

C. The Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third person against the Contractor or any Subcontractor because of any occurrence related to this Agreement, the Contractor shall promptly report the facts in writing to the insurance carrier and to the City.

D. The Commercial General Liability, Automobile Liability, and Pollution Legal Liability insurance policies shall be written on an "occurrence," rather than a "claims made" basis. If Contractor is unable to purchase Pollution Legal Liability insurance on an occurrence form and must purchase such insurance on a claims-made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by Contractor.

2. The policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, Contractor must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.

4. A copy of the claims reporting requirements must be submitted to City for review.

5. These requirements shall survive expiration or termination of this Agreement.

ARTICLE 11
DEFAULT AND REMEDIES

11.1 EVENTS OF DEFAULT

Each of the following shall constitute an event of default ("Event of Default") hereunder:

A. Contractor fails to perform its obligations under this Agreement, or future amendment to this Agreement, including, but not limited to, Contractor's failure to pay Franchise Fees and other City fees in accordance with Article 8 of this Agreement, and the breach continues for more than 10 Business Days after written notice from the City for the correction thereof;

B. Contractor's failure to Divert 50% of the C&D, 70% of the Recyclable Materials, and 90% of Organic Materials Collected in the City as required by Section 5.3 of this Agreement after Contractor is given an opportunity to remedy the nonperformance as described in Section 11.5;

C. Any representation, warranty, or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation, warranty, or disclosure appears as part of this Agreement;

D. There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to substantially impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within 48 hours excluding weekends and Holidays;

E. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing;

F. A court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor;

11.2 RIGHT TO TERMINATE UPON DEFAULT

Upon a default by Contractor, the City may terminate this Agreement within 10 calendar days of the default but no later than 180 calendar days after the default. Such termination shall be effective 10 calendar days following the City's written notice to Contractor, and such termination shall be effective without the need for any hearing, suit, or legal action.

11.3 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE

The City's right to terminate the Agreement under Section 11.2 is not exclusive, and the City's termination of the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which the City may have.

By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the lead time required to effect alternative service, and the rights granted by City to the Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive relief.

11.4 LIQUIDATED DAMAGES

A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable Roll-Off Collection, Processing, and Disposal service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in executing this Agreement. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages that City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article, the Parties

agree that the Liquidated Damages amounts established in Exhibit A of this Agreement and the following Liquidated Damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in the Schedule of Liquidated Damages, Exhibit A.

City may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representative or investigation of complaints by Customers, occupants, and Generators.

Liquidated Damages will only be assessed after Contractor has been given the opportunity but failed to rectify the damages as described in this Agreement. Before assessing Liquidated Damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and/or non-performance. The City may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and non-performance. City may, within 10 calendar days after issuing the notice, request a meeting with Contractor. City may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. City will provide Contractor with a written explanation of its determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 11.4. The decision of City shall be final and City shall not be subject to, or required to exhaust, any further administrative remedies.

C. **Amount.** City may assess Liquidated Damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement in the amounts specified in Exhibit A subject to annual adjustment described below.

The amount of Liquidated Damages specified in Exhibit A shall be adjusted annually on the anniversary of the Effective Date. The adjustment shall be rounded to the nearest cent. Liquidated Damage amounts shall be adjusted to reflect changes in the Consumer Price Index – All Urban Consumers (CPI-U) compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the following Bureau of Labor Statistics' parameters.

- Not Seasonally Adjusted
- Area – Los Angeles-Riverside-Orange County, CA
- Item – All Items
- Base Period – 1982-84=100

The formula for annual adjustment is as follows:

Adjusted Liquidated Damage Amount	=	Then-current Liquidated Damage Amount x most current CPI-U/previous 12-month CPI-U

For example:

Current Liquidated Damage Amount = **$150.00**
Most recently published index (January 2010) = **224.610**
Index published 12 months prior to most recently published index
(January 2009) = **220.719**
Adjusted Liquidated Damage Amount = $150.00 x (224.610/220.719) = **$152.64**

If the CPI-U is discontinued or revised during the Term by the United States Department of Labor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

D. **Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City within 10 calendar days of the date the Liquidated Damages are assessed. If they are not paid within the 10-day period, City may order the termination of the rights or "franchise" granted by this Agreement.

11.5 DIVERSION NON-PERFORMANCE

If the Contractor's Diversion level is less than 50% for C&D, less than 70% for Recyclable Materials, and/or less than 90% for Organic Materials Collected in the City for a monthly reporting period, the following steps shall be followed by the City and Contractor.

A. **Warning.** The City shall issue a written warning to the Contractor within 30 calendar days of receipt of the Contractor's monthly report documenting the Diversion level for the monthly reporting period. The warning notice shall specify the amount of time (i.e. "correction period") the City grants the Contractor to improve its performance and meet the Diversion requirements defined in Section 5.3.

B. **Opportunity to Improve Performance.** The Contractor shall modify its Collection, Processing, Diversion, and public education and outreach programs (subject to the City's approval) to improve the Diversion level. At the end of the correction period, Contractor shall submit a written report to the City identifying the Diversion level and providing the supporting documentation. If the City determines that the Diversion level equals or exceeds Diversion requirements defined in Section 5.3, the Contractor shall continue to perform services in such a manner as to maintain or improve the Diversion level and the City shall waive its rights to proceed with steps outlined in subsections C and D of this Section 11.5 during the remainder of then-current reporting period.

C. **Liquidated Damages.** If the Contractor fails to improve the Diversion level so that it is equal to or greater than Diversion requirements defined in Section 5.3 by the end of the correction period granted in subsection A of this Section, the City may levy, and Contractor shall pay, Liquidated Damages described in Section 11.4.

D. **Termination of the Agreement.** If Contractor's fails to achieve a Diversion level that equals or exceeds Diversion requirements defined in Section 5.3 within six months of the date the City levied Liquidated Damages, the failure to meet the Diversion requirements defined in Section

5.3 shall be considered an event of default and the City may terminate the Agreement in accordance with Section 11.2.

11.6 CONDITIONS UPON TERMINATION

In the event this Agreement is terminated under the provisions of this Article, the following conditions shall be effective:

A. **Prohibit Roll-Off Collection Services.** Contractor shall have no right or authority to engage in Roll-Off Collection services in the City for a period of five years from the date of termination. After five years, should the Contractor provide proof that the event causing the Contractor to default under this Agreement has been corrected, the Contractor may reapply for a non-exclusive Roll-Off Collection service franchise, and the City, at the sole and complete discretion of the City, may reinstate the Contractor based on review of its reapplication.

B. **Continuing Liabilities.** Contractor shall remain liable to the City for:

1. Fees due in accordance with Article 8 that would otherwise be payable by the Contractor.
2. Liquidated Damages assessed pursuant to Section 11.4.
3. Reports required by Article 7 for Roll-Off Collection activities performed by Contractor up to and including the date of termination.
4. Indemnity obligations under Section 10.1.
5. Record keeping and retention obligations under Sections 7.1 and 7.2.

C. **Release Customers and Generators from Obligations.** Contractor shall allow Permitted Materials Generators served by Contractor to arrange for Permitted Materials Collection services with a hauler authorized to perform such services, without penalty or liability for breach of any contract between Contractor and its Customers or Generators.

D. **Remove Roll-Off Containers.** Contractor shall remove all of Contractor's Roll-Off Containers from all of Contractor's Collection locations and shall properly Recycle, Process, Compost, or Dispose of Permitted Materials in such Roll-Off Containers.

ARTICLE 12
OTHER AGREEMENTS OF THE PARTIES

12.1 RELATIONSHIP OF PARTIES

The Parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by City and not as an officer nor employee of the City, nor as a partner of, or joint venturer with, the City. No employee or agent of Contractor shall be, or shall be deemed to

be, an employee or agent of the City. Except as expressly provided herein, Contractor shall have control over the manner and means of conducting the Roll-Off Container Collection, Transportation, Processing, Recycling, Composting, and Disposal services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors, and agents. Neither Contractor nor its officers, employees, Subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with the City.

12.2 PERMITS AND LICENSES

Contractor shall obtain and maintain, at Contractor's sole cost and expense, all permits and licenses applicable to Contractor's operations under this Agreement which are required by any governmental agency.

12.3 COMPLIANCE WITH LAW

Contractor shall, at all times, at its sole cost, comply with all Applicable Laws.

12.4 GOVERNING LAW

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

12.5 JURISDICTION

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Fresno County in the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the Parties agree that this Agreement is made in and will be performed in Fresno County.

12.6 BINDING ON SUCCESSORS

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

12.7 ASSIGNMENT

Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other Party. Any such assignment made without the consent of the other Party shall be void and the attempted assignment

shall constitute a material breach of this Agreement. Under no circumstances shall any assignment be considered by City if Contractor is in default at any time during the period of consideration.

12.8 PARTIES IN INTEREST

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

12.9 WAIVER

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of violation of the same or any other provision. The subsequent acceptance by either Party of any monies which become due hereunder, shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other Party of any provision of this Agreement.

12.10 NOTICE PROCEDURES

All notices, demands, requests, proposals, approvals, consents, and other communications which this Agreement requires, authorizes or contemplates all, shall be in writing and shall either be personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid, addressed as follows:

A. If to City:

Public Utilities Director
City of Fresno
2600 Fresno St., Room 3065
Fresno, CA 93721-3624

B. If to Contractor:

JPA Construction Cleanup Svc, Inc.
PO Box 505
Santa Ana, CA 92702-0505

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

Notice shall be deemed given on the day it is personally delivered or, if mailed, three calendar days from the date it is deposited in the mail.

12.11 REPRESENTATIVES OF THE PARTIES

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the Director and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. The Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

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

12.12 CRIMINAL ACTIVITY OF CONTRACTOR

12.12.1 Criminal Activity

For purpose of this Section, Criminal Activity shall mean any of the following events or circumstances:

A. **Convictions.** The entry against any Contractor Party or its officers, of a criminal conviction or a permanent mandatory or prohibitory injunction from a court, municipality, or regulatory agency of competent jurisdiction, based on acts taken in his or her official capacity on behalf of Contractor with respect to:

1. Fraud or criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to municipal Solid Waste services of any kind (including Collection, Transportation, transfer, Processing, Recycling, Composting, or Disposal), including this Agreement or any amendment thereto;

2. Bribery or attempting to bribe a public officer or employee of a local, State, or Federal agency;

3. Embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony;

4. Unlawful disposal of Hazardous Wastes, the occurrence of which any Contractor Party knew or should have known;

5. Violation of antitrust laws, including laws relating to price-fixing, bid-rigging, and sales and market allocation, and of unfair and anti-competitive trade practices laws;

6. Violation of securities laws; and

7. Felonies.

B. **Pleas.** Entry of a plea of "guilty," "nolo contendere," or "no contest" by a Contractor Party based on acts taken in his, her, or its official capacity on behalf of Contractor with respect to the conduct described in preceding Section 12.12.1.A.

12.12.2 Notice

Contactor shall notify City in writing within five calendar days of occurrence of any Criminal Activity by any Contractor Party.

12.12.3 Contractor's Cure

Upon occurrence of any Criminal Activity, Contractor shall immediately do or cause to be done all of the following:

A. Terminate from employment or remove from office any offending individual Contractor Party, unless otherwise directed or ordered by a court or regulatory agency of competent jurisdiction or authority, and unless that termination would constitute a breach of any labor agreement entered into by Contractor, and

B. Eliminate participation by any offending individual Contractor Party in any management, supervision, or decision activity that affects or could affect, directly or indirectly, the performance of the Contractor under this Agreement.

12.12.4 Transfer and Hiring

Contractor shall not allow or cause to be allowed to hire or transfer any individual from any Parent Company or subsidiary company or business entity of Contractor who has committed Criminal Activity as a Contractor representative, field supervisor, officer, or director who is directly or indirectly responsible for performance of this Agreement without obtaining prior written consent of City, following full disclosure to City of the facts and circumstances surrounding such Criminal Activity.

12.12.5 City's Remedy

In the event of any occurrence of Criminal Activity, the City, in its sole discretion, may terminate the Agreement within 30 calendar days written notice to Contractor, or may impose other sanctions (which may include financial sanctions, temporary suspensions, or any other condition deemed appropriate short of termination) as it will deem proper, in the following events:

A. Contractor fails to comply with the foregoing obligation of this Section, or

B. The Criminal Activity concerns or relates directly or indirectly to this Agreement.

Contractor shall be given the opportunity to present evidence in mitigation during the 30-calendar day notice period.

12.13 ACKNOWLEDGMENT OF PUBLIC RESOURCES CODE SECTION 49520 NOTICE

If Contractor has lawfully provided solid waste collection services in the City for more than three (3) years prior to July 1, 2011 (and is therefore entitled to the notice provided for in Public Resources Code 49520), Contractor shall consider execution of this Agreement by the City as City's notice to Contractor, pursuant to Public Resources Code 49520, that Contractor may provide service for a period of five (5)

years beyond July 1, 2011, after which time the City has the right to establish an exclusive franchise collection system.

ARTICLE 13
MISCELLANEOUS AGREEMENTS

13.1 ENTIRE AGREEMENT

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

13.2 SECTION HEADINGS

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

13.3 REFERENCES TO LAWS

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

13.4 INTERPRETATION

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

13.5 PRONOUNS AND PLURALS; TENSE

When not inconsistent with the context, words and phrases used in the present tense include the future, and words and phrases used in the singular number include the plural number. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

13.6 TEXT TO CONTROL

The captions of the Articles or Sections in this Agreement are for convenience only and in no way define, limit, extend or describe the scope or intent of any of the provisions hereof, shall not be deemed part of this Agreement and shall not be used in construing or interpreting this Agreement.

13.7 AMENDMENT

This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

13.8 SEVERABILITY

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

13.9 COUNTERPARTS

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

13.10 EXHIBITS

Each of the Exhibits identified as Exhibit "A" through "D" is attached hereto and incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed on the day and year first above written.

CITY OF FRESNO
A Municipal Corporation

_____
Director

APPROVED AS TO FORM:

_____
City Attorney

_____
Risk Manager

ATTEST:

_____
City Clerk

CONTRACTOR
JPA Construction Clean-up Svc, Inc

Jose P. Arvizu
Name

President
Title

PO Box 505
Address

Santa Ana CA 92702-050
City

_____
Business License

EXHIBIT A

SCHEDULE FOR LIQUIDATED DAMAGES

Contractor may be assessed Liquidated Damages if Contractor fails to fulfill its obligations with regards to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement with regards to the time frame for accomplishing each event and nature of the responsibility associated with the event unless otherwise stated in this Exhibit.

1.	**Diversion.** Failure to achieve and maintain a minimum of 50% Diversion per month of all C&D Collected within the City, 70% Diversion per month of all Recyclable Materials Collected within the City, and 90% of all Organic Materials Collected within the City.	The greater of $5,000 or 10% of the gross Rate revenues received for providing C&D, Recyclable Materials, and Organic Materials services in the City, for the most recent 12-month period
2.	**Leaks, Litter or Spills.** For each occurrence over five during a calendar year of unreasonable leaks, litter, or spills of Permitted Materials near or on public streets and failure to pick up or clean up such material immediately.	$300/ event
3.	**Unauthorized Collection Hours.** For each occurrence over five during a calendar year of Collecting Permitted Materials during unauthorized hours.	$300/ event
4.	**Excessive Noise.** For each occurrence over 10 during a calendar year of excessive noise.	$300/ event
5.	**Cleaning Collection Vehicles.** For each occurrence over five during a calendar year for failure to keep Collection vehicles in a safe and sanitary condition.	$150/ event
6.	**Labeling of Roll-Off Containers.** For each occurrence of Contractor's failure to correctly label Contractor-owned Roll-Off Containers (in accordance with Section 6.4.C).	$500/ event
7.	**Discourteous Behavior.** For each occurrence of discourteous behavior by Collection vehicle personnel, customer service personnel, or other employees of Contractor.	$500/ event
8.	**Injuries to Others.** For each incident of personal injury to a Person requiring medical treatment or hospitalization, where the negligence of the Contractor or its personnel was a contributing factor to the injury.	$5,000/ incident
9.	**Monthly Reports.** Failure to submit monthly reports in the timeframe specified in this Agreement.	$300/ day*
10.	**Report Hazardous Waste.** For each failure to notify the appropriate authorities of reportable quantities of Hazardous Waste.	$500/ event

11.	**Failure of Other Obligations.** Failure to perform any of the obligations set forth in this Agreement not specifically stated above and not corrected or proceeding in good faith to correct within 24 hours upon 24 hour notification by City.	$150/ for each obligation per day until obligation is performed

* Monthly reports shall be considered late until such time as a correct and complete monthly report is received by City. For each calendar day a report is late, the daily Liquidated Damage shall be as indicated in the monthly reports section above.

In placing Designee's initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of Liquidated Damage provisions of the time that the Agreement was made.

Contractor

Initial Here: JPA

City

Initial Here: _____

EXHIBIT B
SECRETARY'S CERTIFICATION

The undersigned, being the Secretary of JPA Construction Clean-up S.C., a
Company Name
California corporation ("the Company"), do hereby certify that the following resolution was adopted by the Board of Directors of the Company and that such resolution has not been amended, modified or rescinded and is in full force and effect as of the date hereof:

RESOLVED, that Jose P. Arriza be, and hereby is, authorized to
Name of Designated Representative
execute by and on behalf of the Company any and all agreements, instruments, documents or papers, as he/she may deem appropriate or necessary, pertaining to or relating to the Non-Exclusive Franchise Agreement between the City of Fresno and Company for Roll-Off Container Collection, Transporting, Processing, Recycling, Composting, and Disposal of Permitted Materials and that any such action taken to date is hereby ratified and approved.

Dated: 04-21-16

Jose P Arriza
Signature

President
Title

EXHIBIT C

STATEMENT OF APPLICANT'S UNDERSTANDING AND REPRESENTATIONS

The undersigned (who is duly authorized to bind the company submitting this application) has reviewed the requirements of the non-exclusive franchise agreement for Roll-Off Collection, Transporting, Processing, Recycling, Composting, and Disposal services for Solid Waste, Recyclable Materials, Organic Materials, and C&D, its exhibits, and reference documents. In addition, the undersigned attests that this application and any other supplementary information submitted with this application do not: (i) contain any untrue statement of a material fact, (ii) contain inaccurate or misleading information, or (iii) omit to state a material fact that is necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

Jose P. Arriza
Print Name

04-21-16
Date

President
Title

JPA Construction Clean-up Svc. Inc
Company Name

Jose P Arriza
Signature

EXHIBIT D

APPROVED PROCESSING AND RESIDUE DISPOSAL FACILITIES

The following facilities were selected by the Contractor and approved by the City.

	Approved C&D Processing Site	Approved Organics Processing Site
Facility name	Koeker	Green Valley Recycling
Facility address	4627 S. Chestnut Ave. Fresno CA 93725	2365 E. North Ave. Fresno, CA 93725
SWIS number	10-AA-0192	10-AA-0199
Owner	Edwin & Joyce Koeker	Mike Koecheglaw
Operator	Koeker Inc.	same
	Approved Recyclables Processing Site	**Approved Disposal Site (Applicable for Residue Only)***
Facility name	S&A Recycling	
Facility address	3489 S. Chestnut ave. Fresno CA 93725	
SWIS number		
Owner		
Operator		
	Approved Recyclables Processing Site	**Approved Disposal Site (Applicable for Residue Only)***
Facility name		
Facility address		
SWIS number		
Owner		
Operator		

* All Solid Waste shall be Disposed of at the Designated Disposal Facility.

Contractor

Initial Here: JPA

City

Initial Here: _____

Application for Non-Exclusive Franchise Agreement for Roll-Off Collection

April 19, 2016

Public Utilities Director
City of Fresno
2600 Fresno St., Room 3065
Fresno, CA 93721-3624

Dear Sir,

I, Ruben M. Lopez, am working under a DBA of Red Bin Services, and am applying to the City of Fresno for a Non-Exclusive Franchise License for delivering and pick up roll-off bins.

I am the sole proprietor of each of the above businesses. My contact information follows:
Mike Lopez
Owner/Operator
Phone: 559-259-1245
Fax: 559-272-6158
Email: RedBinServices@yahoo.com
Business Mailing Address: P O Box 193, Auberry, CA 93602

I would like to start conducting business immediately for the non-exclusive roll-off bin services.

Thank you for considering my request.

Ruben M Lopez
Owner/Operator
Red Bin Services

cc: City Clerk, City of Fresno

Application for Non-Exclusive Franchise Agreement for Roll-Off Collection
Qualification Information

2. Qualification Information:
   A. Description of Applicant: As a sole proprietor organization, the name of the applicant is Ruben Michael Lopez (Mike Lopez), 32752 Frazier Rd, Auberry, CA 93602.
   B. Experience: Mike had worked at PG&E for 36 years and part of his training was receiving a Class A driver's license and training as a back hoe operator. Mike started working in the roll-off bin service part time in November, 2015 and began working it full time in February, 2016 upon retirement from PG&E.
   C. Municipal References: Boom Phouthavong, R.E.H.S., Environmental Health Specialist, The County of Fresno, 1221 Fulton Mall, Fresno, CA 93721 (P.O. Box 11867, Fresno, CA 93775), Phone 559-600-3271, Fax 559-600-7629, Email: BPhouthavong@co.fresno.ca.us
   D. Customer References:
      1. Bob Webster, Owner, Mr. Sprayman, 1450 Tollhouse Rd, Suite 107, Clovis, CA 93611, Phone: 559-647-9126
      2. Tim Perry, Owner, T&S Services, 4957 E Turner Ave, Fresno, CA 93727, Phone: 559-285-5835
      3. Lee Badillo, Supervisor, Wedgewood Inc., 2015 Manhattan Beach Blvd, Suite 100, Redondo Beach, CA 90278, Phone: 559-317-8456.
   E. Proof of Insurance: Attached
   F. Litigation, Regulatory Actions, and Liquidated Damages: None.
   G. Criminal History: None

3. Operations Information:
   A. Diversion Plan: Construction materials will be taken to Cedar Avenue Recycling & Transfer Station L.P., 3457 S Cedar Ave, Fresno, CA 93725; Recycling materials will be taken to E J Gallo Winery, 5610 E Olive Ave, Fresno, CA 93727
   B. Vehicles: 2003 Dodge Ram 3500 Dually, two axles, License L8231T1, Weight is 9,000 pounds
   C. Roll-Off Containers: 5 20-yard containers, 3 5-yard mini bins
   D. Collection Schedule: As requested per customers
   E. Permitted Materials to be Collected: Construction waste; property clean up waste, including mattresses, furniture, appliances, etc; green waste, landscape material, including wooden fences.
   F. Processing and Disposal Facilities: Only deliveries are made to Cedar Ave and Gallo Winery
   G. Hazardous Waste Procedures: Operator instructs clients that he does not accept hazardous waste, then visually inspects load prior to delivery to landfill. Sole proprietor with no employees to train. Operator has received 35 years of training regarding hazardous waste through PG&E.
   H. Customer Service Plans: Operator is available via business cell phone 24/7.
   I. Billing Services: Operator provides hand written invoice including name of customer, address of drop off, rental of bin price per 7 day rental period, and indication that customer is responsible for dump fees. Invoices are mailed monthly to customers once bin is picked

CITY OF FRESNO INCORPORATED OCT. 12, 1885

up. Invoice copies are maintained and a spreadsheet is kept showing outstanding bills and dates paid.

4. Signed Non-Exclusive Franchise Agreement: Attached

5. Application Fee: Attached

6. Other as Requested By Director: None at this time.

P O Box 193 Auberry, CA 93602 559-259-1245

CITY OF FRESNO
Application Instructions for a Non-Exclusive Franchise Agreement for Roll-Off Collection

PURPOSE

The City will accept applications from companies for roll-off collection service annually from March 1 through April 30. This document provides background information and describes the application requirements, submittal process, and City review.

BACKGROUND

The City of Fresno (City), in accordance with the California Integrated Waste Management Act (Act) of 1989, is required to divert 50% of discarded materials from landfills. The City's commitment to diversion was further supported by the City Council's approval on June 26, 2007 of two additional goals: achieving 75% diversion by 2012 and zero waste status by 2025. The City finds that reusing, recycling, and recyclable materials, organic materials, and construction and demolition debris (C&D) generated by residential and commercial premises is essential to further the City's efforts to reduce waste and comply with the Act and the City's zero waste goal. To support the City's goals, the City is regulating and monitoring the activities of the collection companies that handle roll-off containers in the City to require diversion of some of the materials collected by roll-off collection companies.

This City is exercising its right under Article 2 of Chapter 6 of the City's Municipal Code to provide for the collection, transportation, processing, recycling, composting, and disposal of Permitted Materials placed in roll-off containers through non-exclusive agreements granted to one or more collection providers. Permitted Materials include solid waste, recyclable materials, organic materials, and C&D. Pursuant to Article 2 of Chapter 6 of the City's Municipal Code, the City requires all companies providing roll-off container collection services for Permitted Materials in the City to enter into a non-exclusive franchise with the City in order to regulate this collection, processing, and disposal business, to ensure its orderly operation, and to minimize the potential for adverse effects it may have on the local environment. The non-exclusive franchise agreement for roll-off container collection, processing, and disposal services for Permitted Materials describes the terms and conditions that the collection company must comply with including, but not limited to, diversion of at least 50% of all C&D collected, at least 70% of the recyclable collected, and at least 90% of organic materials collected; payment of franchise fees to the City; and reporting of customer and collection data to the City.

APPLICATION PREPARATION AND SUBMITTAL INSTRUCTIONS

Companies interested in entering a non-exclusive franchise agreement with the City granting them right to provide roll-off container collection, recycling, processing, composting, and disposal services for solid waste, recyclable materials, organic materials, and C&D in the City shall prepare and submit an application to the City in accordance with the instructions provided herein.

The applicant shall submit two copies of its completed application including the application fee identified below by mail or in person to:

City Clerk
City of Fresno
2600 Fresno St., Room 2133
Fresno, CA 93721-3624
((559) 621-7650

With copy to:

Public Utilities Director
City of Fresno
2600 Fresno St., Room 3065
Fresno, CA 93721-3624
((559) 621-8000

APPLICATION CONTENT

The application shall contain the information requested in Items 1 through 6 of this section.

1. **Applicant Information**. Provide a cover letter that includes, at a minimum, the following applicant information. The cover letter shall be signed by an officer or agent of the company submitting the application, who is duly authorized to bind the company to the application.

   A. Company Name

   B. Form of Business Organization:

   ☐ Sole Proprietorship

   ☐ Partnerships (includes limited, general, and limited liability partnerships)

   ☐ Corporation (includes limited liability companies)

   C. Contact Name/Title, Fax, Phone, and Email Address

   D. Business Mailing Address

   F. Names of Persons Doing Business under Fictitious Name (if applicable)

   G. Names of Members of Partnership, Ventures, and LLCs (if applicable)

   H. Names of Officers of Corporation or Association (if applicable)

   I. Date applicant desires the non-exclusive roll-off collection franchise to become effective)

2. **Qualification Information**:

A. Description of Applicant. A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following:

1. The names, residence addresses and business addresses of all officers, directors, and associates of the applicant.
2. The names, residence addresses and business addresses of all persons and entities having, controlling, or being entitled to have or control five percent or more of the ownership of the applicant and the respective ownership share of each such person or entity.
3. The names and addresses of any parent or subsidiary of the applicant and of any other business entity owning or controlling in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including, but not limited to, all similar systems owned or controlled by the applicant, its parent or subsidiary and the areas served thereby.

B. Experience - Describe the applicant's experience in providing roll-off container collection, transportation, processing, and/or disposal services for solid waste, recyclable materials, organic materials, and C&D in the City, in Fresno County, or in similar jurisdictions in California.

C. Municipal References - Provide the name, title, address, and telephone number of at least one representative (responsible for administering the non-exclusive franchise or permit system) of a jurisdiction, where applicant provides services, which the City may contact to conduct a reference check.

D. Customer References - Provide the name, title, address, and telephone number of at least three customers that recently received or currently receive roll-off container collection services provided by the applicant, which the City may contact to conduct a reference check.

E. Proof of Insurance - Provide proof of insurance in the amounts specified in the non-exclusive franchise agreement.

F. Litigation, Regulatory Actions, and Liquidated Damages - Describe all past and pending civil, legal, regulatory, and criminal actions now pending or for which judgments were made in the past five years against the applicant, applicant's key personnel, and all subsidiaries owned by applicant that are affiliated with solid waste, recyclable materials, organic materials, and C&D businesses. List the amount of liquidated damages, fines, and/or penalties the applicant has paid, the name of the jurisdiction to which such payments where paid, and the event(s) which triggered the damages, fines, or penalties.

G. Criminal History – Provide a detailed criminal history of (a) each Person, firm or entity that submits the application; and (b) where the applicant is a firm or entity, of each Person who owns 10 percent or more of the shares of stock, assets, or other

interest in the entity. If requested by the City, the applicant shall also submit such additional information, including consent to a background check and agreement of the applicant to pay all related costs, as may be necessary to fully investigate the potential criminal history of those persons and entities of the applicant.

3. Operations Information

A. Diversion Plan - Describe applicant's plan to divert at least 50% of the C&D collected, 70% of all recyclable materials collected, and 90% of all organic materials collected as applicable. Provide, at a minimum, a list of materials to be accepted, a list of facilities to be used to process permitted materials collected, and the markets for materials.

B. Vehicles - Provide a description and list of the vehicles reasonably expected to be used to provide service through the term of the non-exclusive franchise agreement. At a minimum, include the vehicle make, model, year, body type, body capacity, number of axles per vehicle, vehicle license(s) and number(s), and vehicle weight.

C. Roll-Off Containers - Provide a description of the drop box and roll-off compactor containers reasonably expected to be used to provide service through the term of the non-exclusive franchise agreement. At a minimum, include the number, type, and size of containers.

D. Collection Schedule – Describe plans with regard to collection frequency schedule.

E. Permitted Materials to be Collected – Description the types of permitted materials (e.g., solid waste, recyclable materials, organic materials, and/or C&D) to be collected and services to be performed pursuant to grant of a non-exclusive roll-off collection franchise agreement.

F. Processing and Disposal Facilities – Provide a description of the facilities, site name(s), addresses(s) and permit(s), certifications and/or regulatory classifications(s) where collector intends to process, recycle, compost, and/or disposal of solid waste, recyclable materials, and C&D as the case may be. Note that all solid waste must be delivered to the American Avenue landfill for disposal. Applicant can select disposal site(s) for residue from processing activities.

G. Hazardous Waste Procedures - Describe procedures for identifying and handling hazardous waste placed by generator in the materials collected by the applicant. The plan shall describe: identification and screening procedures; notification plan; disposal plan; and, employee training program.

H. Customer Service Plans - Identify the location and hours of the applicant's customer service center, which shall be available to all its Fresno customers in accordance with Section 5.6 of the non-exclusive franchise agreement.

I. Billing Services - Describe applicant's procedures for billing its roll-off customers and recording customer payments.

4. **Signed Non-Exclusive Franchise Agreement**

Attach to the application two executed copies of the non-exclusive franchise agreement approved by the Director pursuant to Section 6.222.i of the City's Municipal Code.

5. **Application Fee**

An application fee in the sum stated in the City's Master Fee Schedule, which shall be in the form of cash, certified or cashier's check, or money order, to pay the costs of studying, investigating, and otherwise processing such application, and which shall be in consideration thereof and not returnable or refundable in whole or in part; provided, that any applicant who shall deliver to the City Clerk a written withdrawal of or cancellation of any application hereunder, not later than the seventh day next following the day such application is received by the City Clerk, shall be entitled to have returned and refunded a portion of the application fee as specified in the Municipal Code. For applications submitted in April 2011, the application fee shall not due at the time the application is submitted. It shall be due after Council approval of the non-exclusive franchise agreement, prior to execution of the non-exclusive franchise agreement by the City.

6. **Other as Requested by Director**

Include any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the Director.

QUESTIONS

An applicant or prospective applicant may submit written questions to the City regarding the non-exclusive franchise agreement or the application instructions. All questions shall be submitted to:

Public Utilities Director
City of Fresno
2600 Fresno St., Room 3065
Fresno, CA 93721-3624
(559) 621-8000

CITY REVIEW

Director shall evaluate any and all applications for non-exclusive roll-off collection franchises as to the qualifications and capabilities of the applicant. During the Director's review, the information submitted in the application may be subject to verification. The applicant shall cooperate with the Director's review of its application and any request for clarification or additional information. Failure to provide all required application information, false, inaccurate or misleading information may be grounds for rejection of your application.

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NON-EXCLUSIVE FRANCHISE AGREEMENT

BETWEEN

THE CITY OF FRESNO

AND

Red Bin Services

FOR

ROLL-OFF COLLECTION SERVICES

_____, 20

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D Approved Processing and Residue Disposal Facilities

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NON-EXCLUSIVE FRANCHISE AGREEMENT

BETWEEN

THE CITY OF FRESNO

AND

Red Bin Services

FOR ROLL-OFF COLLECTION SERVICES

This non-exclusive franchise agreement (Agreement) is made and entered into this _____ day of _____, 20____, by and between the City of Fresno, a municipal corporation, (City) and Red Bin Services (Contractor.)

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

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

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

WHEREAS, the Act requires local agencies to divert 50% of discarded materials from landfills; and,

WHEREAS, the City Council established goals of achieving 75% diversion by 2012 and zero waste status by 2025 on June 26, 2007, and approved a Zero Waste Strategic Action Plan on February 11, 2009; and

WHEREAS, the City finds that reusing, Recycling, and Composting Recyclable Materials, Organic Materials, and Construction and Demolition Debris (C&D) and beneficial use or composting of Organic Materials is essential to further the City's efforts to reduce Solid Waste Disposal and comply with the Act and the City's zero waste goals; and

WHEREAS, pursuant to the powers granted the City as a charter city by Article XI, Section 5(a) of the California Constitution and Article XIII of the Fresno City Charter, the City has determined that the public health, safety, and well-being require that a franchise agreement defining non-exclusive rights be awarded to qualified companies to provide for the roll-off container collection of Permitted Materials

except for collection of materials excluded in the City's Municipal Code, and other services related to meeting requirements of the Act; and

WHEREAS, the City requires all haulers providing Roll-Off Collection services for Permitted Materials in the City to obtain a non-exclusive franchise in order to regulate this business, ensure its orderly operation, achieve its diversion goals, and to minimize the potential for adverse effects it may have on the local environment; and

WHEREAS, the City Council has determined through an application process that the Contractor, by demonstrated experience, reputation, and capacity, is qualified to provide for the Roll-Off Container Collection of Permitted Materials within the corporate limits of the City and the Transportation of such material to appropriate places of Recycling, Processing, and/or Disposal, and can provide insurance consistent with the City's requirements. The City Council desires that Contractor be engaged to perform such services on the basis set forth in this Agreement; and

WHEREAS, Contractor intends to use the City's streets, alleys, other public rights-of way, and infrastructure to provide Roll-Off Collection services to the City's residents and businesses; and

WHEREAS, the City intends to receive just and reasonable fees from the Contractor for City's administration of the Agreement and for Contractor's use of the City streets, alleys, other public rights-of-way, and infrastructure which the City may lawfully impose and the companies are obligated to pay; and,

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Article and shall be capitalized throughout this Agreement:

"Act" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.

"Agreement" means this Agreement between the City and Contractor for Roll-Off Container Collection, Processing, and Disposal of Permitted Materials including all exhibits, and any future amendments hereto.

"Applicable Law" means all Federal, State, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over the Roll-Off Container Collection, Transportation, Recycling, Processing, and Disposal of Permitted Materials that are in force on the Effective Date and as they may be enacted, issued, or amended during the Term of this Agreement.

"Approved C&D Processing Site" means the processing site specified in Exhibit D, which was selected by Contractor and approved by the City.

"Approved Disposal Site" means a Disposal Site selected by the Contractor or its Subcontractor(s) and approved by the City for Disposal of residue from Approved Processing Site(s). Approved Disposal Site(s) are listed in Exhibit D.

"Approved Organics Processing Site" means the processing site specified in Exhibit D, which was selected by Contractor and approved by the City.

"Approved Processing Site(s)" means the Approved C&D Processing Site, Approved Organics Processing Site, and/or Approved Recyclables Processing Site.

"Approved Processor" means the operator of an Approved Processing Site.

"Approved Recyclables Processing Site" means the processing site specified in Exhibit D, which was selected by Contractor and approved by the City.

"**Bin**" means a container with capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels, that is typically serviced by a front end-loading Collection vehicle.

"Business Days" mean days during which City offices are open to do business with the public.

"**Cart**" means a plastic container with a hinged lid and wheels that is typically serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 64, or 96 gallons (or similar volumes).

"C&D" means Construction and Demolition Debris.

"Change in Law" means any of the following events or conditions that have a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Effective Date of any Applicable Law; or

b. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the City or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

"City" means the City of Fresno, California, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the Term.

"City's Municipal Code" means the City of Fresno Municipal Code.

"Collect" or **"Collection"** means the act of collecting Permitted Materials and other material at the place of generation in the City.

"Commercial" shall mean of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

"Compactor" means a mechanical apparatus that compresses materials into a container, which container may be detachable. For the purposes of this Agreement, Compactors shall include only Compactors with container capacities of ten (10) to fifty (50) cubic yard that are serviced by Roll-Off Collection Trucks.

"Compost" or **"Composting"** includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost Product.

"Compost Product" means the product resulting from the controlled biological decomposition of Organic Materials that are Source Separated from the Solid Waste stream, or which are separated at a centralized facility.

"Construction and Demolition Debris (C&D)" means materials resulting from construction, remodeling, repair, cleanup, or demolition operations that are not hazardous as defined in California Code of Regulations, Title 22 Section 66261.3. This term includes, but is not limited to, asphalt, concrete, cement concrete, brick, lumber, gypsum wallboard, concrete board, cardboard, and other associated packaging, roofing material, ceramic tile, carpeting, plastic pipe and steel, as well as vegetative matter resulting from land clearing and landscaping including but not limited to rock, soil, tree stumps. Construction and Demolition Debris excludes putrescible wastes.

"Contractor" means Red Bin Services (insert contractor's name), a Sole Proprietorship (insert corporation, sole proprietorship, partnership as appropriate) organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies, and Subcontractors.

"Contractor Party(ies)" shall mean Contractor, officers, directors, management employees, or fiscal employees (where "management employee" means any employee with direct or indirect responsibility for direction and control over the Contractor's activities under this Agreement and "fiscal employee" means an employee with direct or indirect responsibility and control duties relating to financial matters under this Agreement).

"Criminal Activity" means those activities described in Section 12.12.1.

"Customer" means the Person whom Contractor submits billing invoice to and collects payment from for Collection services provided.

"Designated Disposal Site" means the American Avenue Landfill at 18950 W American Avenue in Tranquility, California for the purposes of Disposing Solid Waste.

"Designated Waste" means non-Hazardous Wastes that may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal Sites or Class III Disposal Sites pursuant to a variance issued by the California Department of Health Services.

"Director" shall mean the Public Utilities Director of the City or an authorized representative of the Public Utilities Director.

"Discarded Materials" means Solid Waste, Recyclable Materials, Organic Materials, or C&D placed by a Generator in a receptacle and/or at a location that is designated for Collection pursuant to the City's Municipal Code.

"Disposal or Dispose (or variation thereof)" means the final disposition of Solid Waste at a Disposal Site.

"Disposal Site" means a facility for ultimate Disposal of Solid Waste.

"Diversion" means activities that reduce or eliminate the amount of Solid Waste from Solid Waste Disposal including, but not limited to, Recycling, and Composting.

"Drop Box" means an open-top container with capacity from six (6) to fifty (50) cubic yards that is used for Collection of Permitted Materials and that is serviced by a Roll-Off Collection Truck. Drop Boxes with capacities of less than ten (10) cubic yards may only be used for the purposes of Collecting C&D. A Drop Box, which is also known as a roll-off box and/or debris box, is a type of Roll-Off Container.

"Effective Date" means the date set forth in the introductory paragraph of this Agreement.

"Federal" means belonging to or pertaining to the national general government of the United States.

"Food Scraps" means those discarded materials that will decompose and/or putrefy including (i) all kitchen and table food waste, (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs, (iii) discarded paper that is contaminated with Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat and fish waste; and, (v) non-Recyclable paper or contaminated paper. Food Scraps are a subset of Organic Materials.

"Franchise Fee" means the fee paid by Contractor to City for the privilege to hold the non-exclusive rights granted by this Agreement.

"Generator" means any Person whose act or process produces Permitted Materials, or whose act first causes Permitted Materials to become subject to regulation.

"Green Waste Material" means any materials generated from the maintenance or alteration of public, commercial, or residential landscapes that will decompose and/or putrefy including, but not limited to, yard clippings, grass, leaves, shrub/tree trimmings or prunings (less than 4" in diameter), brush, flowers, weeds, dead plants, small pieces of unpainted and untreated wood, and other types of organic waste. For the purposes of this Agreement, such materials shall be Source Separated and placed by a Generator in a receptacle and/or at a location that is designated for Collection. Green Waste Material is a subset of Organic Materials.

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

"Holidays" are defined as New Year's Day, Thanksgiving Day, and Christmas Day.

"Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments, as defined in Health and Safety Code Section 25117.5.

"Liquidated Damages" means the amounts due by Contractor to City for failure to meet specific quantifiable standards of performance as described in Section 11.4 and Exhibit A.

"Organic Materials" means those discarded materials that will decompose and/or putrefy including Green Waste Material and Food Scraps such as, but are not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with Food Scraps, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No discarded material shall be considered to be Organic Materials, unless such material is Source Separated from Solid Waste, Recyclable Materials, C&D, or other materials.

"Parent Company" refers to a company owning more than fifty percent (50%) of the shares of another company (subsidiary) or a company that has management control over such subsidiary.

"Party or **Parties"** refers to the City and Contractor, individually or together.

"Permitted Materials" refers to Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D. Permitted Materials excludes Source Separated Food Scraps.

"Person(s)" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Fresno, and special purpose districts.

"Premises" means any land or building in the City where Permitted Materials are generated or accumulated.

"Processing" means to prepare, treat, or convert through some special method.

"Processing Site" means any plant or site used for sorting, cleansing, treating, or reconstituting Permitted Materials for the purpose of making such material available for reuse.

"**Putrescible Waste**" means Solid Wastes originated from living organisms and their metabolic waste products and from petroleum, which contains naturally produced organic compounds and which are

biologically decomposable by microbial and fungal action into the constituent compounds of water, carbon dioxide and other simpler organic compounds.

"Rates" means the charges and fees Contractor bills and collects from each Customer receiving service pursuant to this Agreement.

"Recyclable Materials" means those Discarded Materials that the City Code permits, directs and/or requires Generators to set out in Recyclables Materials containers for Collection for the purpose of Recycling. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Solid Waste and Organic Materials. Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, soap boxes, cereal and other similar food boxes); chipboard; cardboard; paper milk cartons; glass containers of any color (including glass bottles and jars all colors); aluminum cans; fabric softener containers; steel, tin or bi-metal cans; plastic containers (clear or green plastic soda and water bottles, plastic containers and bottles and plastic bags with no. 1, 2 or 3 on the bottom); and food containers from potato salad, pasta salad, whipped cream, etc.

"Recycle or Recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, or thermally destroying solid waste.

"Residential" shall mean of, from, or pertaining to a single-family Premises, multi-plex, or multi-family Premises including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, cooperative apartments, and yacht harbors and marinas where residents live aboard boats.

"Roll-Off Container" means a Drop Box or Compactor used for Collection of Permitted Materials and serviced by a Roll-off Collection Truck. Roll-Off Containers with capacities of less than ten (10) cubic yards may only be used for the purposes of Collecting C&D.

"Roll-Off Collection Truck" means a collection vehicle with a mechanical device such as a winch that pulls or loads a Roll-Off Container onto the truck bed or attached trailer and separately transports each Roll-Off Container to a Disposal Site or Processing Site.

"Solid Waste" means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder and those Discarded Materials that the City Code requires Generators within the City to set out for Collection. Excluded from the definition of Solid Waste are C&D, Hazardous Waste, Infectious Waste, Designated Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, "Solid Waste" may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Section 41500 and 41802 of the California Public Resources Code.

"Source Separated" means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Processing, Composting, recovery, or reuse.

"State" means the State of California.

"Subcontractor" means a party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor's fulfillment of its obligations under this Agreement.

"Term" means the Term of this Agreement, including extension periods if granted, as provided for in Article 3.

"Ton" means a unit of measure for weight equivalent to 2,000 standard pounds where each pound contains 16 ounces.

"Tonnage" means the total weight in Tons Collected, Recycled, Composted, Diverted, or Disposed of, as the context requires.

"Transportation" means the act of transporting or state of being transported.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

2.1 REPRESENTATIONS AND WARRANTIES

The Contractor, by execution of this Agreement, represents and warrants the following to City, for the purpose of inducing City to enter into this Agreement and to consummate the transactions contemplated hereby:

A. **Corporate Status.** Contractor is duly organized, validly existing and in good standing under the laws of the State. It is qualified to transact business in the City and State and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

B. **Authorization.** Contractor has the authority to enter this Agreement and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary), sole proprietor, or partners have taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of Contractor represents and warrants that they have authority to do so and the corporate secretary's certificate in Exhibit B confirms this. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

C. **Agreement Will Not Cause Breach.** To the best of Contractor's knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by Contractor of its obligations hereunder does not conflict with, violate, or result in a breach: (i) of any law or governmental regulation applicable to Contractor; (ii) any term or condition of any judgment, order, or decree of any court, administrative agency or other governmental authority; or, (iii) any Agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitute a default thereunder.

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

1. Materially adversely affect the performance by Contractor of its obligations hereunder;

2. Adversely affect the validity or enforceability of this Agreement; or

3. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

E. **No Adverse Judicial Decisions.** To the best of Contractor's knowledge after reasonable investigation, there is no judicial decision that would prohibit this Agreement or subject this Agreement to legal challenge.

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

G. **Contractor's Statements.** The Contactor's Application and any other supplementary information submitted to the City, which the City has relied on in entering this Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

H. **Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Contractor has considered such matters in entering this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.

I. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to Collect, Transport, Recycle, Process, and Dispose Permitted Materials generated in the City. Contractor possesses the equipment, facility(ies), and employee resources required to perform its obligations under this Agreement.

ARTICLE 3
TERM OF AGREEMENT

3.1 EFFECTIVE DATE

Contractor may provide the Roll-Off Container Collection, Transportation, Recycling, Processing, Composting, and Disposal services authorized by this Agreement commencing on the Effective Date.

3.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

The obligation of City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which may be waived, in written form, in whole or in part by City.

A. **Accuracy of Representations.** The representations and warranties made in Article 2 of this Agreement are true and correct on and as of the Effective Date.

B. **Absence of Litigation.** There is no litigation pending on the Effective Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.

C. **Furnishings of Insurance.** Contractor has furnished evidence of the insurance required by Article 10 that is satisfactory to the City.

D. **Effectiveness of City Council Action.** The City Council action approving this Agreement shall have become effective and all Parties shall have signed the Agreement pursuant to Applicable Law prior to or on the Effective Date, provided that no restraining order of any kind has been issued.

3.3 INITIAL TERM

The initial Term of this Agreement shall commence on the Effective Date and continue in full force for five (5) years, until June 30, ~~2016~~ 2021. The Term may be extended pursuant to Section 3.4 or terminated early in accordance with Section 11.2.

3.4 OPTION TO EXTEND

Subject to City Council approval, the City shall have the option to extend this Agreement for an additional term of up to five (5) years. If the City extends the Agreement, it shall give written notice to Contractor at least one hundred eighty (180) calendar days prior to expiration of the Initial Term. The City's written notice shall specify the number of years by which it elects to extend the Term of this Agreement and the revised expiration date of the Agreement. Any such extension shall not become effective unless Contractor agrees to the extension, in writing, at least one hundred fifty (150) calendar days prior to expiration of the Initial Term.

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ARTICLE 4
SCOPE OF AGREEMENT

4.1 SCOPE OF AGREEMENT

This non-exclusive franchise, granted to Contractor, authorizes Contractor to Collect, Transport, Recycle, Process, Compost, and Dispose of Permitted Materials placed by Residential or Commercial Generators in Roll-Off Containers for Collection, provided that the Customer has voluntarily arranged for Contractor to provide Collection services.

The Contractor shall be responsible for the following services:

A. Collecting Permitted Materials placed by each Customer in a Roll-Off Container for Collection as requested by Customer.

B. Providing each Customer, upon delivery of Roll-Off Container, a printed list that specifies the materials that cannot be placed in the Roll-Off Container (i.e., Hazardous Wastes) and a list of acceptable Recyclable Materials, Organic Materials, and C&D that may be placed in the Roll-Off Container.

C. Transporting Collected Solid Waste to the Designated Disposal Site and transporting other materials to an Approved Processing Site.

D. Furnishing all labor, supervision, vehicles, Roll-Off Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement.

E. Paying all expenses related to provision of services required by this Agreement including, but not limited to, Franchise Fees, taxes, regulatory fees, Collection costs, Transportation costs, Processing costs, Disposal costs, utilities, etc.

F. Providing all services required by this Agreement in a thorough and professional manner so that residents, businesses, and the City are provided timely, reliable, courteous and high-quality service at all times.

G. Performing all services in substantial accordance with this Agreement at all times using best industry practice for comparable operations.

H. Complying with Applicable Law.

I. Performing or providing all other services necessary to fulfill its obligations under this Agreement.

J. Diverting a minimum of 50% of the C&D Collected from Disposal. The Diversion rate shall be calculated each month based upon the weights of C&D Collected and Diverted.

K. Diverting a minimum of 70% of the Recyclable Materials Collected from Disposal. The Diversion rate shall be calculated each month based upon the weights of Recyclable Materials Collected and Diverted.

L. Diverting a minimum of 90% of the Organic Materials Collected from Disposal. The Diversion rate shall be calculated each month based upon the weights of Organic Materials Collected and Diverted.

The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not relieve Contractor of the duty of accomplishing all other aspects necessary to fulfill its obligations under this Agreement whether such requirements are enumerated elsewhere in the Agreement or not.

4.2 LIMITATIONS TO SCOPE

The scope of the Agreement shall be non-exclusive. Permitted Materials may be Collected and Transported by other Persons provided that such Persons do so in accordance with the City's Municipal Code, including but not limited to the following:

A. **Permitted Materials Collected by Other Non-Exclusive Franchise Haulers.** Permitted Materials Collected by a party that has executed a Non-Exclusive Franchise Agreement with the City for Roll-Off Container Collection Services.

B. **Permitted Materials Collected by City.** Permitted Materials collected by the City's municipal collection operation including: (1) materials Collected using equipment, such as Carts and Bins, not regulated by this Agreement (2) materials Collected from City facilities, and special events and venues sponsored by the City, which may be Collected in Carts, Bins, or Roll-Off Containers by the City's municipal collection operation or City crews.

C. **Donated Recyclable Materials.** Recyclable Materials Generated in the City that are Source Separated and donated by the Generator to youth, civic, charitable, or other nonprofit organizations.

D. **Materials Hauled by Owner or Occupant, or its Contractor.** Permitted Materials that are removed from any Premises and are Transported to a Disposal Site or Processing Site by (i) the Owner or Occupant of such Premises, (ii) by full-time employee of Owner or Occupant that uses the Owner's or Occupant's equipment to transport materials; or (iii) by a construction or demolition contractor performing construction or demolition work at the Premises, whose removal of the Permitted Materials is incidental to the service being performed (as defined in Section 6-205(f)(iii) of the City's Municipal Code) and such contractor removes materials at no additional or separate fee using contractor's employees and contractor's equipment.

E. **Green Waste Material.** Private collection of Green Waste Material resulting from landscaping or gardening service performed by the person collecting such materials.

F. **Other Recyclable Materials.** Private collection by any person or company that transports Recyclable Materials through use of its own vehicle(s), and receives no compensation for such Collection or Transportation.

G. **Materials from Public Schools and Other Government Facilities.** The removal of any materials generated by public schools, cities, the County, or federal facilities (with the exception of those facilities subject to 42 U.S.C. Section 6961(a)).

4.3 CITY'S RIGHT TO GRANT MULTIPLE NON-EXCLUSIVE AGREEMENTS

The City may grant to an unlimited number of additional Persons similar non-exclusive franchise agreements for Roll-Off Container Collection, Transportation, Recycling, Processing, Composting, and Disposal of Permitted Materials.

4.4 CITY'S RIGHT TO EXCLUDE NEWLY ANNEXED TERRITORY FROM SCOPE OF FRANCHISE

The City reserves the right to exclude territory that is annexed into the corporate limits of the City subsequent to the Effective Date from the scope of this franchise.

4.5 AGREEMENT CONSISTENT WITH APPLICABLE LAW

This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law, now and during the Term. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the City to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial interpretations or new laws.

4.6 OWNERSHIP OF MATERIALS

Once Permitted Materials are placed in a Roll-Off Container for Collection by Contractor, ownership and the right to possession of such materials shall transfer directly from the Customer to Contractor.

On a short-term basis not to exceed more than five (5) calendar days per year, City may obtain ownership or possession of Permitted Materials placed in the Roll-Off Container for Collection, for purposes of waste characterization studies, upon written notice to Contractor of its intent to do so. However, nothing in this Agreement shall be construed as giving rise to any inference that City has such ownership or possession unless such written notice has been given to Contractor.

4.7 NOTIFICATION TO CITY OF NON-FRANCHISED HAULERS

If Contractor can produce evidence that other Persons are Collecting Permitted Materials and do not have rights to do so as granted by non-exclusive franchise agreement with the City or otherwise, or in a manner that is not consistent with the City's Municipal Code, Contractor shall notify the City in writing, within ten (10) calendar days of Contractor witnessing such circumstances. The Contractor's notice shall include the name and telephone number of the Person or company Collecting Permitted Materials (if known), the date the Contractor witnessed the event, the location of the Roll-Off Container along with Contractor's evidence of the violation of the rights granted by this non-exclusive franchise.

ARTICLE 5
COLLECTION, PROCESSING, AND DISPOSAL SERVICES

5.1 COLLECTION

Contractor is hereby authorized to Collect Permitted Materials from residents and businesses in the City using Roll-Off Containers. Contractor shall Collect Permitted Materials from Customers that voluntarily subscribe to or request Roll-Off Container Collection services from Contractor. Contractor shall provide its Customers with a Roll-Off Container for Permitted Materials Collection or shall allow its Customers to provide a Roll-Off Container. Contractor shall Collect Permitted Materials from Premises as frequently as scheduled by Contractor or as mutually agreed with Customer, but not less than once a week for Solid Waste and Organic Materials. Contractor shall provide requested service to its Customers and shall charge Customers for service at Rates mutually agreed by Customer and Contractor.

Contractor shall Transport Solid Waste Collected pursuant to this Agreement to the Designated Disposal Site and other materials to an Approved Processing Site that has been selected by the Contractor and approved by the City. The Approved Processing Site(s) must be able to demonstrate Diversion rates in accordance with Sections 4.1 and 5.3.

Contractor may enter into contracts with Customers for Collection services provided that in no case shall the term of such contracts extend beyond the Term of this Agreement, and provided that in the event the City terminates this Agreement the contracts with any and all Customers shall terminate on the termination date of this Agreement.

5.2 PROCESSING AND MARKETING SERVICES

A. **Processing.** Contractor agrees to Transport and deliver (i) all C&D it Collects in the City to the Approved C&D Processing Site, (ii) all Recyclable Materials it Collects in the City to the Approved Recyclable Processing Site, and (iii) all Organic Materials it Collects in the City to the Approved Organics Processing Site. Residue from the C&D, Recyclable Materials, and Organics Processing and Composting activities shall be Disposed of by Contractor or its Approved Processor at an Approved Disposal Site selected by Contractor in accordance with Section 5.4. Contractor selected the Approved Processing Site(s) and Approved Disposal Site(s), which are identified in

Exhibit D. Contractor shall permit or arrange for the City to inspect the Approved Processing Site(s) and observe operations at any time during the Term.

Contractor or its Approved Processor(s) shall possess all permits and approvals necessary for use of the Approved Processing Site(s) in full regulatory compliance. Contractor shall, upon City request, provide or request from its Approved Processor(s) and provide copies of notices of violation or permits to the City. Upon request of the City, Contractor shall provide a certified statement from its Approved Processor(s) documenting its Diversion rate.

If Contractor elects to use a Processing Site(s) that is different than the Approved Processing Site(s) specified in Exhibit D, it shall request written approval from the City sixty (60) calendar days prior to use of the site and obtain the City's written approval no later than ten (10) calendar days prior to use of the site.

If Contractor is unable to use an Approved Processing Site due to an emergency or sudden unforeseen closure of the Approved Processing Site, Contractor may use an alternative Processing Site provided that (i) the Contractor provides verbal and written notice to the City within twenty-four (24) hours of use of an alternative Processing Site, and (ii) the alternative Processing Site is fully permitted and in compliance with all Applicable Laws. The written notice shall include a description of the reasons the Approved Processing Site is not feasible and the period of time Contractor proposes to use the alternative Processing Site. Contractor shall use the alternative Processing Site for no more than twenty-four (24) hours without obtaining City's written approval.

B. **Marketing.** The Contractor or its Approved Processor shall be responsible for marketing C&D, Recyclable Materials, and Organic Materials Collected in the City and Diverted. Contractor and/or its Approved Processor may retain all revenues generated from the sale of Permitted Materials that are Diverted.

Upon request, Contractor or its Approved Processor shall provide proof (in the form of sales receipts showing end-user) to the City that all C&D, Recyclable Materials, and Organic Materials Diverted are marketed for Recycling or reuse in such a manner that materials shall be considered as Diverted in accordance with the State regulations established by the Act. All residual material from the Processing activities that is not marketed for use shall be accounted for as Disposal Tonnage at a permitted Disposal Site. No Permitted Material shall be transported to a domestic or foreign location if Solid Waste Disposal of such material is its intended use.

Contractor or its Approved Processor shall provide the City, upon written request, with a list of broker/buyers it uses to market C&D, Recyclable Materials, and Organic Materials Diverted. City may audit brokers or buyers to confirm that materials are being Recycled and Diverted from Disposal. If Contractor becomes aware that a broker or buyer has illegally handled or Disposed of material generated by the City or elsewhere, Contractor shall immediately inform the City and terminate its contract or working relationship with such party immediately.

C. **Processing and Marketing Costs.** Contractor shall pay all costs associated with Processing and marketing of Permitted Materials including payment of any gate fees charged at the Approved Processing Sites.

5.3 DIVERSION REQUIREMENT

Contractor shall Divert from landfill disposal at least (i) 50% by weight of all C&D it Collects within the City, (ii) 70% by weight of all Recyclable Materials it Collects within the City, and (iii) 90% by weight of all Organic Materials it Collects within the City during each calendar month by Processing, Recycling, or Composting some or all of the C&D, Recyclable Materials, and Organic Materials Collected.

If Contractor fails to meet the Diversion requirements stated in the preceding paragraph during a calendar month, the City may terminate the Agreement in accordance with Section 11.5.

5.4 DISPOSAL

A. **Disposal of Solid Waste Collected**. Contractor shall Transport all Solid Waste Collected in the City to the Designated Disposal Site, which the City specifies shall be the American Avenue Landfill in Tranquility, California. Contractor shall pay all costs associated with Transporting and Disposal of Solid Waste including payment of any gate fees charged at the Designated Disposal Site.

B. **Disposal of Processing Residue.** Contractor shall, or shall require its Approved Processor to, Dispose of residue from Processing of C&D, Recyclable Materials, and Organic Materials Collected within the City, that are not Diverted through Processing activities, by Transporting the residue to an Approved Disposal Site specified in Exhibit D, which is lawfully authorized to accept such material.

C. **Permitted Site**. Contractor or its Approved Processor shall only Dispose of materials at a permitted Disposal Site that is in full regulatory compliance. Contractor, or its Approved Processor, shall keep or confirm all existing permits and approvals necessary for use of the Disposal Site(s) in full regulatory compliance. Contractor shall, upon request, provide copies of notices of violation or permits to the City.

D. **Compliance with Regulations**. Contractor shall observe and comply with all regulations in effect at the Designated Disposal Site and Approved Disposal Site(s) and cooperate with the operator thereof with respect to delivery of Solid Waste, including directions to unload Collection vehicles in designated areas, accommodating operations and maintenance activities, and complying with Hazardous Waste exclusion programs.

E. **Disposal at Approved Site**. Contractor, or its Approved Processor, shall not Dispose of such residue by depositing it on any public or private land, in any river, stream, or other waterway, or in any sanitary sewer or storm drainage system or in any other manner which violates Applicable Laws. Contractor, or its Approved Processor, selected the Approved Disposal Site(s) for residue Disposal specified in Exhibit D. Contractor shall arrange for the City to inspect the Approved Disposal Site(s) and observe operations at any time during the Term.

F. **Alternative Disposal Site**. If Contractor, or its Approved Processor, elects to use a Disposal Site(s) that is different than the Approved Disposal Site(s) listed in Exhibit D, it shall request written approval from the City 60 calendar days prior to use of the site and obtain the City's written approval no later than 10 calendar days prior to use of the site.

If Contractor, or its Approved Processor, is unable to use the Approved Disposal Site due to an emergency or sudden unforeseen closure of the Approved Disposal Site, Contractor, or its Approved Processor, may use an alternative Disposal Site provided that (i) the Contractor provides verbal and written notice to the City within twenty-four (24) hours of use of an alternative Disposal Site, and (ii) the alternative Processing Site is fully permitted and in compliance with all Applicable Laws. The written notice shall include a description of the reasons the Approved Disposal Site is not feasible and the period of time Contractor, or its Approved Processor, proposes to use the alternative Disposal Site. Contractor shall use the alternative Disposal Site for no more than twenty-four (24) hours without obtaining City's written approval.

5.5 BILLING

Contractor shall bill all Customers and collect billings in accordance with Contractor-established Rates, which are set in a manner consistent with provisions of Section 9.3. The Contractor shall prepare, mail, and collect bills (or shall issue written receipts for cash payments) for Collection services provided by Contractor. Contractor shall be responsible for collection of payment from Customers with past due accounts.

Contractor shall maintain copies of all billings and receipts, each in chronological order, for five (5) years after expiration or termination of this Agreement. Contractor shall retrieve and make available to the City copies of the billings and receipts within five (5) days of the Director's written request for the billings and receipts. The Contractor may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

5.6 CUSTOMER SERVICE

Contractor shall maintain a business office within the City or within a reasonable distance of the City limits approved by the Director. The business office shall staff at least one customer service representative capable of accepting payments from Customers, answering service questions, and resolving Customer service issues. Contractor shall have a toll-free Customer service telephone number and shall have staff available to answer calls from at least 8:00 a.m. to 6:00 p.m., Monday through Friday. An answering machine shall record Customer calls and voice messages between 6:00 p.m. and 8:00 a.m.

ARTICLE 6
STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT, AND PERSONNEL

6.1 OPERATING DAYS, HOURS, AND SCHEDULES

A. **Days and Hours of Collection**

1. **Residential Premises.** Delivery or Collection of a Roll-Off Container to or from Residential Premises shall only occur between the hours of 6:00 a.m. and 6:00 p.m., any day of the week.

2. **Commercial Premises.** Delivery or Collection of a Roll-Off Container to or from Commercial Premises that are 200 feet or less from Residential Premises shall only occur between the hours of 6:00 a.m. and 6:00 p.m., any day of the week. Delivery or Collection of a Roll-Off Container to or from Commercial Premises that are more than 200 feet from Residential Premises shall only occur between the hours of 5:00 a.m. and 7:00 p.m., any day of the week. The Director may require modifications to hours for delivery and Collection from Commercial Premises to resolve noise complaints, and, in such case, the Director may change the allowable operating hours.

3. **Exceptions.** In the event of an unforeseen circumstance, the Contractor may deliver or Collect a Roll-Off Container from Residential or Commercial Premises that are 200 feet or less from Residential Premises between the hours of 5:00 a.m. and 10:00 p.m., upon prior written approval from the Director.

4. **Failure to Comply.** If the Contractor fails to comply with the Collection hours described in this Section, the Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit A.

6.2 COLLECTION STANDARDS

6.2.1 Instructions to Customer

Contractor shall instruct Customers as to any preparation of Permitted Materials necessary prior to placing in the Roll-Off Container. Contractor shall, in written form, inform all Customers as to the acceptable materials that can be included in the Roll-Off Container and any unacceptable materials to be excluded from Collection.

6.2.2 Care of Private Property

Contractor shall not damage private property. Contractor shall ensure that its employees: (i) close all gates opened in making Collections, unless otherwise directed by the Customer; (ii) do not cross landscaped areas; and (iii) do not climb or jump over hedges and fences.

City shall refer complaints about damage to private property to Contractor. Contractor shall repair all damage to private and public property caused by its employees to its previous condition.

6.2.3 Litter Abatement

A. **Minimization of Spills.** Contractor shall use due care to prevent vehicle oil and vehicle fuel from being spilled or scattered during Collection and Transportation operations. If any Permitted Materials are spilled or scattered during Collection or Transportation operations, the Contractor shall promptly clean up all spilled and scattered materials.

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, hot load (combustion of material in the truck), accidental damage to a vehicle, or unless approved by the City.

If Contractor fails to perform some or all of the requirements described in this Section, the Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit A.

B. **Clean-Up**. Each Collection vehicle shall carry protective gloves, a broom, and shovel at all times for cleaning up litter and absorbent material for cleaning up liquid spills. The Contractor shall discuss instances of repeated spillage not caused by it with the Customer of the Premises where spillage occurs, and Contractor shall report such instances to City. If the Contractor has attempted to have a Customer stop creating spillage but is unsuccessful, the City will attempt, upon notice by the Contractor, to rectify such situation with the Customer.

C. **Covering of Loads.** Contractor shall cover all Roll-Off Containers at the pickup location before Transporting materials to prevent Permitted Materials from escaping during Transportation.

6.2.4 Noise

All Collection operations shall be conducted as quietly as possible and shall conform to Applicable Law. Contractor will promptly resolve any Complaints of noise during the morning or evening hours of the day to the satisfaction of the City. In the event of repeat occurrences of noise levels in excess of 75 db(A), the Contractor shall pay Liquidated Damages in accordance with Section 11.4 and Exhibit A.

6.3 VEHICLE REQUIREMENTS

A. **General.** Vehicles used to provide services under this Agreement shall be kept in a safe, neat, clean, and operable condition at all times. If Contractor fails to keep Collection vehicles in a safe and sanitary condition, the Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit A.

B. **Specifications.** Contractor shall register all vehicles with the California Department of Motor Vehicles. All such vehicles shall comply with California Environmental Protection Agency (EPA) noise emission and air quality regulations and other applicable noise control regulations.

C. **Vehicle Identification.** Contractor's name, local telephone number, and a unique identification number for each vehicle used to provide services under this Agreement, shall be prominently displayed on all vehicles, in letters and numbers that are a minimum of 4 inches high. Contractor shall not place the City's logo on its vehicles.

D. **Cleaning and Maintenance**

1. **Cleaning.** Collection vehicles shall be thoroughly washed and thoroughly steam cleaned as frequently as necessary to present a clean appearance of the exterior and interior compartment of the vehicle.

2. **Maintenance.** Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operating properly. Contractor shall perform all scheduled maintenance

functions in accordance with the manufacturer's specifications and schedule or in accordance with California Highway Patrol standards, whichever are more stringent. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage, and shall make such records available to the City upon request to the extent necessary to perform the inspections described in Sections 6.3.F and 6.8.

3. **Repairs.** Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause, so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

4. **Storage.** Contractor shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with City's applicable zoning regulations.

E. **Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions for vehicles and roads. Contractor shall have each Collection vehicle weighed at each Approved Processing Sites or Designated Disposal Site to determine the unloaded weight ("tare weight") of the vehicle, and the total loaded weight of each load delivered to the Approved Processing Sites and Designated Disposal Site.

F. **Vehicle Inspection.** City may inspect vehicles at any time to determine compliance with the requirements of this Agreement. Contractor shall make vehicles available to the City and/or Fresno County Health Department for inspection, at any frequency City reasonably requests.

6.4 ROLL-OFF CONTAINER REQUIREMENTS

A. **General.** All Roll-Off Containers shall meet applicable Federal, State, City and local regulations for safety.

B. **Specifications**

1. **Prevent Leakage**. If the type of materials placed in the container may result in leakage of liquids, Contractor shall take precautions to prevent the leakage of liquids. In accordance with Section 17315 of Chapter 3 of Title 14 of the California Code of Regulations, Roll-Off Containers used to Collect garbage and putrescible materials and/or garbage and putrescibles mixed with rubbish shall be non-absorbent, water-tight, vector-resistant, durable, easily cleanable, and shall be designed for safe handling and the containment of refuse.

2. **Provision of Sufficient Capacity**. In accordance with Section 17315 of Chapter 3 of Title 14 of the California Code of Regulations, Containers for garbage and rubbish should be of an adequate size and in sufficient numbers to contain without overflowing, all the refuse that a household or other establishment generates within the designated removal period.

3. **Use of Containers with Less than Ten (10) Cubic Yards of Capacity.** Roll-Off Containers with capacities of less than ten (10) cubic yards may only be used for the purposes of Collecting C&D.

C. **Roll-Off Container Identification.** All Contractor-provided Roll-Off Containers shall prominently display the Contractor's name, local telephone number, a unique Roll-Off Container identification number, and a list of acceptable materials. As appropriate, Roll-Off Containers shall be labeled for: Solid Waste, Recyclable Materials, Organic Materials, or C&D. Such labeling may be temporary labeling in the form of magnetic or detachable signs.

If Contractor fails to comply with the provisions of this Section 6.4, the Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit A.

D. **Cleaning, Painting, and Maintenance.** All Roll-Off Containers shall be maintained in a safe, serviceable, and functional condition. Contractor shall steam clean and repaint all Roll-Off Containers at least every two years, or more frequently, to present a clean, graffiti-free appearance.

E. **Roll-Off Container Inspections.** City may inspect Roll-Off Containers at any time to determine compliance with sanitation requirements. Contractor shall make Containers available to the City at any frequency it requests. The City shall have the right to prohibit the use of any Roll-Off Container that fails to comply with the provisions in this Section 6.4.

F. **Abandoned Roll-Off Containers.** Contractor shall not Abandon any Roll-Off Container used to provide Permitted Materials Collection services under this Agreement. If the Contractor Abandons a Contractor-owned Roll-Off Container, City may remove the Roll-Off Container and Process and Dispose of the contents. If the City removes a Roll-Off Container Abandoned by Contractor, the City may charge Contractor for the City's costs incurred removing such Roll-Off Container, Transporting, Processing, and Disposing of its contents, and/or the cost of storing such Roll-Off Container. Contractor shall reimburse the City for such costs within fourteen (14) calendar days of the date of the City's invoice to the Contractor for such costs. If the Contractor does not pay the invoice amount within fourteen (14) days, the City shall become the Roll-Off Container owner if the invoice stated the City's intent to become the Container owner in lettering of at least 12 point font.

For the purposes of this Section 6.4.F, "Abandon" means the following:

1. Contractor's failure to remove a Contractor-owned Roll-Off Container within five (5) calendar days of receiving a written request from a Customer or the City or within five (5) calendar days after the termination of the customer service agreement between Contractor and the Customer, or
2. Contractor's failure to remove a Contractor-owned Roll-Off Container within ten (10) calendar days upon expiration or termination of this Agreement, except in the case where Contractor has been granted an extension of the Term of the Agreement or Contractor has been granted a subsequent agreement authorizing Contractor to Collect and transport the type or types of materials for which the Roll-Off Container was used pursuant to this Agreement.

6.5 PERSONNEL

A. **General.** Contractor shall furnish such qualified drivers, maintenance, supervisory, Customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.

B. **Driver Qualifications.** All drivers shall be trained and qualified in the operation of Collection vehicles, and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use the Class B California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

C. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment or who are otherwise directly involved in such Collection, Disposal, or Processing. Contractor shall train its employees involved in Collection to identify, and not to collect, Hazardous Waste or Infectious Waste. Upon the City's request, Contractor shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.

D. **Employee Conduct and Courtesy.** Contractor shall use its best efforts to ensure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection employees to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures and shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit A.

E. **Employee Identification.** While performing services under this Agreement, all of the Contractor's employees performing field service shall be dressed in clean clothes and shall wear badges that include the employee's name and/or employee number, and Contractor's name, as approved by the City.

6.6 HAZARDOUS WASTE INSPECTION AND HANDLING

A. **Response to Hazardous Waste Identified during Collection.** If Contractor determines that material placed in any Roll-Off Container for Collection is a Hazardous Waste that may not legally be Disposed of at a Disposal Site or handled at the Processing Site, or presents a hazard to Contractor's employees, the Contractor shall refuse to accept such material. The Contractor shall contact the Customer and request the Customer to arrange proper Disposal. If the Generator cannot be reached immediately, the Contractor shall, before leaving the Premises, leave a tag at least two inches by six inches (2" x 6") in size, which indicates the reason for refusing to Collect the material and lists a phone number for obtaining information on proper disposal of the Hazardous Waste. Under no circumstances shall Contractor's employees knowingly Collect Hazardous Waste.

If Hazardous Waste is found in a Roll-Off Container that could possibly result in imminent danger to people or property, the Contractor shall immediately notify the City's Fire Department using the 911 emergency number.

The Contractor shall notify the City of any Hazardous Waste identified in Roll-Off Containers or left at any Premises within 24 hours of identification of such material.

B. **Response to Hazardous Wastes Identified at Disposal Site or Processing Site.** The Contractor, or its Approved Processor, or Disposal Site operator shall provide load checkers and equipment operators at the Processing or Disposal Site(s) to identify Hazardous Wastes for storage in approved, on-site, hazardous materials storage container(s). Contractor shall make reasonable efforts to identify and notify the Customer. Contractor shall arrange for removal of the Hazardous Wastes by permitted haulers in accordance with Applicable Laws and regulatory requirements.

If the Hazardous Wastes delivered to a Disposal Site or Processing Site by Contractor before its presence is detected, and the Generator cannot be identified or fails to remove the material after being requested to do so, the Contractor shall arrange for its proper Disposal. The Contractor may make a good faith effort to recover the cost of Disposal from the Generator, and the cost of this effort, as well as the cost of Disposal shall be chargeable to the Generator.

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

6.7 NON-DISCRIMINATION

Contractor shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, natural origin, ancestry, religion, gender, marital status, sexual orientation, age, physical or mental disability in violation of any Applicable Law.

6.8 COMMUNICATION AND COOPERATION WITH CITY

A. **Communications.** If requested, the Contractor shall meet with the City or its agent to discuss service issues.

B. **Inspection by City.** The City, or its designated representatives, shall have the right to observe and review Contractor operations, Processing Sites and Disposal Sites used by Contractor, and enter Contractor's Premises for the purposes of such observation and review during reasonable hours without advance notice.

C. **Cooperate with City-Initiated Studies.** Contractor shall cooperate with and assist the City or its agent with the performance of City-initiated studies of Permitted Materials such as, but not limited to, waste characterization and composition studies.

ARTICLE 7
RECORD KEEPING AND REPORTING

7.1 GENERAL

7.1.1 Maintenance of Records

Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with and to meet the reporting and Permitted Materials program management needs of City, the Act and other Applicable Laws, and the requirements of this Agreement.

This Article is intended to highlight the general nature of records and reports to be maintained by Contractor, and their minimum content. This Article is not meant to comprehensively define what the records and reports are to be and their content. With the written direction by or approval of City, the records and reports to be maintained and provided by Contractor in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency. Records and reporting may be revised to reflect current record keeping and reporting requirements.

To the extent such requirements are set out in this and other Articles of this Agreement, they shall not be considered limiting or necessarily complete.

7.1.2 Retention of Records

Unless otherwise required in this Article, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or earlier termination. Records and data shall be in chronological order and readily and easily interpreted.

7.1.3 Inspection of Records

The City, its auditors and other agents, shall have the right, during regular business hours, to inspect specific documents or records required by this Agreement or any other similar records or reports of the Contractor that the City shall deem, at its sole discretion, necessary to evaluate the Contractor's performance provided for in this Agreement. The City may make copies of any documents it deems relevant to this Agreement. The City shall provide Contractor written notice at least three (3) Business Days prior to any inspection of these records, and Contractor shall retrieve and make available to the City the requested documents and records at that time.

The City reserves the right to inspect records for the purposes of auditing the Contractor's reports, reported Diversion level, and fee payments to the City. If an audit conducted by the City, or its representatives, finds: (i) that the Contractor has made any intentional misrepresentation with respect to the fees dues to the City (e.g., Franchise Fees or other fees due to the City) in an amount greater than $1,000 or 10% of the fees due to the City during the period covered by the audit, whichever is greater, or (ii) that the Diversion level is 5% different than the Diversion level reported by the Contractor, then in addition to any other remedies available to the City, Contractor shall reimburse the City for the City's costs incurred in the performance of the audit. Such reimbursement shall be paid by Contractor, along with any underpaid fees and Liquidated Damages required by Section 11.4 and Exhibit A, within thirty (30) calendar days of the date the City notifies the Contractor of the amount due.

7.1.4 Record Security

Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as fire, theft, and earthquake. Electronically maintained data and records shall be protected and backed-up.

7.2 RECORDS

7.2.1 Financial and Operational Records

Contractor shall maintain accurate and complete accounting records containing the underlying financial and operating data relating to and showing the basis for computation of all revenues associated with providing Permitted Materials Collection, Transportation, Processing, Recycling, Composting, and Disposal services. The accounting records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied.

At a minimum, the following operational records shall be maintained by Contractor for City relating to:

A. Customer account information and billing records;

B. Tonnage of material Collected by type (e.g., Solid Waste, Recyclable Material, Organic Material, or C&D) listed by Processing Site or Disposal Site where such materials were delivered. Where possible, information is to be separated by Residential and Commercial Customers.

C. Tonnage of Recyclable Materials, Organic Material, and C&D Diverted from Disposal by Contractor and supporting documentation.

D. Diversion level, which shall equal Tonnage Diverted by Contractor divided by the Tonnage Collected by Contractor multiplied by 100, listed separately by month for the previous quarter. Tonnage Diverted shall reflect Permitted Materials Processed less residue Disposed.

E. Residue levels of Processed or Composted materials.

F. Weight tickets from (i) Designated Disposal Site documenting the Tonnage of Solid Waste Collected within the City and delivered to the Designated Disposal Site; (ii) Processing Sites documenting the Tonnage of Permitted Materials Collected within the City and delivered to the Approved Processing Sites; and, (iii) Approved Disposal Sites documenting the Tonnage of residue delivered to Approved Disposal Sites by vehicle, date, and time.

G. End use and markets for recovered materials.

Contractor shall make records available to the City upon request.

7.2.2 Customer Records

Contractor shall maintain accurate and complete records containing the number and types of accounts served by the Contractor. The records shall contain, at a minimum, the Customers name, type of business, phone number, address of Roll-Off Container delivery and Collection location, date of delivery and Collection, itemized listing of services performed, type of Permitted Material Collected, Tonnage

Collected, and the amount charged to provide services. The information shall be provided to the City upon request.

7.2.3 CERCLA Defense Records

City views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, the City regards its ability to prove where Permitted Materials Collected by the Contractor are taken for Processing, Recycling, Composting, Transfer, or Disposal, as well as where they are not taken, to be matters of concern. Contractor shall maintain, retain and preserve records which can establish where Permitted Materials Collected were Processed, Composted, and Disposed (and therefore establish where they were not). This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. Contractor shall provide these records to City (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.

7.3 GENERAL REPORTING REQUIREMENTS

The format of each report shall be approved by City. Contractor may propose report formats that are responsive to the objectives. Contractor agrees to mail a copy of all reports and submit all reports on computer discs, by e-mail, or by modem in a format compatible with City's software and computers at no additional charge. Contractor will provide a certification statement, under penalty or perjury, by the responsible Contractor official, that the report being submitted is true and correct to the best knowledge of such official after their reasonable inquiry.

Contractor shall submit monthly reports within fifteen (15) calendar days of the end of each month. If Contractor does not submit the monthly reports by the dates required in this Article, Contractor shall pay the City Liquidated Damages as described in Section 11.4 and Exhibit A.

Contractor shall submit (via mail and e-mail) all reports to:

Solid Waste Division Manager
City of Fresno
1325 El Dorado Street
Fresno, CA 93706

7.4 MONTHLY REPORT

The monthly report shall present the following information.

A. **Total Tonnage.** Total Permitted Materials Tonnage Collected by Contractor within the City during the previous quarter, listed separately by material type and by month.

B. **Diverted Tonnage.** Permitted Materials Tonnage Collected by Contractor within the City that was Diverted during the previous quarter, listed separately by material type and by month.

C. **Disposed Tonnage.** Permitted Materials Tonnage Collected by Contractor within the City that was Disposed during the previous quarter, listed separately by month.

D. **Diversion Level.** Tonnage Diverted by Contractor divided by the Tonnage Collected by Contractor multiplied by 100, listed separately by month for the previous quarter. Tonnage Diverted shall reflect Permitted Materials Processed less residue Disposed.

E. **C&D.** Tonnage generated from construction and demolition permitted sites, noting the permit number, the site address, the Tonnage hauled, the date hauled, and the facilities to which the material was hauled.

F. **Disposal and Processing Locations.** Contractor shall provide a list of the names and addresses of where Permitted Materials Collected within the City during the previous quarter was Diverted and Disposed. Such list shall include the amount of Permitted Materials Tonnage Diverted and/or Disposed at each location during the previous quarter, listed separately by material type and by month.

G. **Revenues.** Gross revenues (e.g. cash receipts) earned on all Roll-Off Container Collection, Transportation, Processing, Recycling, Composting, and/or Disposal services provided to Customers within the City during the previous quarter, listed separately by month.

H. **Insurance.** Updated insurance certificates.

I. **Account Information.** In table format, the number of Customers within the City limits served and number of Roll-Off Containers serviced per month listed by Roll-Off Container type (Drop Box or Compactor), Roll-Off Container size, and listed separately by Permitted Material type, and regularly schedule service and unscheduled (on-call) service.

J. **Contractor Officers and Board Members.** Provide a list of Contractor's officers and members of its board of directors (only required with the December monthly report each year, or in the event of a change in the officers or board members).

The City reserves the right to request additional reports from Contractor, and upon City's request, Contractor shall provide information required above for the time period requested by the City. It is the desire of the City to track the above required information on an ongoing basis throughout the term of this Agreement.

7.5 AB 939 COUNTY SURCHARGE REPORTING

Contractor acknowledges that City is a party to that certain AB 939 Memorandum of Understanding with the County of Fresno and various other jurisdictions dated January 6, 2008 (the "AB 939 MOU"), and further acknowledges having received and reviewed a copy of the AB 939 MOU. The Parties agree that Contractor is a "Jurisdiction's Hauler", as that term is used in Part IV, Section H of the AB 939 MOU. Contractor shall comply with all requirements of Part IV, Section H of the AB 939 MOU that are applicable to a Jurisdiction's Hauler, including but not limited to submittal of reports and payment of the AB 939 Surcharge (as that term is defined in the AB 939 MOU).

ARTICLE 8
FRANCHISE FEES AND OTHER FEES

8.1 GENERAL

Contractor shall collect the fees described in this Section from Customers through Contractor's regular billings and remit collected amounts to City on a monthly basis as described in Section 8.5.

8.2 FRANCHISE FEE

In consideration of the exclusive rights provided Contractor herein, Contractor shall pay Franchise Fees to the City each month equal to 10% of actual gross Rate revenues (e.g. cash receipts) remitted to Contractor by Customers for services provided by Contractor under this Agreement.

8.3 OTHER FEES

The City may set "other" additional fees, as it deems necessary. The amount, time, and method of payment and adjustment process will be set in a manner similar to that for other fees described in this Article.

8.4 ADJUSTMENT TO FEES

City may adjust the fees established in this Article annually at any time during the Term of this Agreement.

8.5 PAYMENT SCHEDULE AND LATE FEES

On or before the 20th day of each month during the Term of this Agreement, Contractor shall remit to City Franchise Fees and other fees as described in this Article. If such remittance is not paid to the City on or before the 20th day of any month, Contractor shall pay, in addition to the amount owed to City, 2% of the amount owing for that month; plus an additional 2% owing on any unpaid balance for each following thirty (30) calendar day period the fee remains unpaid

Each monthly remittance to City shall be accompanied by a statement itemizing each fee paid; detailing calculation of all fees; stating actual gross revenues (e.g. cash receipts) for the monthly period collected from all operations conducted or permitted by this Agreement, and stating the number and size of Containers serviced by Contractor for the monthly period. Each remittance including all supporting documentation shall be provided to:

Attn: City Controller, Finance Department
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3624

8.6 OVERPAYMENT OF FEES

If Contractor believes it has paid Franchise Fees or other fees as described in this Article, in excess of the fees due to the City, Contractor may submit a request for refund to the Director. If proof of overpayment is satisfactory to the Director, the Director shall authorize the City to refund the overpayment to the Contractor. Contractor shall not apply any overpayment as a credit against any Franchise Fee or other amounts payable to the City, unless specifically authorized to do so by the Director in writing.

8.7 NON-CITY FEES; AB 939 COUNTY SURCHARGE

Pursuant to Section 7.5, Contractor shall pay the County of Fresno an AB 939 surcharge as applicable in accordance with the AB 939 MOU.

ARTICLE 9
CONTRACTOR'S COMPENSATION AND RATES

9.1 CONTRACTOR'S COMPENSATION

Contractor's compensation for performance of all its obligations under this Agreement shall be: (i) actual Rate revenues paid to Contractor (e.g. cash receipts) by Customers that obtained Contractor's Collection services less fees dues to the City in accordance with Article 8, and (ii) revenues generated by the sale of Collected materials Diverted from Disposal.

Contractor's compensation provided for in this Article shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, Processing, Composting, and Disposal fees, regulatory fees, City fees, taxes, insurance, bonds, overhead, operations, profit and all other things necessary to perform all the services in the manner required by this Agreement.

If Contractor's costs are more than Contractor's compensation, Contractor shall not be compensated for the difference in costs and revenues. If Contractor's costs are less than Contractor's compensation, Contractor shall retain the difference.

9.2 CITY'S RIGHT TO SET MAXIMUM RATES

The City reserves the right to establish maximum Rates for Permitted Materials Collection services provided under this Agreement in the event that: (a) there are three or fewer companies holding non-exclusive franchise agreements for Collection of Permitted Materials, or (b) the Rates charged by the companies holding non-exclusive franchise agreements for Collection of Permitted Materials are no longer comparable to those of other jurisdictions, as reasonably determined by City. If the City chooses to exercise its right to set maximum Rates, City shall notify Contractor at least 180 calendar days prior to the date that maximum Rates become effective. In such case, City will set maximum Rates with

consideration of reasonable and necessary costs for Collection, Processing, Composting, and Disposal and with the intention of setting maximum Rates that will enable parties, including the Contractor, that have executed Non-Exclusive Franchise Agreements with the City for Roll-Off Container Collection Services the ability to recover reasonable and necessary costs and a reasonable profit.

9.3 CONTRACTOR'S RATES

Contractor shall set the Rates it charges its Customers for Roll-Off Collection services. The Contractor's Rates shall not exceed City-established maximum Rates, if the City exercises its rights under Section 9.2.

ARTICLE 10
INDEMNITY AND INSURANCE

10.1 INDEMNIFICATION

Contractor shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City and each of its officers, officials, employees, volunteers, and agents (collectively, indemnitees) from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all 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 without limit attorneys' expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitees arising from or attributable to the acts or omissions of Contractor whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

Contractor's duty to defend and indemnify herein shall include Damages arising from or attributable to any operations, repairs, clean-up or detoxification, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste Collected in the City. Contractor shall be required to indemnify the City for the costs for any claims arising from the Processing, Composting, or Disposal of Permitted Materials, including, but not limited to, claims arising under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The foregoing is intended to operate as an agreement to defend and indemnify and hold harmless indemnities to the full extent permitted for liability pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364.

In addition, Contractor's duty to defend and indemnify herein includes all fines and/or penalties imposed by the California Department of Resources Recycling and Recovery, subject to the restrictions set forth in Public Resources Code Section 40059.1, if the requirements of the Act are not met by the Contractor with respect to the Permitted Materials Collected under this Agreement, and such failure is due to Contractor delays in providing information that prevents Contractor or City from submitting reports required by the Act in a timely manner.

This provision will survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by City to contribution or indemnity from third parties.

10.2 INSURANCE

10.2.1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

A. Insurance Services Office Commercial General Liability coverage.
   1. Personal injury
   2. Contractual liability

B. Insurance Services Office covering Automobile Liability, code I "any auto".

A. Worker's Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Such other insurance coverages and limits as may be required by the CITY.

10.2.2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

A. General Liability: $3,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

B. Automobile Liability: $3,000,000 per accident for bodily injury and property damage.

C. Workers' Compensation: Workers' compensation limits as required by the Labor Code of the State of California.

D. Employer's Liability: Bodily Injury by Accident: $3,000,000 each accident.
   Bodily Injury by Disease: $3,000,000 policy limit.
   Bodily Injury by Disease: $3,000,000 each employee.

E. Pollution Legal Liability: $3,000,000 for bodily injury, property damage, and remediation of contaminated site.

10.2.3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

10.2.4 Other Insurance Provisions

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

A. General Liability and Automobile Liability Coverages

1. The City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers. The automobile liability is endorsed to contain MCA-90 coverage.

2. The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or volunteers.

4. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officers, employees, and volunteers for losses arising from work performed by the Contractor for the City.

C. All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 calendar days' prior written notice by certified mail, return receipt requested, has been given to the City.

10.2.5 Acceptability of Insurers

The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

10.2.6 Verification of Coverage

Contractor shall furnish Contractor's insurance agent a copy of these specifications, and direct the agent to provide the City with certificates of insurance and with original endorsements affecting coverage required by this clause. Issuance of documentation indicates the Contractor's insurance complies with these provisions. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences. The City may require complete, certified copies of all required insurance policies, at any time.

10.2.7 Required Endorsements

A. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty calendar days' prior written notice shall be given to the City of Fresno in the event of cancellation, reduction in coverage, or non-renewal of this policy."

Director of Public Utilities
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3620

B. The Commercial General Liability, Business and Automobile Liability, and Pollution Legal Liability policies shall contain endorsements in substantially the following form:

1. "Thirty calendar days' prior written notice shall be given to the City of Fresno in the event of cancellation, reduction in coverage, or non-renewal of this policy."

   Director of Public Utilities
   City of Fresno
   2600 Fresno Street
   Fresno, CA 93721-3620

2. "The City of Fresno, its officers, employees, and agents are additional insureds on this policy."

3. "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City of Fresno, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

4. "Inclusion of the City of Fresno as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Contractor's liability as set forth in the policy beyond the amount shown or to which the Contractor would have been liable if only one party had been named as an insured."

10.2.8 Delivery of Proof of Coverage

Simultaneously with the execution of this Agreement, Contractor shall furnish the City certificates of each policy of insurance required hereunder, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If the City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City.

Renewal certificates will be furnished annually to City to demonstrate maintenance of the required coverages throughout the Term.

10.2.9 Other Insurance Requirements

A. If any services are delegated to a Subcontractor, the Contractor shall require such Subcontractor to provide statutory Workers' Compensation insurance and employer's liability insurance for all of the Subcontractor's employees engaged in the work in accordance with Sections 10.2.2.C and 10.2.2.D and 10.2.4.B. The liability insurance required by Section 10.2.2.A shall cover all Subcontractors or the Subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 10.2.

B. If at any time during the life of the Agreement or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, Contractor shall be in breach of the Agreement until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this Section shall in any way relieve Contractor of its responsibilities under this Agreement.

C. The Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third person against the Contractor or any Subcontractor because of any occurrence related to this Agreement, the Contractor shall promptly report the facts in writing to the insurance carrier and to the City.

D. The Commercial General Liability, Automobile Liability, and Pollution Legal Liability insurance policies shall be written on an "occurrence," rather than a "claims made" basis. If Contractor is unable to purchase Pollution Legal Liability insurance on an occurrence form and must purchase such insurance on a claims-made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by Contractor.

2. The policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, Contractor must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.

4. A copy of the claims reporting requirements must be submitted to City for review.

5. These requirements shall survive expiration or termination of this Agreement.

ARTICLE 11
DEFAULT AND REMEDIES

11.1 EVENTS OF DEFAULT

Each of the following shall constitute an event of default ("Event of Default") hereunder:

A. Contractor fails to perform its obligations under this Agreement, or future amendment to this Agreement, including, but not limited to, Contractor's failure to pay Franchise Fees and other City fees in accordance with Article 8 of this Agreement, and the breach continues for more than 10 Business Days after written notice from the City for the correction thereof;

B. Contractor's failure to Divert 50% of the C&D, 70% of the Recyclable Materials, and 90% of Organic Materials Collected in the City as required by Section 5.3 of this Agreement after Contractor is given an opportunity to remedy the nonperformance as described in Section 11.5;

C. Any representation, warranty, or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation, warranty, or disclosure appears as part of this Agreement;

D. There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to substantially impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within 48 hours excluding weekends and Holidays;

E. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing;

F. A court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor;

11.2 RIGHT TO TERMINATE UPON DEFAULT

Upon a default by Contractor, the City may terminate this Agreement within 10 calendar days of the default but no later than 180 calendar days after the default. Such termination shall be effective 10 calendar days following the City's written notice to Contractor, and such termination shall be effective without the need for any hearing, suit, or legal action.

11.3 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE

The City's right to terminate the Agreement under Section 11.2 is not exclusive, and the City's termination of the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which the City may have.

By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the lead time required to effect alternative service, and the rights granted by City to the Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive relief.

11.4 LIQUIDATED DAMAGES

A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable Roll-Off Collection, Processing, and Disposal service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in executing this Agreement. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages that City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article, the Parties

agree that the Liquidated Damages amounts established in Exhibit A of this Agreement and the following Liquidated Damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in the Schedule of Liquidated Damages, Exhibit A.

City may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representative or investigation of complaints by Customers, occupants, and Generators.

Liquidated Damages will only be assessed after Contractor has been given the opportunity but failed to rectify the damages as described in this Agreement. Before assessing Liquidated Damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and/or non-performance. The City may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and non-performance. City may, within 10 calendar days after issuing the notice, request a meeting with Contractor. City may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. City will provide Contractor with a written explanation of its determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 11.4. The decision of City shall be final and City shall not be subject to, or required to exhaust, any further administrative remedies.

C. **Amount.** City may assess Liquidated Damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement in the amounts specified in Exhibit A subject to annual adjustment described below.

The amount of Liquidated Damages specified in Exhibit A shall be adjusted annually on the anniversary of the Effective Date. The adjustment shall be rounded to the nearest cent. Liquidated Damage amounts shall be adjusted to reflect changes in the Consumer Price Index – All Urban Consumers (CPI-U) compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the following Bureau of Labor Statistics' parameters.

- Not Seasonally Adjusted
- Area – Los Angeles-Riverside-Orange County, CA
- Item – All Items
- Base Period – 1982-84=100

The formula for annual adjustment is as follows:

Adjusted Liquidated Damage Amount	=	Then-current Liquidated Damage Amount x most current CPI-U/previous 12-month CPI-U

For example:

Current Liquidated Damage Amount = **$150.00**
Most recently published index (January 2010) = **224.610**
Index published 12 months prior to most recently published index
(January 2009) = **220.719**
Adjusted Liquidated Damage Amount = $150.00 x (224.610/220.719) = **$152.64**

If the CPI-U is discontinued or revised during the Term by the United States Department of Labor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

D. **Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City within 10 calendar days of the date the Liquidated Damages are assessed. If they are not paid within the 10-day period, City may order the termination of the rights or "franchise" granted by this Agreement.

11.5 DIVERSION NON-PERFORMANCE

If the Contractor's Diversion level is less than 50% for C&D, less than 70% for Recyclable Materials, and/or less than 90% for Organic Materials Collected in the City for a monthly reporting period, the following steps shall be followed by the City and Contractor.

A. **Warning.** The City shall issue a written warning to the Contractor within 30 calendar days of receipt of the Contractor's monthly report documenting the Diversion level for the monthly reporting period. The warning notice shall specify the amount of time (i.e. "correction period") the City grants the Contractor to improve its performance and meet the Diversion requirements defined in Section 5.3.

B. **Opportunity to Improve Performance.** The Contractor shall modify its Collection, Processing, Diversion, and public education and outreach programs (subject to the City's approval) to improve the Diversion level. At the end of the correction period, Contractor shall submit a written report to the City identifying the Diversion level and providing the supporting documentation. If the City determines that the Diversion level equals or exceeds Diversion requirements defined in Section 5.3, the Contractor shall continue to perform services in such a manner as to maintain or improve the Diversion level and the City shall waive its rights to proceed with steps outlined in subsections C and D of this Section 11.5 during the remainder of then-current reporting period.

C. **Liquidated Damages.** If the Contractor fails to improve the Diversion level so that it is equal to or greater than Diversion requirements defined in Section 5.3 by the end of the correction period granted in subsection A of this Section, the City may levy, and Contractor shall pay, Liquidated Damages described in Section 11.4.

D. **Termination of the Agreement.** If Contractor's fails to achieve a Diversion level that equals or exceeds Diversion requirements defined in Section 5.3 within six months of the date the City levied Liquidated Damages, the failure to meet the Diversion requirements defined in Section

5.3 shall be considered an event of default and the City may terminate the Agreement in accordance with Section 11.2.

11.6 CONDITIONS UPON TERMINATION

In the event this Agreement is terminated under the provisions of this Article, the following conditions shall be effective:

A. **Prohibit Roll-Off Collection Services.** Contractor shall have no right or authority to engage in Roll-Off Collection services in the City for a period of five years from the date of termination. After five years, should the Contractor provide proof that the event causing the Contractor to default under this Agreement has been corrected, the Contractor may reapply for a non-exclusive Roll-Off Collection service franchise, and the City, at the sole and complete discretion of the City, may reinstate the Contractor based on review of its reapplication.

B. **Continuing Liabilities.** Contractor shall remain liable to the City for:

1. Fees due in accordance with Article 8 that would otherwise be payable by the Contractor.

2. Liquidated Damages assessed pursuant to Section 11.4.

3. Reports required by Article 7 for Roll-Off Collection activities performed by Contractor up to and including the date of termination.

4. Indemnity obligations under Section 10.1.

5. Record keeping and retention obligations under Sections 7.1 and 7.2.

C. **Release Customers and Generators from Obligations.** Contractor shall allow Permitted Materials Generators served by Contractor to arrange for Permitted Materials Collection services with a hauler authorized to perform such services, without penalty or liability for breach of any contract between Contractor and its Customers or Generators.

D. **Remove Roll-Off Containers.** Contractor shall remove all of Contractor's Roll-Off Containers from all of Contractor's Collection locations and shall properly Recycle, Process, Compost, or Dispose of Permitted Materials in such Roll-Off Containers.

ARTICLE 12
OTHER AGREEMENTS OF THE PARTIES

12.1 RELATIONSHIP OF PARTIES

The Parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by City and not as an officer nor employee of the City, nor as a partner of, or joint venturer with, the City. No employee or agent of Contractor shall be, or shall be deemed to

be, an employee or agent of the City. Except as expressly provided herein, Contractor shall have control over the manner and means of conducting the Roll-Off Container Collection, Transportation, Processing, Recycling, Composting, and Disposal services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors, and agents. Neither Contractor nor its officers, employees, Subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with the City.

12.2 PERMITS AND LICENSES

Contractor shall obtain and maintain, at Contractor's sole cost and expense, all permits and licenses applicable to Contractor's operations under this Agreement which are required by any governmental agency.

12.3 COMPLIANCE WITH LAW

Contractor shall, at all times, at its sole cost, comply with all Applicable Laws.

12.4 GOVERNING LAW

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

12.5 JURISDICTION

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Fresno County in the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the Parties agree that this Agreement is made in and will be performed in Fresno County.

12.6 BINDING ON SUCCESSORS

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

12.7 ASSIGNMENT

Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other Party. Any such assignment made without the consent of the other Party shall be void and the attempted assignment

shall constitute a material breach of this Agreement. Under no circumstances shall any assignment be considered by City if Contractor is in default at any time during the period of consideration.

12.8 PARTIES IN INTEREST

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

12.9 WAIVER

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of violation of the same or any other provision. The subsequent acceptance by either Party of any monies which become due hereunder, shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other Party of any provision of this Agreement.

12.10 NOTICE PROCEDURES

All notices, demands, requests, proposals, approvals, consents, and other communications which this Agreement requires, authorizes or contemplates all, shall be in writing and shall either be personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid, addressed as follows:

A. If to City:

Public Utilities Director
City of Fresno
2600 Fresno St., Room 3065
Fresno, CA 93721-3624

B. If to Contractor:

Mike Lopez
Red Bin Services
P.O. Box 193
Auberry, CA 93602

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

Notice shall be deemed given on the day it is personally delivered or, if mailed, three calendar days from the date it is deposited in the mail.

12.11 REPRESENTATIVES OF THE PARTIES

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the Director and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. The Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

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

12.12 CRIMINAL ACTIVITY OF CONTRACTOR

12.12.1 Criminal Activity

For purpose of this Section, Criminal Activity shall mean any of the following events or circumstances:

A. **Convictions.** The entry against any Contractor Party or its officers, of a criminal conviction or a permanent mandatory or prohibitory injunction from a court, municipality, or regulatory agency of competent jurisdiction, based on acts taken in his or her official capacity on behalf of Contractor with respect to:

1. Fraud or criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to municipal Solid Waste services of any kind (including Collection, Transportation, transfer, Processing, Recycling, Composting, or Disposal), including this Agreement or any amendment thereto;

2. Bribery or attempting to bribe a public officer or employee of a local, State, or Federal agency;

3. Embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony;

4. Unlawful disposal of Hazardous Wastes, the occurrence of which any Contractor Party knew or should have known;

5. Violation of antitrust laws, including laws relating to price-fixing, bid-rigging, and sales and market allocation, and of unfair and anti-competitive trade practices laws;

6. Violation of securities laws; and

7. Felonies.

B. **Pleas.** Entry of a plea of "guilty," "nolo contendere," or "no contest" by a Contractor Party based on acts taken in his, her, or its official capacity on behalf of Contractor with respect to the conduct described in preceding Section 12.12.1.A.

12.12.2 Notice

Contactor shall notify City in writing within five calendar days of occurrence of any Criminal Activity by any Contractor Party.

12.12.3 Contractor's Cure

Upon occurrence of any Criminal Activity, Contractor shall immediately do or cause to be done all of the following:

A. Terminate from employment or remove from office any offending individual Contractor Party, unless otherwise directed or ordered by a court or regulatory agency of competent jurisdiction or authority, and unless that termination would constitute a breach of any labor agreement entered into by Contractor, and

B. Eliminate participation by any offending individual Contractor Party in any management, supervision, or decision activity that affects or could affect, directly or indirectly, the performance of the Contractor under this Agreement.

12.12.4 Transfer and Hiring

Contractor shall not allow or cause to be allowed to hire or transfer any individual from any Parent Company or subsidiary company or business entity of Contractor who has committed Criminal Activity as a Contractor representative, field supervisor, officer, or director who is directly or indirectly responsible for performance of this Agreement without obtaining prior written consent of City, following full disclosure to City of the facts and circumstances surrounding such Criminal Activity.

12.12.5 City's Remedy

In the event of any occurrence of Criminal Activity, the City, in its sole discretion, may terminate the Agreement within 30 calendar days written notice to Contractor, or may impose other sanctions (which may include financial sanctions, temporary suspensions, or any other condition deemed appropriate short of termination) as it will deem proper, in the following events:

A. Contractor fails to comply with the foregoing obligation of this Section, or

B. The Criminal Activity concerns or relates directly or indirectly to this Agreement.

Contractor shall be given the opportunity to present evidence in mitigation during the 30-calendar day notice period.

12.13 ACKNOWLEDGMENT OF PUBLIC RESOURCES CODE SECTION 49520 NOTICE

If Contractor has lawfully provided solid waste collection services in the City for more than three (3) years prior to July 1, 2011 (and is therefore entitled to the notice provided for in Public Resources Code 49520), Contractor shall consider execution of this Agreement by the City as City's notice to Contractor, pursuant to Public Resources Code 49520, that Contractor may provide service for a period of five (5)

years beyond July 1, 2011, after which time the City has the right to establish an exclusive franchise collection system.

ARTICLE 13
MISCELLANEOUS AGREEMENTS

13.1 ENTIRE AGREEMENT

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

13.2 SECTION HEADINGS

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

13.3 REFERENCES TO LAWS

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

13.4 INTERPRETATION

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

13.5 PRONOUNS AND PLURALS; TENSE

When not inconsistent with the context, words and phrases used in the present tense include the future, and words and phrases used in the singular number include the plural number. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

13.6 TEXT TO CONTROL

The captions of the Articles or Sections in this Agreement are for convenience only and in no way define, limit, extend or describe the scope or intent of any of the provisions hereof, shall not be deemed part of this Agreement and shall not be used in construing or interpreting this Agreement.

13.7 AMENDMENT

This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

13.8 SEVERABILITY

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

13.9 COUNTERPARTS

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

13.10 EXHIBITS

Each of the Exhibits identified as Exhibit "A" through "D" is attached hereto and incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed on the day and year first above written.

CITY OF FRESNO
A Municipal Corporation

_____
Director

APPROVED AS TO FORM:

_____
City Attorney

_____
Risk Manager

ATTEST:

_____
City Clerk

CONTRACTOR

Mike Lopez
Name

Owner / Operator
Title

P.O. Box 193
Address

Auberry, CA 93602
City

_____
Business License

EXHIBIT A

SCHEDULE FOR LIQUIDATED DAMAGES

Contractor may be assessed Liquidated Damages if Contractor fails to fulfill its obligations with regards to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement with regards to the time frame for accomplishing each event and nature of the responsibility associated with the event unless otherwise stated in this Exhibit.

1.	**Diversion.** Failure to achieve and maintain a minimum of 50% Diversion per month of all C&D Collected within the City, 70% Diversion per month of all Recyclable Materials Collected within the City, and 90% of all Organic Materials Collected within the City.	The greater of $5,000 or 10% of the gross Rate revenues received for providing C&D, Recyclable Materials, and Organic Materials services in the City, for the most recent 12-month period
2.	**Leaks, Litter or Spills.** For each occurrence over five during a calendar year of unreasonable leaks, litter, or spills of Permitted Materials near or on public streets and failure to pick up or clean up such material immediately.	$300/ event
3.	**Unauthorized Collection Hours.** For each occurrence over five during a calendar year of Collecting Permitted Materials during unauthorized hours.	$300/ event
4.	**Excessive Noise.** For each occurrence over 10 during a calendar year of excessive noise.	$300/ event
5.	**Cleaning Collection Vehicles.** For each occurrence over five during a calendar year for failure to keep Collection vehicles in a safe and sanitary condition.	$150/ event
6.	**Labeling of Roll-Off Containers.** For each occurrence of Contractor's failure to correctly label Contractor-owned Roll-Off Containers (in accordance with Section 6.4.C).	$500/ event
7.	**Discourteous Behavior.** For each occurrence of discourteous behavior by Collection vehicle personnel, customer service personnel, or other employees of Contractor.	$500/ event
8.	**Injuries to Others.** For each incident of personal injury to a Person requiring medical treatment or hospitalization, where the negligence of the Contractor or its personnel was a contributing factor to the injury.	$5,000/ incident
9.	**Monthly Reports.** Failure to submit monthly reports in the timeframe specified in this Agreement.	$300/ day*
10.	**Report Hazardous Waste.** For each failure to notify the appropriate authorities of reportable quantities of Hazardous Waste.	$500/ event

11.	**Failure of Other Obligations.** Failure to perform any of the obligations set forth in this Agreement not specifically stated above and not corrected or proceeding in good faith to correct within 24 hours upon 24 hour notification by City.	$150/ for each obligation per day until obligation is performed

* Monthly reports shall be considered late until such time as a correct and complete monthly report is received by City. For each calendar day a report is late, the daily Liquidated Damage shall be as indicated in the monthly reports section above.

In placing Designee's initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of Liquidated Damage provisions of the time that the Agreement was made.

Contractor

Initial Here: ML

City

Initial Here: _____

EXHIBIT B
SECRETARY'S CERTIFICATION

The undersigned, being the Secretary of _____, a
Company Name
California corporation ("the Company"), do hereby certify that the following resolution was adopted by the Board of Directors of the Company and that such resolution has not been amended, modified or rescinded and is in full force and effect as of the date hereof:

RESOLVED, that _____ be, and hereby is, authorized to
Name of Designated Representative
execute by and on behalf of the Company any and all agreements, instruments, documents or papers, as he/she may deem appropriate or necessary, pertaining to or relating to the Non-Exclusive Franchise Agreement between the City of Fresno and Company for Roll-Off Container Collection, Transporting, Processing, Recycling, Composting, and Disposal of Permitted Materials and that any such action taken to date is hereby ratified and approved.

Dated: _____

_____
Signature

_____
Title

This page intentionally blank

EXHIBIT C

STATEMENT OF APPLICANT'S UNDERSTANDING AND REPRESENTATIONS

The undersigned (who is duly authorized to bind the company submitting this application) has reviewed the requirements of the non-exclusive franchise agreement for Roll-Off Collection, Transporting, Processing, Recycling, Composting, and Disposal services for Solid Waste, Recyclable Materials, Organic Materials, and C&D, its exhibits, and reference documents. In addition, the undersigned attests that this application and any other supplementary information submitted with this application do not: (i) contain any untrue statement of a material fact, (ii) contain inaccurate or misleading information, or (iii) omit to state a material fact that is necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

Mike Lopez
Print Name

5-5-16
Date

Owner
Title

Red Bin Service
Company Name

Mike Lopez
Signature

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City of FRESNO

Business Tax Certificate Application

Finance Department • P.O. Box 45017 • Fresno, CA 93718-5017
Fresno City Hall • 2600 Fresno St., Room 2162 • Fresno, CA 93721
Phone: (559) 621-6880 / FAX: (559) 498-2544
Hours: Monday – Friday 10:00 a.m. – 5:00 p.m.

Application Processing Fee	$	10.00
Initial Tax Charge	+ $	
State Mandated Fee *For more information see SB1186 notice on reverse*	+ $	1.00
Please remit this amount	= $	

CITY OF FRESNO INCORPORATED OCT. 12, 1885

NOTICE: Before you apply for a new business tax certificate, you are required to obtain a zone clearance for your business location from the City of Fresno Planning Department. Please contact the Planning Division to begin the approval process at its location in Fresno City Hall, 2600 Fresno St Room 3043, Fresno CA. You may also contact the department at (559) 621-8277 or planning@fresno.gov. It is your responsibility to check with the Fresno Police and Fire Departments to determine any additional requirements for your business in your proposed location.

1. Business Name: Red Bin Services
If a business name is not used, enter owner's name

Corporation name (if applicable)

2. Describe Business: (In Detail) Drop off and Pick up Roll off Bins For green waste, TRASH, construction
Include principal service or product, and whether business income is wholesale, retail or both

3. Date Opened: 1 / 1 / 16 (mo / day / yr) *Date business began operating in the City of Fresno*

4. Business Location: 32752 Frazier
Physical/street address (or range of addresses) — *Unit #*
Auberry CA 93602 — 559-259-1245
City — *State* — *Zip Code* — *Business Phone #*

5. Mailing Address: P.O. Box 193
Street/P.O. Box Address — *Unit#* — *Attention*
Auberry CA 93602 — Lowpez5150@yahoo.com
City — *State* — *Zip Code* — *Business email address*

6. Ownership Type: [X] Sole Proprietor [ ] Partnership [ ] Corporation # _____ [ ] LLC# _____
[ ] Non-Profit [ ] Other (specify) _____

7. **Ownership Info:**	(Circle One) Owner / Partner / President	(Circle One) Co-Owner / Partner / Vice Pres. / Etc.
Full Name	Mike Lopez	
Complete Residential Address (Include zip)	32752 Frazier Auberry CA 93602	
Telephone	Home: 559-855-8058 Cell: 559-259-1245	Home. Cell:
Social Security No.	559-13-8123	
Date of Birth	8-23-59	
Driver's License No.	N6113499	

If additional partners/owners exist, please attach a separate list with the above info included

8. Federal Tax I.D. No.: _____ State Resale No.: _____ State Contractors Lic. No.: _____ Exp.: _____

MUST COMPLETE BOTH SIDES OF APPLICATION • INITIAL AND SIGN

For Official Use Only

Business Type: Roll-off First Tax Period: _____ Expiration Date: monthly

Notes: _____

IY: [ ] Yes [ ] No _____ [ ] Amusement Device [ ] Billiards [ ] PD [ ] Zone Clearance File No. _____

Account: 428276 **Date:** 1/20/16 **By:** JMB

Business Description and Information

If you know your NAICS code, provided by the state, please provide: _____

Number of Employees: Full Time: _____ Part Time: _____

Current Year Estimated Gross Receipts in City of Fresno $_____.00 Square Footage: _____

Please describe your business and the products or services you will provide. Include types of products and quantities stored: _____

Do you sell your service or product outside of California? [ ] Yes [ ] No

If Yes, what is the current year estimated gross value of product/service you export? $_____.00

Landlord Info: _____

Name of property owner or person to whom rent is paid

_____

Address of property owner or person to whom rent is paid

On September 19, 2012 Governor Brown signed into law SB1186, which adds a state fee of $1.00 on any applicant for a local business license or similar instrument or permit, or renewal thereof. The purpose is to increase disability access and compliance with construction-related accessibility requirements and to develop education resources for businesses in order to facilitate compliance with federal and state disability laws, as specified.

Under federal and state law, compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open to the public.

You may obtain information about your legal obligations and how to comply with disability access laws at the following agencies:

The Division of the State Architect at www.dgs.ca.gov/dsa/Home.aspx
The Department of Rehabilitation at www.rehab.cahwnet.gov
The California Commission of Disability Access at www.ccda.ca.gov

ML Initial — I have obtained a completed and approved Zone Clearance from the City of Fresno Planning Division

ML Initial — The zone clearance document is attached to this application

ML Initial — I acknowledge receipt of "Attachment A" New Business Information Checklist

ML Initial — I will contact the Business Tax Division if there are any changes to this account

ML Initial — I acknowledge that the issuance of a Business Tax Certificate does not exempt me from the requirements of any City, County, State, or Federal law.

I hereby certify under penalty of perjury under the State laws of California that the above information is correct and I am an authorized representative of this business. I understand this application is a City of Fresno Municipal Code requirement and not a license to do business. I agree to conduct all phases of this business in conformance with all applicable laws, ordinances, and regulations established for such business/profession.

Signature Mike Lopez Title OWNER

Printed Name Mike Lopez Date 1-25-16

**********OFFICE USE ONLY **********

ACCT# 428276 INITIALS JMB

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/31/2016

CITY OF FRESNO INCORPORATED OCT. 12, 1885

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Kenneth W Kinchen
Kinchen Insurance Agency
4685 N. Cedar Ave., Suite C
Fresno CA 93726

CONTACT NAME: Kenneth W Kinchen
PHONE (A/C, No, Ext): 559-227-7856 FAX (A/C, No): 559-227-7865
E-MAIL ADDRESS: Ken@Kincheninsurance.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Atain Speciality Insurance Company	17159
INSURER B: Ace USA Westchester Surplus Lines Company A++	10172
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED

Mike Lopez DBA: Red Bin Services
32752 Frazier Rd.
Auberry, CA 93602

COVERAGES **CERTIFICATE NUMBER:** 01 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC	Y	Y	CIP271511	03/10/2016	03/10/2017	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
B	UMBRELLA LIAB X OCCUR X EXCESS LIAB CLAIMS-MADE X DED RETENTION $ 5,000	Y	Y	G27966147 001	03/10/2016	03/10/2017	EACH OCCURRENCE	$ 2,000,000
							AGGREGATE	$ 1,000,000
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N N / A If yes, describe under DESCRIPTION OF OPERATIONS below						WC STATU-TORY LIMITS OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Mike Lopez DBA: Red Bin Services
32752 Frazier Rd.
Auberry, CA 93602

Insurer A: CIP271511 - Commercial General Liability - A/I - Primary and Non-Contributing
Insurer B: G27966147 001 - Contractors Pollution Liability - A/I - Primary and Non-Contributing

CERTIFICATE HOLDER

Director of Public Utilities
City of Fresno
2600 Fresno Street
Fresno CA 93721

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Kenneth W Kinchen

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The ACORD name and logo are registered marks of ACORD

ENDORSEMENT

This Endorsement Changes the Policy - Please Read it Carefully

PRIMARY AND NON-CONTRIBUTING INSURANCE (Third-Party's Sole Negligence)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/ COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD LIABILITY COVERAGE PART
BUSINESSOWNERS LIABILITY COVERAGE FORM

The following is added to Section IV - Commercial General Liability Conditions, Paragraph 4:

Section IV: Commercial General Liability Conditions

4. Other Insurance

d. Notwithstanding the provisions of sub-paragraphs a, b, and c of this paragraph 4, with respect to the Third Party shown below, it is understood and agreed that in the event of a claim or "suit" arising out of the Named Insured's sole negligence, this insurance shall be primary and any other insurance maintained by the additional insured named as the Third Party below shall be excess and non-contributory.

The Third Party to whom this endorsement applies is:

DIRECTOR OF PUBLIC UTILITIES
CITY OF FRESNO
2600 FRESNO STREET
FRESNO, CA 93721

Absence of a specifically named Third Party above means that the provisions of this endorsement apply "as required by written contractual agreement with any Third Party for whom you are performing work."

All other terms and conditions of this policy remain unchanged.

This endorsement is effective on the inception date of the policy unless otherwise stated herein. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: CIP271511

Named Insured: RED BIN SERVICES
MIKE LOPEZ, DBA:
Endorsement Effective Date: 03/ 10/ 2016

Endorsement Serial No. AF 001 397 0712
Includes copyrighted material of Insurance Services Office, Inc. with its permission
Copyright, Insurance Services Office, Inc. 1994

POLICY NUMBER: CIP271511

COMMERCIAL GENERAL LIABILITY
CG 20 26 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):
DIRECTOR OF PUBLIC UTILITIES CITY OF FRESNO 2600 FRESNO STREET FRESNO, CA 93721
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Copyright, Insurance Services Office, Inc., 2012

ace usa

☐ Illinois Union Insurance Company

☒ Westchester Surplus Lines Insurance Company

Insured:
Mike Lopez Dba Red Bin Services
32752 Frazier Rd
Auberry, CA 93602

Attached To Policy No.: G27966147 001

Effective Date: 03/10/2016

CALIFORNIA SURPLUS LINES NOTIFICATION

NOTICE:

1. **THE INSURANCE POLICY THAT YOU HAVE PURCHASED IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINE" INSURERS.**
2. **THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT THAT APPLY TO CALIFORNIA LICENSED INSURERS.**
3. **THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.**
4. **THE INSURER SHOULD BE LICENSED EITHER AS A FOREIGN INSURER IN ANOTHER STATE IN THE UNITED STATES OR AS A NON-UNITED STATES (ALIEN) INSURER. YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINE" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: 1-800-927-4357. ASK WHETHER OR NOT THE INSURER IS LICENSED AS A FOREIGN OR NON-UNITED STATES (ALIEN) INSURER AND FOR ADDITIONAL INFORMATION ABOUT THE INSURER. YOU MAY ALSO CONTACT THE NAIC'S INTERNET WEB SITE AT WWW.NAIC.ORG.**
5. **FOREIGN INSURERS SHOULD BE LICENSED BY A STATE IN THE UNITED STATES AND YOU MAY CONTACT THAT**

STATE'S DEPARTMENT OF INSURANCE TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.

6. FOR NON-UNITED STATES (ALIEN) INSURERS, THE INSURER SHOULD BE LICENSED BY A COUNTRY OUTSIDE OF THE UNITED STATES AND SHOULD BE ON THE NAIC'S INTERNATIONAL INSURERS DEPARTMENT (IID) LISTING OF APPROVED NONADMITTED NON-UNITED STATES INSURERS. ASK YOUR AGENT, BROKER, OR "SURPLUS LINE" BROKER TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.
7. CALIFORNIA MAINTAINS A LIST OF ELIGIBLE SURPLUS LINE INSURERS. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST, OR VIEW THAT LIST AT THE INTERNET WEB SITE OF THE CALIFORNIA DEPARTMENT OF INSURANCE: WWW.INSURANCE.CA.GOV.
8. IF YOU, AS THE APPLICANT, REQUIRED THAT THE INSURANCE POLICY YOU HAVE PURCHASED BE BOUND IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE WITHIN TWO BUSINESS DAYS, AND YOU DID NOT RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS POLICY WITHIN FIVE DAYS OF RECEIVING THIS DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM WILL BE PRORATED AND ANY BROKER'S FEE CHARGED FOR THIS INSURANCE WILL BE RETURNED TO YOU.

NOTHING HEREIN CONTAINED SHALL BE HELD TO VARY, ALTER, WAIVE OR EXTEND ANY OF THE TERMS, CONDITIONS, OR LIMITATIONS OF THE POLICY TO WHICH THIS NOTICE IS ATTACHED OTHER THAN AS STATED ABOVE.

Westchester Surplus Lines Insurance Company

Royal Centre Two
11575 Great Oaks Way, Suite 200
Alpharetta, GA 30022

NOTICE

POLICY NO. G27966147 001

NAME OF INSURED: Mike Lopez Dba Red Bin Services

ADDRESS: 32752 Frazier Rd
Auberry, CA 93602

We are pleased to enclose your policy for this account.

Please be advised that by binding this risk with the above referenced Surplus Lines Insurance Company, you agree that as the Surplus Lines Broker responsible for the placement of this insurance policy, it is your obligation to comply with all States Surplus Lines Laws including completion of any declarations/affidavits that must be filed as well as payment of any and all Surplus Lines taxes that must be the remitted to the State(s). We will look to you for indemnification if controlling Surplus Lines Laws are violated by you as the Surplus Lines broker responsible for the placement.

You further confirm that any applicable state requirement concerning a diligent search for coverage by admitted carriers has been fulfilled in accordance with state law.

Thank you for this placement and your regulatory compliance.

Date: 03/21/2016

Westchester Surplus Lines
INSURANCE COMPANY

Environmental Policy Declarations

THE DECLARATIONS, TOGETHER WITH THE COMPLETED AND SIGNED APPLICATION, THIS POLICY AND ANY ENDORSEMENTS OR SCHEDULES ATTACHED HERE TO, CONSTITUTE THE INSURANCE POLICY.

Policy Number: G27966147 001 **Renewal of:** New

Item 1. Named Insured: Mike Lopez Dba Red Bin Services
32752 Frazier Rd
Auberry, CA 93602

The Named Insured is a: [X] Individual [ ] Partnership [ ] Limited Liability Company [ ] Corporation [ ] Other: ____

Item 2. Producer: BURNS & WILCOX LTD
7807 EAST PEAKVIEW AVENUE
SUITE 400
CENTENNIAL, CO 80112

Item 3. Policy Period: Inception Date: 03/10/2016 Expiration Date: 03/10/2017

(12:01 A.M. Standard time at the address shown in Item 1.)

If "NOT INCLUDED" appears, then no such Coverage is provided under this policy.

Item 4. Limits of Insurance:

General Aggregate Limit	**$2,000,000**	
Contractors Pollution Liability Coverage Part	**$1,000,000**	Each Pollution Condition

Item 5. Deductible:

Contractors Pollution Liability Coverage Part	**$5,000**	Each Pollution Condition

Item 6. Advance Premium: $2,000 (25% minimum earned)

Item 7. Rate: Flat / Not Auditable

Item 8. Estimated Basis: $ 36,000

Item 9. Retroactive Dates:

Contractors Pollution Liability Coverage Part: Not Applicable

Item 10. Covered Locations: Not Applicable

Item 11. Forms and Endorsements:

SL-17888 -	California Notice to Insured
WSG084 (05/11) -	Surplus Lines Broker Notice
LD-5S23j (03/14) -	Signature Endorsement
ENV-1200 (03/10) -	Contractors Pollution Liability Insurance Policy - Occurrence - Elite

ALL-21101 (11/06) -	Trade or Economic Sanctions Endorsement
ENV-3100 (08/04) -	Additional Insured Endorsement
ENV-3101 (08/04) -	Additional Insured Endorsement - Primary and Non-Contributory
ENV-3103 (12/10) -	All Known or Reported Incidents Exclusion
ENV-3130 (10/04) -	Prior Operations Exclusion
ENV-3137 (08/04) -	Separate Defense Limit Endorsement - Contractors Pollution Liability Coverage
ENV-3143 (03/05) -	Waiver of Transfer of Rights of Recovery Against Others to Us
ENV-3147 (05-12) -	Global Program Solutions Amendatory (Foreign Indemnity) Endorsement
ENV-3213 (05/12) -	Mold Sublimit Endorsement - Contractors Pollution Liability
ENV-3225 (10/08) -	Additional Insured Endorsement - Products-Completed Operations Hazard
ENV-3226 (10/08) -	Additional Insured Endorsement - Products-Completed Operations Hazard Primary & Non-Contributory
ENV-5100 (06/11) -	Asbestos Amendatory Endorsement
ENV-5102 (10/04) -	Nuclear Hazard Liability Exclusion
ENV-5519 (09/04) -	Earned Premium Endorsement - 25% Minimum Earned
ENVM-205 -	Transportation Pollution Liability Coverage Endorsement (Owned)
ALL-20887 (10/06) -	ACE Producer Compensation Practices & Policies
IL P 001 01 04 -	U.S. Treasury Departments' Office of Foreign Assets Control ("OFAC") Advisory Notice to Policyholders
MA-608255e (08/09) -	Claims Directory - Umbrella/Excess Casualty/Environmental
SL-34255 (09/11) -	Service of Suit Endorsement

Item 12.

JOHN J. LUPICA, President
Authorized Representative

Date: 03/21/2016

SIGNATURES

Named Insured			Endorsement Number
Mike Lopez Dba Big Red Serivces and Red Bin Services			
Policy Symbol CPW	Policy Number G27966147 001	Policy Period 03/10/2016 **to** 03/10/2017	Effective Date of Endorsement 03/10/2016
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

THE ONLY SIGNATURES APPLICABLE TO THIS POLICY ARE THOSE REPRESENTING THE COMPANY NAMED ON THE FIRST PAGE OF THE DECLARATIONS.

By signing and delivering the policy to you, we state that it is a valid contract.

ILLINOIS UNION INSURANCE COMPANY (A stock company)
525 W. Monroe Street, Suite 400, Chicago, Illinois 60661

WESTCHESTER SURPLUS LINES INSURANCE COMPANY (A stock company)
Royal Centre Two, 11575 Great Oaks Way, Suite 200, Alpharetta, GA 30022

Rebecca L Collins
REBECCA L. COLLINS, Secretary

JOHN J. LUPICA, President

Authorized Representative

Contractors Pollution Liability Insurance Policy
ACE Westchester Elite Form℠

PLEASE READ THIS POLICY CAREFULLY. SOME OF THE PROVISIONS CONTAINED IN THIS POLICY RESTRICT COVERAGE, SPECIFY WHAT IS AND IS NOT COVERED AND DESIGNATE RIGHTS AND DUTIES. LEGAL DEFENSE EXPENSES ARE SUBJECT TO AND WILL ERODE THE LIMITS OF INSURANCE AND ANY APPLICABLE DEDUCTIBLE.

Throughout this policy the words "the Insurer", "we", "us" and "our" shall refer to the company providing this insurance. Other words and phrases that appear in bold have special meanings and are defined in **Section V. – DEFINITIONS**. In consideration of the payment of the Premium and in reliance upon all statements made in the Application, including the information furnished in connection therewith, and subject to all terms, definitions, conditions, exclusions and limitations of this policy, the Insurer agrees to provide insurance coverage to the "Insured" as described herein. The words "insured", "you" and "your" mean any person or organization qualifying as such under **Section II. – WHO IS AN INSURED**.

I. COVERAGES – CONTRACTORS POLLUTION LIABILITY

A. Insuring Agreement

We will pay those sums in excess of the deductible shown in the Declarations that the insured becomes legally obligated to pay as damages because of **bodily injury** or **property damage** to which this insurance applies. We shall have the right and duty to defend the insured against any **claim** or **suit** seeking those damages. However, we shall have no duty to defend the insured against any **claim** or **suit** seeking damages for **bodily injury** or **property damage** to which this insurance does not apply.

We may, at our discretion, investigate any **loss** and settle any **claim(s)** or **suit(s)** that may result. But the amount we will pay for damages is limited as described in **III. LIMITS OF INSURANCE**; and our right and duty to defend ends when the applicable limit of insurance has been exhausted in the payment of judgments, settlements or supplementary payments under all attached Coverage Parts and all Supplementary Payments which reduce the Limit of Insurance.

This insurance applies to a **loss** only if:

1. The **loss** occurs during the policy period; and
2. The **loss** takes place in the **coverage territory**; and
3. The **loss** arises out of **your work**.

In the event a **loss** continues to take place during multiple policy periods for policies issued by us, all **bodily injury** and **property damage** arising out of such **loss** will be deemed to take place during the earliest period during which the **loss** commenced.

B. Exclusions

This insurance does not apply to:

1. Contractual Liability

Bodily injury or **property damage** arising out of any liability of others assumed by the insured through contract or agreement. This exclusion shall not apply to liability for damages:

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a. That would have otherwise attached to the insured in the absence of such contract or agreement; or

b. Assumed in a contract or agreement that is an **insured contract**, provided the **bodily injury** and **property damage** occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of **bodily injury** and **property damage** provided:

(1) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same **insured contract**; and

(2) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

2. Damage to Your Work

Property damage to **your work** arising out of it or any part of it and included in the **products-completed operations hazard**.

This exclusion does not apply:

a. To **replacements costs**; or

b. If the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

3. Employer's Liability

Bodily injury to:

a. An insured or an **employee** of the insured, its parent, subsidiary or affiliate:

(1) Arising out of and in the course of employment; or

(2) While performing duties related to the conduct of the insured's business.

b. The spouse, child, parent, brother or sister of that **employee** of the insured, its parent, subsidiary or affiliate as a consequence of Paragraph **a.** above.

This exclusion applies:

a. Whether the insured may be liable as an employer or in any other capacity; and

b. To any obligation to share damages with or repay someone else who must pay damages because of such **bodily injury**.

This exclusion does not apply to liability assumed by the insured under an **insured contract**.

4. Executive Officer

Bodily injury or **property damage** arising from your services and/or capacity as an **executive officer**, director, partner, trustee or **employee** of a business enterprise not named in the Declarations.

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5. **Expected or Intended Injury**

Bodily injury or **property damage** expected or intended from the standpoint of the insured.

6. **Fines and Penalties**

Any **suit(s)** or **claim(s)** seeking injunctive relief; or payment for fines, penalties, punitive, exemplary or multiplied damages unless allowed by law.

7. **Insured's Internal Expenses**

Claim(s) arising from expenses incurred by the insured for services performed by the salaried staff and **employees** of the insured. However, this exclusion shall not apply to **emergency response expense.**

8. **Impaired Property**

Any **suit(s)** or **claim(s)** arising out of **property damage** to **impaired property** or property that has not been physically injured, arising out of:

a. A defect, deficiency, inadequacy or dangerous condition in **your product** or **your work**; or

b. A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to **your product** or **your work** after it has been put to its intended use.

9. **Insured's Real Property**

Bodily Injury or **property damage** arising from the insureds ownership, rental, lease, maintenance, operation, use, repair, voluntary or involuntary sale, transfer, exchange, gift, abandonment, or condemnation of insured's real property. However, this exclusion does not apply to:

a. **Bodily injury** or **property damage** arising from the insured's temporary rental, lease or use of non-owned real property used solely to house materials, parts or equipment furnished in connection with **your work** during the duration of **your work** performed for a specific job or project; or

b. Asbestos that was transported, stored, or otherwise handled as a result of **your work** performed in accordance with applicable **environmental laws** during the policy period that is stored for a period of time not to exceed ten (10) days at premises owned or leased by you during the policy period.

10. **Intentional Acts**

Bodily injury or **property damage** based upon or arising from any acts of the insured which are based upon or otherwise attributed to the insured's:

a. Dishonest, intentional, fraudulent, malicious, willful, deliberate or knowingly wrongful act or;

b. Dishonest, intentional, fraudulent, malicious, willful, deliberate non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice

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letter, executive order, or instruction of any governmental agency or body prior to or after inception of this policy.

This exclusion does not apply to a **responsible insured** that did not commit, participate in, or have knowledge of an act described above.

11. Non-Owned Disposal Sites

Bodily injury or **property damage** arising out of **pollution conditions** on, at, under or migrated from a **Non-Owned Disposal Site**.

12. Other Enterprises

Bodily injury or **property damage** arising out of any business enterprise owned, operated or managed by the insured or its parent company or the affiliate, successor or assignee of such company not named in the Declarations.

13. Other Named Insureds

Bodily injury or **property damage** arising out of claim(s) against you by any other **Named Insured**.

14. Products Liability

Bodily injury or **property damage** arising out of **your product**. However, this exclusion does not apply to **bodily injury** or **property damage** resulting in a **pollution condition** that commences during the transportation of **your product** by a **carrier**.

15. Professional Liability

Bodily injury or **property damage** arising from or in any way related to the rendering of or failure to render **professional services** by the insured or any contractor or subcontractor working on the insured's behalf. This exclusion does not apply to damaged work or the work out of which the damage arises due to improper supervision or lack of supervision of a subcontractor by the insured.

16. Vehicles

Bodily injury or **property damage** arising from the ownership, maintenance, use or entrustment to others, beyond the boundaries of job sites where **your work** is being performed by any aircraft, **auto,** or watercraft owned or operated by or rented or loaned to you. However, this exclusion does not apply to **bodily injury** or **property damage** resulting in a **pollution condition** that commences during the transportation of **your product** by a **carrier**.

17. War

Bodily injury and **property damage** based upon, arising out of any consequence, whether direct or indirect, of war, invasion, act of foreign enemy, terrorism, civil war, rebellion, revolution, insurrection or military or usurped power.

18. Workers' Compensation

Claim(s) or **suit(s)** arising as a result of any obligation of any insured under any workers compensation, disability benefits, or unemployment compensation law or any similar law.

C. Supplementary Payments

We will pay, with respect to any **claim(s)** we investigate or settle, or any **suit(s)** against an insured we defend:

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1. All expenses we incur.

2. All premiums on appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. The company does not have the obligation to apply or furnish these bonds.

3. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the **claim(s)** or **suit(s)**, including actual loss of earnings up to $250 a day because of time off of work.

4. All costs taxed against the insured in the **suit(s)**.

5. Pre-judgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any pre-judgment interest based on that period of time after the offer.

6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Insurance.

These payments will reduce the Limits of Insurance shown in the Declarations.

II. WHO IS AN INSURED

A. If you are designated in the Declarations as:

1. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

2. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds but only with respects to the conduct of your business.

3. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

4. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your **executive officers** and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

B. Each of the following is also an insured:

1. Your **employees**, other than either your **executive officers** (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of **your work**.

2. Any person (other than your **employee**), or any organization while acting as your real estate manager.

3. Any person or organization having proper temporary custody of your property if you die, but only

a. With respect to liability arising out of the maintenance or use of that property; and

b. Until your legal representative has been appointed.

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4. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.

C. Any organization you newly acquire or form other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest will qualify as a **Named Insured** if there is no other similar insurance available to that organization. However:

1. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

2. Coverage does not apply to **claim(s)** that occurred before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **Named Insured** in the Declarations.

III. LIMITS OF INSURANCE

A. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of insureds, **emergency response expense**, **claim(s)** made or **suit(s)** brought or persons or organizations making **claim(s)** or bringing **suit(s)**.

B. The Each Pollution Condition Limit shown in the Declarations is the most we will pay for the sum of all damages because of a **loss** or **emergency response expense** arising out of any one **pollution condition** under this policy. The most we will pay with respect to any **pollution condition** that continues during the policy periods of more than one Pollution Liability Policy is the Each Pollution Condition Limit shown in the Declarations applicable to the first policy period during which the **pollution condition** commenced.

C. The General Aggregate Limit shown in the Declarations is the most we will pay for the sum of damages under all Coverage Parts and Supplementary Payments afforded by this policy.

D. The Limits of Insurance apply to the policy period shown in the Declarations or as amended by endorsement.

E. The deductible amount stated on the Declarations is applicable to each **pollution condition** or **emergency response expense**. The deductible amount applies once to each **pollution condition** or **emergency response expense** and applies to defense expenses, investigation, settlement, compromise, or indemnification.

F. We, at our sole election and option, may either:

1. Pay any part of the deductible amount to effect settlement or expense of any **claim**, and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount that has been paid by us; or

2. Simultaneously upon receipt of notice of any **claim** or at any time thereafter, call upon you to pay or deposit with us all or any part of the deductible amount, to be held and applied by us at our sole discretion.

G. If a **claim** has not entered into litigation, and we and the **Named Insured** mutually agree to **mediation** as a means to settle a **claim** made against the insured, and if such **claim** is settled as a direct result of and during the **mediation**, the deductible stated in the Declarations or applicable endorsement(s) shall be waived up to a maximum of $25,000. When this occurs, we will reimburse the **Named Insured** as soon as practical for any qualifying deductible amount which was already paid by the **Named Insured** prior to the **mediation**.

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IV. GENERAL CONDITIONS

A. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

B. Duties in the event of a Loss, Claim or Suit:

1. You must see to it that we are notified as soon as practicable of a **pollution condition** or **loss**, which may result in a **claim** or **suit**. To the extent possible, notice should include:

   a. How, when and where the pollution condition or loss took place;

   b. The names and addresses of any injured persons and witnesses;

   c. The nature and location of any injury or damage arising out of the **pollution condition** or **loss**; and

   d. The steps undertaken by the insured to respond to the **pollution condition** or **loss**.

2. If a **claim** is made or **suit** is brought against any insured, you must:

   a. Immediately record the specifics of the **claim** or **suit** and the date received;

   b. Notify us as soon as practicable.

   You must see to it that we receive written notice of the **claim** or **suit** as soon as practicable.

3. You and any other involved insured must:

   a. Immediately send us copies of any demands, notices, summons or legal papers received in connection with the **claim** or **suit**;

   b. Authorize us to obtain records and other information;

   c. Cooperate with us in the investigation or settlement of the **claim** or defense against the **suit**; and

   d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

4. No insured will, except at your own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for **emergency response expense** or first aid, without our consent.

C. Legal Action Against Us

No person or organization has a right under this policy:

1. To join us as a party or otherwise bring us into a **suit** asking for damages from an insured; or

2. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a

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settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

D. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this policy, our obligations are limited as follows:

1. Primary Insurance

This insurance is primary except when Paragraph **2.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **3.** below.

2. Excess Insurance

If other insurance, whether collectible or not, is available to the insured covering a **loss** also covered by this policy, other than a policy that is specifically written to apply in excess of this policy, the insurance afforded by the policy shall apply in excess of and shall not contribute with other such insurance.

This policy shall in no way be increased or expanded as a result of receivership, insolvency or inability to pay of any insurer with respect to both the duty to indemnify and the duty to defend. This also applies to the insured while acting as a self-insured for any coverage.

When this insurance is excess, we will have no duty under the policy to defend any **claim(s)** or **suit(s)** if any other insurer has a duty to defend the insured against that **claim(s)** or **suit(s)**. If no other insurer defends a **loss** covered under this policy, we may undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the **loss**, if any, that exceeds the sum of:

a. The total amount that all such other insurance would pay for the **loss** in the absence of this insurance; and

b. The total of all deductible and self-insured amounts under all other insurance or under this policy.

We will share the remaining **loss**, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this policy.

3. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

E. Premium Audit

1. We will compute all premiums for this policy in accordance with our rules, rates, and minimum premium requirements.

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2. Premium shown in the Declarations page of this policy as Premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the **Named Insured**.

3. The **Named Insured** must keep records of the information we need for premium computation, and send us copies at such times as we may request.

4. We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

5. Premium adjustments as a result of premium audits will be done after the policy expires or is terminated, but may be done by us while the policy is in effect.

6. Premium Audit adjustment calculations will be made to determine additional premium only. You have agreed with us that there will be no downward adjustments of the Premium.

F. Representations

By accepting this policy, you agree:

1. The statements in the Declarations, application for insurance, any other underwriting, loss control or claims related information, and any other information submitted to us are accurate and complete at the time you reported that information; and

2. Those statements are based upon representations you made to us; and

3. We have issued this policy in reliance upon your representations.

G. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the **Named Insured**, this insurance applies:

1. As if each **Named Insured** were the only **Named Insured**; and

2. Separately to each insured against whom **claim** is made or **suit** is brought.

H. Transfer of Rights of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing to impair these rights once a **loss** is known by a **responsible insured**. At our request, the insured will bring **suit** or transfer those rights to us and help us enforce them.

I. Cancellation or Non-renewal

This policy may be cancelled by you by surrender thereof to us or any of our authorized representatives or by mailing to us written notice stating when thereafter the cancellation shall be effective.

If we decide to cancel or not to renew this policy on or before the expiration date of the policy, we will mail or deliver to the first **Named Insured** shown in the Declarations, written notice of cancellation or non-renewal not less than sixty (60) days or ten (10) days for non-payment of premium prior to cancellation.

If notice is mailed, proof of mailing will be sufficient proof of notice.

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J. **Inspection**

With reasonable notice to the insured, the Insurer shall be permitted, but not obligated, to inspect the insured's property and/or operations. Neither the Insurer's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the insured or others, to determine or warrant that such property or operations are safe or in compliance with environmental law(s), or any other law.

K. **Headings**

The descriptions in the headings and sub-headings of this policy are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.

V. DEFINITIONS

A. **Auto** means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But **auto** does not include **mobile equipment**.

B. **Bodily injury** means:

1. Physical injury, illness or disease, sustained by any person, including death resulting there from, and any associated medical monitoring; and

2. Mental anguish, emotional distress or shock.

C. **Carrier** means a person or entity, other than the Insured or any subsidiary or affiliated company of the Insured, engaged in the business of transporting property for hire by **auto**, rolling stock, aircraft or watercraft.

D. **Claim** means any written demand, notice, or request for defense, request for indemnity, or other legal or equitable proceeding against any insured by a person, entity or asserted class for **loss**.

E. **Cleanup costs** means reasonable and necessary expenses incurred in the investigation, evaluation, monitoring, testing, removal, containment, treatment, response, disposal, remediation, detoxification or neutralization of any **pollution conditions**:

1. To the extent required by applicable **environmental laws**; or

2. In absence of any applicable **environmental laws**, to the extent recommended in writing by an **environmental consultant**.

Cleanup costs also include **replacement costs**.

F. **Coverage territory** means:

1. The United States of America, its territories and possessions, Puerto Rico and Canada;

2. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Item **1.** above.

G. **Emergency response expense** means reasonable **cleanup costs** incurred by the **Named Insured** in response to an imminent and substantial threat to human health or the environment arising from a **pollution condition**. Such reasonable **cleanup costs** must be incurred within seven (7) days of the discovery of a **pollution condition**.

H. **Employee** includes temporary and/or leased staff working on behalf of and under direct supervision by you, but only for **your work**.

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I. **Environmental consultant** means a person approved by us in writing who is duly certified and licensed in a recognized field of environmental science as required by an applicable state or provincial board, a professional association, or both, and fulfills certain minimum qualifications and maintains errors and omissions insurance. We shall consult with the insured in conjunction with the selection of the **environmental consultant**.

J. **Environmental law** means federal, state, provincial, municipal or other local laws, statutes, ordinances, regulations, and all amendments thereto, including state voluntary cleanup or risk-based corrective action guidance, governing the liability of the insured with respect to **pollution conditions**.

K. **Executive officer** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

L. **Impaired property** means tangible property, other than **your product** or **your work**, that cannot be used or is less useful because:

1. It incorporates **your product** or **your work** that is known or thought to be defective, deficient, inadequate or dangerous; or

2. You have failed to fulfill the terms of the contract or agreement;

If such property can be restored to use by:

1. The repair, replacement, adjustment or removal of **your product** or **your work**; or

2. Your fulfilling the terms of the contract or agreement.

M. **Insured contract** means:

1. A sidetrack agreement;

2. Any easement or license agreement;

3. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

4. An elevator maintenance agreement;

5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **5.** does not include that part of any contract or agreement:

a. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(1) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

b. Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services,

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including those listed in Item **5.a.** above and supervisory, inspection, architectural or engineering activities.

N. **Loss** means **bodily injury** or **property damage**, neither expected nor intended from the standpoint of the insured, caused by or resulting from a **pollution condition** and which results in a **claim** or **suit**.

O. **Mediation** means the non-binding intervention of a neutral third-party to effect resolution of a **claim**.

P. **Mobile equipment** means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

2. Vehicles maintained for use solely on or next to premises you own or rent;

3. Vehicles that travel on crawler treads;

4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

   a. Power cranes, shovels, loaders, diggers or drills; or

   b. Road construction or resurfacing equipment such as graders, scrapers or rollers;

5. Vehicles not described in **1.**, **2.**, **3.** or **4.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

   a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

   b. Cherry pickers and similar devices used to raise or lower workers;

6. Vehicles not described in **1.**, **2.**, **3.** or **4.** above maintained primarily for purposes other than the transportation of persons or cargo.

   However, self-propelled vehicles with the following types of permanently attached equipment are not **mobile equipment** but will be considered **auto**:

   a. Equipment designed primarily for:

      (1) Snow removal;

      (2) Road maintenance, but not construction or resurfacing; or

      (3) Street cleaning;

   b. Cherry pickers and similar devices mounted on **auto** or truck chassis and used to raise or lower workers; and

   c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

Q. **Mold** means mildew, fungus, or mold; including mycotoxins, spores or byproducts produced or released by fungi.

R. **Named Insured** means the person or entity shown in Item **1**. of the Declarations.

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S. **Natural resource damage** means damage for, injury to, destruction of, or loss of fish, wildlife, biota, land, air, water, groundwater, drinking water supplies, and other similar resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, and state or local government, any foreign government, or any Indian Tribe, including the reasonable costs of assessing such injury, destruction or **loss** resulting there from.

T. **Non-Owned Disposal Site** means a facility or site that is used for treatment, storage or disposal of any material or waste provided the **Non-Owned Disposal Site** is not owned, operated, leased or maintained by the insured or affiliated entity.

U. **Pollution condition** means the discharge, dispersal, release, escape, migration, or seepage of any solid, liquid, gaseous or thermal, material matter, irritant or contaminant, including smoke, soot, vapors, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials, low level radiological material, or waste materials including medical, infectious, or pathological wastes, on, in, into, or upon land and structures thereupon, the atmosphere, surface water or groundwater. **Pollution condition** includes electromagnetic fields, **mold**, virus(es), and bacteria including Legionella pneumophila.

V. **Products - completed operations hazard**:

1. Includes all **bodily injury** and **property damage** occurring away from premises you own or rent and caused by **pollution conditions** arising out of **your product** or **your work** except:

   a. Products that are still in your physical possession; or

   b. Work that has not yet been completed or abandoned. However, **your work** will be deemed completed at the earliest of the following times:

      (1) When all of the work called for in your contract has been completed.

      (2) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

      (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

   Work that may need service, maintenance, correction. repair or replacement, but which is otherwise complete, will be treated as completed.

2. Does not include **bodily injury** or **property damage** arising out of

   a. The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the loading or unloading of that vehicle by any insured;

   b. The existence of tools, uninstalled equipment or abandoned or unused materials.

W. **Professional services** means those architectural, engineering, consulting, project management or construction management services that are performed by you or on your behalf. **Professional services** includes making recommendations for the site selection, transportation, disposal or treatment of **pollution condition(s)**.

X. **Property damage means:**

1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of physical injury that caused it; or

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2. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **loss**; or

3. **Cleanup costs**; or

4. **Natural Resource Damage**; or

5. Diminished value of property owned by third parties.

Y. **Replacement costs** means reasonable expenses necessarily incurred by the insured to repair or replace real property or physical improvements to such real property that were made prior to the **pollution condition** and damaged during the course of responding to the **pollution condition**. **Replacement costs** do not include costs associated with improvements or betterments.

Z. **Responsible Insured** means any employee of the insured responsible for environmental affairs, control, or compliance, or any officer, director, partner, branch manager, operations manager, or project manager of the **Named Insured**.

AA. **Suit** means a civil proceeding in which damages because of **bodily injury** or **property damage** to which this insurance applies are alleged. **Suit** includes:

1. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

BB. **Your product**:

1. Means:

a. Any goods or products including waste, other than real property, manufactured, sold, handled, distributed or disposed of by:

(1) You;

(2) Others trading under your name; or

(3) A person or organization whose business or assets you have acquired; and

b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

2. Includes:

a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your product**; and

b. The providing of or failure to provide warnings or instructions.

3. Does not include vending machines or other property rented to or located for the use of others but not sold.

CC. **Your work**:

1. Means:

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a. Work or operations performed by you or on your behalf; and

b. Materials, parts or equipment furnished in connection with such work or operations.

2. Includes:

a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your work**; and

b. The providing of or failure to provide warnings or instructions.

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TRADE OR ECONOMIC SANCTIONS ENDORSEMENT

Named Insured Mike Lopez Dba Red Bin Services			Endorsement Number
Policy Symbol CPW	Policy Number G27966147 001	Policy Period 03/10/2016 **to** 03/10/2017	Effective Date of Endorsement 03/10/2016
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including but not limited to, the payment of claims. All other terms and conditions of policy remain unchanged.

Authorized Agent

Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
CPW	G27966147 001	03/10/2016 to 03/10/2017	03/10/2016
Issued By (Name of Insurance Company)			
Westchester Surplus Lines Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED ENDORSEMENT
OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE
CONTRACTOR'S POLLUTION LIABILITY COVERAGE

SCHEDULE:

Name of Person or Organization:
Any person or organization that is an owner of real property or personal property on which you are performing operations, or a contractor on whose behalf you are performing operations, and only at the specific written request of such person or organization to you, wherein such request is made prior to commencement of operations.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. **SECTION II - WHO IS AN INSURED** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to **bodily injury** or **property damage** occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

(2) That portion of **your work** out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
CPW	G27966147 001	03/10/2016 **to** 03/10/2017	03/10/2016
Issued By (Name of Insurance Company)			
Westchester Surplus Lines Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED ENDORSEMENT - OWNERS, LESSEES OR CONTRACTORS (PRIMARY AND NON-CONTRIBUTORY)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE
CONTRACTOR'S POLLUTION LIABILITY COVERAGE

SCHEDULE:

Name of Person or Organization:

Any person or organization that is an owner of real property or personal property on which you are performing operations, or a contractor on whose behalf you are performing operations, and only at the specific written request of such person or organization to you, wherein such request is made prior to commencement of operations.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

SECTION II - WHO IS AN INSURED is amended to include:

A. **SECTION II - WHO IS AN INSURED** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to **bodily injury** or **property damage** occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

(2) That portion of **your work** out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. The coverage provided hereunder shall be primary and not contributing with any other insurance available to those designated above under any other third party liability policy.

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ALL KNOWN OR REPORTED INCIDENTS EXCLUSION

Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
CPW	G27966147 001	03/10/2016 to 03/10/2017	03/10/2016
Issued By (Name of Insurance Company)			
Westchester Surplus Lines Insurance Company			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY

CONTRACTORS POLLUTION LIABILITY

PROFESSIONAL LIABILITY

This insurance does not apply to **bodily injury, property damage, personal and advertising injury,** or **pollution conditions** from any incident, **claim**, **suit,** act, error, omission or accident:

1) of which the insured is aware, or reasonably should have been aware; or
2) committed by the insured or alleged to have been committed by the insured

which is known or reported to the insured, his agent, broker or insurance company prior to the inception date of this policy are excluded from coverage under this policy.

All other terms and conditions remain the same.

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Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
CPW	G27966147 001	03/10/2016 **to** 03/10/2017	03/10/2016
Issued By (Name of Insurance Company)			
Westchester Surplus Lines Insurance Company			

Insert the policy number The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIOR OPERATIONS EXCLUSION

This insurance does not apply to **claim(s)** or **suit(s)**, including the obligation to investigation, defend, or settle any such **claim(s)** or **suit(s)**, arising out of operations or activities conducted or performed prior to 03/10/2015 .

All other terms and conditions remain the same.

Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
CPW	G27966147 001	03/10/2016 **to** 03/10/2017	03/10/2016
Issued By (Name of Insurance Company)			
Westchester Surplus Lines Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SEPARATE DEFENSE LIMIT ENDORSEMENT - CONTRACTOR'S POLLUTION LIABILITY

This endorsement modifies insurance provided under the following:

CONTRACTORS POLLUTION LIABILITY COVERAGE PART

SECTION I - COVERAGES, C. Supplementary Payments is deleted in its entirety and replaced by the following:

C. Supplementary Payments

We will pay, with respect to any **claim(s)** we investigate or settle, or any **suit(s)** against an insured we defend:

1. All expenses we incur.

2. All premiums on appeal bonds or bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. The company does not have the obligation to apply for or furnish these bonds.

3. All reasonable expense(s) incurred by the insured at our request to assist us in the investigation or defense of the **claim(s)** or **suit(s)**, including actual loss of earnings up to $250 per day because of time off from work.

4. All costs taxed against the insured in the **suit(s)**.

5. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.

6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Insurance.

These payments will not reduce the Limits of Insurance shown in the Declarations until we have paid $1,000,000 in total Supplementary Payments, after which these payments will reduce the Limits of Insurance shown in the Declarations.

Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
CPW	G27966147 001	03/10/2016 to 03/10/2017	03/10/2016
Issued By (Name of Insurance Company)			
Westchester Surplus Lines Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTORS POLLUTION LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:
Any person or organization that is an owner of real property or personal property on which you are performing operations, or a contractor on whose behalf you are performing operations, and only at the specific written request of such person or organization to you, wherein such request is made prior to commencement of operations.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The **TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition** is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or **your work** done under a contract with that person or organization and included in the **products-completed operations hazard**. This waiver applies only to the person or organization shown in the Schedule above.

All other terms and conditions remain the same.

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GLOBAL PROGRAM SOLUTIONS AMENDATORY (Foreign Indemnity) ENDORSEMENT

Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
CPW	G27966147 001	03/10/2016 **to** 03/10/2017	03/10/2016
Issued By (Name of Insurance Company)			
Westchester Surplus Lines Insurance Company			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTOR'S POLLUTION LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART
THIRD-PARTY PREMISES POLLUTION LIABILITY COVERAGE PART
ONSITE CLEANUP PREMISES POLLUTION LIABILITY COVERAGE PART
SUDDEN AND ACCIDENTAL PREMISES POLLUTION LIAIBLITY COVERAGE PART

Notwithstanding anything in this policy that might be construed otherwise, including any definitions or provisions governing Defense and Claims Expense that discuss the geographic scope of coverage to be provided herein, the Coverage Territory of this policy shall include the following:

1. The United States of America, including its territories and possessions, and Puerto Rico;
2. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any of the places included in Item **1.**, above; and
3. All other parts of the world, except:
   a. The People's Republic of China; and
   b. Any of the former member states of the Union of Soviet Socialist Republics, including Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

This policy shall not afford coverage for any risk which would otherwise be in violation of the laws of the United States of America, including, but not limited to, economic or trade sanction laws or export control laws administered by the government of the United States of America.

I. FOREIGN COVERAGE

When a **foreign occurrence** arising out of one or more otherwise covered exposures of the insured or **foreign entity** causes injury or damage to which this insurance applies, rather than directly pay on behalf of the insured or **foreign entity**, we shall indemnify the insured for the **foreign loss** or **foreign entity loss** caused by a **foreign occurrence** subject to the following provisions.

II. WHO IS AN INSURED

The **WHO IS AN INSURED** provisions of this policy and any other associated definitions or schedules are hereby amended to confirm that **foreign entities** *are not insureds* on whose behalf we have a direct duty to pay settlements or judgments or to whom we owe any duty to defend.

III. DEFENSE AND SUPPLEMENTARY PAYMENTS

Rather than directly defend an insured or **foreign entity**, we shall indemnify the insured for defense costs incurred in defending a **suit** brought against it or its **foreign entity**, provided that the insured complies with Section **IV.**, **ADDITIONAL CONDITIONS**, of this Endorsement, below, and all other policy terms, conditions and limitations.

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IV. LIMITS OF INSURANCE

The insurance provided by this Endorsement is subject to all applicable limits of insurance, limits of liability, deductibles and self-insured retentions (if any) identified in the Declarations of, or elsewhere in, this policy, including any aggregate limits and sublimits (collectively "limits"). Any **foreign loss** or **foreign entity loss** for which we pay indemnity shall erode and be counted against such limits. Such limits apply on the same basis (e.g., per **occurrence**, per **claim**, in the aggregate etc.) with respect to the insureds as would apply if the **foreign occurrence** had taken place within the United States of America, including its territories and possessions, or Puerto Rico.

The applicability of limits to Supplementary Payments or **allocated loss adjustment expense** applies on the same basis (pursuant to the applicable coverage part) as would apply if the **foreign occurrence** had taken place directly with respect to an insured within the United States of America, including its territories and possessions, or Puerto Rico.

V. ADDITIONAL CONDITIONS

The following conditions apply in addition to the conditions and limitations provided elsewhere in this policy.

A. Claims Made and/or Reported Coverage (to the extent applicable)

Any requirements in this policy that a **claim** be first made and/or reported, or deemed made and/or reported, during the policy period, or any discovery or extended reporting period, shall also apply to all **claims** made against a **foreign entity** for which an insured seeks indemnification. Any provisions regarding notice of circumstances which may become a **claim** pursuant to this policy shall apply to circumstances known or which reasonably should have been known by the insured.

B. Additional Duties of the Insured

1. With respect to a **foreign occurrence** which may result in a **claim** to which this insurance applies, the insured assumes the duty to notify us, and must notify us in accordance with the conditions in the applicable coverage part or endorsement of this policy.
2. The insured shall, when directed by us:
   a. Retain in its own name, but, subject to any relevant retention or deductible obligations herein, a loss adjusting expert approved by us that is authorized in the jurisdiction in which the **foreign loss** or **foreign entity loss** occurred;
   b. Where permitted by applicable law, grant us the full right to collaborate with such loss adjusting expert;
   c. Grant us full access to any records produced by such loss adjusting expert; and
   d. Obtain the right to control the investigation, adjustment, defense and settlement of the **foreign loss** or **foreign entity loss** using experts approved by us, including access to books, records, bills, invoices, vouchers and other information.

C. Payment as Discharge of Liability

With respect to any **foreign loss** or **foreign entity loss**, payment to the insured shall, in all circumstances, to the extent of such payment, discharge us from any liability or alleged liability to any other person or entity, whether or not such person or entity is named as an insured pursuant to this policy.

D. Truthfulness and Accuracy of Information

1. The insured shall make a good faith effort to provide truthful and accurate information to us with respect to the applicable **foreign entity**, **foreign occurrence**, **claim**, **suit**, **foreign loss** or **foreign entity loss**; and
2. The insured shall not, at any time, intentionally conceal or misrepresent facts concerning any **foreign entity**; any **foreign loss**; any **foreign entity loss**; any **claim** or **suit**; or any **foreign occurrence**.

VI. Additional Definitions

The following definitions apply to this Endorsement in addition to definitions set forth elsewhere in this policy:

A. Allocated loss adjustment expense means any:

1. Expenses, costs and interest provided for pursuant to this policy that responds to a **loss**, **claim**, suit or demand; and

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2. Other expenses, costs, or interest incurred in connection with the investigation, administration, adjustment, settlement or defense of any **loss**, **claim**, **suit** or demand arising pursuant to this policy that we directly allocate to a particular **claim**, whether or not a payment indemnifying the claimant(s) is made by any person or entity. Such expenses shall include: subrogation; all court costs, fees and expenses; fees for service of process; fees and expenses to attorneys for legal services; the cost of services of undercover operations and detectives; fees to obtain medical cost containment services; the cost of employing experts for the purpose of preparing maps, photographs, diagrams, or chemical or physical analysis, or for expert advice or opinion; the cost of obtaining copies of any public records; and the cost of obtaining depositions and court reporters or recorded statements.

However, **allocated loss adjustment expense** does not include:

1. The salaries of the employees of any **foreign entity** or of the insured;
2. Fees, expenses and interest for legal services not provided to or for the benefit of the insured; and
3. Amounts otherwise reimbursed to the insured or **foreign entity**.

B. **Foreign entity** means any person or entity which would otherwise qualify as an insured or additional insured as defined in or identified in any coverage part, endorsement or schedule attached to this policy, but for the fact that such person or entity is domiciled or its principal place of business is located within a jurisdiction outside of the United States of America, including its territories and possessions, or Puerto Rico.

C. **Foreign loss** means:

1. Damages or other amounts to which this insurance applies, that an insured has incurred or becomes legally obligated to pay within a jurisdiction outside of the United States of America, including its territories and possessions, or Puerto Rico, as the result of injury, damage, **loss**, or liability to which this insurance would apply if the **foreign occurrence** had taken place within the United States of America, including its territories and possessions, or Puerto Rico; and
2. Any reasonable and necessary expenses or costs incurred by the insured to which this insurance would apply if we defended the **claim** or **suit**,

which have not been paid, indemnified or reimbursed pursuant to any other insurance.

D. **Foreign entity loss** means:

1. Damages, or other amounts to which this insurance applies, that a **foreign entity** has incurred or becomes legally obligated to pay because of injury, damage, **loss**, or liability to which this insurance would apply if the insured were directly liable for such amounts with respect to covered exposures located within the United States of America, including its territories and possessions, or Puerto Rico; and
2. Any reasonable and necessary expenses or costs incurred by a **foreign entity** to which this insurance would apply if we defended the **claim** or **suit**,

which have not been paid, indemnified or reimbursed pursuant to any other insurance.

E. **Foreign occurrence** means an accident, **occurrence**, **pollution condition**, **loss**, act, error or omission (as any of these terms may be defined in the applicable coverage parts), which may result in a **foreign loss** or **foreign entity loss**.

All other terms and conditions of this policy remain unchanged.

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MOLD SUBLIMIT ENDORSEMENT – CONTRACTORS POLLUTION LIABILITY

Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
Policy Symbol CPW	Policy Number G27966147 001	Policy Period 03/10/2016 to 03/10/2017	Effective Date of Endorsement 03/10/2016
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

CONTRACTORS POLLUTION LIABILITY COVERAGE PART

CONTRACTORS POLLUTION LIABILITY COVERAGE PART, DEFINITIONS, Pollution Condition, is deleted in its entirety and replaced with the following:

Pollution condition means the discharge, dispersal, release, escape, migration, or seepage of any solid, liquid, gaseous or thermal, material matter, irritant or contaminant, including smoke, soot, vapors, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials, low level radiological material, or waste materials including medical, infectious, or pathological wastes, on, in, into, or upon land and structures thereupon, the atmosphere, surface water or groundwater. **Pollution condition** includes:

a. electromagnetic fields, virus(es), and bacteria including Legionella pneumophila

b. **mold**

With respect to item **b.** above, the following Limits of Insurance and Deductible apply:

Limits of Insurance:	$ 1,000,000	Each Pollution Condition
	$ 1,000,000	Mold Aggregate Limit (serves to reduce the General Aggregate Limit shown on the Declarations page)
Deductible:	$ 10,000	Each Pollution Condition

The above Limits of Insurance and Deductible are subject to the terms and conditions of the **LIMITS OF INSURANCE** section of the policy to which this endorsement is attached.

All other terms and conditions remain the same.

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ADDITIONAL INSURED ENDORSEMENT – PRODUCTS-COMPLETED OPERATIONS HAZARD

Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
CPW	G27966147 001	03/10/2016 to 03/10/2017	03/10/2016
Issued By (Name of Insurance Company)			
Westchester Surplus Lines Insurance Company			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTOR'S POLLUTION LIABILITY COVERAGE PART

SCHEDULE

Any person or organization that is an owner of real property or personal property on which you are performing operations, or a contractor on whose behalf you are performing operations, and only at the specific written request of such person or organization to you, wherein such request is made prior to commencement of operations.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for **bodily injury** or **property damage** caused, in whole or in part, by **your work** performed for that additional insured and included in the **products-completed operations hazard**.

All other terms and conditions remain the same.

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ADDITIONAL INSURED ENDORSEMENT – PRODUCTS-COMPLETED OPERATIONS HAZARD
PRIMARY & NON-CONTRIBUTORY

Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
CPW	G27966147 001	03/10/2016 to 03/10/2017	03/10/2016
Issued By (Name of Insurance Company)			
Westchester Surplus Lines Insurance Company			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTOR'S POLLUTION LIABILITY COVERAGE PART

SCHEDULE

Any person or organization that is an owner of real property or personal property on which you are performing operations, or a contractor on whose behalf you are performing operations, and only at the specific written request of such person or organization to you, wherein such request is made prior to commencement of operations.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for **bodily injury** or **property damage** caused, in whole or in part, by **your work** performed for that additional insured and included in the **products-completed operations hazard**.

Furthermore, the coverage provided hereunder shall be primary and not contributing with any other insurance available to those designated above under any other third party liability policy.

All other terms and conditions remain the same.

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ASBESTOS AMENDATORY ENDORSEMENT

Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
CPW	G27966147 001	03/10/2016 **to** 03/10/2017	03/10/2016
Issued By (Name of Insurance Company)			
Westchester Surplus Lines Insurance Company			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

This insurance does not apply to **bodily injury** or **property damage** at any time arising out of the manufacture of, mining of, sale or distribution of, or installation of asbestos products, asbestos fibers or asbestos dust, or to any obligation of the insured to indemnify any party because of damages arising out of such **bodily injury** or **property damage** at any time as a result of the manufacture of, mining of, sale or distribution of, or installation of asbestos products, asbestos fibers or asbestos dust.

Furthermore, the Company shall not be obligated to defend any **claim** or **suit** against any insured alleging **bodily injury** or **property damage** resulting from or contributed to, by any and all manufacture of, mining of, sale or distribution of, or installation of asbestos products, asbestos fibers or asbestos dust.

For the purpose of this endorsement, **bodily injury** shall include disability, disease, occupational disease, sickness, and shock.

All other terms and conditions of this **Policy** remain unchanged.

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Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
CPW	G27966147 001	03/10/2016 **to** 03/10/2017	03/10/2016
Issued By (Name of Insurance Company)			
Westchester Surplus Lines Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR HAZARD LIABILITY EXCLUSION

This insurance does not apply to:

A. **Bodily injury** or **property damage**:

1. With respect to which the Insured under the policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limits of insurance;

2. Resulting from the **hazardous properties** of **nuclear material** and with respect to which:

   (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or

   (b) The Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Resulting from the **hazardous properties** of **nuclear material**, if:

1. The **nuclear material**

   (a) Is at any **nuclear facility** owned by, or operated by or on behalf of the Insured; or

   (b) Has been discharged or dispersed therefrom;

2. The **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of the Insured; or

3. The **bodily injury** or **property damage** arises out of the furnishing by the Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, located within the United States of America, its territories or possessions or Canada.

C. As used in this exclusion:

1. **Hazardous properties** include radioactive, toxic, or explosive properties.

2. **Nuclear material** means **source material**, **special nuclear material**, or **byproduct material**.

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3. **Source material, special nuclear material,** and **byproduct material** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

4. **Spent fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**.

5. **Waste** means any **waste material**:

   (a) Containing **byproduct material** other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content;

   (b) Resulting from the operation by any person or organization of any nuclear facility included under the first two paragraphs of the definition of **nuclear facility**;

6. **Nuclear facility** means:

   (a) Any **nuclear reactor**;

   (b) Any equipment or device designed or used for:

      i. Separating the isotopes of uranium or plutonium;

      ii. Processing or utilizing **spent fuel**; or

      iii. Handling, processing or packaging **waste**;

   (c) Any equipment or device used for the processing, fabricating or alloying of **special nuclear material** if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

   (d) Any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of **waste**;

   (e) The site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

7. **Nuclear reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

8. **Property damage** includes all forms of radioactive contamination of property.

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Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
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Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy

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EARNED PREMIUM ENDORSEMENT – 25% MINIMUM EARNED

The Minimum Earned Premium due for this policy shall be calculated in accordance with the following:

1. In the event of cancellation of this policy by the first **Named Insured** the minimum earned premium due if this policy remains in effect for ninety (90) days or less shall be twenty-five percent (25%) of the amount entered as advance premium on the Declarations of this policy; and

2. In the event of cancellation of this policy by the first **Named Insured** after this policy has been in effect for more than ninety (90) days, the return premium due, if any, shall be computed at a rate equal to ninety percent (90%) of the pro-rata unearned policy premium, subject, however, to final premium adjustment in accordance with our rules, rates and the Premium Audit provisions of this policy; and

3. In the event of cancellation of this policy by the Company for reasons other than non-payment of premium, the earned premium for this policy shall be computed on a pro-rata basis, subject, however, to final premium adjustment in accordance with our rules, rates and Premium Audit provisions of this policy; and

4. The following supersedes any provision to the contrary contained in the policy to which this endorsement is attached:

   The premium entered in the Declarations of this policy as advance premium is a provisional premium only and is subject to adjustment in accordance with our rules, rates and the Premium Audit provisions of this policy. Premium adjustments effected as a result of premium audits will be done after the policy is no longer in effect but may be done by the Company while the policy is in effect. Premium audit adjustment calculations will be made to determine additional premiums only. The first **Named Insured** agrees that there will be no downward adjustment of the advance premium resulting from the Premium Audit provisions of this policy. You agree that we may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three (3) years afterward.

All other terms and conditions remain the same.

TRANSPORTATION POLLUTION LIABILITY COVERAGE ENDORSEMENT

Named Insured			Endorsement Number
Mike Lopez Dba Red Bin Services			
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
CPW	G27966147 001	03/10/2016 **to** 03/10/2017	03/10/2016
Issued By (Name of Insurance Company)			
Westchester Surplus Lines Insurance Company			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

CONTRACTORS POLLUTION LIABILITY COVERAGE PART

COVERAGES - CONTRACTORS POLLUTION LIABILITY, Section **B., Exclusions, 16. Vehicles** is deleted in its entirety and replaced with the following:

16. Vehicles

Bodily injury or **property damage** arising from the use, maintenance, entrustment to others, or operation of any **auto**, aircraft, watercraft or other conveyance. However, this exclusion does not apply to:

a. **Bodily injury** or **property damage** resulting from a **pollution condition** that commences during the transportation of **your product** by a **carrier**; or

b. **Bodily injury** or **property damage** resulting from a **pollution condition** arising out of the ownership, maintenance or use of any **autos** or watercraft used in the operations performed by or on behalf of the insured.

With respect to item **b.** above, the following Limits of Insurance apply:

Limits of Insurance:	$ 1,000,000	Each Occurrence
	$ 1,000,000	Transportation Pollution Aggregate Limit (serves to reduce the General Aggregate shown on the Declarations page)

The Limits of Insurance are subject to the terms and conditions of the **LIMITS OF INSURANCE** section of the policy to which this endorsement is attached.

All other terms and conditions remain the same.

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ACE Producer Compensation Practices & Policies

ACE believes that policyholders should have access to information about ACE's practices and policies related to the payment of compensation to brokers and independent agents. You can obtain that information by accessing our website at http://www.aceproducercompensation.com or by calling the following toll-free telephone number: 1-866-512-2862.

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – http//www.treas.gov/ofac.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

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Claims Directory
Umbrella/Excess Casualty/Environmental

Claims or Loss Notices related to this policy should be reported to the following:

Claim Office	Email and Fax	Location
ACE Westchester Claims	First Notices Email: WSGUMB-LTECLAIMS@ACEGROUP.COM First Notices Fax: 215.640.5055 or 1.877.518.3494 General Correspondence Fax: 1-866-635-5688	P.O. Box 5119 Scranton, PA 18505-0549

SERVICE OF SUIT ENDORSEMENT

Named Insured Mike Lopez Dba Red Bin Services			Endorsement Number
Policy Symbol CPW	Policy Number G27966147 001	Policy Period 03/10/2016 to 03/10/2017	Effective Date of Endorsement 03/10/2016
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Information about service of suits upon the company is given below. Service of process of suits against the company may be made upon the following person, or another person the company may designate:

Saverio Rocca, Assistant General Counsel
ACE Group of Insurance Companies
436 Walnut Street
Philadelphia, PA 19106-3703

The person named above is authorized and directed to accept service of process on the company's behalf in any action, suit or proceeding instituted against the company. If the insured requests, the company will give the insured a written promise that a general appearance will be entered on the company's behalf if a suit is brought.

If the insured requests, the company will submit to the jurisdiction of any court of competent jurisdiction. The company will accept the final decision of that court or any Appellate Court in the event of an appeal. However, nothing in this endorsement constitutes a waiver of company's right to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States.

The law of some jurisdictions of the United States of America requires that the Superintendent, Commissioner or Director of Insurance (or their successor in office) be designated as the company's agent for service of process. In these jurisdictions, the company designates the Director of Insurance as the company's true and lawful attorney upon whom service of process on the company's behalf may be made. The company also authorizes the Director of Insurance to mail process received on the company's behalf to the company person named above.

If the insured is a resident of Canada, the insured may also serve suit upon the company by serving the government official designated by the law of the insured's province.

NOTHING HEREIN CONTAINED SHALL BE HELD TO VARY, ALTER, WAIVE OR EXTEND ANY OF THE TERMS, CONDITIONS, OR LIMITATIONS OF THE POLICY TO WHICH THIS ENDORSEMENT IS ATTACHED OTHER THAN AS ABOVE STATED.

Authorized Representative