AMENDED & RESTATED EXCLUSIVE FRANCHISE AGREEMENT FOR PROVISION OF SOLID WASTE HANDLING SERVICES

THIS AMENDED & RESTATED EXCLUSIVE FRANCHISE AGREEMENT FOR PROVISION OF SOLID WASTE HANDLING SERVICES ("Agreement") is made and entered into this 4th day September of 2013, by and between WASTE MANAGEMENT COLLECTION & RECYCLING, INC., a California corporation, doing business as, "Waste Management of San Gabriel/Pomona Valley" ("Franchisee") and THE CITY OF BALDWIN PARK, a municipal corporation of the State of California (the "City"). City and Franchisee are occasionally herein referred to each as a "Party" and collectively as the "Parties."

RECITALS

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, Public Resources Code Sections 49100, *et seq.*, ("the Act" or "AB 939"), has declared that a city may determine all aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees and the nature, location and extent of providing solid waste handling services.

B. Pursuant to California Public Resources Code Subsection 40059(a)(1), the City Council of the City has determined that the public health, safety, and welfare require that an exclusive franchise be awarded to a qualified solid waste enterprise for solid waste handling in residential, commercial, and industrial areas in the City.

C. On or about January 1, 1990, the City and Webster's Refuse Disposal, a predecessor in interest to Franchisee, entered into an "Agreement for Collection of Solid Wastes" (the "1990 Franchise Agreement") for the provision by Franchisee of certain services for, among other things, the collection, transportation, disposal and recycling of residential, industrial and commercial waste, which services were specifically set forth in the 1990 Franchise Agreement. The 1990 Franchise Agreement was amended by City and Webster's Refuse Disposal or Franchisee, several times over the past twenty-three years, which amendments and the 1990 Franchise Agreement shall be hereinafter collectively referred to as the "Prior Franchise Agreement."

D. The Prior Franchise Agreement is currently subject to a month-to-month extension pursuant to Amendment No. 6 to the Prior Franchise Agreement.

E. The City and Franchisee desire to enter into a long-term renewal of their arrangements for solid waste handling services.

F. This Agreement is intended to replace and supersede the Prior Franchise Agreement in its entirety, except for Franchisee's indemnification of the City arising from matters occurring prior to the Effective Date of this Agreement.

G. It is the intent of the Parties to provide for the exclusive right of collection of all solid waste from single-family, multi-family and commercial/industrial premises within the City, in accordance with the terms and conditions set forth herein.

H. The Legislature, by enactment of the Global Warming Solutions Act of 2006 ("AB 32"), has declared the reduction of greenhouse gas ("GHG") emissions that cause climate change is among the State's top priorities. Local governments will play a vital role in the implementation of AB 32 by identifying opportunities and best practices to increase waste reduction and recycling, thereby reducing carbon emissions. Franchisee's operation of a Materials Recovery Facility located close to the City will contribute to GHG emissions reductions by reducing fuel consumption and vehicle miles traveled in performing waste collection and diversion activities for the City and by recovering and recycling commodities in the waste stream.

NOW THEREFORE, in consideration of the promises and covenants contained herein, the above recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS; DELEGATION OF AUTHORITY

1.1. General. Whenever any term used in this Agreement has been defined by the provisions of Chapter 50 of the Baldwin Park Municipal Code (hereinafter "Chapter 50") or by Division 30, Part I of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise expressly defined in this Agreement or the context requires, in which case this Agreement shall control.

1.2. Definitions. Except as provided in Section 1.1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following respective meanings:

1.2.1. AB 341. "AB 341" means those provisions of "the Act" related to commercial and multi-family recycling that became effective on January 1, 2012.

1.2.2. AB 939. "AB 939" means the California Integrated Waste Management Act of 1989, Public Resources Code Section 40000 *et seq.* and regulations promulgated thereunder, as amended from time to time.

1.2.3. Account. "Account" means premises located within the City receiving services pursuant to this Agreement, or the person arranging for services pursuant to this Agreement, as the case may be. The word "Account" is used interchangeably with the word "Customer" in this Agreement.

1.2.4. Activation Fee. "Activation Fee" means a fee charged by Franchisee to compensate it for expenses incurred where re-establishing service following a suspension of service due to non-payment.

1.2.5. Agreed Upon Procedure. "Agreed Upon Procedure" shall mean the procedures and methodology approved by the City's Finance Department for review and audit of Franchisee's financial records in connection with this Agreement.

1.2.6. Agreement or Haul Agreement. "Agreement" or "Haul Agreement" means this Amended & Restated Exclusive Franchise Agreement For Provision of Solid Waste Handling Services, including all exhibits and attachments, and any amendments.

1.2.7. Bagster® Bag. "Bagster® Bag" means a soft-sided polypropylene Container that can hold up to 3,000 pounds of solid waste, is purchased by the customer at a local hardware or home supply store by the customer, and is collected by Franchisee using a special vehicle with an overhead crane.

1.2.8. Bagster® Service. "Bagster® Service" means a method for single-family, multi-family or commercial/industrial customers to arrange for collection of solid waste as an alternative to temporary Bin or Roll-Off box service, using a Bagster® Bag. Franchisee will provide for collection/processing of the Bagster® Bag. Bagster® Service is considered a special temporary service. Bagster® Service is intended as a service additional to, and not as a substitution for, temporary Bin or Roll-Off service.

1.2.9. Bin. "Bin" means a metal or rigid plastic Container with a capacity of one to six cubic yards, having a hinged lid and wheels, which is serviced by a front-end loading truck.

1.2.10. Bin Service. "Bin Service" means collection services provided to accounts using Bins provided by Franchisee. Bin Service may be provided to Single-Family Premises, Multi-Family Premises or Commercial/Industrial Premises on a Permanent or Temporary basis.

1.2.11. Biohazardous Waste. "Biohazardous Waste" means those materials defined as "biohazardous waste" in Health and Safety Code §117635.

1.2.12. Bulky Items. "Bulky Items" means discarded furniture (including but not limited to chairs, sofas, mattresses, and rugs); appliances (including but not limited to refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances, and other similar items, commonly known as "white goods"); Wood Waste, tree trunks, and large branches if more than six inches in diameter or four feet in length, or scrap wood not exceeding three cubic yards, and e-waste. Bulky Items do not include construction and demolition waste, or large items such as car bodies, Jacuzzi tubs or spas, or other items that cannot be handled by two persons. In addition, Bulky Items do not include waste tires, or Universal Waste.

1.2.13. Board or CIWMB. "Board" or "CIWMB" means the California Integrated Waste Management Board, as established pursuant to the Act (Public Resources Code §§ 40000 *et seq.)* or such successor entity to which the duties of the California Integrated Waste Management Board are assigned, including without limitation the Department of Resources Recycling and Recovery ("CalRecycle").

1.2.14. CalRecycle. "CalRecycle" means the California Department of Resources Recycling and Recovery, or any successor agency.

1.2.15. Cart "Cart" means a plastic Container having a hinged lid and wheels, which is serviced by an automated side-loading truck.

1.2.16. Cart Service. "Cart Service" means collection services provided to Accounts using Carts provided by Franchisee. Cart Service may be provided to either Single-Family Premises or Multi-Family Premises on a Permanent basis.

1.2.17. City. "City" means the City of Baldwin Park, a municipal corporation organized under the laws of the State of California, and all of the territory lying within the municipal boundaries of the City as presently existing and, subject to the provisions of Section 3.1.3, all geographic areas which may be added or annexed thereto during the term of this Agreement.

1.2.18. City Facility. "City Facility" means any building, park or other site owned, leased or used by the City.

1.2.19. Chief Executive Officer. "Chief Executive Officer" means the Chief Executive Officer of the City or his or her designee(s).

1.2.20. Commercial/Industrial Premises. "Commercial/Industrial Premises" means property upon which a business activity is conducted, including but not limited to retail sales, services, manufacturing, assembling, storage, or wholesale operations, but excluding businesses conducted upon Single-Family Premises or Multi-Family Premises that are permitted under applicable zoning regulations and that do not constitute the primary use of the property. Commercial/Industrial Premises may receive Bin Service, Roll-Off Service, Cart Service or Bagster® Service. Commercial/Industrial Premises also include hotels, motels, other temporary housing facilities, and senior citizen housing complexes.

1.2.21. Commercial/Industrial Service means solid waste handling services provided to Commercial/Industrial Premises, which may include both Permanent and Temporary service.

1.2.22. Construction and Demolition Waste or C&D Material. "Construction and Demolition Waste" or "C&D Material," means any combination of inert building materials and Solid Waste resulting from construction, remodeling, repair, clean-up, or demolition operations as defined in California Code of Regulations, Title 22 Sections 66261.3 *et seq.* This term includes, but is not limited to, asphalt, concrete, cement, brick, lumber, gypsum wallboard, cardboard, and other associated packaging, roofing material, ceramic tile, carpeting; plastic pipe and steel. The material may be commingled with rock, soil, tree stumps and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.

1.2.23. Container. "Container" means a Cart, Bin, Roll-Off Box, Bagster® Bag, or other receptacle for Solid Waste, Recyclable Material or Green Waste.

1.2.24. Contamination. "Contamination Fee" means an amount charged by Franchisee to Commercial/Industrial Accounts to recover its costs for separating Solid Waste placed in Recyclable Materials or Green Waste Containers, or for arranging special, unscheduled Solid Waste collections, due to placement of Solid Waste in Recyclable Materials or Green Waste Containers.

1.2.25. Contract Year. "Contract Year" means each July 1–June 30 period during the term of this Agreement.

1.2.26. County. "County" means the County of Los Angeles.

1.2.27. Day. "Day" means calendar day, unless otherwise stated in this Agreement.

1.2.28. Disposal Fee. "Disposal Fee" means those costs imposed at a Disposal Site for the reuse, processing, handling recycling, transfer, transportation or disposal of Solid Waste collected by Franchisee.

1.2.29. Disposal Site. "Disposal Site" means a final end-point or permanent site for the reuse, processing, handling, recycling, transfer, transportation or disposal of Solid Waste, such as a landfill, incineration facility, Materials Recovery Facility for Recyclables or transfer station.

1.2.30. Divert or Diversion. "Divert" or "Diversion" means to divert from a Disposal Site or Transformation Facilities, as described in Section 40201 of the Act (including incineration, pyrolysis, distillation, gasification or biological conversion), through source reduction, Recycling and composting, as provided in Section 41780 of the Act as such act may be hereafter amended or superseded; provided, that Divert or Diversion shall include delivery to transformation facilities if the overall Diversion achieved by the City is at a level where delivery to such facilities shall be considered Diversion pursuant to the Act.

1.2.31. Dwelling Unit. "Dwelling Unit" for purposes of this Agreement means any Single-Family Premises or any individual living unit in a Multi-Family Premises intended for, or capable of being utilized for, residential living.

1.2.32. Effective Date. The term "Effective Date" means the later of either July 1, 2013, or the date that (i) this Agreement has been fully executed, and (ii) thirty (30) days following adoption of any authorizing ordinance or resolution approving this Agreement as stated on the first page hereof.

1.2.33. Electronic Waste or E-waste. "Electronic Waste" or "E-waste" means "Covered Electronic Waste" as defined in Section 42463 of the Public Resources Code and other discarded electronic equipment commonly known as "brown goods" such as, but not limited to, CD players and recorders, DVD players and recorders, stereos, computers, printers, keyboards, and peripherals. Revenues from the recycling of Electronic Waste shall be accounted for separately from revenues from other Recyclable Materials.

1.2.34. Food Waste. "Food Waste" means solid waste comprised of animal, fruit or vegetable matter that results from the preparation, consumption, decay, dealing in or storage of meats, fish, fowls, fruits or vegetables.

1.2.35. Franchisee. "Franchisee" means Waste Management Collection & Recycling, Inc. a California corporation.

1.2.36. Franchise Documents. "Franchise Documents" means Chapter 50 as the same exists or may be amended in the future of the Baldwin Park Municipal Code, this Agreement and all attachments to this Agreement.

1.2.37. Franchise Fee. "Franchise Fee" means that consideration paid by Franchisee to the City as consideration for the grant of exclusive franchise effected by the Agreement and as described in Section 3.3.1 hereof.

1.2.38. Green Waste. "Green Waste" means any and all forms of biodegradable plant material which can fit within a Cart, such as wastes generated from the maintenance, repair or replacement of public, commercial or residential landscaped areas, including, but not limited to, yard clippings, leaves, tree trimmings, prunings, brush, and weeds as well as green waste. Tree stumps and limbs that are six inches in diameter or four feet in length or greater are excluded, unless they are reduced to a chipped form; otherwise, such large portions of Green Waste shall be considered Bulky Waste. Green Waste does not include palm fronds.

1.2.39. Gross Receipts. "Gross Receipts" means all monetary amounts actually collected or received by Franchisee for the collection of Solid Waste, Green Waste, and Recyclable Material pursuant to this Agreement (and includes but is not limited to, Overage Fees, Roll-Off service fees, and Bin rental fees). Gross Receipts, for purposes of this Agreement, does not include material sales revenues derived from the collection of recyclable materials, Special Fees, or other receipts from state and local government accounts (including CalRecycle beverage container recycling payments).

1.2.40. Hazardous Waste. "Hazardous Waste" means any hazardous or toxic substance, material or waste, which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iv) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (v) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (vi) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (ix) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. Section 1317; (xi) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. § 6903); (xii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. § 9601); (xiii) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.;* or (xiv) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in effect.

1.2.41. Household Hazardous Waste or HHW. "Household Hazardous Waste" or "HHW" shall mean that waste resulting from products purchased by the general public for household use which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed, or otherwise managed.

1.2.42. Household Waste. "Household Waste" shall mean that waste normally generated by a Single-Family Residential Unit or a Multi-Family Residential Unit.

1.2.43. Infectious Waste. "Infectious Waste" means waste capable of producing an infection or pertaining to or characterized by the presence of pathogens including, but not limited to, certain wastes generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals and medical testing labs.

1.2.44. Late Fee. "Late Fee" means amounts charged by Franchisee to reimburse it for administrative costs arising from payment delinquency, including the cost of notices and adjustments to its accounting records, and may include a fixed fee, interest on past due amounts, or NSF fees.

1.2.45. Materials Recovery Facility. "Material Recovery Facility or MRF" shall mean a facility designed to process and recover collected materials for reuse, Recycling or other Diversion.

1.2.46. Maximum Rate Schedule. "Maximum Rate Schedule" means that schedule of rates (attached hereto at Exhibits A-1 and A-2) to be charged to Residential Units and Commercial/Industrial customers located in the City by Franchisee for Franchisee's solid waste handling services, which Maximum Rates are effective as of the Effective Date of this Agreement, upon completion of the hearing and protest process to the extent required by Proposition 218 and in accordance with Section 8.1.2.

1.2.47. Multi-Family Premises. "Multi-Family Premises" means a development of two (2) or more Dwelling Units, including, but not limited to, a duplex, triplex, condominium project, townhouse project, apartment house, or mobile home park, irrespective of whether residence therein is transient, temporary or permanent, such that all Dwelling Units dispose of Solid Waste and/or Recyclable Materials in a communal Bin(s) at centralized locations.

1.2.48. Multi-Family Service. "Multi-Family Service" means Solid Waste handling services provided to Multi-Family Premises, which may include both Permanent and Temporary service.

1.2.49. Oil Waste. "Oil Waste" means used motor oil and used oil filters.

1.2.50. Overage Fee. "Overage Fee" means a fee charged by Franchisee to Commercial/Industrial Accounts to compensate it for its expenses in documenting and cleaning up litter and debris arising from overfilling of Containers.

1.2.51. Permanent Service. "Permanent Service" means routine, regularly-scheduled collection of Solid Waste, Recyclable Material or, Green Waste in Carts, Bins or Roll-Off Boxes on a continuing basis.

1.2.52. Premises. "Premises" means any parcel of land, building(s) or structure(s), or portion thereof, in the City where Solid Waste is produced, generated or accumulated.

1.2.53. Proposition 218. "Proposition 218" means Articles XIIIC and XIIID of the California Constitution and any implementing legislation promulgated thereunder, as may be amended from time to time.

1.2.54. Rate Year. "Rate Year" means the July 1 – June 30 period during the term.

1.2.55. Reasonable Business Efforts. "Reasonable Business Efforts" means those efforts a reasonably prudent business person would expend under the same or similar circumstances in the exercise of such Person's business judgment, intending in good faith to take steps calculated to satisfy the obligation which such Person has undertaken to satisfy.

1.2.56. Recyclable Materials or Recyclables. "Recyclable Materials" or "Recyclables" interchangeably mean any product salvaged or collected for the purpose of reuse, reprocessing or remanufacturing, consistent with the requirements of AB 939, including, but not limited to, Electronic Waste, glass, newsprint, aluminum, cardboard, paper, Green Waste, wood, plastics or metal. Recyclable Materials discarded by the owner (including where the owner pays a fee or other consideration to have Recyclable Materials collected by another party) are Solid Waste.

1.2.57. Roll-Off Box. "Roll-Off Box" means an open-top metal Container or closed compactor box with a capacity of 10 to 40 cubic yards that may be provided by either the account or Franchisee, which is serviced by a Roll-Off truck.

1.2.58. Roll-Off Service. "Roll-Off Service" means collection, transportation, recycling, processing and disposal services that are provided using a Roll-Off Box. Roll-Off Service may be provided to Single-Family Premises and Multi-Family Premises on a Temporary basis, or Commercial/Industrial Premises on a Permanent or Temporary basis.

1.2.59. Single-Family Premises. "Single-Family Premises" means any building or structure in which each of the Dwelling Units (including those at duplexes, triplexes, apartment houses, condominiums, mixed condominiums and rental housing, or a mobile home parks) receives Solid Waste collection service using Carts.

1.2.60. Single-Family Service. "Single-Family Service" means Solid Waste handling services provided to Single-Family Premises, which may include both permanent and temporary service.

1.2.61. Solid Waste. "Solid Waste" is synonymous with "Refuse" and means "solid waste," as defined in Public Resources Code Section 40191, which is collected and transported under the authorization of the City or is self-hauled by residents or contractors. Solid Waste does not include Hazardous Waste or any Solid Waste which (i) is not permitted to be disposed of at a Class III landfill or (ii) does not fall within the definition of "Nonhazardous Solid Waste" set forth in Title 27, Chapter 3, Section 20220f the California Code of Regulations as amended. For purposes of this Agreement, "Solid Waste" includes Construction and Demolition Waste, Green Waste, Food Waste, Wood Waste, and Recyclable Material.

1.2.62. Solid Waste Enterprise. "Solid Waste Enterprise" means "solid waste enterprise" as defined in Public Resources Code Section 40193 (i.e., any individual, partnerships, joint venture, unincorporated private organization, or private corporation, which is regularly engaged in the business of providing Solid Waste handling services).

1.2.63. Solid Waste Handling. "Solid Waste handling" or "handling" (or other form thereof) means: "Solid Waste Handling" or "Handling" as defined in Public Resources Code Section 40195 (*i.e.*, the collection, transportation, storage, transfer, or processing of solid wastes) and Solid Waste disposal by a Solid Waste Enterprise defined in Section 40193 of the Public Resources Code, such as residential or commercial refuse collection in packer-type vehicles by haulers whose core business is refuse collection or the small-scale collection and disposal of residential or commercial solid waste in any type of truck, trailer or vehicle.

1.2.64. Source Reduction. "Source Reduction" means the process of reducing the amount of waste produced by the person or organization generating such waste. Source Reduction occurs through the use of alternative goods and products and/or the reuse of goods and products.

1.2.65. Source Separated. "Source Separated" describes the segregation, by the generator, of materials designated for separate collection for some form of materials recovery or special handling.

1.2.66. Special Fees. "Special Fees" means a charge imposed by Franchisee in response to improper actions by Accounts, including fees for Contamination, extra pickups, Overage Fees, Cart or Bin repair or replacement arising from damage caused by the Account, late payment, or interest; or a charge for special services where a rate is not provided in the Maximum Rate Schedule.

1.2.67. Special Waste. "Special Waste" means Solid Waste generated by a Commercial/Industrial Premises that is a "designated waste" under applicable law or regulations, is required to be accompanied by a written manifest or shipping document describing the waste under applicable law, or which requires special handling at any processing facility or disposal site.

1.2.68. Temporary Service. "Temporary Service" means Bagster® Service, Bin Service or Roll-Off Service provided to premises on a Temporary, as-needed basis, such that no Container remains on the Premises or a service location on Premises for more than thirty (30) calendar days at a time, or for more than sixty (60) calendar days of any ninety (90) calendar day period.

1.2.69. Universal Waste. "Universal Waste" means all waste defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations, which typically include batteries, fluorescent tubes, compact fluorescent bulbs and aerosol cans.

1.2.70. Wood Waste. "Wood Waste" means industrial dimension lumber, pallets, shipping dunnage, and similar discarded processed wood materials.

1.3. Delegation of Authority. The administration of this Agreement by the City shall be under the supervision and direction of the Chief Executive Officer and the actions specified in this Agreement shall be taken by the Chief Executive Officer or as he otherwise directs.

ARTICLE II
FRANCHISE DOCUMENTS

2.1 Documents. All of the provisions of the Franchise Documents are incorporated and made a part of this Agreement as though set forth in full. Nothing shall prevent the City from amending Chapter 50 of the Municipal Code or from adopting such other and further legislation as the City deems necessary or appropriate; provided, however, that the City shall give Franchisee thirty-days' (30-days') notice prior to considering any amendment to Chapter 50, and if such amendment would affect costs or revenue under this Agreement the parties shall meet and confer in good faith to determine whether the planned amendment will materially change Franchisee's costs or revenues and whether a Proposition 218 hearing process is warranted for purposes of allowing Franchisee to adjust Service Rates pursuant to Section 8.2.4, hereof. The City acknowledges and agrees (i) this Agreement is the product of extensive review and negotiation and constitutes a valid and binding agreement and (ii) any future amendment to Chapter 50 of the Municipal Code or other further legislation adopted or enacted by City in the exercise of its police powers, if it adversely affects the rights or financial position of Franchisee under this Agreement, shall only be undertaken in good faith and to the extent necessary to protect the public health, safety, morals, and general welfare of the community, and not for the purpose of circumventing an obligation of City or depriving Franchisee of any right or benefit accruing to Franchisee as a result of this Agreement.

ARTICLE III
GRANT OF FRANCHISE; SCOPE OF FRANCHISE; EXCLUSIONS

3.1 Grant of Franchise.

3.1.1 General Grant. The City grants to Franchisee and Franchisee shall have during the Term of this Agreement, the exclusive franchise, right, license and privilege (except as provided in Section 3.2 below) to engage in, the business of collecting, transporting, recycling, and disposing of all Solid Waste generated at Single-Family Premises, Multi-Family Premises, Commercial/Industrial Premises and government facilities (to the extent permitted by law) within the City. It is expressly understood that the Solid Waste management business is conducted by Franchisee and not City, and while City grants the right to conduct the business within the terms of this Agreement, Franchisee must determine what personnel to employ, terms and conditions of employment, what equipment to utilize and at what cost, rates and charges to establish for customers and all methods, costs, obligations and mechanisms to undertake the terms of the franchise.

3.1.2 Duty. To the extent the franchise granted hereby is exclusive, it shall be so only if Franchisee is and shall be at all times ready, willing and able to perform its obligations under this Agreement, including but not limited to, collecting, transporting and disposing of all Solid Waste generated within the City in accordance with the provisions of this Agreement and all applicable law, rules and regulations.

3.1.3 Annexations. This Agreement shall extend to any territory annexed to the City during the Term that is not covered by an existing Solid Waste permit, license, agreement or franchise granted by another public entity, where collection by Franchisee within that annexed territory would not violate the provisions of Public Resources Code Section 49520. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and City agrees that it shall cooperate with Franchisee to fulfill any requirement necessary for Franchisee to serve the annexed area consistent with this Section 3.1.3.

3.2 Scope of Franchise; Mandatory Service And Exclusions. The franchise granted to Franchisee shall be exclusive within City limits such that Franchisee shall be the sole provider of general Solid Waste hauling services to City residents and businesses. The hauling services franchise herein granted shall be subject to the following exclusions:

3.2.1 Reserved.

3.2.2 Self Hauling. Self-hauling by City residents, Owners, or occupants of Premises. To qualify as a "self-hauler" for purposes of this exemption, an Owner or occupant must remove and personally transport from his/her own Premises using his/her own equipment for the purpose of lawfully delivering same to a Disposal Site or MRF/TS authorized to receive and handle Solid Waste or Recyclables. The use of a subcontractor is not "self haul" within the meaning of this exception. Self-hauling of Solid Waste or Recyclables does not exempt the property owner from subscribing to franchise collection service;

3.2.3 Gardner/Landscaper Green Waste. Green Waste and other compostables removed from a Premises by an Owner or resident of Premises or by a gardening, landscaping or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service. To qualify for this exemption, a gardener or landscaper must not be a hauling service or Solid Waste Enterprise, must not separately or additionally charge for the incidental service of removing, transporting or disposing (except for tipping fee) of the Green Waste, and must utilize only his or her own employees and equipment to collect, transport and dispose of said Green Waste;

3.2.4 C&D Material. The collection, transportation and disposal by a construction contractor of C&D Material that is incidentally removed by a duly licensed construction or demolition company, as part of a total service offered by such licensed company, provided that the construction contractor is not a hauling service or Solid Waste Enterprise, does not separately or additionally charge for the incidental service of removing, transporting or disposing (except for tipping fee) of the C&D Material, and utilizes only his/her own employees and equipment to collect, transport and dispose of the C&D Material;

3.2.5 Automotive Dismantling. The collection, transportation and disposal of vehicles or machine parts and waste generated by an automotive/vehicle dismantler or Owner of a vehicular salvage or disposal yard;

3.2.6 Animal Waste. Animal waste, including dead animals and the remains from any slaughterhouse or butcher shop for use as tallow;

3.2.7 Agricultural Waste. Agricultural waste, such as manure or bedding from poultry yards or stables;

3.2.8 Sewage Treatment Waste. By-products of sewage treatment, including sludge, sludge ash, grit and screenings;

3.2.9 Grease Trap Waste. Grease generated from food service providers;

3.2.10 Hazardous Waste. Hazardous Waste, Biohazardous Waste, Infectious Waste, Universal Waste, hazardous substances, or Special Waste, regardless of its source, unless expressly provided for in this Agreement;

3.2.11 Recyclable Materials. Recyclable Materials not "discarded" (but rather sold or donated) by an Owner of Premises which are disposed of at legally-mandated public redemption centers that comply with all reporting and other requirements imposed by any political entity having jurisdiction over those redemption centers, including but not limited to Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Sections 14500, et seq., California Resources Code, and recyclable material donated to youth, civic or charitable organizations. A mere discount or reduction in price of third-party charges for the handling of Recyclables is not a sale or donation within the meaning of this Agreement and is thus precluded by Franchisee's exclusive franchise;

3.2.12 Legally-Required Exemptions. Other collection, removal or disposal activities required to be exempt from mandatory franchise services pursuant to law, or entities exempt from such franchise pursuant to State or Federal law, including but not limited to, public universities, community college and school districts, other state agencies, and any other governmental entity that is not subject to the City's police powers;

3.2.13 City Hauls. The casual or emergency collection, removal, disposal or Diversion of Solid Waste or Recyclables by the City through City officers or employees in the normal course of their employment; and

3.2.14 Tires. The City utilizes another contractor/provider for the collection, transport and disposal of Waste tires.

3.3 Compensation To City for Grant of Franchise.

3.3.1 Franchise Fee. In consideration for the grant of the franchise provided herein, Franchisee agrees to pay the City a franchise fee equaling fifteen percent (15%) of Gross Receipts for providing Single-Family Service or Multi-Family Service, and eighteen percent (18%) of Gross Receipts for providing Commercial/Industrial Service (the "Franchise Fee"). Concurrent with each Franchise Fee payment, Franchisee shall provide an accounting worksheet showing the discrepancy, if any, between Gross Revenues as calculated for purposes of the Franchise Fee versus Franchisee's gross receipts actually collected.

3.3.2 Contract Modification Fee. Franchisee will pay a contract modification fee of One Million Dollars ($1,000,000.00), within thirty (30) business days after the Effective Date.

3.3.3 AB 939 Fee. Franchisee shall charge a monthly fee of $1.29 per solid waste Cart ($0.46 per Solid Waste Cart for Accounts receiving the senior discount) to Accounts for Single-Family Service for implementation of the Solid Waste Diversion programs required by AB 939. Such monthly surcharge shall be charged and collected by Franchisee over and above the rates provided for in the Maximum Rate Schedule, as amended. Franchisee shall pay all AB939 fees collected to City quarterly within thirty (30) days of the end of each calendar quarter.

3.3.4 Integrated Waste Management Fund. Franchisee shall pay City's Integrated Waste Management Fund the amount of Fifteen Thousand Dollars ($15,000.00) each July 1 and January 1 during the Term of this Agreement, commencing on the Effective Date, for administration of this Agreement, implementation of diversion programs or public education. Late payments will be subject to an interest charge or one and one-half percent (1½%) per month, or the highest rate allowable under applicable law, whichever is less.

3.3.5 New or Increased Fees. The City has the right to impose new fees on the provision of Solid Waste Handling Services, and to increase the amount or percentage of the Franchise Fee, or other fees as described above, from that set forth above. In such event, as allowed under Section 8.2.4, Franchisee shall receive an adjustment to the rates to fully compensate its increased costs, including, if applicable, a one-time rate adjustment to the rates to fully compensate it where there is any delay between the effective date of the new or increased fee and the date on which it begins to receive increased compensation from billings related to the new or increased fee.

3.3.6 Payment Protocol. Unless otherwise provided in this Section 3.3, all such payments to the City required pursuant to this Section 3.3 shall be made to City within thirty (30) days after the close of each Rate Year following the Effective Date during the Term of this Agreement. Late payments will be subject to an interest charge of one and a half percent (1½ %) per month, or the highest applicable rate allowable under law, whichever is less. All remittances by Franchisee shall be accompanied by a report setting forth the basis and calculations used for computing the amount due. Each payment of Franchisee Fee shall be accompanied by a statement separately setting forth the Gross Receipts collected by Franchisee and the computation of the total fee due. Each statement shall include the following certification executed by an officer of Franchisee: "I hereby certify that the foregoing statement of Franchise Fee payment is made by me, that I am authorized to make such statement, and that, to the best of my knowledge and belief, it is true, correct and complete."

3.4 Ownership of Solid Waste and Recyclable Materials. Ownership of all Solid Waste collected, except for Recyclable Material, shall transfer to the Franchisee as of the time the same is received by it. Ownership of Recyclable Material shall transfer to the Franchisee when the Account generating such Recyclable Material places it for collection by the Franchisee. Franchisee is thereby granted the right to retain, recycle, compost, dispose of and otherwise use such waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by Franchisee. Subject to the provisions of this Agreement, and excepting any material which is not a Solid Waste and which was inadvertently or improperly discarded, Franchisee shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, convert, dispose of or use the Solid Waste which it collects, including, without limitation, CalRecycle container recycling payments, proceeds from the sale of Recyclable Material, and the market value of all greenhouse gas (GHG) emissions, reduction, carbon, or renewable energy credits, offsets or similar benefits arising from the Solid Waste Handling activities undertaken by Franchisee pursuant to this Agreement. City shall have the right to report any such benefits as part of City's Climate Action Plan or similar plan, and Franchisee shall provide information requested by City for such reporting. Solid Waste and any other material which is disposed of at a Disposal Site or sites (whether landfill, transformation facility, transfer station or material recovery facility) shall, as between the City and Franchisee, remain the responsibility of Franchisee, and Franchisee shall retain ownership of the same.

ARTICLE IV

TERM OF AGREEMENT

4.1 Term And Franchise Term. .

The Term of this Agreement shall be for a period commencing on the Effective Date and ending on June 30, 2023 ("the Term"). Thereafter, the Term may be extended by mutual agreement of the parties as set forth in writing.

4.2 Representations and Warranties of Franchisee.

4.2.1 Corporate Status. Franchisee is doing business as Waste Management of San Gabriel/Pomona Valley, and is a company duly organized, validly existing and in good standing under the laws of the State of California. Franchisee is qualified to transact business in the State of California and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

4.2.2 Corporate Authorization. Franchisee has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Franchisee (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise, to authorize the execution of this Agreement. The persons signing this Agreement on behalf of Franchisee have authority to do so. Entering into this Agreement does not violate any provision of any other Agreement to which Franchisee is bound.

4.2.3 Accuracy of Representations. The representations and warranties made by Franchisee in this Section 4.2 are true and correct on and as of the Effective Date of this Agreement.

ARTICLE V
SERVICES OF FRANCHISEE

5.1 General Standards.

5.1.1 Furnishing of Services. The work to be performed pursuant to this Agreement shall include the furnishing of all labor, materials and equipment necessary for, and the collection of all Solid Waste and Recyclables from, Residential Premises, Commercial/Industrial Premises within the City according to the terms of this Agreement, and the disposal, recycling and/or Diversion of such materials. Franchisee shall own or lease and maintain at its expense all equipment necessary to perform its duties as provided for under the Agreement, including sufficient radio equipment for office to field communication. All work shall be accomplished in a courteous, thorough and workmanlike manner and adhere to the highest standards consistent with the best practice in the industry.

5.1.2 Oversight by Chief Executive Officer.

(a) Performance of each of the provisions of the Agreement shall be under the direction of the Chief Executive Officer and the work hereunder shall be done in a thorough and workmanlike manner under the direction, and to the satisfaction of the Chief Executive Officer. To this end, the Chief Executive Officer shall have the power to establish rules and regulations relating to the accumulation, collection, Recycling, disposal, and management of Solid Waste not inconsistent herewith and/or as necessary to ensure compliance with laws, ordinances and regulations, and which the Chief Executive Officer finds are reasonably necessary for enforcement hereof or of applicable laws, ordinances and regulations, or for preservation of the public peace, health, and safety. Franchisee shall be given thirty (30) days prior written notice of any such changes in rules or regulations excepting in those circumstances where the changes are necessitated by an immediate threat to the public health, safety and/or welfare.

(b) Changes in Service. The Chief Executive Officer may direct Franchisee to modify the manner in which it performs existing services or bills for services. Pilot programs and innovative services that may entail new collection methods, different kinds of services or new requirements for customers, and alternative rate structures are included among the kinds of changes that the Chief Executive Officer may direct.

(c) Emerging Technologies. The parties understand Solid Waste handling is a dynamic and evolving industry. Franchisee, upon request from the Chief Executive Officer or designee, agrees to meet and confer with the City to review and discuss commercially reasonable technological advances for post-collection processing, handling, diversion or resource recovery, and their potential application in the City. Based upon those consultations, City or Franchisee may desire to implement new methods of processing, handling diversion or resource recovery. In such event, the City agrees to provide Franchisee the exclusive opportunity to present a proposal to perform such new or additional services, programs or methods, and thereafter the parties agree to negotiate exclusively with each other and in good faith for a period of not less than three months regarding mutually agreeable terms and conditions for Franchisee to provide the new or additional services, programs or methods.

(d) The Parties may negotiate a means of recompensing Franchisee for material increases in Franchisee's costs as a result of either (i) new or changed rules and regulations by the Chief Executive Officer, or (ii) other changes in services required by the Chief Executive Officer that are in excess of those contemplated by this Agreement. If any such changes cause a change in Franchisee's costs or revenues or the time required for performance of the Agreement, an equitable adjustment shall be made in the Agreement price or schedule, or both, subject to the requirements of Section 8.2 for rate adjustments.

5.1.3 Hazardous Materials.

(a) The scope of this Agreement and franchise excludes the handling of Hazardous Materials, and no right to provide Hazardous Materials handling services is conferred on Franchisee as a result of this Agreement. Franchisee shall ensure only persons duly-licensed to handle Hazardous Materials shall be engaged when such services become necessary.

(b) Franchisee shall implement a system of Hazardous Waste and Prohibited Material (as defined by CCR Title 22, Chapter 11, Sections 66261.1 through 66261.126) screening, identification, and prevention protocol reasonably designed to screen-out Hazardous Waste and Prohibited Materials that Franchisee is not permitted to handle pursuant to applicable law prior to Franchisee accepting such materials. If Franchisee inadvertently collects Hazardous Waste that Franchisee is not qualified or permitted to handle (under any applicable permit conditions or Applicable Laws), Franchisee shall arrange, at no cost and without liability to City, for the proper disposal of the Hazardous Waste in accordance with applicable laws and regulations; provided however, that Franchisee shall be entitled to return any such Hazardous Waste, if the customer can be identified, or at its own expense pursue all legal rights and remedies it may have against the customer(s) who generated such Hazardous Waste. The City shall be indemnified by Franchisee from liability for any disposal of Hazardous Waste pursuant to Section 12.2 hereof.

5.2 Standards of Performance.

5.2.1 Availability of Franchisee. Franchisee shall maintain a customer service office with assigned personnel accessible by a local phone number or a toll-free number to receive customer requests directed to City. Franchisee's office hours shall be from 8:00 a.m. to 5:00 p.m. on Monday-Friday, and 8:00 a.m. to 12:00 p.m. on Saturdays.

5.2.2 Franchisee Liaison to City. Franchisee shall be reasonably available to the City. Franchisee shall provide the Chief Executive Officer and the Police and Fire Departments with an emergency telephone number for effectively reaching Franchisee in the case of off-hour emergencies. Franchisee shall also provide the Chief Executive Officer with the mobile phone number of a Franchisee representative(s) with day-to-day managerial responsibility over the services provided within the City. One or more of Franchisee's representatives described in this Section shall visit City offices at such reasonable times as the Chief Executive Officer shall designate for the purpose of discussing any matters relating to this Agreement or Franchisee's performance thereof. Any representative appointed by Franchisee shall occupy a position of sufficient managerial authority and knowledge of day-to-day Franchisee operations as to be able to meaningfully discuss performance issues with the Chief Executive Officer.

5.2.3 Service Complaints.

(a) Complaints. All customer complaints shall be directed or referred to Franchisee. During office hours, Franchisee shall maintain a complaint service and a telephone answering system.

(b) Record of Complaints. Franchisee shall record all complaints, including date, time, complainant's name and address if the complainant is willing to give this information, and date and manner of resolution of complaint. Franchisee shall maintain this information in a computerized daily service complaint log for a period of three (3) years. Any such calls received via Franchisee's answering service shall be recorded in the service complaint log the following working day. A copy of the service complaint log for each calendar quarter shall be submitted to the City, within thirty (30) calendar days after the end of the calendar quarter.

5.2.4 Resolution of Disputes. Franchisee shall notify customers of the following complaint resolution procedure in the first set of public education materials produced after the Effective Date, and at the time new customers apply for or are provided service. Procedures for resolution of disputed claims shall be as follows:

(a) A customer dissatisfied with Franchisee's decision regarding a complaint may ask the City to review the complaint. To obtain this review, the customer may request City review within thirty (30) days after receipt of Franchisee's response to the complaint, or within forty-five (45) days after submitting the complaint to Franchisee, if Franchisee has failed to respond to the complaint. The City may extend the time to request its review for good cause.

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

(c) The Chief Executive Officer shall determine if the customer's complaint is justified, and if so, what remedy, if any, shall be imposed. The remedy under this Section shall be limited to a rebate of customer charges related to the period of breach of any of the terms of this Agreement or a penalty of up to One Hundred Dollars ($100.00) for any single event in addition to any actual damages.

(d) The Chief Executive Officer may delegate these duties to a designee.

5.2.5 Property Damage Caused by Franchisee. Franchisee shall be responsible for the cost of repairing any property damaged by the negligent or intentional conduct of its employees or agents.

5.2.6 Quality of Service Surveys. The City may, at its own expense, conduct periodic quality of service surveys of Franchisee's customers. Prior to finalizing the survey form, the City shall review the survey with Franchisee. Results of the quality of service survey shall be reviewed with Franchisee and used to discuss improvements in service delivery.

5.2.7 Route Audits by City. In order to verify reports of the amounts of Solid Waste, Recyclable Material or Green Waste collected by Franchisee from each designated route, the City shall be entitled to conduct an audit of any designated route upon request, up to three (3) routes each Rate Year. The City will make the audit request by telephone two (2) business days prior to the regularly scheduled collection day of the designated route. Telephone notice shall be followed by written notice to Franchisee. The audit request entitles the City to conduct a physical route audit of the designated route(s) for the purposes of verifying customers served, amounts collected by material type, and any other information as may deemed necessary and beneficial to the City so long as the audit activity does not interfere with Franchisee's personnel who are servicing the route being audited. The standard route audit will include but is not limited to: (i) verification that the collection vehicle is empty when beginning the route; (ii) verification of the addresses which are served by the designated collection vehicle; (iii) verification of the landfill or other facility to which the Solid Waste or Recyclables are taken; and (iv) the quantity of Solid Waste, Green Waste or Recyclables in tons collected from the designated route.

5.2.8 After Hours Equipment and Personnel; Auxiliary Vehicle. After normal business hours, Franchisee shall make commercially reasonable efforts to have sufficient manpower and equipment available to respond to customer emergencies that are an immediate threat to life or property. Franchisee shall also be available to assist the City with debris collection and removal within a reasonable time resulting from emergencies and natural disasters, excepting that nothing in this Section shall require Franchisee to collect, haul or dispose of waste that Franchisee is not permitted to handle.

5.2.9 Transportation of Solid Waste. Franchisee must transport all Solid Waste collected to a permitted transfer station, Materials Recovery Facility or Disposal Site. Franchisee shall be responsible for payment of all disposal and processing fees or charges. Franchisee will use reasonable efforts to divert recyclable material from landfill disposal consistent with the Diversion Program, developed under Section 6.2.

5.2.10 Revised Routing Plan. Franchisee may submit a revised routing plan, and may implement the revised routing plan upon approval by the Chief Executive Officer. Following approval of the revised routing plan but prior to implementation, Franchisee shall provide notification to all affected accounts, through written notices, electronic notices, telephone messages or otherwise. In addition, for the first two (2) weeks following implementation of a revised routing plan, Franchisee shall provide for special collection at all accounts setting out Containers in accordance with the prior collection schedule, at no additional cost.

5.2.11 Right of Entry. Franchisee shall have the right, until receipt of written notice revoking permission to pass is delivered to Franchisee, to enter or drive on any private street, court, place, easement, alleyway, or other private property for the purpose of providing Solid Waste Handling services in accordance with this Agreement.

5.3 Hours & Dates of Collection. Franchisee shall conduct its operations so as to offer the least possible obstruction and inconvenience to public traffic or disruption to the peace or quiet of the area within which collections are effected. Collection of Solid Waste, Green Waste and Recyclable Material from Single-Family Premises using Cart Service will occur on Friday. Collection of Multi-Family Premises and Commercial/Industrial Premises may occur on Monday through Saturday between 6:00 a.m. and 7:00 p.m. All Carts used for Single-Family Service shall be collected on the same collection service day. Further, Franchisee shall observe the following holidays annually (whereby there will be no collection services and collection shall occur one business day late following the holiday):

- January 1 - New Year's Day
- July 4 - Independence Day
- Labor Day
- Memorial Day
- November - Thanksgiving Day
- December 25 - Christmas Day

5.4 Commercial/Industrial Service Collections.

5.4.1 Solid Waste Bin Service.

(a) Franchisee shall provide Permanent and Temporary Bin Service to Commercial/Industrial Accounts. Franchisee shall collect and remove all Solid Waste that is placed in Bins from every Commercial/Industrial Premises receiving Bin Service. Franchisee shall collect and remove all Solid Waste that is placed in Bins from every Commercial/Industrial Premises receiving Bin Service, at least once every week or more frequently if required to handle the waste stream of the Commercial/Industrial Premises. The service frequency and volume shall be subject to negotiation and agreement between Franchisee and the Account. Bins provided by Franchisee shall have a volume of not less than one and one-half (1 ½) cubic yards. In the event the parties are unable to agree on volume, service frequency or Container location, then the question or questions in dispute shall be submitted to the Chief Executive Officer, who shall arbitrate the dispute and render a decision. Franchisee shall deliver and collect Temporary Bins at the direction of the Account.

(b) Franchisee shall provide other services desired by Commercial/Industrial Accounts receiving Bin Service, including walk-in/push-out service where the Container must be moved manually to the collection point, scout service, or use of Containers with castors, hasps or locks, at the rates set forth in the Maximum Rate Schedule.

5.4.2 Solid Waste Roll-Off Service.

(a) Franchisee shall provide Permanent and Temporary Roll-Off Service to Commercial/Industrial Accounts. Franchisee shall collect and remove all Solid Waste that is placed in Roll-Off Boxes from every Commercial/Industrial Premises receiving Roll-Off Service, at least once every week or more frequently if required to handle the waste stream of the Commercial/Industrial Premises. The service frequency and volume shall be subject to negotiation and agreement between Franchisee and the Account. In the event the parties are unable to agree on volume, service frequency or Container location, then the question or questions in dispute shall be submitted to the Chief Executive Officer, who shall arbitrate the dispute and render a decision. Franchisee shall deliver and collect Temporary Roll-Off Boxes at the direction of the Account, and shall notify the City prior to delivering Temporary Roll-Off Boxes placed within the public right-of-way.

(b) Franchisee shall provide extra services desired by Commercial/Industrial Accounts receiving Roll-Off Service, including container weight above five (5) tons (at actual per ton transfer/processing/disposal rate paid by Franchisee), extra pickups, relocation of Containers, trip charges where the Account refuses service, Account-owned Roll-Off Box hauling and disposal services, and use of compactors and vertical compactors, at the rates set forth in the Maximum Rate Schedule.

(c) Roll-Off loads consisting of Construction and Demolition Waste will be transported to a Materials Recovery Facility for processing.

5.4.3 Bagster® Service. Franchisee will, where commercially reasonable, make Bagster® Service, consisting of collection of the Bagster® Bag and processing/disposal, available to all Commercial/Industrial Accounts purchasing a Bagster® Bag and requesting collection. Bagster® Service is intended as a service additional to, and not as a substitution for, Temporary Bin or Roll-Off Service provided in accordance with Sections 5.4.2.

5.4.4 Recyclable Material.

(a) Franchisee shall provide for collection of Recyclable Material from Commercial/Industrial Accounts, using Bins, Roll-Off Boxes or Carts, depending upon the Account's space limitations and volume of Recyclable Material generated.

(b) Franchisee shall collect and remove all Recyclable Material placed in Containers from every Commercial/Industrial Premises receiving Recyclable Material collection service, at a frequency of not less than once each week, or more frequently if required to handle the Recyclable Material generated.

(c) In addition to the requirements set forth in Sections 5.4.4 (a) and (b), all commercial/industrial accounts receiving solid waste collection permanent Bin Service will receive recyclable material collection at a frequency of up to two (2) times per week at no additional charge. Additional recyclable material collections beyond two (2) per week will be provided, where required to meet the needs of the account, at the rates set forth in Exhibit A-2. Implementation of this program will be reflected in the rates for services set forth in Exhibit A-2, beginning with the date the rates set forth in Exhibit A-2 become effective, in accordance with Section 8.1.2.

5.4.5 Commercial/Industrial Service Requirements.

(a) Access to Containers. Franchisee shall undertake all reasonable efforts to complete collection service at each Commercial/Industrial Account in accordance with scheduled routing. If, at the time of collection at a commercial/industrial account, the Container is not accessible to the collection vehicle, then Franchisee shall notify the Account by telephone of the situation and request that access be provided. If the Account is unavailable or unable to provide prompt access to the Container, then Franchisee shall provide pickup a later time, but may charge an extra pickup fee, which will be charged as a special fee.

(b) Missed Pickups. In the event that Franchisee fails to provide collection service to a Commercial/Industrial Account, where the Container(s) had been timely and properly set out for collection, Franchisee shall complete the collection from the Commercial/Industrial Account no later than the next business day following notification of the missed pickup.

(c) CLEAN – Click Load Educate and Notice. Where Franchisee identifies instances of overfilling of Containers, it will document the overfilling through the use of film or digital photography. Franchisee will place overfilled material into the collection vehicle, and will present evidence of the overfilling to both the City and the Commercial/Industrial Account. Where such evidence was presented to the Commercial/Industrial Account, and Franchisee documents another instance of overfilling within one (1) year of such presentation, Franchisee is authorized to charge an Overage Fee, deliver the next larger-sized Container to the Commercial/Industrial Premises, and adjust the service rate to the rate then in effect for the next larger-sized Container. Franchisee will maintain a log listing all Commercial/Industrial Premises where overfilled material was observed, and actions taken in response by Franchisee, which shall be maintained for inspection by the Chief Executive Officer upon request. In addition, Franchisee will provide the Chief Executive Officer or his/her designee with verbal notification prior to delivering the next larger-sized Container and adjusting the service rate at a Commercial/Industrial Account.

(d) Record of Non-Collection. When Solid Waste is not collected by Franchisee, a tag shall be fastened to the Container indicating the reason for non-collection and stating Franchisee's telephone number. Reasons for non-collection may include the presence of Hazardous Waste, Biohazardous Waste, Infectious Waste, Special Waste (unless arrangements for the collection of this waste have been made with the customer), Universal Waste, or hazardous substances in the Container, materials placed in plastic bags or otherwise not in the required Containers, the commingling of Recyclable

Material or Green Waste with Solid Waste, or overfilling of a Roll-Off Box such that it would cause a violation of applicable weight restrictions. Franchisee shall promptly provide the Chief Executive Officer with verbal notification when Contamination is observed. In addition, Franchisee shall maintain a log containing the name and address of each Commercial/Industrial Account where Solid Waste is tagged and the date of such tagging, which shall be maintained for inspection by the Chief Executive Officer upon request. Where there have been three (3) or more instances of non-collection at a Commercial/Industrial Account in any twelve (12) month period, Franchisee may charge the Commercial/Industrial Account a Contamination fee. Franchisee shall provide the Chief Executive Officer with verbal notification prior to charging the Contamination fee.

5.5 Single-Family Service Collections.

5.5.1 Solid Waste Cart Service.

(a) Franchisee shall collect Solid Waste delivered for collection at the curbside at each Single-Family Account not less than once each calendar week, at the rates set forth in the Maximum Rate Schedule. Franchisee shall supply each Single-Family Account with one (1) approximately 64-gallon Solid Waste Cart. Accounts may also substitute an approximately 95-gallon Cart for an additional charge, or a 35-gallon Cart for a reduced charge, as set forth in the Maximum Rate Schedule. This Agreement does not allow Customers from different Dwelling Units at apartment houses, condominiums, mixed condominiums, rental housing or mobile home parks to share Solid Waste Cart Service.

(b) Accounts may obtain additional Solid Waste Carts from Franchisee, at the rate set forth in the Maximum Rate Schedule.

5.5.2 Temporary Bin and Roll-Off Service.

(a) Franchisee shall provide temporary Bin Service and Roll-Off Service to Single-Family Accounts that request these services. Franchisee shall deliver and collect temporary Bins at the direction of the Account, and shall notify the City prior to delivering Temporary Roll-Off Boxes placed within the public right-of-way.

(b) Franchisee shall provide extra services desired by Single-Family Accounts receiving Temporary Roll-Off Service, including Container weight above five (5) tons (at actual per ton transfer/processing/disposal rate paid by Franchisee), extra pickups, relocation of Containers, or trip charges where the account refuses service.

(c) Roll-Off loads consisting of Construction and Demolition Waste will be transported to a Materials Recovery Facility for processing.

5.5.3 Bagster® Service. Franchisee will, where commercially reasonable, make Bagster® Service, consisting of collection of the Bagster® Bag and processing/disposal, available to all Single-Family Accounts purchasing a Bagster® Bag and requesting collection. Bagster® Service is intended as a service additional to, and not as a substitution for, Temporary Bin or Roll-Off Service provided in accordance with Section 5.5.2(a).

5.5.4 Green Waste Cart Service.

(a) Franchisee shall provide weekly Cart Service for collection of Green Waste at each Single-Family Account, on the same day as Solid Waste collection. Franchisee will supply each Single-Family Premises with one (1) approximately 64-gallon Green Waste Cart. Accounts may request a 35-gallon Green Waste Cart where space constraints or physical limitations make use of the 64-gallon cart impracticable. This Agreement does not allow Customers from different Dwelling Units at apartment houses, condominiums, mixed condominiums, rental housing or mobile home parks to share Solid Green Waste Cart Service.

(b) Accounts may obtain upon request one (1) additional Green Waste Cart at no additional charge. Additional Green Waste Carts beyond one (1) can be obtained upon request at the rate set forth in the Maximum Rate Schedule.

5.5.5 Recyclable Material Cart Service.

(a) Franchisee shall provide weekly Cart Service for collection of Recyclable Material at each Single-Family Account, on the same day as Solid Waste collection. Franchisee will supply each Single-Family Premises with one (1) approximately 64-gallon Recyclable Material Cart. Accounts may request a 35-gallon Recyclable Material Cart where space constraints or physical limitations make use of the 64-gallon Cart impracticable. This Agreement does not allow Customers from different Dwelling Units at duplexes, triplexes, apartment houses, condominiums, mixed condominiums, rental housing or mobile home parks to share Recyclable Material Cart Service.

(b) Accounts may obtain upon request one (1) additional Recyclable Material Cart at no additional charge. Additional recyclable material Carts beyond one (1) can be obtained upon request at the rate set forth in the Maximum Rate Schedule.

5.5.5 Single-Family Service Requirements.

(a) Collection Location. All Carts will be serviced at curbside along a public street or an alleyway. Accounts will be responsible for placing the Carts at the proper location for collection, except for Single-Family Premises receiving backyard service.

(b) Record of Non-Collection. When Solid Waste is not collected by Franchisee a tag shall be fastened to the Container indicating the reason for non-collection and Franchisee's telephone number. Reasons for non-collection may include the presence of Hazardous Waste, Biohazardous Waste, Infectious Waste, Special Waste, Universal Waste or hazardous substances in the Container, materials placed in plastic bags or otherwise not in the required Containers, placement of yucca, palm fronds or large tree trunks or limbs into the Green Waste Cart, overweight Green Waste Carts, the commingling of Recyclable Material or Green Waste with Solid Waste, or the compacting of materials in such a manner that the contents of a Container will not of their own weight fall out of the Container when it is turned upside down. Franchisee shall maintain a log containing the name and address of each Account where Solid Waste is tagged and the date of such tagging. The log shall be maintained for inspection by representatives of the City upon request.

(c) Missed Pickups. In the event that Franchisee fails to provide collection service to a Single-Family Account, where the Containers had been timely and properly set out for collection, Franchisee will complete the collection from the Single-Family account no later than the next business day following notification of the missed pickup.

5.6 Multi-Family Service Collections.

5.6.1 Solid Waste Bin Service.

(a) Franchisee shall provide permanent Bin Service to Multi-Family Accounts. Franchisee shall collect and remove all Solid Waste that is placed in bins from every Multi-Family Account. Franchisee shall collect and remove all Solid Waste that is placed in Bins from every Multi-Family Premises at least once every week or more frequently if required to handle the waste stream of the Multi-Family Premises. The service frequency and volume shall be subject to negotiation and agreement between Franchisee and the Account. Bins provided by Franchisee shall have a volume of not less than one and one-half (1 ½) cubic yards. In the event the parties are unable to agree on volume, service frequency or Container location, then the question or questions in dispute shall be submitted to the Chief Executive Officer, who shall arbitrate the dispute and render a decision.

(b) Franchisee shall provide other services desired by Multi-Family Accounts receiving Bin Service, including walk-in/push-out service where the Container must be moved manually to the collection point, scout service, or use of Containers with castors, hasps or locks, at the rates set forth in the Maximum Rate Schedule.

5.6.2 Temporary Bin and Roll-Off Service.

(a) Franchisee shall provide Temporary Bin Service and Roll-Off Service to Multi-Family Accounts that request these services. Franchisee shall deliver and collect Temporary Bins at the direction of the Account, and shall notify the City prior to delivering Temporary Roll-Off Boxes placed within the public right-of-way.

(b) Franchisee shall provide extra services desired by Multi-Family Accounts receiving Temporary Roll-Off Service, including Container weight above five (5) tons (at actual per ton transfer/processing/disposal rate paid by Franchisee), extra pickups, relocation of Containers, or trip charges where the Account refuses service.

(c) Roll-Off loads consisting of Construction and Demolition Waste will be transported to a Materials Recovery Facility for processing.

5.6.3 Bagster® Service. Franchisee will, where commercially reasonable, make Bagster® Service, consisting of collection of the Bagster® Bag and processing/disposal, available to all Multi-Family Accounts purchasing a Bagster® Bag and requesting collection. Bagster® Service is intended as a service additional to, and not as a substitution for, Temporary Bin or Roll-Off Service provided in accordance with Section 5.6.2(a).

5.6.4 Recyclable Material.

(a) Franchisee shall provide for collection of Recyclable Material from Multi-Family Accounts, using Bins, Roll-Off Boxes or Carts, depending upon the Account's space limitations and volume of recyclable material generated.

(b) Franchisee shall collect and remove all Recyclable Material placed in Containers from every Multi-Family Premises receiving Recyclable Material collection service, at a frequency of not less than once each week, or more frequently if required to handle the Recyclable Material generated.

(c) In addition to the requirements set forth in Sections 5.6.4(a) and (b), all Multi-Family Accounts receiving permanent Bin Service will receive Recyclable Material collection at a frequency of up to two (2) times per week at no additional charge. Additional Recyclable Material collections beyond two (2) per week will be provided, where required to meet the needs of the Account, at the rates set forth in Exhibit A-2. Implementation of this program will be reflected in the rates for services set forth in Exhibit A-2, beginning with the date the rates set forth in Exhibit A-2 become effective, in accordance with Section 8.1.2.

5.6.5 Multi-Family Service Requirements.

(a) Access to Containers. Franchisee shall undertake all reasonable efforts to complete collection service at each Multi-Family Account in accordance with scheduled routing. If, at the time of collection at a Multi-Family Account, the Container is not accessible to the collection vehicle, Franchisee shall notify the Account by telephone of the situation and request that access be provided. If the Account is unavailable or unable to provide prompt access to the Container, Franchisee shall provide pickup at a later time, but may charge an extra pickup fee, which will be charged as a special fee.

(b) Missed Pickups. In the event that Franchisee fails to provide collection service to a Multi-Family Account, where the container(s) had been timely and properly set out for collection, Franchisee shall complete the collection from the Multi-

Family Account no later than the next business day following notification of the missed pickup.

(c) Record of Non-Collection. When solid waste is not collected by Franchisee, a tag shall be fastened to the Container indicating the reason for non-collection and Franchisee's telephone number. Reasons for non-collection may include the presence of Hazardous Waste, Biohazardous Waste, Infectious Waste, Special Waste, Universal Waste or hazardous substances in the Bin, materials placed in plastic bags or otherwise not in the required Containers or, the commingling of Recyclable Material or Green Waste with Solid Waste. Franchisee shall promptly provide the Chief Executive Officer or his/her designee with verbal notification when Contamination is observed. In addition, Franchisee shall maintain a log containing the name and address of each Commercial/Industrial Account where Solid Waste is tagged and the date of such tagging, which shall be maintained for inspection by the Chief Executive Officer upon request. Where there have been three (3) or more instances of non-collection at a Commercial/Industrial Account in any twelve-month (12-month) period, Franchisee may charge the Multi-Family Account a Contamination fee. Franchisee shall provide the Chief Executive Officer with verbal notification prior to charging the Contamination fee.

5.7 Additional Services to Single-Family and Multi-Family Premises.

5.7.1 Holiday Tree Collection Program. Franchisee will collect, transport and recycle as alternate daily cover, or other reuse programs may be mutually agreed upon between the City and Franchisee, holiday trees which are placed at the curbside at all Single-Family Premises, and near the Bin storage area at all Multi-Family Premises, on the two regularly-scheduled collection days following Christmas Day. Franchisee is not required to collect or accept artificial holiday trees, or trees containing decorations, ornaments, tinsel, debris, support stands or other foreign matter as part of this diversion program.

5.7.2 Bulky Items. Franchisee will provide curbside Bulky Items pickup service to Single-Family Premises and Multi-Family Premises each Friday. Accounts will provide Franchisee with one (1) business-day advance notice and the Bulky Items will be collected on the next Friday collection day.

5.7.3 Backyard Service. Upon authorization from the Chief Executive Officer, Franchisee shall provide backyard service, at no additional cost, for disabled or physically challenged Single-Family Accounts who provide a doctor's statement certifying their disabled status and expected duration, along with a signed affidavit in a form provided by Franchisee stating that no able-bodied person is available at the Single-Family Premises to bring Carts to the collection location. Other Single-Family Accounts may receive backyard service at the additional charge set forth in the Maximum Rate Schedule.

5.7.4 Sharps Collection. Franchisee will provide for the collection and safe processing of sharps generated at Single-Family Premises and Multi-Family Premises, through a mail-based program. Residents requesting sharps services may apply to

Franchisee to receive this service, and sharps Containers will be delivered directly to the Single-Family Premises or Multi-Family Premises at no cost to the account.

5.8 CITY FACILITIES AND SERVICES.

5.8.1 City Facilities. Franchisee will provide Solid Waste, Green Waste, and Recyclable Material collection services at designated facilities located within the City at no charge to the City. Locations and required services are described in Exhibit B. In addition, Franchisee will perform a waste audit of each City facility designated, and implement a comprehensive waste diversion program, including education of City employees. Additional services at City facilities, whether requested by the City or recommended in connection with the waste audit, will be provided as a changed service in accordance with Section 5.1.2(b).

5.8.2 City-Sponsored Events. Franchisee shall provide Solid Waste and Recyclable Material Containers in sufficient numbers to serve up to four (4) City-sponsored events each Franchise Year, at no cost to the City. Franchisee may use either Bins, cardboard Containers or Bagster® Bags for this service, as appropriate. Franchisee shall use commercially reasonable efforts to maximize diversion of materials collected at City-sponsored events.

5.8.3 Emergency Service. Franchisee will assist City at the City's request with emergency collection service in the event of major disaster, such as an earthquake, storm, riot or civil disturbance, by providing equipment and drivers normally assigned to City. Franchisee may charge City for actual disposal costs, plus service rates in accordance with the Maximum Rate Schedule.

5.8.4 Illegal Dumping.

(a) Franchisee shall arrange to remove and dispose of illegally dumped materials at City facilities or within twenty (20) feet of the public right-of-way on Ramona Boulevard, Baldwin Park Boulevard, Maine Avenue, and Puente Avenue, within one (1) business day from its observation of the illegally dumped material or a request for removal from the City, as the case may be. Franchisee shall provide an accounting of the cost of providing this service annually to the City, and Franchisee may request an adjustment in rates to reimburse it for a substantial increase in costs to provide this service under Section 8.2.5.

(b) Abandoned vehicles and objects or appliances larger than conventional household furniture or appliances as well as hazardous, special and biohazardous wastes are exempt from the above requirements, provided, however, that of these exempted items noted within the public right-of-way are to be immediately reported to the City.

5.8.5 Large Venue Recycling. Franchisee agrees to carry out all requirements of Public Resources Code Sections 42648 through 42648.7 (AB 2176) applicable to a solid waste enterprise, and to cooperate with City to facilitate compliance with these provisions by large event operators for events occurring within the City.

5.8.6 Climate Change. Franchisee will assist the City in monitoring the development of regulatory programs to implement state climate change legislation (AB 32), and in developing programs and tracking mechanisms as required for compliance at the request of the City, as a change in service under Section 5.1.2(b).

5.8.7 Annual Benefit Fund. Franchisee shall make a contribution to an Annual Benefit Fund to be established by the City, at the request of the City, in the amount of Fifty Thousand Dollars ($50,000.00), commencing with the Rate Year beginning on July 1, 2014 and each Rate Year thereafter during the term. The programs that may be undertaken by the City through the Annual Benefit Fund, include, but are not limited to, those set forth below.

(a) One or more annual Community Cleanup days, where Roll-Off Boxes are provided at locations throughout the City for collection of Solid Waste, Bulky Items, and E-waste.

(b) Undertaking a Single-Family, Multi-Family or Commercial/Industrial Food Waste collection pilot program, and a proposal for a permanent plan (if feasible) to be implemented as a change in service in accordance with Section 5.1.2(a).

(c) Additional Bulky Items collection days.

5.8.8 Local Student Programs.

(a) Commencing with the Rate Year beginning on July 1, 2014, and every Rate Year thereafter during the term, Franchisee will implement a student internship program at its local office, for the purpose of providing training in the provision of solid waste handling services, for one high school student residing in the City for three months. Franchisee shall publicize its internship program and use reasonable efforts to encourage City high school students to apply.

(b) Commencing with the Rate Year beginning on July 1, 2014, and every Rate Year thereafter during the term, Franchisee will implement a scholarship program providing one or more graduating high school students scholarships, with an aggregate value of not more than Two Thousand Five Hundred Dollars ($2,500.00) each Rate Year. Franchisee shall publicize its scholarship program and use reasonable efforts to encourage graduating City high school students to apply.

5.8.9. Compressed Natural Gas (CNG) Fueling Facility. Franchisee will make its CNG fueling facility, located at 13940 East Live Oak Avenue, Baldwin Park, available to the City for refueling of the City vehicles in the event of an emergency, as reasonably determined by City's Chief Executive Officer, at the same rate for CNG paid by Franchisee. Upon request of the Chief Executive Officer, Franchisee and the City agree to negotiate in good faith to allow the use of Franchisee's CNG fueling facility for routine non-emergency use by City vehicles, upon mutually agreeable terms and conditions.

5.8.10. Grant Funding. Franchisee shall provide reasonable assistance to the City in identifying and applying for grants or other publicly-funded programs related to waste diversion or public education, at no additional cost.

ARTICLE VI
WASTE DIVERSION.

6.1 State Mandate. AB 939 currently sets the directive of Diverting fifty percent (50%) of the City's Solid Waste. If the City fails to implement its required plans to achieve the aforementioned directive under AB 939, then the Department of Resources Recycling and Recovery ("CalRecycle") may impose administrative civil penalties of up to Ten Thousand Dollars ($10,000.00) per day until the City implements its plans. Furthermore, City anticipates the State Legislature will adopt new legislation that will increase the minimum Diversion requirement. Upon the effective date of any new legislation that affects the Diversion requirements currently imposed by AB 939, Franchisee agrees to implement a revised or new Diversion program meeting such amended legislative requirements and may seek a rate adjustment, as appropriate, under Section 8.2.4. Failure to implement an amended Diversion program based upon new State legislation mandating Waste Diversion levels shall constitute a default of this Agreement.

6.2 Joint Responsibilities; Development of Diversion Program. The City and Franchisee shall meet and confer in good faith to jointly develop Solid Waste Diversion strategies and develop a program adequate to meet the requirements established by the State. In the event of any change to State or regional laws, regulations or mandates setting new Diversion requirements applicable to the City, the Parties shall promptly meet and confer to negotiate in good faith the implementation of such amendments to law through the City's Solid Waste Diversion program. City and Franchisee shall reasonably cooperate in good faith with all effort by each other to meet City's AB 939 diversion requirements and otherwise to ensure compliance with the Act including, without limitation, requests to the Board pursuant to Public Resources Code §§ 41785 and/or 41820. If the City and Franchisee cannot agree on an amended Diversion program within thirty (30) days after initially commencing any meet and confer process, City shall be entitled to specify the program to be implemented, and, as appropriate, rates may be adjusted subject to the provisions of Section 8.2.4.

6.3 Franchisee Waste Diversion Responsibilities.

6.3.1 Cooperation. Franchisee shall cooperate with the Solid Waste Diversion activities of the City and shall coordinate Diversion activities and programs to the extent possible. Franchisee shall undertake all of the terms and conditions of any Diversion program or amended Diversion program agreed to with the City, or mandated by the City in accordance with Section 6.2, as the case may be.

6.3.2 Education and Public Awareness.

(a) General. Franchisee acknowledges that education and public awareness are essential elements of efforts to achieve AB 939 requirements. Accordingly, within ninety (90) days after the Effective Date, and each July 1 thereafter during the term, Franchisee shall develop or update a public education and information program plan for review and approval by the Chief Executive Officer, to explain program offerings, maximize participation in the recycling effort, and assist the City's overall sustainability efforts, and to provide information on other matters such as holiday collection schedules, the availability of Bulky Item collection, Temporary collection services and other special collection services, as well as procedures for complaints and service requests. Public education materials will be provided in English and Spanish. In addition, Franchisee shall distribute electronic welcome brochures with the above information to new Single-Family and Multi-Family customers at the time they apply for service. Franchisee shall also provide a website specific to the City providing the above information. The direct costs of implementing the program shall be borne by Franchisee.

(b) The public education program will include the "Clean Baldwin Park" program, designed to educate and encourage residents and businesses to identify and report illegal dumping, and to encourage proper disposal of Bulky Items. Education and outreach implemented as part of the public education plan may include print media, invoice inserts, bus shelter signage, posters, messaging on social media outlets, regularly scheduled school presentations, and participation at designated City and community events.

(c) The public education program will include programs designed to educate and encourage Commercial/Industrial and Multi-Family Premises to comply with the requirements of AB 341. Education and outreach implemented as part of the public education plan may include print media, invoice inserts, posters, messaging on social media outlets, regularly scheduled school presentations, and participation at designated City and community events.

(d) Franchisee will designate a Contract Liaison/Representative, who will be responsible to day-to-day interaction with the City related to contract performance. Franchisee Liaison/Representative will also be responsible to ongoing outreach to community groups, school assemblies, and homeowner's associations to encourage waste diversion and, in general, provide the information described in the public education plan. Franchisee will provide City with ten (10) days advance notice of a change in its Franchisee Liaison/Representative.

6.3.3 Waste Generation/Characterization Studies. Franchisee acknowledges that the City may be required periodically to perform solid waste generation and disposal characterization studies to comply with AB 939 or other waste diversion requirements.

Franchisee agrees to participate in, and to cooperate with the City and its agents in the preparation of these studies at no additional cost to the City.

6.3.4 AB 341 Assistance. Franchisee shall make good faith efforts to assist the City to implement the requirements of AB 341, including the education, outreach and monitoring requirements of the Mandatory Commercial Recycling law. Within ninety (90) days after the Effective Date, Franchisee shall submit to City for review and approval, a plan to provide such assistance, and more specifically, to implement a public education plan as described in Section 6.3.2(c), identify all customers subject to the requirements of AB 341, provide periodic on-site visits to such premises to offer and promote recycling services and attempt to resolve any logistical detriments to providing service, and notify and request assistance from the City for potential follow-up action where there is a repeated refusal to implement recycling services. City agrees to provide reasonable assistance to Franchisee in implementing the plan and program, including preparing a letter for distribution to customers regarding AB 341 requirements, and occasional participation by City personnel in meetings with customers who repeatedly refuse to implement recycling services.

6.3.5 Implementation of Strategies and Penalties. Franchisee shall implement the strategies jointly developed and agreed to by the Parties. If Franchisee's failure to perform its obligations under this Section 6.3 results in the imposition of penalties against the City pursuant to the provisions of AB 939, Franchisee shall protect, defend with counsel approved by City, indemnify, and reimburse the City (including its officers, directors, employees and agents) for such fine or penalty within thirty (30) days of its imposition, subject to any limitations on such indemnification contained in Public Resources Code §40059.1.

6.3.6 Waste Diversion Reporting Requirements. Franchisee shall comply with the Waste Diversion reporting requirements established by the City. Franchisee shall provide City with regular written reports in a form acceptable to the City and adequate to meet City's reporting requirements to the Board on compliance with AB 939, including a breakdown of the type and quantity of waste (by weight and volume) hauled by Franchisee, generator type and program area, the type and quantity of Recyclable Materials, HHW (as may be inadvertently received by Franchisee), Green Waste and Bulky Waste, and including a discussion of the quarterly waste Diversion percentages achieved during the year. Franchisee shall report such information on a monthly basis. Monthly records will allow for reporting of seasonal variation in waste quantities and will assists in program operation, improvement and expansion.

6.3.7 Meet and Confer Process. If Franchisee materially fails to undertake the requirements of any Diversion program or amended Diversion program, as described in this Agreement, Franchisee and City shall meet and confer to develop a revised or new Diversion program. If the City and Franchisee fail to agree on a revised or new Diversion program within one hundred twenty (120) days after commencing the meet and confer process (which date may be extended by mutual written agreement), notwithstanding anything to the contrary contained herein, then the City may elect to seek termination or other remedies in accordance with Article X. Franchisee agrees to continue performance under this Agreement until City hires a new contractor.

6.4 Green Waste Diversion. Franchisee will divert Green Waste collection from disposal. Franchisee will provide for end uses of Green Waste that maximize diversion credit for the City according to regulations adopted by CalRecycle. Green Waste may be used as alternative daily cover ("ADC") to the extent that City will receive full diversion credit. Franchisee is responsible for monitoring how the green waste will be diverted at selected processing facilities and for selecting alternative facilities if necessary to ensure full diversion credit.

ARTICLE VII
VEHICLES, EQUIPMENT AND PERSONNEL

7.1 Vehicles.

7.1.1 General. Franchisee shall continue to provide a fleet of collection vehicles sufficient in number and capacity to perform efficiently the work required by this Agreement in strict accordance with its terms. Franchisee agrees to maintain each piece of equipment used by it in good order and repair. All vehicles shall be uniformly painted. All vehicles shall be registered with the California Department of Motor Vehicles and shall meet or exceed all applicable State and local requirements. Each vehicle shall also carry a fire extinguisher, first aid kit and a broom and shovel to be used for the immediate removal of any spilled material. All spilled material shall be immediately removed by Franchisee. The Chief Executive Officer may order the removal of any vehicle from service within the City if such vehicle is found to be in nonconformance with the requirements of any provision in Section 7.1. Any vehicle removed from service will not be placed back into service without the approval of the Chief Executive Officer.

7.1.2 Vehicle Specifications. All collection vehicles shall conform to the highest industry standards and shall be maintained in a clean and efficient condition. All collection vehicles shall comply with all applicable provisions of South Coast Air Quality Management District Rule 1193. As of the Effective Date of this Agreement, 100% of Bin Service collection vehicles providing service are alternative fuel vehicles, and the large majority of Cart Service and Roll-Off Service collection vehicles are alternative fuel vehicles. The City hereby directs and requires Franchisee to achieve 100% use of alternative fuel Cart Service and Roll-Off Service collection vehicles by means of the compliance strategy set forth in Rule 1193(d)(4)(A), within five (5) years of the effective date.

7.1.3 Truck Bodies. All truck bodies used by Franchisee shall be constructed of metal, shall be watertight and leak-proof and shall be so constructed as to prevent odors or the falling, leaking or spilling of Solid Waste, Recyclables, or other materials. Franchisee shall maintain all trucks and equipment used within City in good mechanical condition and the same shall be clean and uniformly painted and numbered. All trucks and equipment shall have painted thereon, or affixed thereto, in letters and numbers at least three (3) inches in height, the name and telephone number of Franchisee, which name and telephone shall be clearly visible at all times. Each vehicle utilized by Franchisee shall be identified by numerals at least three (3) inches in height in a location or locations on such vehicles to be specified by Franchisee. A list showing each vehicle so identified shall be made available to City and maintained in the current status by Franchisee and, upon notice given by City, Franchisee shall make the equipment available for inspection. If City finds any truck or equipment being used by Franchisee is not in satisfactory condition, then the truck or equipment requiring correction of defects shall not be used by Franchisee in the performance of the Agreement until corrected to the reasonable satisfaction of City. In addition, if any of Franchisee's trucks are inspected by any other public agencies, then copies of any inspection report shall be made available to the City upon request.

7.1.4 Backup Alarm. Each vehicle used for collecting, hauling or disposing of Solid Waste and/or Recyclables shall be equipped with an audible warning device that is activated when the vehicle is backing up.

7.1.5 Preventive Maintenance and Repair Program. Within thirty (30) days of the Effective Date of this Agreement, Franchisee shall have implemented a complete and comprehensive preventive maintenance and repair program, or if such repair program has already been implemented, Franchisee shall continue its performance thereof. Franchisee shall provide a copy of its preventative maintenance program to City, upon request. The maintenance program shall include and Franchisee shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, must be removed from service until repaired and operating properly. Franchisee shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule and shall inspect each vehicle daily to ensure that all equipment is in good working order. Franchisee shall keep accurate records of all vehicle maintenance and repairs, recorded according to date and mileage, nature of maintenance or repair and the signature of a maintenance supervisor or mechanic that the maintenance or repair has been properly performed. Franchisee shall make such maintenance records available to City on request.

7.1.6 Vehicle Cleaning. Vehicles shall be washed completely at least once a week and steam-cleaned on a regular basis so as to present a clean appearance and minimize odors, but in no event less than once a month.

7.1.7 Vehicle Storage. No vehicle used by Franchisee in performance of this Agreement shall be stored on any public street or other public property in the City. All Franchisee's vehicles if kept within the boundaries of the City shall at all times when not in use be kept on property of the proper zone either within a building or fenced yard.

7.1.8 Vehicle Operation.

(a) Vehicles must be operated in compliance with the California

Vehicle Code, and all applicable local ordinances. No vehicle used for collecting, hauling or disposing of Solid Waste and/or Recyclables shall be loaded in excess of the manufacturer's gross vehicle weight rating or in excess of the maximum weight specified by the California Vehicle Code, whichever is less. Evidence of the manufacturer's name and gross vehicle weight rating shall be maintained in, or upon, every vehicle.

(b) Solid waste shall be covered at all times except when it is being loaded or unloaded or when a vehicle is moving along the collection route.

(c) Minimization of Spills. Franchisee must use due care to prevent solid waste or fluids from leaking or being spilled or scattered during the collection or transportation process. If any solid waste or fluids leak, or are spilled during collection, Franchisee must promptly clean up those materials to the satisfaction of the City. Each collection vehicle must carry a broom and shovel at all times for this purpose. Franchisee shall promptly provide the Chief Executive Officer or his/her designee with verbal notification whenever a spill occurs.

7.1.9 Inspections.

(a) City Inspections. Franchisee shall give the City at least fifteen (15) days prior written notice of any vehicle inspection to be performed by the California Highway Patrol ("CHP") and the City may elect to observe the CHP inspection. Without limiting the City's right to observe the CHP inspections, City reserves the right to cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the provisions of the Baldwin Park Municipal Code and the State Vehicle Code, including but not limited to California Vehicle Code Sections 27000(b), 23114, 23115, 42030, 42032, and all Vehicle Code Sections regarding smog equipment requirements. The City may elect in its sole discretion to hire an independent contractor to perform a comprehensive inspection of Franchisee's vehicles. If the City hires an independent contractor to perform the inspection on behalf of the City Franchisee shall pay for the cost of such inspection. City shall act prudently in requesting any such inspection.

(b) Brake Inspections. The brake system of each vehicle used in performance of this Agreement shall be inspected by the CHP and shall comply with State law. Notice of certification shall be filed with the City within thirty (30) days after each such certification. Failure to submit the required certification shall be grounds for terminating this Agreement.

7.2 Containers.

7.2.1 Container Ownership. All Containers provided by Franchisee under this Agreement shall remain the property of Franchisee at all times.

7.2.2 Cart Specifications. Franchisee shall utilize Carts for collection of

Solid Waste, Green Waste and Recyclable Material designed and manufactured in accordance with standard industry specifications. The design of any new Carts proposed to be placed into service must be approved by the Chief Executive Officer.

7.2.3 Cart Maintenance and Replacement Responsibilities. Franchisee is responsible for Cart repair and maintenance, graffiti removal (within three (3) business days), and replacing lost, stolen or damaged Carts within seven (7) business days from receipt of a request at no additional charge. Franchisee may charge the account for repairing or replacing a Cart if the damage is due to loss, negligence or abuse by the account. In no event may this charge be greater than Franchisee's actual cost for replacement parts or a new Cart, and delivery. Each customer is entitled to one replacement of the Solid Waste, Recyclable Materials and Green Waste Carts, each, during the term of this Agreement, without charge, upon request. In addition, Franchisee will conduct an annual review of the overall condition of Carts in use in the City, and provide replacement Carts as needed to assure that all Carts in use are serviceable and have a good appearance.

7.2.4 Bin Specifications. Franchisee will provide Bin Containers for collection of Solid Waste, and for the collection of Recyclable Material, as appropriate for individual Commercial/Industrial or Multi-Family Accounts. Franchisee must maintain its Bins in a clean and sound condition, free from putrescible residue. Repairs or graffiti removal requested by an account must be completed within five (5) business days of Franchisee's receipt of the request.

7.2.5 Bin Maintenance and Replacement Responsibilities. Franchisee may charge the account a fee for repairing or replacing a Bin if the damage is due to loss, negligence or abuse by the account, or for cleaning of a bin.

7.2.6 Roll-Off Boxes Specifications. Franchisee will provide clean Roll-Off Boxes, free from graffiti and equipped with reflectors. Franchisee must properly cover all open Roll-Off Boxes during transport to the Disposal Site.

7.2.7 Bin and Roll-Off Boxes Cleaning. Each Commercial/Industrial Account receiving Permanent Bin or Roll-Off Service is entitled to one (1) free cleaning of each Container each Franchise Year, at no additional cost, upon the request of the account or the direction of the City. Additional cleanings may be requested by the Account at the rate set forth in the Maximum Rate Schedule.

7.3 Personnel.

7.3.1 General. Franchisee shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, economical, courteous, safe and efficient manner. Franchisee shall keep itself fully informed of existing and future State and Federal laws, rules and regulations rules and orders in any manner affecting those engaged and employed in or on the work contemplated herein or in any way affecting the conduct of that work and of all orders or decrees of bodies of officials having jurisdiction or authority over the same, and shall, at all times, observe and comply with and cause any and all persons employed by Franchisee or under Franchisee cause to observe and comply with all such laws, ordinances, rules, regulations, orders and decrees. Franchisee and any subcontractors and/or employees under Franchisee shall comply with and be governed by the law of the State of California having to do with working hours as set forth in the Labor Code of the State of California, as the same may be amended from time to time.

7.3.2 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.

7.3.3 Uniforms and Identification Badges. Franchisee shall require its drivers and all other collection personnel to wear suitable, appropriate, clean and neat uniforms with the employee's name visible. All other employees of Franchisee who come into contact with the public shall carry suitable identification badges or cards upon their person.

7.3.4 Employee Appearance and Conduct. Franchisee shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Franchisee shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct collection crews 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, Franchisee shall take all appropriate corrective measures.

7.3.5 Background Check. The City reserves the right to perform a security and identification check through the City's Police Department upon Franchisee and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

7.3.6 Safety Training. Franchisee shall provide suitable operational and safety training for all its employees who use or operate vehicles or equipment for collection of Solid Waste or who are otherwise directly involved in such collection. Franchisee must establish and vigorously enforce an educational program to train Franchisee's employees in the identification of Hazardous Waste. Franchisee's employees must not knowingly place any Hazardous Waste in the collection vehicles, nor knowingly dispose of any Hazardous Waste at a processing facility or Disposal Site. Franchisee shall also establish and implement an educational program to train Franchisee's employees to identify, document and report illegal dumping, and to identify areas of the City with chronic illegal dumping, for purposes of developing additional collection programs in accordance with Section 5.8.4. Franchisee and its employees shall comply with any requirements, policies, regulations or standards of any Disposal Site that is used by Franchisee.

7.3.7 Safety. All work performed pursuant to this Agreement shall be performed in a manner that provides safety to the public and meets or exceeds safety standards outlined by the California Construction Safety Orders under the State of California Code of Regulations ("CAL-OSHA"). City reserves the right to issue restraint or cease and desist orders to Franchisee when unsafe or harmful acts are observed or reported to City. Franchisee shall maintain any of its facilities, free of hazards to persons and/or property. Franchisee shall instruct its employees to report immediately any hazardous conditions or Hazardous Wastes they observe within the City during the course of their work to the City.

7.3.8 No Gratuities. Franchisee shall not, nor shall it permit any officer, agent, or employee employed by it to, request, solicit, demand, or accept, either directly or indirectly, any gratuity for services required under this Agreement.

ARTICLE VIII
FRANCHISEE'S COMPENSATION

8.1 Maximum Rate Schedule.

8.1.1 In the attached Exhibit A-1, the City has established the maximum service rates which may be charged by Franchisee to its customers in the City, as of the Effective Date. Franchisee may establish such rates and charges Franchisee believes are appropriate in the marketplace; provided, that such rates and charges do not exceed the maximum rates set forth in the Maximum Rate Schedule. Franchisee shall not receive any other fees or compensation for the services to be performed pursuant to this Agreement in excess of those provided in the Maximum Rate Schedule, unless until such additional fees or compensation have been duly noticed and subjected to a public hearing process in accordance with Proposition 218, to the extent applicable.

8.1.2 On or before January 15, 2015, the City agrees to initiate a Proposition 218 hearing and protest process for the purpose of (i) implementing the blended rate schedule for Commercial/Industrial and Multi-Family service in accordance with Subsections 5.4.4(c) and 5.6.4(c), as set forth in Exhibit A-2 (as they may be adjusted in accordance with the July 1, 2014 rate adjustment described in Section 8.2.3), and (ii) to establish the index formula for future annual rate adjustments in accordance with Section 8.2.3. Upon completion of the hearing and protest process, and subject to the requirements of Section 8.3.4, the rates set forth in Exhibit A-2 shall supersede the rates set forth in Exhibit A-1, and will be subject to future adjustments in accordance with Sections 8.2.3 and 8.2.4.

8.1.3 In addition to the Proposition 218 notice and protest process undertaken in accordance with Section 8.1.2, and to the extent required, the City agrees to initiate and complete the Proposition 218 hearing and protest process with respect to each and every increase to the Maximum Rate Schedule requested by Franchisee during the term, including, but not limited to, the annual adjustments set forth in Sections 8.2.2 and 8.2.3, and the Increase for Unusual Increased Costs as set forth in Section 8.2.4. Any future adjustment is subject to the requirements of Section 8.3.4, to the extent applicable.

8.2 Adjustments to Maximum Rate Schedule.

8.2.1 General. Franchisee acknowledges under current law, increases in the Maximum Rate Schedule may be subject to the substantive and procedural requirements of Proposition 218. During the Term of this Agreement, the Maximum Rate Schedule shall be adjusted in accordance with this Article VIII, subject to the provisions and requirements of Proposition 218. Any increases in the Maximum Rate Schedule are strictly subject to the assent of the City and compliance with Proposition 218 as provided in Section 8.3.

8.2.2 Annual Adjustments. Adjustments to the Maximum Rate Schedule shall be authorized consistent with this Section 8.2 beginning on July 1, 2014. All requests for rate adjustments shall be submitted by Franchisee to the Chief Executive Officer on or before the first day of March each year beginning with March 1, 2014. All requests for annual adjustments shall be in a form acceptable to the Chief Executive Officer with support for all assumptions made by Franchisee in preparing the adjustment. The Chief Executive Officer shall review the information submitted by Franchisee for completeness and accuracy, and the parties agree to negotiate in good faith regarding any dispute. The requested adjustment, if authorized under 8.2.3, shall take effect upon verification of completeness and accuracy by the Chief Executive Officer, or complying with all requirements of Proposition 218 for any other adjustment authorized by this Agreement.

8.2.3 COLA Adjustments. With respect to the adjustment effective July 1, 2014, all rates, fees or charges on Exhibit A-1 shall be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers as prepared and announced from time to time by the United States Department of Labor for the Los Angeles/Orange County/Riverside area. The adjustment shall be equal to the amount derived by multiplying the previous rates in Exhibit A-1 by the percentage increase or decrease in the index as measured in the month of March each year. City and Franchisee acknowledge, agree and understand that the foregoing adjustment has previously been approved by the City following completion of the Proposition 218 notice and hearing process, and that this adjustment shall take effect upon verification of completeness and accuracy by the Chief Executive Officer.

Beginning with the adjustment effective July 1, 2015, and through the adjustments effective for the Contract Years 2015/2016, 2016/2017, 2017/2018, 2018/2019 and 2019/2020, all rates, fees or charges set forth in Exhibit A-2 shall be adjusted by the percentage increase in the Consumer Price Index, CUSR0000SEHG02 CPI-U Garbage and Trash Collection, US City Average, not seasonally adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics, or the most similar successor index if this index is no longer published, ("CPI"), by calculating the average of the changes in the CPI between each month during the January to December period immediately preceding the date of the rate adjustment and the same month in the preceding year. An example of the rate adjustment methodology is provided in Exhibit C.

For each Contract Year beginning with 2020/2021 during the term on this Agreement, and subject to adoption in accordance with Proposition 218 and this Agreement, all rates, fees or charges set forth on the Maximum Rate Schedule shall be adjusted by the percentage increase in the CPI, by calculating the average of the changes in the CPI between each month during the January to December period immediately preceding the date of the rate adjustment and the same month in the preceding year. An example of the rate adjustment methodology is provided in Exhibit C. Such annual CPI adjustments to the Maximum Rate Schedule shall be subject to the following requirements:

(a) The COLA Adjustment may take effect only after it has been adopted and passed pursuant to a Proposition 218 hearing and protest process, to the extent applicable. In this vein, the COLA Adjustment shall be enacted consistent with Government Code § 53756, such that the COLA Adjustment may not exceed a period of five (5) years.

(b) Commencing from the date of adoption for any COLA Adjustment, such adjustments shall continue automatically on a year-to-year basis for a period not to exceed five (5) years after the date such adjustments were adopted in accordance with Proposition 218.

(c) At the end of the five-year period, there shall be no further CPI escalations or other automatic adjustments to the Maximum Rate Schedule unless or until further automatic adjustments are adopted through a subsequent Proposition 218 hearing and protest process as required by Government Code § 53756, to the extent applicable.

With respect to any annual adjustment beginning, the amount of the annual adjustment under this section shall not exceed five percent (5%) for any Contract Year. Any percentage increase calculated pursuant to Section 8.2.3 which exceeds the annual rate cap for such Contract Year shall be carried forward and added to future approved percentage rate increases; provided, however, that the total increase for any future Contract Year is no more than the annual rate cap for that year. Any unused increase may be carried forward until fully applied, except that any unused increases remaining at the end of the term hereof will expire unused.

8.2.4 Increases for Unusual Increased Costs. Subject to adoption in accordance with Proposition 218 and this Agreement, the Maximum Rate Schedule shall be adjusted to account for unusual or extraordinary costs to Franchisee such that cost increases shall be "passed-through" to Franchisee's customers in the form of service rate adjustments ("Pass-Through Adjustments"). Franchisee may request a Pass-Through Adjustment under this Section 8.2.4 only once each Rate Year; and each request shall include a schedule documenting the extraordinary costs. Such unusual or extraordinary costs that shall be passed-through include, without limitation:

- Changes in State or local government Solid Waste fees and charges, or changes in the law, but shall not include circumstances within the control of Franchisee, such as changes in the purchase price of new equipment, amounts reimbursed by insurance companies, or rebates of any type;

- Changes in Franchisee's costs or revenues arising from a change service requirements in accordance with Section 5.1.2;

- Changes in Franchisee's costs or revenues arising from any future amendment to Chapter 50 of the Municipal Code or other further legislation adopted or enacted by City in the exercise of its police powers;

- Changes in Franchisee's costs or revenues arising from an amended Diversion program mandated by the City in accordance with Section 6;

- Changes in Franchisee's costs arising from a new or increased fee or charge imposed on Franchisee in accordance with Section 3.3.5;

- Changes in Franchisee's costs arising from City's direction to increase the coverages or limits of coverage in its policies of insurance in accordance with Exhibit D, Section 8.

The Pass-Through Adjustments may be adopted through a Proposition 218 hearing and protest process any time after the Effective Date hereof. Pass-Through Adjustments may adjust automatically each year as needed solely to cover the actual cost increases to be incurred by Franchisee; however, such annual automatic adjustments for pass-throughs shall not continue for a period exceeding five (5) years unless, at the end of such five-year period, continued automatic adjustments are adopted through a subsequent Proposition 218 hearing and protest process as required by Government Code § 53756. Franchisee agrees to notify City in writing of any expected cost increases that could result in a Pass-Through Adjustment, and Franchisee shall use its best efforts to utilize any alternate action (including, as appropriate, a change to using a Disposal Site with lower Disposal Fees) to the extent reasonably feasible to avoid passing-on cost increases to Franchisee's customers.

8.3 Proposition 218 Process for Adjustments to Maximum Rate Schedule.

8.3.1 Compliance with Proposition 218 Required. As provided in Section 8.2, above, certain adjustments to the Maximum Rate Schedule are strictly subject to the assent of the City and compliance with Proposition 218, to the extent applicable. The City intends to comply with all applicable laws, including without limitation applicable requirements of Proposition 218, concerning the setting of adjustments to the Maximum Rate Schedule under this Agreement. At the request of the City, Franchisee shall arrange and pay for the cost of mailing all notices required by Proposition 218. Those notices shall be prepared by the City

8.3.2 Indemnification. With respect to any approval undertaken in accordance with Section 8.1.2 and any future adjustment to the Maximum Rate Schedule undertaken in accordance with Sections 8.1.3, 8.2.2, 8.2.3 and 8.2.4 where City has completed the Proposition 218 hearing and protest process or where Franchisee has agreed, in writing, no Proposition 218 hearing and protest process is required, Franchisee shall indemnify, defend and hold harmless the City, their officers, employees, agents and volunteers, (collectively, indemnitees) from and against all claims, damages, injuries, losses, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest fines, charges, penalties and expenses (including attorneys' and expert witness fees, expenditures for investigation, and administration) and costs or losses of any kind whatsoever paid, imposed upon, endured or suffered by or assessed against Franchisee or any of the indemnitees resulting in any form from the City's establishing maximum rates for service under this Agreement or in connection with the application of California Constitution Article XIIIC and Article XIIID to the imposition, payment or collection of rates and fees for services provided by Franchisee under this Agreement. Notwithstanding the foregoing, this indemnity shall not extend to any portion of the rates that is not associated with Franchisee's costs in providing service, such as governmental fees, franchise fees or charges, nor shall it apply to any loss arising directly from the negligence of City, its officers and employees. Nothing herein is intended to imply that California Constitution Articles XIIIC or XIIID, apply to the setting of rates for the services provided under this Agreement; rather this Section is provided merely to allocate risk of loss as between the Parties.

8.3.3 Notice of Increases. Franchisee shall give prompt written notice of any duly-adopted rate increases to all customers, which notice shall inform customers of the exact date on which the increase becomes effective. These notices shall be provided on Franchisee's publicly-accessible website and shall also be included in those billing invoices mailed out at a time closest to the date that the rate increase will become effective.

8.3.4 Rate Increase Not Automatic. While City reserves all powers afforded to cities generally under the provisions of applicable law, this Agreement, including the rate adjustment elements hereof, has been agreed to by the parties following arms-length negotiations and upon advice of counsel, for the dual purposes of safeguarding public health and facilitating the performance of obligations undertaken by Franchisee on City's behalf and for its benefit. Accordingly, while this Agreement does not require City's approval of a Maximum Rate Schedule adjustment in every case, it does contemplate the City will exercise its powers reasonably and in good faith, and shall favorably consider and shall accord proper weight to a Maximum Rate Schedule proposal if accompanied by substantial supporting evidence. After its review of substantial supporting evidence timely provided by Franchisee, the City agrees, to the extent permitted by law, to implement rate adjustments authorized by this Agreement; provided, that the City shall not be in default of this Agreement nor bear any liability to Franchisee for any damages suffered by Franchisee as a result of the failure to implement any rate adjustment authorized pursuant to this Agreement, if (i) a majority protest prevents a proposed rate increase from being implemented or (ii) a court rules the Rates implemented pursuant to this Agreement are not consistent with applicable law. If an adjustment to the Maximum Rate Schedule is not approved as requested by Franchisee and Franchisee provides substantial evidence Franchisee's business operations will be negatively and materially impacted because the Maximum Rate Schedule was not approved by the City for other than as a result of a successful protest vote, Franchisee shall have the right, within sixty (60) days after the City's disapproval, to request, in writing, the City negotiate in good faith regarding reductions in programs, services, or fees to compensate for that negative and material impact on Franchisee's business operations. If the City fails, for sixty (60) consecutive days, to negotiate in good faith and after receipt of written notice from Franchisee of that failure and does not commence negotiations in good faith within forty-five (45) days after receipt of that written notice (the "45-Day Failure Period"), then Franchise may terminate this Agreement no earlier than one hundred eighty (180) days after the termination of the 45-Day Failure Period.

8.4 Billing. All Residential, Commercial/Industrial Unit accounts shall be directly billed by Franchisee consistent with this Section 8.4.

8.4.1 Single-Family Cart Services. Franchisee shall bill Single-Family Accounts bi-monthly in advance for Solid Waste handling services at the rates set forth in the Maximum Rate Schedule, as adjusted, and for service fees where the rate can be determined in advance. Payment is due within thirty (30) calendar days after the invoice date, and is considered overdue fifteen (15) days following the end of the billed service period.

8.4.2 Multi-Family and Commercial/Industrial Services. Franchisee shall bill Multi-Family and Commercial/Industrial Accounts monthly in advance for Solid Waste handling services at the rates set forth in the Maximum Rate Schedule, as adjusted, and for special fees and service fees where the rate can be determined in advance. Payment is due within thirty (30) calendar days after the invoice date, and is considered overdue fifteen (15) days following the end of the billed service period.

8.4.3 Temporary Services; Special Services. Franchisee shall bill Single-Family Accounts, Multi-Family Accounts and Commercial/Industrial Accounts monthly in arrears for Temporary services, special fees, and service fees where the rate cannot be determined in advance. Payment is due within thirty (30) calendar days after the invoice date, and is considered overdue thirty (30) calendar days from the date of invoice. Franchisee may use payment by credit card for temporary services or Bagster® Service.

8.4.4 Senior Discount. Franchisee will provide senior citizens discount to certain Single-Family Accounts as set forth in the Maximum Rate Schedule where: (i) the occupant is sixty (60) years or older and is considered to be the head of their household, and (ii) proof of age is verified to the reasonable satisfaction of Franchisee. In addition, all Single-Family Accounts receiving the senior discount will be provided Solid Waste collection service using a 35-gallon cart.

8.5 Delinquent Accounts.

8.5.1 Notice. Franchisee may send a written or telephonic notice to Accounts regarding payments of invoices during the billed service period, at the approximate intervals of thirty (30) and sixty (60) days after the billing date. If payment is not received within fifteen (15) days from the end of the billed service period, or thirty (30) days following the date of invoice for Temporary or special services, as the case may be, then Franchisee may send Accounts a notice that service will be suspended if payment is not made within thirty (30) days from the date of the delinquency notice. In addition, Franchisee is permitted to charge late fees in the amount of interest not to exceed 1.5% per month with a minimum fee of three dollars $3.00 per invoice less any interest assessed, as to any invoices where payment is not received within fifteen (15) days from the end of the billed service period, or thirty (30) days following the date of invoice for temporary or special services, as the case may be.

8.5.2 Termination of Service. In addition, if payment is not received within thirty (30) calendar days from the date of the delinquency notice provided in accordance with Section 8.5.1, Franchisee may terminate collection service at the delinquent account until payment in full has been received, including payment of the late fees and the activation fee set forth in the Maximum Rate Schedule.

8.5.3 Collection Procedure Review. Upon the request of either party, the parties agree to meet from time to time to review procedures for collection of delinquencies, the success of collection efforts, and additional programs to enhance collections and reduce bad debt.

8.5.4 No Waiver of City Remedies to Address Public Nuisance. If Franchisee terminates service to any customer in the City, then nothing herein waives or supersedes the City's rights to initiate code enforcement action(s) in response to the build-up, long-term stagnation, or misplacement of Solid Waste as a result of the termination of Franchisee's service. In addition, the City and Franchisee shall, at the option of either party, meet and confer in good faith to resolve any matters of public nuisance or Solid Waste build-up that resulted from a termination of service by Franchise.

8.6 Refunds. Franchisee shall refund to each customer, on a pro rata basis, any advance service payments made by such customer for service not provided when service is discontinued by notification to Franchisee by the customer.

ARTICLE IX
ACCOUNTING AND RECORDS

9.1 Recordkeeping. Franchisee understands and agrees that it shall keep full and complete books, records and accounts of all financial transactions with respect to this Agreement. All such books, records and accounts shall be maintained for a minimum of five (5) years from and after the end of the fiscal year in which any such books, records and accounts are created. Records subject to this Section shall include paper, electronic, magnetic or other media including, but not limited to, records of recovered materials, marketing records, cash register records of purchases of source separated Recyclables, and video tape recordings of Franchisee operations, vehicular registration and maintenance records, complaint logs, the log of uncollected materials, personnel files, customer correspondence and other correspondence, etc.

9.2 Inspection of Franchisee's Accounts and Records. Franchisee's records of customer complaints, AB 939 compliance records, maps, billing records, gross income, franchise fee payments and customer payment histories or other operational records reasonably required to verify Franchisee's performance under this Agreement shall be available at Franchisee's local office as set forth in Section 5.2.1 at any time during regular business hours for inspection on twenty-four (24) hours notice, and/or performance of financial review of Franchisee's records by the City or its duly authorized representative in accordance with the Agreed Upon Procedures, as such term is associated with standard audit procedures), for a period of three (3) years following the close of Franchisee's fiscal year. Franchisee shall provide City with a copy of any requested record at no cost to City.

9.3 Cost of Agreed Upon Procedures. The City may annually perform an Agreed Upon Procedure of Franchisee's books and records in accordance with Section 9.2, or otherwise upon Franchisee's request for an increase in rates under the Maximum Rate Schedule. If the City's performance of Agreed Upon Procedures discloses the Franchise Fee payable by Franchisee was underpaid by three percent (3%) or more, or customers were overcharged by three percent (3%) or more, for the period under review, then Franchisee shall pay for the cost of City's performing the Agreed Upon Procedures in addition to the reimbursing the City for the underpayment and/or refunded the customers for their overpayment.

9.4 Payments and Refunds. If the performance of an Agreed Upon Procedure by the City discloses the Franchise Fee payable by Franchisee was underpaid or customers were overcharged for the period under review, then Franchisee shall pay to City any underpayments of the Franchise Fee and refund to Franchisee's customers any overcharges. If the performance of an Agreed Upon Procedure by the City discloses Franchise Fee were overpaid, then City shall promptly refund to Franchisee the amount of the overpayment.

9.5 Reporting.

9.5.1 Reports. Franchisee shall provide quarterly and annual reporting as outlined in this Section. However, the Chief Executive Officer reserves the right to request additional information as necessary to meet AB 939 reporting requirements. All information included in the reports shall be provided according to the source of generation. Waste generator types are defined as follows:

(a) Single-Family

(b) Multi-Family

(c) Commercial/Industrial

(d) Construction/Temporary Bin/Roll-Off

(e) Bulky Item

(f) City facilities

9.5.2 Quarterly Reports. Franchisee shall submit quarterly reports no later than one month following the completion of each quarter. The quarterly reports shall include the information collected and summarized on a monthly basis. Specifically, Franchisee shall provide the following quarterly reports:

(a) Collection information. The quantity of solid waste collected by month and the number of accounts serviced monthly. The quantities of solid waste, recyclable material, and green waste collected shall be reported in terms of tonnage (or cubic yards if tonnage information is not available). Franchisee shall clearly specify any assumptions made in reporting of quantities.

(b) Service performance. Summarize the entries made in the service log including all praises, complaints, notifications of missed pickups, Container overfilling, and non-collection notices issued, and Franchisee responses thereto. Identify the total number of all written or oral customer comments and shall provide the number of comments received in the following categories: praises, litter or property damage complaints, misplacement of Containers, stolen Containers, personnel complaints, missed pickups, and other.

(c) Program implementation. Summarize the problems or barriers to implementation of services for the quarter. The report shall address how the problems and barriers were overcome or the proposed resolutions and schedule for correcting the problem.

9.5.3 Annual Reports. Franchisee shall submit annual reports to the City no later than February 28 of each year. The annual report will be in lieu of the quarterly report for the fourth quarter of any calendar year. Franchisee will be responsible for providing the following reports:

(a) Summary reports. Provide a summary of information contained in the quarterly reports. Clearly indicate the diversion rate for each waste sector type. The diversion information provided shall include quantities of materials collected, and the quantities recycled and composted for each waste generator type. Franchisee shall note unusual changes in disposal quantities and indicate potential reason(s) for this change. The summary report shall include a discussion of noteworthy experiences, and any problems in program operation and how they were resolved.

(b) Equipment inventory. Franchisee shall provide a complete inventory of collection equipment.

(c) Future programs. Franchisee shall prepare a report that identifies any future programs and/or facilities that may be needed but have not been planned for.

(d) Litigation information. Franchisee shall submit a summary of the current status of any pending criminal or civil litigation that may have a material effect on Franchisee's ability to perform its obligations under this Agreement.

(e) Corporate Information. The names of Franchisee's principal officers and shareholders, and any changes in Franchisee's equity.

ARTICLE X
ENFORCEMENT OF AGREEMENT.

10.1 City Right to Terminate. The City shall have the right to terminate Franchisee's franchise and this Agreement upon Franchisee's material breach of this Agreement. The City's right to terminate shall be in addition to any other remedy provided in this Agreement or provided by law and shall include, but not be limited to, any of the events of default set forth in this Article X. In addition, specific events of default by Franchisee include, without limitation, the following:

(a) If Franchisee practices, or attempts to practice, any fraud or deceit upon the City, or practiced any fraud or deceit or made any misrepresentation in the negotiations which preceded the execution of this Agreement.

(b) If Franchisee or any of its officers, directors, shareholders (who have been active in the business of Franchisee), or employees are found guilty of felonious conduct, illegal transport or disposal of Hazardous Waste, or bribery of public officials, then the City reserves the unilateral right to terminate this Agreement, should they not be removed from their position upon conviction, or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper under the circumstances. The term "felonious conduct" shall mean a felony that in the City's determination has the potential of endangering the public or affecting Franchisee's ability to perform this Agreement (e.g., identity theft). The term "found guilty" shall be deemed to include any judicial determination of guilt including, but not limited to, pleas of "guilty", "nolo contendere", "no contest" or "guilty to a lesser charge" entered as part of a plea bargain. This Section is not intended, and shall not be interpreted, to require that Franchisee terminate any current employee who may, at the Effective Date of this Agreement, have a criminal record.

(c) If Franchisee fails to provide or maintain in full force and effect the workers' compensation or any other insurance coverage or performance bond required by this Agreement.

(d) If Franchisee willfully violates any orders or rulings of any regulatory body having jurisdiction over Franchisee, provided that Franchisee may reasonably contest any such orders or rulings by appropriate proceeding conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until a final decision adverse to Franchisee is entered.

(e) If Franchisee fails to make any payments or to pay any penalties required to be made or paid by Franchisee pursuant to this Agreement.

(f) If Franchisee for any reason ceases to provide Solid Waste and/or Recycling management services required under this Agreement over all or a substantial portion of its franchise area for a period of seven (7) days or more, except where arising due to an event of Force Majeure.

(g) If Franchisee violates the terms, conditions or requirements of the Baldwin Park Municipal Code or AB 939 or successor legislation, as they may be amended from time to time or violates any order, directive, rule or regulation issued pursuant to the foregoing legislation, where the violation is not remedied within the time set in the written notice of the violation.

(h) If Franchisee refuses to provide City with required information, financial statements, report or test results in a timely manner as required by this Agreement.

(i) If Franchisee becomes insolvent, unable or unwilling to pay its debts, or upon the appointment of a receiver to take possession of all or substantially all of the assets of Franchisee, or upon a general assignment by Franchisee for the benefit of creditors, or upon any action taken by or suffered by Franchisee under any insolvency or bankruptcy act.

(j) If Franchisee materially fails to meet the requirements of any Diversion program or amended Diversion program, or AB 939.

(k) If Franchisee should persistently and repeatedly refuse or should fail to supply enough properly skilled workers or proper materials or equipment for the collection and disposal of Solid Waste from City in a good and workmanlike manner, or fail to make prompt payment for materials, equipment or labor, or fail to make any payment to City when due, or persistently disregard laws, ordinances, or the instructions of City or its duly authorized representatives, or otherwise to be in substantial violation of any provision of the Agreement.

(l) If Franchisee should persistently and repeatedly fail to perform its services hereunder in a professional and workmanlike manner as required by the performance standards set forth herein, or if Franchisee's conduct of its services under this Agreement should result in a recurrent or persistent condition of public nuisance or threat to public health and safety.

10.2 <u>Rights of Nondefaulting Party after Default</u>. The Parties acknowledge both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a default or to enforce any covenant or agreement herein. Before this

Agreement may be terminated or action may be taken to obtain judicial relief the Party seeking relief for a default ("Nondefaulting Party") shall comply with the notice and cure provisions below.

10.3 Notice of Default and Opportunity to Cure. A Nondefaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("Defaulting Party") in its performance of a material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Nondefaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure ("Default Notice"). The Defaulting Party shall be deemed in "default" under this Agreement, where: (i) said breach or failure can be cured, but the Defaulting Party has failed to fully cure within thirty (30) days after the date of the Default Notice (subject to the provisions below), or (ii) a monetary default remains uncured for ten (10) days (or such lesser time as may be specifically provided in this Agreement).

10.4 Non-Monetary Defaults; Longer Cure Period. The Defaulting Party on a non-monetary default shall not be deemed in breach of this Agreement, and such default shall be waived, if such non-monetary default cannot reasonably be cured within the above-prescribed thirty (30) day period, and as long as the Defaulting Party does each of the following:

(a) Notifies the Nondefaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

(b) Notifies the Nondefaulting Party of the Defaulting Party's proposed cause of action to cure the default;

(c) Promptly commences to cure the default within the thirty (30) day period;

(d) Makes periodic reports to the Nondefaulting Party as to the progress of the program of cure; and

(e) Diligently prosecutes such cure to completion.

10.5 Termination Upon Default. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Nondefaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and other Agreements ("Termination Notice"). The Termination Notice shall state that the Nondefaulting Party will elect to terminate this Agreement and will describe the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Nondefaulting Party's election to terminate this Agreement will only be waived if the Defaulting Party fully and completely cures all defaults prior to the date of termination.

10.6 Franchisee Hearing Opportunity Prior to Termination. If Franchisee is the Defaulting Party, then the City's Termination Notice to Franchisee shall additionally specify that Franchisee has the right to a hearing prior to the City's termination of any Agreements ("Termination Hearing"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950, et seq. At said Termination Hearing, Franchisee shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the City Council may, by adopted resolution, act as follow:

(a) Decide to terminate this Agreement; or

(b) Determine that Franchisee is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or

(c) Impose conditions on a finding of default and a time for cure, such that Franchisee's fulfillment of said conditions will waive or cure any default.

Findings of a default or a conditional default must be based upon substantial evidence supporting the following two findings: (i) that a default in fact occurred and has continued to exist without timely cure, and (ii) that such default has, or will, cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, the environment, the City or the financial terms established in this Agreement. The decision of the City Council shall be final. Thereafter, Franchisee may appeal any decision, order or action by the City Council under this Section 10.6, by filing a legal action.

10.7 Interest on Monetary Default. In the event Franchisee fails to perform any monetary obligation under this Agreement, Franchisee shall pay interest thereon at the rate of ten percent (10%) per annum from and after the due date of said monetary obligation until payment is actually received by City.

10.8 City's Right to Perform Service.

10.8.1 City Rights. In addition to any and all other legal or equitable remedies, in the event that Franchisee, for any reason whatsoever, fails, refuses or is unable to collect, transport or deliver to a Disposal Site, as appropriate, any or all Solid Waste or Recyclables which it is required by this Agreement to collect and transport, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the Chief Executive Officer in his or her sole discretion should find that such accumulation endangers or menaces the public health, safety or welfare, then the Chief Executive Officer shall have the right, but not the obligation, without payment to Franchisee, to (i) cause to be performed, such services itself with its own personnel or employ Franchisee's personnel, without liability to Franchisee; and/or (ii) to take possession of any or all of Franchisee's equipment and other property used or useful in the collection and transportation of Solid Waste and to use such property at the expense of Franchisee to collect and transport any Solid Waste which Franchisee would otherwise be obligated to collect and transport pursuant to this Agreement.

10.8.2 Franchisee and City Responsibilities. Franchisee further agrees that in such event:

(a) It will fully cooperate with City to effect the transfer of possession or property to the City for City's use;

(b) It will, if Chief Executive Officer so requests, and to the extent feasible, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition;

(c) The City agrees to assume complete responsibility for the proper and normal use of such equipment and facilities while in its possession; and

(d) Notice of Franchisee's failure, refusal or neglect to collect, transport and properly dispose of or process solid waste may be given orally by telephone to Franchisee and shall be effective immediately. Written confirmation of such oral notification shall be sent to Franchisee within twenty-four (24) hours of the oral notification.

10.8.3 Franchise Waivers. Franchisee agrees that the City's exercise of its rights under this Article 10:

(a) Does not constitute a taking of private property for which compensation must be paid and is an exercise of the City's police power;

(b) Will not create any liability on the part of City to Franchisee, including but not limited to, any right to compensation for use of Franchisee's equipment unless Franchisee's failure to perform was caused by Force Majeure (in such a case, the City shall pay to Franchisee the reasonable rental value of the equipment and property, possession of which is taken by the City, for the period of the City's possession);

(c) Does not exempt Franchisee from the indemnity provisions of Article 10, which are meant to extend to circumstances arising under this Section 10.8, provided that Franchisee is not required to indemnify City against claims and damages arising from the negligence of City, its officers, employees, agents, or volunteers acting under this Section 10.8; and

(d) Does not terminate this Agreement, unless termination occurs under other provisions of this Agreement.

10.9 Duration of City's Possession. The City has no obligation to maintain possession of Franchisee's property and/or continue its use in collecting and transporting Solid Waste for any period of time and may, at any time, in its sole discretion, relinquish possession to Franchisee. Should the City desire to retain possession of Franchisee's property, the City's right to retain temporary possession, and to provide Solid Waste collection services, shall continue until Franchisee can demonstrate to the Chief Executive Officer's reasonable satisfaction that it is ready, willing and able to resume such services.

10.10 Forfeiture of Performance Bond. In the event Franchisee shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, the City may declare that portion of the performance bond or other security established pursuant to Section 12.3 which is necessary to recompense and make whole the City, forfeited to the City. Upon partial forfeiture of the performance bond or other security, Franchisee shall promptly take all steps necessary to restore the performance bond or other security to its face amount.

10.11 City's Right to Lease Franchisee's Equipment Following Termination. If the City terminates this Agreement for cause, the City shall have the right to lease Franchisee's equipment from Franchisee at its fair market value for a period not to exceed six (6) months in order to allow City to perform the services required under this Agreement.

10.12 Cooperation Following Termination. At the end of the Term or Franchise Term or in the event this Agreement is terminated for cause prior to the end of the Term or Franchise Term, Franchisee shall cooperate fully with City and any subsequent contractor to assure a smooth transition of Solid Waste management services. Franchisee's cooperation shall include, but not be limited to, Franchisee providing detailed route lists, billing and service-level information and other operating records needed to service all premises covered by this Agreement. Franchisee shall provide the new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Franchisee shall be responsible for coordinating transfer immediately after Franchisee's final pickups, so as not to disrupt service. Franchisee shall provide City with detailed route sheets containing service names and addresses, invoice names and addresses, monthly rate and service levels (number and size of Containers and pickup days) at least ninety (90) days prior to the transition date, and provide an updated list two weeks before the transition and a final list of changes the day before the transition.

10.13 Remedies for Nuisance Violations.

10.13.1 Liquidated Damages. The provision of poor public service or the production of any nuisance condition will subject Franchisee to the following provisions.

10.13.2 Complaints. Public complaints (whether received by the City regarding Franchisee' performance or received directly by Franchisee) will be handled as prescribed in Sections 5.2.3 and 5.2.4 hereof.

10.13.3 Nuisance Conditions. Repeated, substantiated complaints of, or continued conditions of, poor service quality and/or nuisance conditions that result in a material breach of any term or condition of this Agreement may be handled in the manner prescribed below. For purposes of this Section, the term "nuisance conditions" shall include, but is not limited to, the following:

(a) Failure to duly collect Solid Waste and/or Recyclables that have been properly set out for collection through the willful or negligent conduct of Franchisee employees;

(b) Uncured damage to the property of third parties or customers through the willful or negligent conduct of Franchisee employees;

(c) Legitimate complaints of rude or unprofessional behavior or conduct by Franchisee's employees in the course of their duties;

(d) Failure to cooperate with the City's performance of service surveys and route audits as required by Sections 5.2.6 and 5.2.7, hereof;

(e) Unreasonable leakage or spillage of Solid Waste or other collected materials from Franchisee's vehicles;

(f) Failure to immediately or promptly collect Solid Waste or other materials that spilled or fell from Franchisee's vehicles onto public streets or third-party property;

(g) Poor maintenance of Franchisee's vehicles, containers and equipment in violation of Sections 7.1 and 7.2 hereof;

(h) Violations of personnel standards and qualifications in contravention of Section 7.3 hereof; and

(i) Any other failure to meet performance standards in such a manner as to give rise to a condition of public nuisance or threat to public health and safety.

10.13.4 Notice of Violation. Initially, when the Chief Executive Officer or a designated enforcement officer observes a material breach, a verbal warning shall be given to Franchisee. If the violation is thereafter repeated and, in the opinion of the Chief Executive Officer or designated enforcement officer, Franchisee has not taken timely, effective action to correct the violation and prevent its repetition, then the Chief Executive Officer or designated enforcement officer may issue a written notice of violation (the "Notice of Violation") describing the violation, the period in which Franchisee is required to cure the violation (if such violation is curable) and a warning that continued violations can be subject to liquidated damages.

10.13.5 Franchisee's Right To Contest. Within five (5) business days after receiving the Notice of Violation, Franchisee may submit a written response (the "Response") to the Notice of Violation to the Chief Executive Officer. The Chief Executive Officer shall review Franchisee's Response and may further investigate the claimed violation. The Chief Executive Officer shall make a final determination regarding the Notice of Violation and the City Manager shall deliver to Franchisee a written conclusion concerning the Notice of Violation. Additionally, at the election of either Party, the Parties may meet to develop a written corrective action plan ("Correction Plan") to prevent further occurrence of the problematic conditions established in the Notice of Violation. The Correction Plan shall be finally prepared by the City (or, at the election of the City, by Franchisee) within ten (10) business days after the meeting between the Chief Executive Officer (or designee) and Franchisee. The Correction Plan may include additional procedures, as deemed necessary by the Chief Executive Officer, to assure that in the future Franchisee will be able to perform its services in compliance with this Agreement.

10.13.6 Liquidated Damages. If a second Notice of Violation is issued for any violation *after* an initial verbal warning and thereafter the issuance of a written Notice of Violation that is not withdrawn pursuant to Subsections 10.13.4 or 10.13.5 above, then liquidated damages may thereafter be assessed against Franchisee (as liquidated damages and not a penalty) by the Chief Executive Officer in the amount of $250 for every day the condition persists. Further, if the violation for which liquidated damages were assessed recurs on three (3) or more days within a 60-day period following any assessment of liquidated damages, then starting on the fourth (4th) day that such violation either persists or recurs the amount of liquidated damages shall increase to $500 per day.

10.13.7 Basis for Liquidated Damages. The Parties further recognize that if Franchisee recurrently fails to prevent and remediate nuisance conditions that result in a material breach of any term or condition of this Agreement, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City and its citizens will suffer. Therefore, the Parties agree the liquidated damages established herein represent a reasonable estimate of the amount of such damages for such specific breach, considering all of the circumstances existing on the 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. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of these liquidated damage provisions prior to entering this Agreement.

Franchisee's Initials ______ City Initials ______

10.13.8 Further Remedies For Severe Or Persistent Violations. The above provisions for a Correction Plan procedure and liquidated damages are intended to give the Parties a remedy under this Agreement short of termination or default; however, should Franchisee's violations be severe and repetitive or otherwise not reasonably subject to correction through liquidated damages, the Chief Executive Officer may, in his sole discretion, institute the procedures set forth in this Article hereof.

10.14 No Waiver of City's Police Powers or Legal Rights. Nothing in this Agreement is intended to limit the power and ability of the City to initiate administrative and/or judicial proceedings for the abatement of nuisance conditions or violations of any applicable law. Nothing herein shall waive or limit any other legal rights or recourses the City may have in response to Franchisee's repeated, material violations of Performance Standards or failure to mitigate nuisance conditions.

10.15 Professional Misconduct.

10.15.1 Notice of Franchisee Employees Subject to Criminal Process. In the event that any official, employee, or contractor for Franchisee is indicted by a grand jury, named as a defendant in a felony complaint filed in any court in the United States, or is otherwise alleged to have participated in any criminal activity directly or indirectly associated with the performance of Solid Waste handling services under this Agreement, Franchisee or its successor-in-interest shall provide written notice thereof to the City within fourteen (14) calendar days of such indictment, complaint or allegation. Such notice shall contain a description of the indictment, complaint or allegation, as well as a copy of such indictment or complaint or other matters of public record related thereto.

10.15.2 Removal From Assignment. In the event that any official, employee, or contractor of Franchisee, who has any responsibility for any aspect of the performance of Solid Waste handling services under this Agreement, is convicted, indicted by a grand jury, or named as a defendant in a felony complaint, this person shall, upon request of the City be immediately removed from any assignment whatsoever, directly associated with the performance of Solid Waste handling services under this Agreement during the pendency of trial and/or following conviction.

ARTICLE XI
TRANSFERS OF INTEREST.

11.1 Restrictions on Transfers. The City, in entering into this Agreement, has placed a special value, faith and confidence in the experience, background, and expertise of Franchisee in the field of waste disposal. Such faith and confidence being a substantial consideration in the granting of this Agreement warrants the transfer restrictions provided in this Article XI.

11.2 Definition of Transfer. As used in this Section, the term "Transfer" shall include any hypothecation, mortgage, pledge, or encumbrance of this Agreement by Franchisee, subject to the exceptions set forth in Section 11.4 below. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than thirty percent (30%) of the present equity ownership and/or more than thirty percent (30%) of the voting control of Franchisee (jointly and severally referred to herein as the "Trigger Percentages"), taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest to an affiliate owned or controlled by the present beneficial owners of Franchisee or members of their immediate family, or between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family. A transfer of interests (on a cumulative basis) in the equity ownership and/or voting control of Franchisee in amounts less than Trigger Percentages shall not constitute a Transfer subject to the restrictions set forth herein. In the event Franchisee or its successor is a corporation or trust, such Transfer shall refer to the transfer of the issued and outstanding capital stock of Franchisee, or of beneficial interests of such trust; in the event that Franchisee or any general partner comprising Franchisee is a limited or general partnership or a limited liability company, such Transfer shall refer to the transfer of more than the Trigger Percentages in the limited or general partnership or limited liability company interest; in the event that Franchisee or any general partner is a joint venture, such Transfer shall refer to the transfer of more than the Trigger Percentages of such joint venture partner, taking all transfers into account on a cumulative basis.

11.3 Transfers Require City Approval. Franchisee shall not Transfer this Agreement or any of Franchisee's rights hereunder, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, and if so purported to be transferred, the same shall be null and void. Franchisee will submit its request for City consent to the City together with documents, including but not limited to: (i) the transferee's audited financial statements for at least the immediately preceding three (3) operating years; (ii) proof that the proposed transferee has at least five (5) years of municipal solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Franchisee under this Agreement; (iii) proof that in the last five (5) years, the proposed transferee has not suffered any citations or other censure from any federal, state, or local agency having jurisdiction over its waste management operations due to any significant failure to comply with federal, state, or local waste management law and that the transferee has provided the City with a complete list of such citations and censures; (iv) proof that the proposed transferee has at all times conducted its operations in an environmentally safe and conscientious fashion; (v) proof that the proposed transferee conducts its municipal solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state, and local laws regulating the collection and disposal of waste, including hazardous waste; (v) proof that the transferee's officers or directors have no criminal convictions for fraud, deceit, false claims or racketeering with respect to the transferee's course of business; (vi) proof that the proposed transferee is of comparable financial strength to Franchisee and has the required insurance and bonds, and (vii) any other information required by the City to ensure the proposed transferee can fulfill the terms of this Agreement, including the payment of indemnities and damages and provision of bonds and/or performance standards, in a timely, safe, and effective manner.

11.4 Exceptions. The requirement to obtain City approval for a Transfer shall not apply to any of the following:

(a) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing and any resulting foreclosure therefrom.

(b) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(c) A sale or transfer to an affiliate of Franchisee owned or controlled by the present beneficial owners of Franchisee or members of their immediate family, or between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family.

11.5 Assumption of Obligations. No attempted Transfer of any of Franchisee's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form approved by the City assuming such obligations. Following any such assignment or Transfer of any of the rights and interests of Franchisee under this Agreement, the exercise, use and enjoyment shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Franchisee.

11.6 Release of Franchisee. City's consent to a Transfer shall not be deemed to release Franchisee of liability for performance under this Agreement unless such release is specific and in writing executed by City, which release shall not be unreasonably withheld. Upon the written consent of City to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Franchisee under this Agreement by the assignee, Franchisee shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Franchisee is in default under the terms of this Agreement prior to said Transfer.

11.7 Franchisee to Pay Transfer Costs. Franchisee will pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed transferee or assignee, and to review and finalize any documentation required as a condition for approving any such Transfer.

11.8 Subcontracting. This Agreement, or any portion thereof, shall not be subcontracted except with the prior written consent of the City, which consent shall not be unreasonably withheld. No such consent shall be construed as making the City a Party to such subcontract, or subject the City to liability of any kind to any subcontractor. Franchisee shall submit all subcontracts for review and approval by the City and any permitted subcontract shall terminate on or before the termination of this Agreement. All subcontractors shall be licensed as required under State, Federal and local laws and regulations to perform their subcontracted work and obtain and maintain a City business license if required. Franchisee shall remain otherwise liable for the full and complete performance of its obligations hereunder. City acknowledges and approves of Franchisee's use of a subcontractor to haul transfer rigs to the landfill, subject to City's approval of such subcontractors, which will not be unreasonably withheld.

11.9 Heirs and Successors. The terms, covenants and conditions of this Agreement shall apply to and shall bind the heirs, successors, executors, administrators and assigns of Franchisee and City.

ARTICLE XII
INSURANCE, INDEMNITY AND PERFORMANCE BOND

12.1 Insurance. Franchisee shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the policies of insurance contained in Exhibit D hereto.

12.2 Indemnification.

12.2.1 General Liability. Without regard to the limits of any insurance coverage, Franchisee shall indemnify, defend, and save harmless the City, its officers, agents and employees (the "Indemnitees"), for and from any and all loss, liability, claim, demand, action or suit, of any and every kind and description, arising or resulting from or in any way connected with any operations of Franchisee in performing the obligations required by this Agreement, or arising or resulting from the failure of Franchisee to comply in all respects with the provisions and requirements of this Agreement, or arising or resulting from the failure of Franchisee to comply with applicable law, whether or not there is concurrent passive or active negligence, on the part of the City, its representatives, officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its representatives, officers, agents or employees, who are directly responsible to the City. Subject to the scope of this indemnification and upon demand of any of the Indemnitees, Franchisee shall appear in and defend the Indemnitees in any claims or actions, whether judicial, administrative or otherwise arising out of the above and shall pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith. Franchisee will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities and agrees to save and hold the City, its officers, agents and employees harmless therefrom.

12.2.2 CERCLA/Hazardous Waste Liability.

(a) Without regard to the limits of any insurance coverage, Franchisee shall indemnify, defend and hold harmless the Indemnitees for all claims, actual damages, natural resources damages, injuries, costs, response, remediation and removal costs, losses, liabilities, cause of action, interest and expenses (including but not limited to reasonable attorneys' and experts' fees) of any kind whatsoever paid, incurred, or suffered by or against the Indemnitees arising from or attributable to any repair, clean up, removal action or response action undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (CERCLA), the California Health and Safety Code ("H&S Code"), HSAA, RCRA, any other Hazardous Waste laws or other similar federal, state or local law or regulations, with respect to Franchisee's collection, handling, or transportation of Solid Waste collected by Franchisee from Accounts pursuant to this Agreement. The indemnity contained in this Section 13.2.2 is intended to operate as an agreement of Franchisee pursuant to Section 107(e) of CERCLA and the H&S Code Section 25364 to defend, protect, hold harmless and indemnify the Indemnitees. Subject to the scope of this indemnification and upon demand of any of the Indemnitees, Franchisee shall appear in and defend the Indemnitees in any claims or actions, whether judicial, administrative or otherwise arising out of the above, and shall pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith. Franchisee will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities and agrees to save and hold the City, its officers, agents and employees harmless therefrom.

(b) The foregoing indemnity shall not apply to the extent any claims arise or result from the sole negligence, willful misconduct, or violation of applicable law by any Indemnitee.

12.2.3 Survives Termination. Franchisee's obligations under Section 12.2 shall survive the termination or expiration of this Agreement.

12.3 Faithful Performance Security. Within ten (10) business days of the Effective Date, Franchisee shall deliver to City a bond for Seven Hundred Thousand Dollars ($700,000), which shall secure the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement, unless such requirement is waived by the Chief Executive Officer. The performance bond shall be executed by a surety company licensed to do business in the State of California, having an A: VII or better rating, and approved by the City; and included on the list of surety companies approved by the Treasurer of the United States. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his or her power of attorney. The bond shall be unconditional and remain in force during the entire Term, which may be accomplished through annual renewals. In the event Franchisee shall for any reason become unable to, or fail in any way to perform as required by this Agreement, City may declare a portion or all of the performance bond or letter of credit forfeited to the City. Upon partial or full forfeiture of the performance bond or letter of credit, Franchisee shall restore the performance bond or letter of credit to its face amount within thirty (30) days of the City's declaration. Failure to restore the performance bond or letter of credit to its full amount within thirty (30) days shall be a material breach of this Agreement.

12.4 <u>AB 939 Guarantee and Indemnification</u>. Franchisee shall carry out its obligations under this Agreement so the City will meet or exceed the diversion requirements set forth in AB 939, and all amendments thereto more fully set forth below. City and Franchisee shall reasonably assist each other to meet the City's AB 939 diversion requirements. In carrying out the provisions of this Section, Franchisee agrees to perform the following obligations at its cost and expense:

(a) Defend, with counsel approved by City, indemnify and hold harmless the City against all fines and/or penalties imposed by the Board, if Franchisee fails or refuses to provide information relating to its operations which is required under this Agreement and such failure or refusal prevents or delays City from submitting reports required by AB 939 in a timely manner;

(b) Assist City in preparing for, and participating in, the Board's biannual review of the City's source reduction and recycling element pursuant to Public Resources Code Section 41825;

(c) Assist City in responding to inquiries from the Board in applying for an extension under Public Resources Code Section 41820, if so directed by City; in conducting any hearing conducted by the Board relating to AB 939; or in any other investigative or enforcement manner undertaken by any agency;

(d) Defend, with counsel acceptable to City, and indemnify and hold harmless the City against any fines or penalties levied against it for violation of AB 939's diversion requirements, provided that Franchisee's obligation to indemnify City shall be subject to the limitations set forth in Public Resources Code Section 40059.1(c) as may be amended from time to time;

(e) In cooperating with the City, should it seek to become its own enforcement agency, to the extent it may be permitted under state law.

12.5 <u>Road Surface Damage</u>. Franchisee shall be responsible for any extraordinary damage to driving surfaces in the City, whether or not paved, resulting from and directly attributable to the illegally excessive weight of vehicles providing Solid Waste collection or the improper placement and removal of Containers on public or private property, but shall not be responsible for normal wear and tear.

ARTICLE XIII
GENERAL PROVISIONS.

13.1 **Force Majeure**. The time period(s) specified for performance of the provisions of this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Franchisee, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics and quarantine restrictions (or threat of same), riots, strikes, lockouts or labor unrest, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City if Franchisee promptly notifies the Chief Executive Officer when it learns of the existence of such cause and within ten (10) days notifies the Chief Executive Officer in writing of the causes of the delay; no extension of time for performance shall be granted, however, by reason of the unavailability of any Disposal Site by reason of strikes, lockouts, or other labor disturbances, or breakage or accidents to vehicles, equipment, machinery or plants. The Chief Executive Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Chief Executive Officer such delay is justified. In no event shall Franchisee be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Franchisee's sole remedy being extension of the Agreement pursuant to this Section 13.1.

13.2 **Notices**. All notices, demands, requests, approvals, disapprovals, proposals, consents, or other communications whatsoever which this Agreement contemplates or authorizes, or requires or permits either Party to give to the other, shall be in writing and shall be personally delivered, sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective Party as follows:

If to Franchisee:	District Manager Waste Management of San Gabriel/Pomona Valley 13940 East Live Oak Avenue Baldwin Park, CA 91706
Copy to:	Waste Management—Southern California Market Area 9081 Tujunga Avenue Sun Valley, CA 91352 Attn: Legal Counsel
If to City:	Chief Executive Officer City of Baldwin Park 14403 East Pacific Avenue Baldwin Park, CA 91706

With copy to: Aleshire & Wynder, LLP
2361 Rosecrans Ave., Suite 475
El Segundo, CA 90245
Attention: Joseph Pannone, City Attorney

or to such other address as either Party may from time to time designate by notice to the other given in accordance with this Section 13.2. Notice shall be deemed effective on the date personally served or by facsimile or, if mailed, three (3) days from the date such notice is deposited in the United States mail.

13.3 **Non-discrimination**. Franchisee covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, sexual orientation, or ancestry in the performance of this Agreement. Franchisee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation, national origin or ancestry.

13.4 **Compliance with Immigration Laws**. Franchisee agrees that, in the performance of this Agreement, it will comply with all applicable immigration laws and regulations.

13.5 **No Liability of City Officials**. No officer, employee or agent of the City shall be personally liable to Franchisee, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to Franchisee or to its successor, or for breach of any obligation of the terms of this Agreement.

13.6 **Laws and Regulations**. Franchisee shall observe all the terms of any City ordinance or resolution now in effect, or as the same maybe subsequently adopted or amended by the City, governing or affecting the collection, removal and disposal of Municipal Solid Waste in the City. Franchisee further agrees to comply with all applicable county, state or federal laws or regulations as they exist now or may subsequently be adopted or amended, governing the collection, removal and disposal of Municipal Solid Waste. Franchisee further agrees to comply with all applicable state and federal laws governing employment, wages, working conditions, use of materials, equipment, supplies and the like. The City shall comply with all applicable laws and regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, that are now in force and as they may be enacted or amended during the term of this Agreement in performing its obligations under this Agreement.

13.7 **Proprietary Information: Public Records**. The City acknowledges that a number of the records and reports of Franchisee are proprietary and confidential. Franchisee is obligated to permit City inspection of certain of its records, as provided herein, on demand

and to provide copies to City where requested. City will endeavor to maintain the confidentiality of all proprietary information provided by Franchisee and shall not voluntarily disclose such proprietary information. Notwithstanding the foregoing, any documents provided by Franchisee to City that are public records may be disclosed pursuant to a proper public records request. City shall notify Franchisee of any such request affecting Franchisee's records or reports at least five (5) business days prior to their release, to enable Franchisee to seek a protective order or otherwise prevent disclosure; provided, however, that City's failure to provide such notice shall not be a breach of this Agreement.

13.8 Privacy. Franchisee shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers or the composition or contents of a customer's waste stream shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Franchisee from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by the Act. In addition, Franchisee shall not market, sell, convey, or donate to any person any list with the name or address of customers except that Franchisee may provide such lists to authorized employees and authorized representatives of the City as necessary to comply with this Agreement. The rights accorded customers pursuant to this Section shall be in addition to any other privacy right accorded customers pursuant to Federal or State Law.

13.9 Waiver of Future Claims. No delay or omission in the exercise of any right or remedy by a Non-Defaulting Party on any default shall impair such right or remedy or be construed as a waiver. A Party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

13.10 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 this Agreement and their representatives, successors, and permitted assigns.

13.11 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. Franchisee warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement.

13.12 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

13.13 Integration: Amendment. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. This Agreement, including the exhibits, constitutes the entire agreement between the parties with respect to the matters covered. This Agreement may only be amended at any time by the mutual consent of the Parties by an instrument in writing. This Agreement is intended, in part, to carry out City's obligation to comply with the provisions of AB 939 and regulations promulgated thereunder, as amended from time to time. In the event that AB 939 or other state or federal laws or regulations enacted after this Agreement prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. No other amendment of this Agreement shall be valid unless in writing duly executed by the Parties.

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

13.15 References to Laws. All references in this Agreement to laws will be understood to include existing laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

13.16 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

13.17 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend or is made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys, fees and expert witness fees.

13.18 No Joint Venture. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Franchisee, its agents or employees, perform the services required herein, except as otherwise set forth. Franchisee shall perform all services required herein independent from the City and shall remain at all times as to City a wholly independent entity with only such obligations as are consistent with that role. Franchisee shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Franchisee in its business or otherwise or a joint venturer or a member of any joint enterprise with Franchisee. Neither Franchisee nor its officers, employees, subsidiaries, subcontractors, affiliates and agents will obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to City employees by virtue of their employment with the City.

13.19 **<u>Rights and Remedies are Cumulative</u>**. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

13.20 **<u>Governing Law</u>**. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13.21 **<u>Jurisdiction and Venue</u>**. The parties hereto agree that the State of California is the proper jurisdiction for litigation of any matters relating to this Agreement. The Parties further agree Los Angeles County, California is the proper place for venue as to any such litigation arising out of the Agreement and Franchisee agrees to submit to the personal jurisdiction of such court in the event of such litigation.

13.22 **<u>Legal Action</u>**. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

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IN WITNESS WHEREOF, the Parties hereto do hereby set their hands and seals as of the day and the year first written above.

CITY OF BALDWIN PARK By: ________________ Manuel Lozano, Mayor ATTEST: ________________ Alejandra Avila, City Clerk APPROVED AS TO FORM: ALESHIRE & WYNDER, LLP ________________ Joseph W. Pannone, City Attorney	**FRANCHISEE** Waste Management Collection & Recycling, Inc., a California Corporation By: ________________ Name: Barry Metter Its: President By: ________________ Name: Doug Corcoran Its: Vice President

EXHIBIT A-1

MAXIMUM RATE SCHEDULE
AS OF THE EFFECTIVE DATE

Residential Schedule of Charges	**Rate**	**Unit**
35 Gallon Waste, 64 Gallon Recycle, 64 Gallon Green Waste	$17.90	Per month
64 Gallon Waste, 64 Gallon Recycle, 64 Gallon Green Waste	$21.35	Per month
96 Gallon Waste, 64 Gallon Recycle, 64 Gallon Green Waste	$24.55	Per month
**Residential Standard Rate Customer AB939 Fee – per refuse container*	$1.29	Per month
Additional 35 Gallon Waste Container	$3.24	Per month
Additional 64 Gallon Waste Container	$4.32	Per month
Additional 96 Gallon Waste Container	$5.40	Per month
**Monthly bill based on the largest Waste Container used*		
Additional 64 Gallon Green Waste Container in excess of two (2)	$6.25	Per month
Additional 64 Gallon Recycling Container in excess of two (2)	$1.78	Per month
Senior Rate 35 Gal. Waste, 64 Gal. Recycle, 64 Gal. Green Waste	$11.89	Per month
Senior Rate 64 Gal. Waste, 64 Gal. Recycle, 64 Gal. Green Waste	$14.28	Per month
Senior Rate 96 Gal. Waste, 64 Gal. Recycle, 64 Gal. Green Waste	$16.44	Per month
**Residential Senior Rate Customer AB939 – per refuse container*	$0.46	Per month
Recycling/Green waste contamination fee	$10.00	Per occurrence
Cart Replacement due to loss or misuse	$79.52	Per cart
Extra Pickup	$30.83	Per trip
Reactivation Service Fee after non-payment cutoff (includes cart delivery)	$31.82	Per occurrence
Cart Walk-In/Push Out Service (Valet) Surcharge – ***No charge for qualified disabled customers***	$13.00	Per month

INSTA-BIN TEMPORARY 3 CU YARD SERVICE

	Rate	Unit
Temp 3 yard bin (includes delivery & pick up)	$118.88	Up to one week
Extra collection	$57.64	Per extra dump
INSTA-BIN AB939 Fee – 3% in addition to above listed fees charge applies to all INSTA-BIN service customers		

COMMERCIAL & MULTI-FAMILY BIN COLLECTION AND DISPOSAL MONTHLY RATES

Bin Size (Cubic Yard)	Frequency of Collection (no. of collections per week)						
	1	**2**	**3**	**4**	**5**	***6**	**Extra PU**
1.5	$143.94	$196.44	$248.73	$301.38	$428.06	$431.06	$107.95
2	$152.40	$206.68	$259.37	$312.82	$366.32	$444.53	$114.30
3	$166.76	$222.23	$277.75	$333.25	$388.73	$468.96	$125.07
4	$178.39	$238.63	$296.17	$353.68	$411.15	$493.41	$133.80
6	$185.15	$271.45	$332.96	$394.49	$455.22	$542.29	$138.86
*6th day (Saturday) service available for customers with service everyday Monday thru Friday only.							
Commercial AB939 Fee – 3.0% in addition to above listed fees charge applies to all commercial service customers.							
**No bin rental or installation fee on permanent commercial containers*							

COMMERCIAL COMPACTOR BIN COLLECTION AND DISPOSAL MONTHLY RATES

Bin Size (Cubic Yard)	Frequency of Collection (no. of collections per week)						
	1	**2**	**3**	**4**	**5**	***6**	**Extra PU**
3.0	$416.90	$555.58	$694.38	$833.13	$971.83	$1,172.40	$312.68
*6th day (Saturday) service available for customers with service everyday Monday thru Friday only.							
Commercial AB939 Fee – 3.0% in addition to above listed fees charge applies to all commercial service customers.							

COMMERCIAL & MULTI-FAMILY RECYCLING MONTHLY RATES

Bin Size (Cubic Yard)	Frequency of Collection (No. of collections per week)					
	1	2	3	4	5	*6
One 96 Gal	$21.07 Friday only					
1.5	$38.62	$68.46	$99.19	$129.04	$159.77	$189.61
2	$39.50	$74.61	$101.83	$132.55	$164.16	$195.75
3	$41.26	$76.37	$107.97	$141.33	$174.69	$207.16
4	$43.89	$79.00	$114.11	$149.23	$184.35	$219.45
6	$50.91	$89.54	$128.16	$167.67	$206.28	$244.91

*6th day (Saturday) service available for customers with service everyday Monday thru Friday only.

**No bin rental or installation fee on permanent commercial containers*

Commercial AB939 Fee – 3.0% in addition to above listed fees charge applies to all commercial service customers.

COMMERCIAL & MULTI-FAMILY BIN - OTHER FEES

Service	Rate	Unit
City administrative fee – impounded illegal receptacle	$212.03	Per occurrence
Contamination fee	$75.00	Per bin per occurrence
Locking lid	$10.27	Per bin per month
Relocation fee	$75.00	Per bin per occurrence
Lock replacement	$21.20	Per occurrence
Scheduled commercial bulky item collection	$26.51	Up to 3 cu. yards
Reactivation fee after non-payment cutoff	$35.00	Per occurrence
Graffiti Removal fee	$50.00	Per occurrence
"Hard to Service" fee	$100.00	
Unscheduled commercial bulky item collection	$79.52	Up to 3 cu. yards
Tilt Hopper	$137.12	Per unit per month
Roll out or push out service (Valet service)	$21.20	Per bin per # of service days a week

ROLL-OFF COLLECTION AND DISPOSAL FEES

Container/Bin Size (Cubic Yards)	**Rate**	**Unit**
10 - 12 Cubic Yard (Rock and/or Dirt) includes 5 tons of disposal	$407.71	
25 Cubic Yard up include 5 tons of disposal	$419.35	
30 – 40 Cubic Yard up to 5 tons	$442.67	
Disposal tonnage over 5 tons	$59.31	Per ton
Overweight fee	$500.00	If over 10 tons, plus haul rate & disposal over 5 tons
OTHER ROLL OFF SERVICE FEES		
One time Delivery fee per container	$50.85	
Cleaning fee	$150.00	Per occurrence
Hourly Driver Rate	$150.00	
Roll-Off Trip fee	$130.00	Per occurrence
Relocation fee	$75.00	Per occurrence
Roll-Off Recycling Haul Rate	$149.79	Per occurrence
**No bin rental or installation fee on permanent commercial containers*		
Roll-Off AB939 Fee – 3.0% in addition to above listed fees charge applies to all Roll-Off service customers.		

EXHIBIT A-2

MAXIMUM RATE SCHEDULE
UPON COMPLETION OF INITIAL
PROPOSITION 218 HEARING AND PROTEST PROCESS
AND APPROVAL BY COUNCIL

THE FOLLOWING RATES WERE ESTABLISHED BASED UPON THE RATES IN EFFECT ON JULY 1, 2013, AND ARE FOR EXAMPLE PURPOSES ONLY. ALL OF THE FOLLOWING RATES SHALL BE ADJUSTED IN ACCORDANCE WITH THE JULY 1, 2014 RATE ADJUSTMENT PRIOR TO THIS EXHIBIT A-2 TAKING EFFECT.

Residential Schedule of Charges	**Rate**	**Unit**
35 Gallon Waste, 64 Gallon Recycle, 64 Gallon Green Waste	$17.90	Per month
64 Gallon Waste, 64 Gallon Recycle, 64 Gallon Green Waste	$21.35	Per month
96 Gallon Waste, 64 Gallon Recycle, 64 Gallon Green Waste	$24.55	Per month
**Residential Standard Rate Customer AB939 Fee – per refuse container*	$1.29	Per month
Additional 35 Gallon Waste Container	$3.24	Per month
Additional 64 Gallon Waste Container	$4.32	Per month
Additional 96 Gallon Waste Container	$5.40	Per month
**Monthly bill based on the largest Waste Container used*		
Additional 64 Gallon Green Waste Container in excess of two (2)	$6.25	Per month
Additional 64 Gallon Recycling Container in excess of two (2)	$1.78	Per month
Senior Rate 35 Gal. Waste, 64 Gal. Recycle, 64 Gal. Green Waste	$11.89	Per month
Senior Rate 64 Gal. Waste, 64 Gal. Recycle, 64 Gal. Green Waste	$14.28	Per month
Senior Rate 96 Gal. Waste, 64 Gal. Recycle, 64 Gal. Green Waste	$16.44	Per month
**Residential Senior Rate Customer AB939 – per refuse container*	$0.46	Per month
Recycling/Green waste contamination fee	$10.00	Per occurrence
Cart Replacement due to loss or misuse	$79.52	Per cart
Extra Pickup	$30.83	Per trip
Reactivation Service Fee after non-payment cutoff (includes cart	$31.82	Per occurrence

delivery)		
Cart Walk-In/Push Out Service (Valet) Surcharge – ***No charge for qualified disabled customers***	$13.00	Per month

INSTA-BIN TEMPORARY 3 CU YARD SERVICE

	Rate	Unit
Temp 3 yard bin (includes delivery & pick up)	$118.88	Up to one week
Extra collection	$57.64	Per extra dump
INSTA-BIN AB939 Fee – 3.0% in addition to above listed fees charge applies to all INSTA-BIN service customers.		

COMMERCIAL & MULTI-FAMILY BIN COLLECTION AND DISPOSAL MONTHLY RATES

Bin Size (Cubic Yard)	Frequency of Collection (no. of collections per week)						
	1	2	3	4	5	*6	Extra PU
1.5	$152.41	$208.01	$263.37	$319.12	$453.25	$456.43	$114.30
2	$161.37	$218.84	$274.64	$331.23	$387.62	$470.69	$121.02
3	$176.57	$235.30	$294.09	$352.85	$411.60	$496.55	$132.42
4	$188.89	$252.67	$313.59	$374.50	$435.35	$522.45	$141.67
6	$196.05	$287.44	$352.61	$417.71	$482.03	$574.20	$147.03
*6th day (Saturday) service available for customers with service everyday Monday thru Friday only.							
Commercial AB939 Fee – 3.0% in addition to above listed fees charge applies to all commercial service customers.							
**No bin rental or installation fee on permanent commercial containers*							

COMMERCIAL COMPACTOR BIN COLLECTION AND DISPOSAL MONTHLY RATES

Bin Size (Cubic Yard)	Frequency of Collection (no. of collections per week)						
	1	2	3	4	5	*6	Extra PU
3.0	$441.42	$588.25	$735.21	$882.12	$1,028.98	$1,241.34	$331.07
*6th day (Saturday) service available for customers with service everyday Monday thru Friday only.							
Commercial AB939 Fee – 3.0% in addition to above listed fees charge applies to all commercial service customers.							

COMMERCIAL & MULTI-FAMILY RECYCLING MONTHLY RATES

Bin Size (Cubic Yard)	Frequency of Collection (No. of collections per week)					
	1	**2**	**3**	**4**	**5**	***6**
One 96 Gal	$0 Friday only					
1.5	$0.00	$0.00	$38.62	$68.46	$99.19	$129.04
2	$0.00	$0.00	$39.50	$74.61	$101.83	$132.55
3	$0.00	$0.00	$41.26	$76.37	$107.97	$141.33
4	$0.00	$0.00	$43.89	$79.00	$114.11	$149.23
6	$0.00	$0.00	$50.91	$89.54	$128.16	$167.67

*6^{th} day (Saturday) service available for customers with service everyday Monday thru Friday only.

**No bin rental or installation fee on permanent commercial containers*

Commercial AB939 Fee – 3.0% in addition to above listed fees charge applies to all commercial service customers.

COMMERCIAL & MULTI-FAMILY BIN - OTHER FEES

Service	Rate	Unit
City administrative fee – impounded illegal receptacle	$224.50	Per occurrence
Contamination fee	$79.41	Per bin per occurrence
Locking lid	$10.87	Per bin per month
Relocation fee	$79.41	Per bin per occurrence
Lock replacement	$22.45	Per occurrence
Scheduled commercial bulky item collection	$27.86	Up to 3 cu. yards
Reactivation fee after non-payment cutoff	$37.06	Per occurrence
Graffiti Removal fee	$52.94	Per occurrence
"Hard to Service" fee	$105.88	
Unscheduled commercial bulky item collection	$82.51	Up to 3 cu. yards
Tilt Hopper	$145.18	Per unit per month
Roll out or push out service (Valet service)	$22.45	Per bin per # of service days a week

ROLL OFF COLLECTION AND DISPOSAL FEES

Container/Bin Size (Cubic Yards)	Rate	Unit
10 - 12 Cubic Yard (Rock and/or Dirt) includes 5 tons of disposal	$407.71	
25 Cubic Yard up include 5 tons of disposal	$419.35	
30 – 40 Cubic Yard up to 5 tons	$442.67	
Disposal tonnage over 5 tons	$59.31	Per ton
Overweight fee	$500.00	If over 10 tons, plus haul rate & disposal over 5 tons
OTHER ROLL OFF SERVICE FEES		
One time Delivery fee per container	$50.85	
Cleaning fee	$150.00	Per occurrence
Hourly Driver Rate	$150.00	
Roll-Off Trip fee	$130.00	Per occurrence
Relocation fee	$75.00	Per occurrence
Roll-Off Recycling Haul Rate	$149.79	Per occurrence
**No bin rental or installation fee on permanent commercial containers*		
Roll-Off AB939 Fee – 3.0% in addition to above listed fees charge applies to all Roll-Off service customers.		

EXHIBIT B

CITY FACILITIES

LOCATION	SERVICE(S)
City Hall 14403 E. Pacific	1-3 yd trash 3x a week 1-3 yd recycle 3x a week
Police Station 14403 E. Pacific	1-3 yd trash on-call
City Yard 13155 Garvey Avenue	1 – 3 yd trash 3x a week 1-3 yd recycle 3x a week
Senior Center 4100 Baldwin Park Blvd	2-3 yd trash 3 x a week
Family Service Center 4115 Laurens Avenue	1-3 yd trash 3 x a week
Community Center 4100 Baldwin Park Blvd.	4-3 yd trash 3x a week 1-3 yd recycle 3 x a week
Barnes Park	1-3 yd trash 3x a week 1-3yd recycle 3x a week
Hilda Solis Park	1- 3 yd trash 3x a week
Teri G Muse Teen Center	1-3 yd trash 3x a week
Olive & Center Transfer Station (4769 Center)	2-40 yd on-call 1- low boy on- call
Walnut Creek Nature Park	1-3 yd trash 3x week
Big Dalton Transfer Station	1-40 yd roll off (Green Waste) on-call
Bus Shelter Trash Cans	92 containers at bus stops picked up and emptied every Friday
Ramona Shopping Center	15 containers emptied by hand and the liners provided and replaced three times a week
MetroLink, Pacific & Bogart	14 containers emptied by hand and the liners provided and replaced three times a week

EXHIBIT C

EXAMPLE RATE ADJUSTMENT METHODOLOGY

The percent change in the current 12-month average index over prior 12-month average index of the Garbage and Trash Collection CPI-U, US City Average, not seasonally adjusted, CUUR0000SEHG02.
Current Average = (Sum of the indices for the 12-months ending the current March) / 12
Prior Average = (Sum of the indices for the 12-months ending the prior March) / 12
((Current Average – Prior Average) / Prior Average) X 100 = Percentage Change%
Current Net Rate + (Current Net Rate X Percentage Change) = New Net Rate

Residential Rates: New Net Rate + AB939 = New Gross Rate
Commercial and RO Rates: New Net Rate + (New Net Rate X 3%) = New Gross Rate

EXHIBIT D

INSURANCE PROVISIONS

Franchisee shall carry the following types and levels of insurance:

1. Comprehensive General Liability Insurance. Throughout the Term of this Agreement, Franchisee shall keep or cause to be kept in full force and effect, for the mutual benefit of City and Franchisee, comprehensive broad form general public liability insurance against claims and liability for personal injury, death or property damage arising from Franchisee's operations hereunder, said liability insurance shall be a minimum of Five Million Dollars ($5,000,000). Such insurance shall be carried only in responsible insurance companies licensed to do business in the State of California. Franchisee shall pay all premiums therefor, without contribution by the City. All such policies shall contain language that:

(i) the insurer waives the right of subrogation against City and against City's elected officials, officers, employees, agents, and representatives for losses which arise from work performed by Franchisee for the City under this Agreement;

(ii) the insurance shall act for each insured, as though a separate policy had been written for each. This, however, shall not act to increase the limit of liability of the insuring company;

(iii) the policies are primary and non-contributing with any insurance that may be carried by City; and

(iv) they cannot be canceled or materially changed except upon thirty (30) days prior written notice (ten (10) days in the event of cancellation for nonpayment) by the insurer to City. In the event of any such cancellation or material change in such policy of insurance, then Franchisee shall provide the City another certificate of insurance carrier that the insurance required herein is in full force and effect. Insurance carrier shall furnish to the City by direct mail with certificates of insurance showing that such insurance is in full force and effect, and City is named as additional insured with respect to this Agreement and the obligations of Franchisee hereunder.

Franchisee agrees to furnish City copies of all certificates and endorsements evidencing the insurance. Franchisee further agrees all such policies shall name City, its elected officials, officers, agents and employees as additional insureds. Franchisee may effect for its own account insurance not required under this Agreement.

The limits of the insurance coverage shall be subject to review by the Chief Executive Officer every year and may be modified at that time by the City upon a demonstration of reasonable need, as a change in service in accordance with Section 5.1.2(b).

2. Workers' Compensation Insurance. Franchisee shall, at Franchisee's sole cost and expense, maintain a policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both Franchisee and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Franchisee in the course of carrying out the work or services contemplated in this Agreement. Endorsements that implement the required coverage shall be filed and maintained with the City. The policy providing coverage shall be amended to provide that the insurance shall not be canceled, except after thirty (30) days prior written notice (ten (10) days in the event of cancellation for non-payment) by certified mail, return receipt requested, has been given to City. The policy shall also be amended to waive all rights of subrogation against the City, its elected or appointed officials, employees, or agents for losses which arise from work performed by Franchisee for the City under this Agreement.

3. Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (i) bodily injury liability limits of One Million Dollars ($1,000,000.00) per person and Two Million Dollars ($2,000,000.00) per occurrence and property damage liability limits of One Million Dollars ($1,000,000.00) per occurrence and $2,000,000.00 in the aggregate or (ii) combined single limit liability of Two Million Dollars ($2,000,000.00). The policy shall include coverage for owned, non-owned, leased and hired cars.

4. Umbrella Insurance. Umbrella coverage to bring total aggregate insurance coverage for all underlying insurance coverage to Twenty Million Dollars ($20,000,000.00).

5. No Limitation. Franchisee agrees that the provisions of Article 12 and this Exhibit D shall not be construed as limiting in any way the extent to which Franchisee may be held responsible for the payment of damages to any persons or property resulting from Franchisee's activities or the activities of any person or persons for which Franchisee is otherwise responsible.

6. Rating. The insurance policies required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California rated AVII or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class IV or better, unless such requirements are waived by the Risk Manager of the City.

7. Primary Insurance. The insurance policies shall be considered primary insurance as respects any other valid and collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it. The insurance policies shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company.

8. Changes in Market. In the event the Chief Executive Officer determines that (i) the market conditions creates an increased or decreased risk of loss to City, (ii) greater insurance coverage is required due to the passage of time or (iii) changes in the insurance industry require different coverages be obtained, Franchisee agrees that the minimum limits of any insurance policy required to be obtained by Franchisee may be changed accordingly upon receipt of written notice from the Risk Chief Executive Officer.