CITY OF FRESNO
City Clerk's Office (Original)

NON-EXCLUSIVE FRANCHISE AGREEMENT

BETWEEN

THE CITY OF FRESNO

AND

FNF Roll off Service

FOR

ROLL-OFF COLLECTION SERVICES

April 25, 2011

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AND

F-N-F Roll-off Service

FOR ROLL-OFF COLLECTION SERVICES

This non-exclusive franchise agreement (Agreement) is made and entered into this 25 day of April, 20 11, by and between the City of Fresno, a municipal corporation, (City) and Fernando Leanos (Contractor.)

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1
DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

"C&D" means Construction and Demolition Debris.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"State" means the State of California.

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

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

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

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

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

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

2.1 REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3
TERM OF AGREEMENT

3.1 EFFECTIVE DATE

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

3.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

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

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

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

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

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

3.3 INITIAL TERM

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

3.4 OPTION TO EXTEND

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

ARTICLE 4
SCOPE OF AGREEMENT

4.1 SCOPE OF AGREEMENT

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

The Contractor shall be responsible for the following services:

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

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

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

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

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

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

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

H. Complying with Applicable Law.

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

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

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

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

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

4.2 LIMITATIONS TO SCOPE

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

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

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

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

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

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

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

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

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

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

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

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

4.5 AGREEMENT CONSISTENT WITH APPLICABLE LAW

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

4.6 OWNERSHIP OF MATERIALS

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

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

4.7 NOTIFICATION TO CITY OF NON-FRANCHISED HAULERS

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

ARTICLE 5
COLLECTION, PROCESSING, AND DISPOSAL SERVICES

5.1 COLLECTION

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

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

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

5.2 PROCESSING AND MARKETING SERVICES

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

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

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

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

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

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

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

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

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

5.3 DIVERSION REQUIREMENT

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

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

5.4 DISPOSAL

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

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

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

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

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

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

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

5.5 BILLING

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

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

5.6 CUSTOMER SERVICE

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

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

6.1 OPERATING DAYS, HOURS, AND SCHEDULES

A. **Days and Hours of Collection**

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

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

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

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

6.2 COLLECTION STANDARDS

6.2.1 Instructions to Customer

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

6.2.2 Care of Private Property

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

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

6.2.3 Litter Abatement

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

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

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

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

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

6.2.4 Noise

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

6.3 VEHICLE REQUIREMENTS

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

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

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

D. **Cleaning and Maintenance**

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

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

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

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

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

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

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

6.4 ROLL-OFF CONTAINER REQUIREMENTS

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

B. **Specifications**

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

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

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

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

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

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

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

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

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

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

6.5 PERSONNEL

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

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

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

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

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

6.6 HAZARDOUS WASTE INSPECTION AND HANDLING

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

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

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

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

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

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

6.7 NON-DISCRIMINATION

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

6.8 COMMUNICATION AND COOPERATION WITH CITY

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

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

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

ARTICLE 7
RECORD KEEPING AND REPORTING

7.1 GENERAL

7.1.1 Maintenance of Records

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

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

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

7.1.2 Retention of Records

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

7.1.3 Inspection of Records

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

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

7.1.4 Record Security

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

7.2 RECORDS

7.2.1 Financial and Operational Records

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

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

A. Customer account information and billing records;

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

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

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

E. Residue levels of Processed or Composted materials.

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

G. End use and markets for recovered materials.

Contractor shall make records available to the City upon request.

7.2.2 Customer Records

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

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

7.2 RECORDS

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A. Customer account information and billing records;

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

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

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

E. Residue levels of Processed or Composted materials.

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

G. End use and markets for recovered materials.

Contractor shall make records available to the City upon request.

7.2.2 Customer Records

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

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

7.2.3 CERCLA Defense Records

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

7.3 GENERAL REPORTING REQUIREMENTS

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

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

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

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

7.4 MONTHLY REPORT

The monthly report shall present the following information.

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

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

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

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

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

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

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

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

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

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

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

7.5 AB 939 COUNTY SURCHARGE REPORTING

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

ARTICLE 8
FRANCHISE FEES AND OTHER FEES

8.1 GENERAL

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

8.2 FRANCHISE FEE

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

8.3 OTHER FEES

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

8.4 ADJUSTMENT TO FEES

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

8.5 PAYMENT SCHEDULE AND LATE FEES

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

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

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

8.6 OVERPAYMENT OF FEES

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

8.7 NON-CITY FEES; AB 939 COUNTY SURCHARGE

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

ARTICLE 9
CONTRACTOR'S COMPENSATION AND RATES

9.1 CONTRACTOR'S COMPENSATION

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

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

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

9.2 CITY'S RIGHT TO SET MAXIMUM RATES

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

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

9.3 CONTRACTOR'S RATES

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

ARTICLE 10
INDEMNITY AND INSURANCE

10.1 INDEMNIFICATION

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

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

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

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

10.2 INSURANCE

10.2.1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

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

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

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

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

10.2.2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

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

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

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

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

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

10.2.3 Deductibles and Self-Insured Retentions

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

10.2.4 Other Insurance Provisions

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

A. General Liability and Automobile Liability Coverages

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

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

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

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

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

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

10.2.5 Acceptability of Insurers

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

10.2.6 Verification of Coverage

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

10.2.7 Required Endorsements

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

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

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

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

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

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

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

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

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

10.2.8 Delivery of Proof of Coverage

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

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

10.2.9 Other Insurance Requirements

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

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

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

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

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

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

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

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

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

ARTICLE 11
DEFAULT AND REMEDIES

11.1 EVENTS OF DEFAULT

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

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

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

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

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

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

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

11.2 RIGHT TO TERMINATE UPON DEFAULT

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

11.3 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE

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

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

11.4 LIQUIDATED DAMAGES

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

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

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

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

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

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

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

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

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

The formula for annual adjustment is as follows:

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

For example:

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

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

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

11.5 DIVERSION NON-PERFORMANCE

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

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

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

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

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

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

11.6 CONDITIONS UPON TERMINATION

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

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

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

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

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

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

ARTICLE 12
OTHER AGREEMENTS OF THE PARTIES

12.1 RELATIONSHIP OF PARTIES

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

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

12.2 PERMITS AND LICENSES

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

12.3 COMPLIANCE WITH LAW

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

12.4 GOVERNING LAW

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

12.5 JURISDICTION

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

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

12.6 BINDING ON SUCCESSORS

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

12.7 ASSIGNMENT

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

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

12.8 PARTIES IN INTEREST

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

12.9 WAIVER

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

12.10 NOTICE PROCEDURES

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

A. If to City:

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

B. If to Contractor:

Fernando Leanos
ENF Rolloff Service
10420 E. Manning Ave.
Selma, CA 93662

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

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

12.11 REPRESENTATIVES OF THE PARTIES

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

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

12.12 CRIMINAL ACTIVITY OF CONTRACTOR

12.12.1 Criminal Activity

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

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

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

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

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

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

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

6. Violation of securities laws; and

7. Felonies.

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

12.12.2 Notice

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

12.12.3 Contractor's Cure

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

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

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

12.12.4 Transfer and Hiring

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

12.12.5 City's Remedy

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

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

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

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

12.13 ACKNOWLEDGMENT OF PUBLIC RESOURCES CODE SECTION 49520 NOTICE

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

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

ARTICLE 13
MISCELLANEOUS AGREEMENTS

13.1 ENTIRE AGREEMENT

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

13.2 SECTION HEADINGS

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

13.3 REFERENCES TO LAWS

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

13.4 INTERPRETATION

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

13.5 PRONOUNS AND PLURALS; TENSE

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

13.6 TEXT TO CONTROL

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

13.7 AMENDMENT

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

13.8 SEVERABILITY

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

13.9 COUNTERPARTS

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

13.10 EXHIBITS

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

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

CITY OF FRESNO
A Municipal Corporation

Director

APPROVED AS TO FORM:

City Attorney Chief Assistant

Risk Manager

ATTEST:

City Clerk

CONTRACTOR

Fernando Leanos
Name

Owner
Title

10420 E. Manning Ave
Address

Selma CA 93662
City

100984
Business License

EXHIBIT A

SCHEDULE FOR LIQUIDATED DAMAGES

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

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

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

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

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

Contractor

Initial Here: FL

City

Initial Here: BW

EXHIBIT B
SECRETARY'S CERTIFICATION

The undersigned, being the Secretary of F N F Rolloff Service, a
Company Name
California corporation ("the Company"), do hereby certify that the following resolution was adopted by the Board of Directors of the Company and that such resolution has not been amended, modified or rescinded and is in full force and effect as of the date hereof:

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

Dated: April 25, 2011

Fernando Leanos
Signature

Owner
Title

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EXHIBIT C

STATEMENT OF APPLICANT'S UNDERSTANDING AND REPRESENTATIONS

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

Fernando Leanos
Print Name

April 25, 2011
Date

Owner
Title

F-N-F Roll-off Service
Company Name

Fernando Leanos
Signature

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EXHIBIT D

APPROVED PROCESSING AND RESIDUE DISPOSAL FACILITIES

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

	Approved C&D Processing Site	Approved Organics Processing Site	
Facility name	Sun Set Wastepaper Inc	West Coast Waste	Green Valley Recycling
Facility address	2721 S. Elm Ave. Fresno, CA 93706	3077 Golden State Frontage Rd. Fresno 93725	2365 E. North Ave Fresno 93725
SWIS number	10-AA-0188	10-AA-0197	10-AA-0199
Owner	Sunset Waste Holding LLC	Daniel Sevmian	Mike Kochergen
Operator	Sunset Waste Holding LLC	West Coast Waste	Green Valley Recycling

	Approved Recyclables Processing Site	Approved Disposal Site (Applicable for Residue Only)*
Facility name	Smurfit-Stone Container Corp	Sun Set Waste Paper Inc
Facility address	24 S. Thorne Ave Fresno, CA 93706	2721 S. Elm Ave Fresno CA 93706
SWIS number		10-AA-0188
Owner	Smurfit-Stone Container	Sunset Waste Holding LLC
Operator		Sunset Waste Holding

	Approved Recyclables Processing Site		Approved Disposal Site (Applicable for Residue Only)*
Facility name	Bairos Recycling	Calaveras Material	American Avenue Disposal Site
Facility address	2788 S. Orange Fresno, 93725	2175 E. Central Fresno 9325	18950 W. American Ave. Tranquility CA 93668
~~SWIS number~~	RC2560		10-AA-0009
Owner	Al Bairos		County of Fresno
Operator	Bairo 3	Calaveras Material	County of Fresno Planning & Res. Mgmt.

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

Contractor

Initial Here: F.L.

City

Initial Here: BW