



# AGENDA

Special Meeting of the  
**Scotts Valley City Council**  
**REMOTE ACCESS ONLY**  
**Date: September 29, 2021**  
**Time: 7:00 pm**

CONTACT INFORMATION	MEETING LOCATION	POSTING
City of Scotts Valley 1 Civic Center Drive Scotts Valley, CA 95066 (831) 440-5600	Zoom Videoconference <a href="https://us02web.zoom.us/j/81159004568">https://us02web.zoom.us/j/81159004568</a>  <i>See information below for how to participate.</i>	The agenda was posted 9-24-21 at City Hall and on the Internet at <a href="http://www.scottsvalley.org">www.scottsvalley.org</a> .

## PUBLIC ADVISORY REGARDING COVID-19 AND PUBLIC PARTICIPATION

Consistent with Executive Order No. N-29-20 issued by Governor Newsom on March 17, 2020, and the County of Santa Cruz Health Services Agency Shelter In Place Public Health Order dated March 31, 2020, this regular meeting of the City Council will be conducted through videoconference. Elected Officials and City Staff Members will be participating remotely via videoconference.

### Public Participation:

The meeting will be available on Zoom. For those wishing to participate via Zoom you can join the following ways:

- Join from a PC, Mac, iPad, iPhone or Android device:  
Please click this URL to join. <https://us02web.zoom.us/j/81159004568>
- Or iPhone one-tap:  
+16699009128,,88999122100# US (San Jose)  
+12532158782,,88999122100# US (Tacoma)
- Or join by phone:  
Dial(for higher quality, dial a number based on your current location):  
US: +1 669 900 9128 or +1 253 215 8782 or +1 346 248 7799 or +1 646 558 8656  
or +1 301 715 8592 or +1 312 626 6799

Webinar ID: 811 5900 4568

You will be given opportunities to provide public comment at the appropriate times throughout the meeting via Zoom. If you are participating via dial-up only, use \*9 to raise your hand at the requested time.

Date: September 29, 2021

**How to comment via Zoom:**

1. At the appropriate times during the meeting for public comment, on items not on the agenda, and on specific agenda items, the Mayor will announce that public comment will be accepted. Our usual time limits of 3 minutes per individual, or 5 minutes for an individual who is representing a group of three or more, will apply. Please note that per our standard practice, this is not a question and answer time, but simply a time for you to provide your comments to the Council.
2. There is an option on Zoom to raise your hand. Please click on this option when the Mayor announces that public comment will be taken. Zoom places people in line automatically. If you are participating via dial-up, you can raise your hand at the appropriate time by pressing \*9. When it is your turn, the City Clerk will unmute you, and you will be able to make your comments based on the above time frames. Once your time is up, you will once again be muted and the next person in line will be given their opportunity to speak.

**How to comment via email:**

1. Members of the public may provide public comment by sending comments to the City Clerk via email at [cityhall@scottsvally.org](mailto:cityhall@scottsvally.org).
2. Additional materials and emails must be received by 5:30 pm the day of the meeting and will be distributed to agenda recipients prior to the meeting.
3. Emails received after 5:30 pm the day of the meeting will not be included in the record.

ELECTED OFFICIALS	CITY STAFF MEMBERS
Derek Timm, Mayor Jim Reed, Vice Mayor Jack Dilles, Council Member Randy Johnson, Council Member Donna Lind, Council Member	Brian Haddix, Interim City Manager Kirsten Powell, City Attorney Steve Walpole, Chief of Police Taylor Bateman, Community Development Director Casey Estorga, Administrative Services Director Chris Lamm, Public Works Director/City Engineer Tracy Ferrara, City Clerk

**MOMENT OF SILENCE**

**ROLL CALL**

**PUBLIC COMMENT TIME**

This is the opportunity for individuals to make and/or submit written or oral comments to the Council on any items within the purview of the Council, which are NOT part of the Agenda. No action on the item may be taken, but the Council may request the matter be placed on a future agenda.

**ALTERATIONS TO CONSENT AGENDA**

Council can remove or add items to the Consent Agenda.

**CONSENT AGENDA**

The Consent Agenda is comprised of items which appear to be non-controversial. Persons wishing to speak on any items may do so raising their hand to be recognized by the Mayor.

- A. Authorize the Interim City Manager to enter into the Amended and Restated Garbage, Recycling, Organics, Food Waste, Yard Waste and Construction and Demolition Debris Services Franchise Agreement with Green Waste Recovery, Inc.
  
- B. Approve Resolution No. 2005 approving application for grant funds to the Santa Cruz County Regional Transportation Commission for the Granite Creek Overpass Roadway, Bicycle and Pedestrian Improvements Project

**ADJOURNMENT**

**NOTICE**

The City of Scotts Valley does not discriminate against persons with disabilities. The City Council Chambers is an accessible facility. If you wish to attend a City Council meeting and require assistance such as sign language, a translator, or other special assistance or devices in order to attend and participate at the meeting, please call the City Clerk's office at (831) 440-5602 five to seven days in advance of the meeting to make arrangements for assistance. If you require the agenda of a City Council meeting be available in an alternative format consistent with a specific disability, please call the City Clerk's Office. The California State Relay Service (TTY/VCO/HCO to Voice: English 1-800-735-2929, Spanish 1-800-855-3000; or, Voice to TTY/VCO/HCO: English 1-800-735-2922, Spanish 1-800-855-3000), provides Telecommunications Devices for the Deaf and Disabled and will provide a link between the TDD caller and users of telephone equipment.

**PROCEDURAL INFORMATION FOR THE PUBLIC**

**THE FOLLOWING IS THE PROCEDURE COUNCIL SHOULD TAKE IN APPROVAL OF A RESOLUTION:**

1. Move the Resolution number for approval.
2. Second the motion.
3. Vote by body, a roll call vote is not required.

**THE FOLLOWING IS THE PROCEDURE COUNCIL SHOULD TAKE IN INTRODUCTION/ADOPTION OF AN ORDINANCE:**

1. Move the Ordinance number for introduction (or adoption).
2. Move the Ordinance be introduced by title only and waive the reading of the text.
3. Read the Ordinance title.
4. Second the motion.
5. Vote by body, a roll call vote is not required.

**THE FOLLOWING IS THE PROCEDURE COUNCIL SHOULD TAKE IN PUBLIC COMMENT/PUBLIC HEARINGS:**

Unless otherwise determined by the presiding officer of the meeting:

1. Three minutes allowed per individual to speak.
2. Five minutes allowed per individual representing a group of three or more.



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## **City of Scotts Valley CITY COUNCIL STAFF REPORT**

**DATE:** September 29, 2021

**TO:** Honorable Mayor and City Council

**FROM:** Kirsten Powell, City Attorney

**SUBJECT: AMENDED AND RESTATED GARBAGE, RECYCLING, ORGANICS, FOOD WASTE, YARD WASTE AND CONSTRUCTION AND DEMOLITION DEBRIS SERVICES FRANCHISE AGREEMENT WITH GREEN WASTE**

### **SUMMARY OF ISSUE**

#### **Background**

In 2016, Governor Brown signed SB 1383. The primary goals of SB 1383 are to reduce organic waste disposed in landfills 50% by 2020 and 75% by 2025 (2014 baseline), and to reach recovery of 20% of edible food that would otherwise be disposed of in landfills by 2025. To achieve these goals, SB 1383 requires each jurisdiction to take action in the following areas:

- Capturing Organics that would other be disposed in landfills;
- Adopting model Ordinances;
- Providing Education and Outreach to promote new programs and incentivize customer participation;
- Implementing Contamination Monitoring programs;
- Procuring Organic Materials (compost) for local use;
- Participating in Edible Food Recovery programs; and,
- Establishing Compliance Reporting.

Non-compliant jurisdictions will be assessed penalties. On November 3, 2020, the Office of Administrative Law approved the final SB 1383 regulations.

#### **Current Contract**

On December 16, 2009, the City granted a franchise to Green Waste Recovery, Inc. ("Green Waste") for the collection of refuse, recycling, yard waste and construction and demolition debris (the "Franchise"). The term of the Franchise expired January 31, 2018. On January 19, 2011, the Franchise was amended to extend the term until January 31, 2022. A second amendment to the Franchise was entered into on July 20, 2011, which provided for yard waste collection for multi-family units and adjusted the rate calculation.

In order to comply with SB 1383, it is necessary to further amend the Franchise to include the collection of organics, require reporting and monitoring, and other mandates required by SB 1383.

**Contract Amendment**

This amendment includes the following major changes:

- Updates to definitions and language to provide organic materials collection for all customers;
- Extension of the term through June 30,2030;
- Green Waste to purchase food pails and distribute to requesting single-family and multi-family generators;
- Updated container colors to comply with SB 1383;
- Route reviews by Green Waste to review a selection of Customer’s containers and document contamination for subsequent noticing to the individual Customer if determined to be out of compliance;
- Reporting to maintain an accurate and up-to-date Implementation Record for CalRecycle;
- Public education requirements for SB 1383; and,
- Additional liquidated damages for SB 1383 specific compliant requirements.

Previous programs that will continue under the amended agreement include bulky pick ups, spring and fall clean ups, collection service at 4 major community events per year and Christmas tree pick ups.

The proposed residential rates are as follows:

<b>Cart Size</b>	<b>Current Rate (01/01/2020)</b>	<b>New Rate (07/01/2021)</b>
10 Gallon	\$ 15.18	\$ 17.15
<i>Care Discounted</i>	\$ 12.14	\$ 13.72
20 Gallon	\$ 16.46	\$ 18.60
<i>Care Discounted</i>	\$ 13.17	\$ 14.88
35 Gallon*	\$ 22.84	\$ 25.81
<i>Care Discounted</i>	\$ 18.27	\$ 20.65
64 Gallon	\$ 45.56	\$ 51.48
96 Gallon	\$ 68.27	\$ 77.14

\*most commonly used

The rates will be adjusted annually by the CPI. The commercial rates are attached as Attachment 1.

**FISCAL IMPACT**

As a condition to granting the Franchise to Green Waste, Green Waste is required to pay a franchise fee which generates approximately \$650,000.00 per year for the General Fund.

**STAFF RECOMMENDATION**

It is recommended that the City Council authorize the Interim City Manager to enter into the Amended and Restated Garbage, Recycling, Organics, Food Waste, Yard Waste and Construction and Demolition Debris Services Franchise Agreement with Green Waste Recovery, Inc.

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**APPENDIX B-2**  
**MONTHLY SERVICE RATES - COMMERCIAL GARBAGE**

Garbage CARTS			Current Rate	Rate Components		New Rate (01/01/2022)
Quantity	Size	Frequency		Service	Disposal	
1	64-gal	1x/week	\$ 45.56	\$ 45.41	\$ 6.07	\$ 51.48
1	96-gal	1x/week	\$ 68.27	\$ 68.04	\$ 9.10	\$ 77.14

Each Business subscribing to Garbage service in Carts only will receive one (1) 64-gallon Recyclables Cart and one (1) 64-gallon Organics Cart collected 1x/week on the same day as Garbage for no additional charge.

Garbage BINS			Current Rate	Rate Components		New Rate (01/01/2022)
Quantity	Cart Size	Frequency		Service	Disposal	
1	1 cu yd	1x/week	\$ 149.89	\$ 149.38	\$ 19.99	\$ 169.37
1	1 cu yd	2x/week	\$ 259.34	\$ 258.47	\$ 34.58	\$ 293.05
1	1 cu yd	3x/week	\$ 442.95	\$ 441.47	\$ 59.06	\$ 500.54
1	1 cu yd	4x/week	\$ 573.56	\$ 571.64	\$ 76.48	\$ 648.12
1	1 cu yd	5x/week	\$ 729.74	\$ 727.30	\$ 97.30	\$ 824.61
1	1 cu yd	6x/week	\$ 873.12	\$ 870.20	\$ 116.42	\$ 986.62
1	2 cu yd	1x/week	\$ 247.19	\$ 246.37	\$ 32.96	\$ 279.33
1	2 cu yd	2x/week	\$ 466.00	\$ 464.44	\$ 62.14	\$ 526.58
1	2 cu yd	3x/week	\$ 669.55	\$ 667.31	\$ 89.28	\$ 756.59
1	2 cu yd	4x/week	\$ 868.96	\$ 866.06	\$ 115.87	\$ 981.92
1	2 cu yd	5x/week	\$ 1,104.01	\$ 1,100.32	\$ 147.21	\$ 1,247.53
1	2 cu yd	6x/week	\$ 1,321.27	\$ 1,316.85	\$ 176.18	\$ 1,493.03
1	3 cu yd	1x/week	\$ 334.92	\$ 333.80	\$ 44.66	\$ 378.46
1	3 cu yd	2x/week	\$ 619.83	\$ 617.76	\$ 82.65	\$ 700.41
1	3 cu yd	3x/week	\$ 954.77	\$ 951.58	\$ 127.31	\$ 1,078.89
1	3 cu yd	4x/week	\$ 1,239.70	\$ 1,235.56	\$ 165.30	\$ 1,400.86
1	3 cu yd	5x/week	\$ 1,574.70	\$ 1,569.44	\$ 209.97	\$ 1,779.41
1	3 cu yd	6x/week	\$ 1,884.63	\$ 1,878.34	\$ 251.30	\$ 2,129.63
1	4 cu yd	1x/week	\$ 404.66	\$ 403.31	\$ 53.96	\$ 457.27
1	4 cu yd	2x/week	\$ 751.15	\$ 748.64	\$ 100.16	\$ 848.80
1	4 cu yd	3x/week	\$ 1,155.83	\$ 1,151.97	\$ 154.12	\$ 1,306.09
1	4 cu yd	4x/week	\$ 1,502.31	\$ 1,497.29	\$ 200.32	\$ 1,697.61
1	4 cu yd	5x/week	\$ 1,907.03	\$ 1,900.66	\$ 254.28	\$ 2,154.94
1	4 cu yd	6x/week	\$ 2,282.59	\$ 2,274.96	\$ 304.36	\$ 2,579.33
1	6 cu yd	1x/week	\$ 589.57	\$ 587.60	\$ 78.61	\$ 666.22
1	6 cu yd	2x/week	\$ 1,095.25	\$ 1,091.60	\$ 146.04	\$ 1,237.64
1	6 cu yd	3x/week	\$ 1,684.81	\$ 1,679.18	\$ 224.65	\$ 1,903.83
1	6 cu yd	4x/week	\$ 2,190.53	\$ 2,183.21	\$ 292.08	\$ 2,475.30
1	6 cu yd	5x/week	\$ 2,780.16	\$ 2,770.88	\$ 370.71	\$ 3,141.58
1	6 cu yd	6x/week	\$ 3,271.93	\$ 3,261.00	\$ 436.28	\$ 3,697.28
1	8 cu yd	1x/week	\$ 743.14	\$ 740.66	\$ 99.09	\$ 839.75
1	8 cu yd	2x/week	\$ 1,406.88	\$ 1,402.19	\$ 187.59	\$ 1,589.78
1	8 cu yd	3x/week	\$ 2,086.04	\$ 2,079.07	\$ 278.15	\$ 2,357.23

1	8 cu yd	4x/week	\$ 3,226.80	\$ 3,216.03	\$ 430.26	\$ 3,646.29
1	8 cu yd	5x/week	\$ 3,797.63	\$ 3,784.95	\$ 506.38	\$ 4,291.32

Garbage Front-Load Compactor			Current Rate	Rate Components		New Rate (01/01/2022)
Quantity	Size	Frequency		Service	Disposal	
1	1 cu yd	1x/week	<i>n/a</i>	\$ 149.38	\$49.96	\$ 199.35
1	1 cu yd	2x/week	<i>n/a</i>	\$ 258.47	\$86.45	\$ 344.92
1	1 cu yd	3x/week	<i>n/a</i>	\$ 441.47	\$147.66	\$ 589.13
1	2 cu yd	1x/week	<i>n/a</i>	\$ 246.37	\$82.40	\$ 328.77
1	2 cu yd	2x/week	<i>n/a</i>	\$ 464.44	\$155.34	\$ 619.78
1	2 cu yd	3x/week	<i>n/a</i>	\$ 667.31	\$223.19	\$ 890.51
1	3 cu yd	1x/week	<i>n/a</i>	\$ 333.80	\$111.64	\$ 445.44
1	3 cu yd	2x/week	<i>n/a</i>	\$ 617.76	\$206.62	\$ 824.39
1	3 cu yd	3x/week	<i>n/a</i>	\$ 951.58	\$318.27	\$ 1,269.86
1	4 cu yd	1x/week	<i>n/a</i>	\$ 403.31	\$134.89	\$ 538.21
1	4 cu yd	2x/week	<i>n/a</i>	\$ 748.64	\$250.39	\$ 999.03
1	4 cu yd	3x/week	<i>n/a</i>	\$ 1,151.97	\$385.30	\$ 1,537.26

**Excess Material Pick-up (Non-Recurring)**

Material Type	Per Collection	Plus Dismount Fee	Regular Service Day	Non-Service Day
Extra Set-Out (Non-GWR Container)*	\$ 6.44	\$ 3.50	<i>n/a</i>	+ \$30.00
Extra Collection (GWR Container)	25% of 1x/wk	\$ 3.50	<i>n/a</i>	Trip Fee

*\*Charged in 32-Gallon Increments*

**Bulky Item Collection**

Material Type	Collection Charge	Containing CFCs	Regular Service Day	Non-Service Day
Bulky Good	\$ 45.00/item	<i>n/a</i>	<i>n/a</i>	+ \$30.00 Trip Fee
Appliances	\$ 30.00/item	+ \$10.00/ea	<i>n/a</i>	
Carpet/Padding	\$ 1.00/sq.ft.	<i>n/a</i>	<i>n/a</i>	

Description	Charge	Frequency
Bin Locks	\$ 30.00	/each
Re-Start Fee	\$ 25.00	/occurrence

**APPENDIX B-2**  
**MONTHLY SERVICE RATES - COMMERCIAL RECYCLING**

Recycling CARTS			Current Rate	Rate Components		New Rate (01/01/2022)
Quantity	Size	Frequency		Service	Processing	
1	64-gal	1x/week	n/a	\$ 3.30	\$ 2.36	\$ 5.66
1	96-gal	1x/week	n/a	\$ 4.95	\$ 3.54	\$ 8.49

Recycling BINS			Current Rate	Rate Components		New Rate (01/01/2022)
Quantity	Cart Size	Frequency		Service	Processing	
1	1 cu yd	1x/week	n/a	\$ 10.86	\$ 7.77	\$ 18.63
1	1 cu yd	2x/week	n/a	\$ 18.79	\$ 13.44	\$ 32.24
1	1 cu yd	3x/week	n/a	\$ 32.10	\$ 22.96	\$ 55.06
1	1 cu yd	4x/week	n/a	\$ 41.56	\$ 29.73	\$ 71.29
1	1 cu yd	5x/week	n/a	\$ 52.88	\$ 37.82	\$ 90.71
1	1 cu yd	6x/week	n/a	\$ 63.27	\$ 45.26	\$ 108.53
1	2 cu yd	1x/week	n/a	\$ 17.91	\$ 12.81	\$ 30.73
1	2 cu yd	2x/week	n/a	\$ 33.77	\$ 24.15	\$ 57.92
1	2 cu yd	3x/week	n/a	\$ 48.52	\$ 34.70	\$ 83.23
1	2 cu yd	4x/week	n/a	\$ 62.97	\$ 45.04	\$ 108.01
1	2 cu yd	5x/week	n/a	\$ 80.00	\$ 57.22	\$ 137.23
1	2 cu yd	6x/week	n/a	\$ 95.75	\$ 68.49	\$ 164.23
1	3 cu yd	1x/week	n/a	\$ 24.27	\$ 17.36	\$ 41.63
1	3 cu yd	2x/week	n/a	\$ 44.92	\$ 32.13	\$ 77.05
1	3 cu yd	3x/week	n/a	\$ 69.19	\$ 49.49	\$ 118.68
1	3 cu yd	4x/week	n/a	\$ 89.84	\$ 64.26	\$ 154.09
1	3 cu yd	5x/week	n/a	\$ 114.11	\$ 81.62	\$ 195.73
1	3 cu yd	6x/week	n/a	\$ 136.57	\$ 97.69	\$ 234.26
1	4 cu yd	1x/week	n/a	\$ 29.32	\$ 20.97	\$ 50.30
1	4 cu yd	2x/week	n/a	\$ 54.43	\$ 38.93	\$ 93.37
1	4 cu yd	3x/week	n/a	\$ 83.76	\$ 59.91	\$ 143.67
1	4 cu yd	4x/week	n/a	\$ 108.87	\$ 77.87	\$ 186.74
1	4 cu yd	5x/week	n/a	\$ 138.20	\$ 98.85	\$ 237.04
1	4 cu yd	6x/week	n/a	\$ 165.41	\$ 118.31	\$ 283.73
1	6 cu yd	1x/week	n/a	\$ 42.72	\$ 30.56	\$ 73.28
1	6 cu yd	2x/week	n/a	\$ 79.37	\$ 56.77	\$ 136.14
1	6 cu yd	3x/week	n/a	\$ 122.09	\$ 87.33	\$ 209.42
1	6 cu yd	4x/week	n/a	\$ 158.74	\$ 113.54	\$ 272.28
1	6 cu yd	5x/week	n/a	\$ 201.47	\$ 144.10	\$ 345.57
1	6 cu yd	6x/week	n/a	\$ 237.11	\$ 169.59	\$ 406.70
1	8 cu yd	1x/week	n/a	\$ 53.85	\$ 38.52	\$ 92.37
1	8 cu yd	2x/week	n/a	\$ 101.95	\$ 72.92	\$ 174.88
1	8 cu yd	3x/week	n/a	\$ 151.17	\$ 108.13	\$ 259.29
1	8 cu yd	4x/week	n/a	\$ 233.84	\$ 167.26	\$ 401.09
1	8 cu yd	5x/week	n/a	\$ 275.20	\$ 196.84	\$ 472.05

**Excess Material Pick-up (Non-Recurring)**

<b>Material Type</b>	<b>Per Collection</b>	<b>Plus Dismount Fee</b>	<b>Regular Service Day</b>	<b>Non-Service Day</b>
Extra Set-Out (Non-GWR Container)*	\$ 0.71	\$ 3.50	<i>n/a</i>	+ \$30.00
Extra Collection (GWR Container)	25% of 1x/wk	\$ 3.50	<i>n/a</i>	Trip Fee

*\*Charged in 32-Gallon Increments*

**APPENDIX B-2**  
**MONTHLY SERVICE RATES - COMMERCIAL FOOD WASTE**

Food Waste CARTS			Current Rate (01/01/2020)	Rate Components		New Rate (01/01/2022)
Quantity	Size	Frequency		Service	Processing	
1	64-gal	1x/week	\$ 47.93	\$ 48.53	\$ 5.63	\$ 54.16
1	64-gal	2x/week	\$ 95.87	\$ 97.06	\$ 11.27	\$ 108.33
1	64-gal	3x/week	\$ 143.81	\$ 145.60	\$ 16.90	\$ 162.50
1	64-gal	4x/week	\$ 191.74	\$ 194.14	\$ 22.53	\$ 216.67

Food Waste BINS			Current Rate	Rate Components		New Rate (01/01/2022)
Quantity	Cart Size	Frequency		Service	Processing	
1	1 cu yd	1x/week	\$ 176.38	\$ 178.58	\$ 20.73	\$ 199.31
1	1 cu yd	2x/week	\$ 304.48	\$ 308.28	\$ 35.78	\$ 344.06
1	1 cu yd	3x/week	\$ 521.22	\$ 527.73	\$ 61.25	\$ 588.98
1	1 cu yd	4x/week	\$ 674.62	\$ 683.05	\$ 79.28	\$ 762.33
1	1.5 cu yd	1x/week	\$ 230.80	\$ 233.71	\$ 27.13	\$ 260.84
1	1.5 cu yd	2x/week	\$ 422.87	\$ 428.14	\$ 49.70	\$ 477.84
1	1.5 cu yd	3x/week	\$ 652.55	\$ 660.69	\$ 76.69	\$ 737.38
1	1.5 cu yd	4x/week	\$ 845.60	\$ 856.15	\$ 99.38	\$ 955.53

**Excess Material Pick-up (Non-Recurring)**

Material Type	Per Collection	Plus Dismount Fee	Regular Service Day	Non-Service Day
Extra Set-Out (Non-GWR Container)*	\$ 6.77	\$ 3.50	n/a	+ \$30.00
Extra Collection (GWR Container)	25% of 1x/wk	\$ 3.50	n/a	Trip Fee

\*Charged in 32-Gallon Increments

AMENDED AND RESTATED  
GARBAGE, RECYCLING, ORGANICS, FOOD WASTE, YARD WASTE  
AND CONSTRUCTION AND DEMOLITION DEBRIS  
SERVICES FRANCHISE AGREEMENT

THIS Franchise Agreement (the “Franchise”) is granted this \_\_\_th day of \_\_\_\_\_, 2021, by the City of Scotts Valley, a Municipal Corporation within the State of California (hereafter “City”) to GreenWaste Recovery, Inc., a California Corporation (hereafter “Franchisee”), with an effective date of \_\_\_\_\_, 2021, and an expiration date of June 30, 2030.

RECITALS:

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (“AB 939”) established a solid waste management process which requires cities and other local jurisdictions to implement source reduction, reuse and recycling as integrated waste management practices; and

WHEREAS, AB 939 authorizes and requires local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

WHEREAS, the City of Scotts Valley is obligated to protect the public health and safety of its residents and has determined that arrangements by waste haulers for the collection of Solid Waste should be made in a manner consistent with the protection of public health and safety; and

WHEREAS, the Franchisee has represented and warranted to the City that it has the experience, responsibility, and qualifications to conduct the services detailed herein for the collection, safe transportation and processing or disposal of Franchise Materials as described herein; and

WHEREAS, Public Resources Code Section 40059(a)(2) permits the City to impose terms and conditions on the award of a solid waste franchise if, in the opinion of the governing body, the public health, safety and well-being require the imposition of those terms and conditions; and

WHEREAS, the City Council of the City of Scotts Valley determines and finds that, the public interest, health, safety and well-being would be served if the Franchisee performs the solid waste handling services described herein for single family residences, multi-family dwellings and commercial service customers; and

WHEREAS, Franchisee has been providing Solid Waste collection services since 2007; and

WHEREAS, the City and Franchisee entered into that certain Exclusive Refuse, Recycling, Yard Waste and Construction and Demolition Material Franchise Agreement on December 16, 2009 with a term ending January 31, 2018 with options to extend the term of the Agreement; and

WHEREAS, the City and Franchisee entered into that certain First Amendment to the 2009 Agreement on January 19, 2011 to extend the term of the Agreement through January 31, 2022 and adjust rates; and

WHEREAS, Senate Bill 1383 (SB 1383) that was passed by the California legislature in 2016 established methane emission reduction targets in a statewide effort to reduce emissions of short lived climate pollutants by requiring local agencies to ensure their solid waste collection and processing systems promote the diversion of organic waste from landfills; and

WHEREAS, the City entered into that certain agreement with the Monterey Regional Waste Management District to receive and process organic waste, food waste, yard waste and construction and demolition debris; and

WHEREAS, City and Franchisee desire to amend and restate the December 16, 2009 agreement to continue services through June 30, 2030 to supersede any and all prior agreements for services; and

WHEREAS, continuation of Franchisee's services through June 30, 2030, coupled with the City's agreement with MRWMD, will allow the City to be compliant with the regulations imposed by the State of California under SB 1383.

NOW, THEREFORE, the City of Scotts Valley grants the Franchisee the Franchise described herein on the terms and conditions established hereby:

**ARTICLE I**  
**DEFINITIONS & INTERPRETATION**

**SECTION 1.1. DEFINITIONS.** The following capitalized names and terms shall have the meanings set forth below:

**"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.

**"Appendix"** means an appendix to this Franchise, as the same may be amended or modified from time to time in accordance with the terms hereof.

**"Applicable Law"** means any law, rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the Franchise Services; the Operating Assets; the siting, design, acquisition, permitting, construction, equipping, financing, ownership, possession, shakedown, testing, operation or maintenance of any of the Operating Assets; or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages), and further including the City Municipal Code and the County Integrated Waste Management Plan. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383 and corresponding regulations.

**"Bin"** means a receptacle meeting the requirements of Appendix A, for discarding Garbage, Recyclables, and/or Organics in a range of sizes set forth in Appendix A, or as hereafter agreed between the parties, provided by and/or serviced by the Franchisee.

**"Box"** means a receptacle meeting the requirements of Appendix A, for discarding Garbage, Recyclables, Organics and/or Construction and Demolition Debris in a range of sizes set forth in Appendix A, or as hereafter agreed between the parties, provided by and serviced by the Franchisee.

**"Bulky Goods"** means large and small household appliances, furniture, tires, carpets, mattresses and similar large items of Solid Waste. Bulky Goods shall not include Excluded Materials or commercial appliances or tires.

**"Cart"** means a receptacle meeting the requirements of Appendix A, for discarding Garbage, Recyclables, and/or Organics in a range of sizes set forth in Appendix A, or as hereafter agreed between the parties, provided by and serviced by the Franchisee.

**"Change in Law"** means any of the following events or conditions which have a material and adverse effect on the performance by the parties of their respective obligations under this Franchise (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management, operation or maintenance of the Operating Assets or other matters to which Applicable Law applies:

(1) The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Franchise Date of any Applicable Law; or

(2) The order or judgment of *any* Governmental Body, on or after the Franchise 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 Franchisee, 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 Scotts Valley, California.

**"City Manager"** means the City Manager of the City or his/her designee.

**"City Indemnified Parties"** has the meaning specified in Section 10.1 hereof.

**"City Facility"** means any building, park, right of way or other site owned, leased or used regularly and significantly by employees or contractors of the City of Scotts Valley that is not accessible to the public.

**"City Facility Containers"** means those Containers located at City Facilities and designated by the City for the collection Garbage, Recyclables, Organics, and/or Construction and Demolition Debris generated at City facilities.

**"City Manager"** means the City Manager for the City of Scotts Valley, California.

**"Commercial Customer"** means any person, including an owner of a multi-family building, who generates Solid Waste at and/or brings Solid Waste to Commercial Premises and subscribes to temporary or permanent Commercial Collection Services provided by the Franchisee pursuant to this Franchise.

**"Commercial Premises"** means any building or developed or undeveloped site in the Franchise Area, other than Residential Premises, from which any business, service, non-profit, governmental, institutional, commercial or industrial activity is conducted and Solid Waste is generated, including without limitation motels, hotels, recreational vehicle parks, restaurants, professional offices, clubhouses, places of entertainment, manufacturing plants and private schools.

**"Compactor"** means a receptacle meeting the requirements of Appendix A, for discarding Garbage, Recyclables, and/or Organics in a range of sizes set forth in Appendix A, or as hereafter agreed between the parties, that meets Franchisee's specifications for service that is serviced by the Franchisee.

**"Composting"** means the controlled biological decomposition of Organics.

**"Contamination"** means (i) the percentage by weight of Non-Recyclable Material in a load of Recyclables, and/or (ii) the percentage by weight of Non-Compostable Material in a load of

Organics.

**"Containers"** means Carts, Bins and Boxes provided by Franchisee to Customers and Compactors provided by Customer that meet Franchisee's collection specifications.

**"Customer"** means Residential Customer or Commercial Customer.

**"Customer Rates"** means the then-current Service Rates charged by Franchisee to Residential and Commercial Customers for Franchise Services. Initial Customer Rates are specified in Appendices B-1, B-2, and B-3.

**"Designated Composting Facility"** and **"Composting Facility"** means the facility or facilities designated by the City for the Composting of Organics, Food Waste and/or Yard Waste as specified in Section 4.8.A.

**"Designated C&D Facility"** and **"C&D Facility"** means the facility or facilities designated by the City for the Processing of C&D and/or Wood Waste as specified in Section 4.9.A.

**"Designated Disposal Site"** and **"Disposal Site"** means the facility or facilities designated by the City for the disposal of Garbage as specified in Section 4.7.A.

**"Designated Material Recovery Facility"** and **"Material Recovery Facility"** means the GreenWaste Material Recovery Facility located at 625 Charles Street in San Jose, CA 95112 or another facility or facilities mutually agreed upon between City and Franchisee in writing.

**"Designated Processing Facilities"** and **"Processing Facilities"** mean the Designated Composting Facility, the Designated Transfer Facility, the Designated Material Recovery Facility, and the Designated C&D Processing Facility.

**"Designated Transfer Facility"** and **"Transfer Facility"** means the GreenWaste Transfer Facility located at 375 Industrial Road in Watsonville, CA 95076 or another facility or facilities mutually agreed upon between City and Franchisee in writing.

**"Enclosure"** means a walled or fenced storage area for Containers that is only accessible by a door or gate.

**"Excluded Materials"** means (1) Hazardous Waste, (2) Medical Waste, (3) Qualified Household Hazardous Waste, (4) Self-hauled Waste, (5) Excluded Recyclable Materials, (6) Tires, (7) Dead animals and animal waste and remains from slaughterhouses or butcher shops, or (8) By-products of sewage treatment, including sludge, grit and screenings.

**"Fees-and-Costs"** means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and of any Legal Proceeding.

**"Franchise"** means the license and other rights enjoyed by, and obligations imposed upon, the Franchisee under this Agreement between the City of Scotts Valley and the Franchisee. Where the context so indicates, it may also refer to this Agreement.

**"Franchise Area"** is that geographic area comprising the city limits of the City of Scotts Valley, California.

**"Franchise Date"** means the date of execution of this Franchise by both parties hereto.

**"Franchisee"** means GreenWaste Recovery, Inc., and its successors and assigns permitted hereby.

**"Franchisee Operating Assets"** and **"Operating Assets"** means all real and personal property of any kind, which is owned, leased, managed or operated by or under contract to the Franchisee for providing the Franchise Services, including without limitation, containers, vehicles, transfer stations, processing facilities, maintenance and storage facilities, administrative facilities, and other equipment, machinery, parts, supplies and tools.

**"Franchise Construction and Demolition Debris"** and **"C&D"** means all those materials resulting from construction, renovation, remodeling, repair, or demolition operations relating to or resulting from a building, structure, pavement or other improvement, including, without limitation, Wood Waste, concrete, brick, bituminous concrete, rubble, wood and masonry, composition roofing and roofing paper, steel, and other metals such as copper. C&D also includes, without limitation, rocks, soils, tree remains and other Yard Waste which results from land clearing or land development operations in preparation for construction. C&D does not include Garbage, Food Waste, or Excluded Materials. The definition of C&D is subject to change based on the requirements of the Processing Facilities.

**"Franchise Food Waste"** and **"Food Waste"** means putrescible wastes including kitchen and table food wastes; food soiled paper, animal or vegetable wastes resulting from storage, preparation, cooking, processing, or handling of food or food stuffs that has been separated by the generator from other Solid Waste. Food Waste is a subset of Organics and does not include Garbage, Recyclable Materials, C&D or Excluded Materials. The definition of Food Waste is subject to change based on the requirements of the Processing Facilities

**"Franchise Materials"** means all Solid Waste generated in the Franchise Area including Franchise Garbage, Franchise Recyclables, Franchise Organics, Franchise Food Waste, Franchise Yard Waste and Franchise Construction and Demolition Debris; provided, however, that "Franchise Materials" shall not include Excluded Materials.

**"Franchise Recyclables"** and **"Recyclables"** means materials of the type normally accepted in curbside recycling collection programs in Central Coast region in California, which have been separated by the generator from other Solid Waste, but exclude Non-Recyclables. The list of accepted types of Recyclables ("Acceptable Recyclable") as of the Franchise Date are specified in Appendix C. The parties may, by mutual written agreement, add additional materials or remove materials from Appendix C. Recyclables may be either a mixed stream of commingled Acceptable Recyclables, or a stream consisting of a single type of Acceptable Recyclables (such as cardboard).

Recyclables does not include Garbage, Organics Yard Waste, Construction and Demolition Debris or Excluded Materials.

**“Franchise Garbage”** and **“Garbage”** means that portion of Franchise Materials which does not constitute Recyclables, Organics, Food Waste, Yard Waste, C&D or Excluded Materials.

**“Franchise Services”** means all of the rights, duties and obligations of the Franchisee hereunder.

**“Franchise Organics”** and **“Organics”** means that portion of Franchise Materials which is separated from other Franchise Materials for Composting, consisting of Yard Waste and Food Waste. Organics does not include Garbage, Recyclables, C&D or Excluded Materials. The definition of Organics is subject to change based on the requirements of the Processing Facilities.

**“Franchise Year”** means the twelve-month period year beginning each July 1 and ending on the following June 30.

**“Governmental Body”** means any Federal, State, county, city, local or regional, legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

**“Hazardous Waste”** means (1) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281; (2) the Toxic Substance Control Act (15 U.S.C. Section 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766; (3) the California Health and Safety Code, §25117 (West 1984 & Supp. 1991); (4) the California Public Resources Code, §40141; and (1) future additional or substitute federal, state or local laws pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; and (2) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40.

**“Insurance Requirement”** means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or any body having similar functions or by any insurance company, which has issued a policy with respect to the Operating Assets or the Franchise Services.

**“Legal Entitlement”** means all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Operating Assets or the performance of any obligation under this Franchise or the matters covered hereby.

**"Legal Proceeding"** means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Franchise.

**"Medical Waste"** means waste capable of producing an infection or pertaining to or characterized by the presence of pathogens, including without limitation certain waste generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals and medical testing labs.

**"Non-Compostables"** means those materials collected by Franchisee as part of the Organics and/or Wood Waste collection program and delivered to the Designated Composting Facility and that require Disposal because they are not accepted in the collection program.

**"Non-Recyclable Materials"** means those materials collected by Franchisee as part of a Recyclables collection program and delivered to the Designated Material Recovery Facility that require disposal because they are:

- 1) Not Acceptable Recyclable Materials pursuant to Appendix C, or
- 2) Acceptable Recyclable Materials but are:
  - a) Not free of food/liquid, or
  - b) Free of food/liquid but:
    - i. Are smaller than 2"-2.5" and, as a result, are not recoverable using industry-standard processing equipment or otherwise commercially reasonable methods, or
    - ii. Placed in a Container by the generator in a manner or condition that renders them unmarketable (e.g. contaminated with paint, mangled), or
    - iii. Where no commercially reasonable market exists for their disposition.

**"Processing"** and **"Process"** means the act of separating, sorting, cleansing, treating, reconstituting or otherwise preparing materials that are or would otherwise be disposed of in a landfill for return to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace. Processing shall also mean Composting where the context so indicates.

**"Premises"** means any Residential Premises or Commercial Premises.

**"Processing Fee Component"** means that component of the Customer Rate(s) that comprises Franchisee's costs to a facility or facilities to Process, dispose of and/or Transfer Franchise Materials collected, as specified in Section 7.1 and in the Service Rate Schedules in Appendices B-1, B-2, and B-3, and as may be adjusted from time to time as specified in Section 7.1.C.

**"Public Litter Containers"** means containers designated by the City for the collection of Garbage and/or Recyclables in public places and as agreed upon between City and Franchisee and as specified in Appendix C.

**“Qualified Household Hazardous Waste”** means waste materials determined by the State Integrated Waste Management Board, the Department of Health Services, the State Water Resources Control Board, or the Air Resources Board to be:

- 1) Of a nature that they must be listed as hazardous in State statutes and regulations; Toxic/ignitable/corrosive/reactive; and
- 2) Carcinogenic/mutagenic/teratogenic; which are discarded from households as opposed to businesses.
- 3) Qualified Household Hazardous Waste shall not include Hazardous Waste.

**"Residential Customer"** means any person who generates Solid Waste at and/or brings Solid Waste to Residential Premises and subscribes to Residential Service provided by the Franchisee pursuant to this Franchise.

**"Residential Premises"** means any building in the City used for or designated as a residential dwelling, including condominium projects, apartments, duplexes, townhouse projects, or mobile home parks.

**"Residue"** means materials which have been collected by Franchisee as part of Franchisee's Services but which remain after Processing.

**"Routing and Collection System"** means the routing and collection system as currently in use by the Franchisee to provide the Franchise Services, as it may be modified from time to time in accordance with Sections applicable to Franchise Garbage, Franchise Recyclables, Franchise Organics, and Franchisee Construction and Demolition Debris collection practices.

**"Self-Hauled Waste"** means Solid Waste collected and hauled by Self Haulers.

**"Self-Hauler"** means any person not engaged commercially in waste haulage who consolidates and hauls solid waste generated from their own residential, commercial or industrial premises generated through activities conducted solely by such person on that premise.

**"Service Fee Component"** means that component of the Customer Rate(s) that comprises Franchisee's costs to provide recurring or one-time collection services, exclusive of Processing costs, as specified in Section 7.1 and in the Service Rate Schedules in Appendices B-1, B-2 and B-3, and as may be adjusted from time to time as specified in Section 7.1.C.

**"Service Rate Schedule"** means the initial Service Rate Schedule attached hereto as Appendices B-1, B-2, and B-3, that may be a Rate comprised of Service Fee Component and a Processing Fee Component that together make up the Customer Rate(s), or a single Customer Rate without components, and as may be adjusted from time to time as specified in Section 7.1.C.

**"Solid Waste"** means all garbage, refuse, rubbish and other materials and substances discarded or rejected as being spent, useless, worthless or in excess to the generator thereof at the time of such discard or rejection and which are normally disposed of by or collected from residential (single family

and multi-family), commercial, industrial, governmental and institutional establishments, which are acceptable at Class III landfills under Applicable Law.

**"State"** means the State of California.

**"Term"** has the meaning specified in Article IX hereof.

**"Ton"** means a "short ton" of 2,000 pounds.

**"Uncontrollable Circumstance"** means only the following acts, events or conditions, whether affecting the Operating Assets, the City, or the Franchisee, to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Franchise (except for payment obligations), if such act, event or condition is beyond the reasonable control and is not also the result of the willful or negligent act, error or omission, or failure to exercise reasonable diligence, on the part of the party relying thereon as justification for not performing an obligation, or complying with any condition, required of such party under this Franchise; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party:

- 1) An "Act of God", including, hurricane, typhoon, landslide, lightning, earthquake, fire, explosion, flood (but not including reasonably anticipated weather conditions for the geographic area of the facility), pandemic; sabotage or similar occurrence; acts of a public enemy; extortion; war; blockade or insurrection;
- 2) A change in law;
- 3) The failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the Operating Assets are located to provide and maintain the disposal site, utilities, services, water and sewer lines and power transmission lines to the Operating Assets, which are required for the performance of the Franchise Services and which directly results in a delay or curtailment of the performance of the Franchise Services; and
- 4) Pre-emption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Operating Assets.

It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances except where Franchisee has been directed by City to use a certain facility, subcontractor and/or vendor: (a) general economic condition, interest or inflation rates, or currency fluctuation or changes in the cost of fuel, commodities, supplies or equipment unless impacted by those circumstances listed above; (b) changes in the financial condition of the City, the Franchisee or any of its Affiliates or parent company(s) or any subcontractor affecting their ability to perform their obligations; (c) the consequences of errors, neglect or omissions by the Franchisee, any of its Affiliates or any subcontractor in the performance of the Franchise Services; (d) the failure of the Franchisee to secure patents or licenses in connection with the technology necessary to perform its obligations hereunder; (e) union work rules, requirements or demands which have the effect of increasing the number of employees employed in connection with the Operating Assets or otherwise increase the cost to the Franchisee of operating and maintaining the

Operating Assets or providing the Franchise Services; (f) strikes, work stoppages or other labor disputes or disturbances occurring with respect to any activity performed or to be performed by the Franchisee or any subcontractors or suppliers in connection with the Operating Assets or the Franchise Services; (g) any failure of any subcontractor or supplier to furnish labor, materials, service or equipment for any reason; (h) equipment failure; (i) any impact of prevailing wage law, customs or practices on the Franchisee's construction or operating costs; (j) changes in market prices for, or the unavailability of markets for, the sale or purchase of Recyclables; or (k) any act, event or circumstance occurring outside of the State of California.

**"Wood Waste"** means dimensional lumber, post-consumer and other wood products, pallets and tree trunks, and other wood products all of which are without paint or chemical treatment of any kind. Wood Waste does not include Garbage, Recyclables, Food Waste, Construction and Demolition Debris or Excluded Materials. Wood Waste may be a subset of C&D or of Yard Waste as the context provides. The definition of Wood Waste is subject to change based on the requirements of the Processing Facilities.

**"Yard Waste"** means tree trimmings, including branches and Wood Waste that are less than six (6) inches in diameter less than two (2) feet in length, shrubbery prunings, vegetative garden wastes, dead plants, weeds, leaves, grass clippings and other vegetative matter. Yard Waste also means holiday trees that are cut to lengths of not more than 6-feet, and which are free of plastics or other contaminants. Yard Waste does not include Garbage, Recyclables, Construction and Demolition Debris or Excluded Materials. Yard Waste is a subset of Organics; provided, however, that Yard Waste does not include Food Waste. The definition of Yard Waste is subject to change based on the requirements of the Processing Facilities.

## **SECTION 1.2. INTERPRETATION.**

In this Franchise, unless the context otherwise requires:

A. References Hereto.

The terms "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Agreement, and the "hereafter" means after, and the term "heretofore" means before, the date of execution of this Agreement.

B. Gender and Plurality.

Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

C. Persons.

Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations, non-profit corporations and other legal entities, including Governmental Bodies, as well as individuals.

D. Headings.

The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Franchise shall be solely for convenience of reference and shall not constitute a part of this Franchise, nor shall they affect its meaning, construction or effect.

E. Entire Agreement.

This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement, and nothing in this Agreement is intended to confer on any person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

F. Reference to Days.

All references to days herein are to calendar days, including Saturdays, Sundays and holidays, except as otherwise specifically provided.

G. Counterparts.

This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

H. Applicable Law.

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

I. Severability.

If any clause, provision, subsection, Section or Article of this Agreement shall be determined to be invalid by any court of competent jurisdiction, then the parties hereto shall: (1) promptly meet and in good faith attempt to negotiate a substitute for such clause, provision, section or Article which shall, to the greatest extent legally permissible, effect the intent of the parties; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalid portion of this Agreement; (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist. Notwithstanding the foregoing, however, the provisions of this Agreement reserving to the City the right, power and obligation to designate the Designated Disposal Site for

Franchise Garbage, as provided in Section 4.7 hereof and otherwise herein, the Designated Composting Facility for Franchise Organics, as provided in Section 4.8 hereof and otherwise herein, and the Designated C&D Processing Facility for Franchise C&D, as provided in Section 4.9 hereof and otherwise herein shall not be deemed to be severable from the other provisions hereof. In the event such provisions are held in any Legal Proceeding which is binding upon the City to be null, void, in excess of the City's powers or otherwise invalid or unenforceable, City shall have the responsibility to secure capacity at an alternative Disposal Site and/or Composting Facility and shall direct Franchisee to deliver Garbage and/or Organics to such Designated Facilities unless an alternative arrangement is otherwise agreed upon between the parties in writing.

J. Defined Terms.

Should there appear to be any uncertainty, ambiguity or discrepancy in defined terms or should any misunderstanding arise as to the interpretation to be placed upon any defined term hereof, the City of Scotts Valley Manager shall be consulted and his/her decision thereon shall be final and conclusive; provided, however, that Franchisee shall retain all rights in law and in equity as provided in Sections 6.10 and 8.8 of this Agreement.

**ARTICLE II**  
**REPRESENTATIONS AND WARRANTIES OF FRANCHISEE**

**SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF THE FRANCHISEE.**

The Franchisee, by acceptance of this Franchise, represents and warrants that:

A. Existence and Powers.

The Franchisee is duly organized and validly existing as a corporation under the laws of the State of California, with full legal right, power and authority to enter into and perform its obligations under this Franchise.

B. Due Authorization and Binding Obligation.

The Franchisee has duly authorized the execution and delivery of this Franchise. This Franchise has been duly executed and delivered by the Franchisee and constitutes the legal, valid and binding obligation of the Franchisee, enforceable against the Franchisee in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

C. No Conflict.

Neither the execution nor the delivery by the Franchisee of this Franchise nor the performance by the Franchisee of its obligations hereunder (1) conflicts with, violates or results in a breach of any law or governmental regulations applicable to the Franchisee; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of the Franchisee) or instrument to which the Franchisee is a party or by which the Franchisee or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of the Franchisee.

D. No Litigation.

There is no action, suit or other proceeding as of the Franchise Date, at law or in equity, before or by any court or governmental authority, pending or, to the Franchisee's best knowledge, threatened against the Franchisee which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Franchise or any such agreement or instrument entered in to by the Franchisee in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the Franchisee of its obligations hereunder or by the Franchisee under any such other agreement or instrument.

E. No Legal Prohibition.

The Franchisee has no knowledge of any Applicable Law in effect on the Agreement Date, which would prohibit the performance by the Franchisee of this Franchise and the transactions hereby.

F. Information Supplied by the Franchisee.

The information supplied by the Franchisee in all submittals made in connection with negotiation and execution of this Franchise is correct and complete in all material respects.

G. Waiver of Certain Rights

City has retained the right, power and obligation to designate the Designated Disposal Site for Franchise Garbage as provided in Section 4.7, the Designated Composting Facility for Franchise Organics as provided in Section 4.8, and the Designated C&D Processing Facility for Franchise C&D, as provided in Section 4.9. Franchisee hereby:

1. Waives any right it may possess to contest the legal right, power or authority of the City to enter into and perform this Franchise, including particularly the provisions thereof providing for the delivery to the Designated Disposal Site of Franchise Garbage, the delivery to the Designated Composting Facility of Franchise Organics, and the delivery to the Designated C&D Processing Facility of Franchise C&D and agrees to cooperate with and assist the City in supporting the legal validity of, and authorization for, such provisions in the event of any legal challenge thereto brought or made in any manner by a third party; and
2. Agrees to observe and comply with the operating rules and regulations established or approved by the City with respect to the Designated Disposal Site and Designated Processing Facilities, including without limitation those governing delivery procedures, receiving hours, vehicle and waste inspection, Hazardous Waste screening, litter control and safety measures.
3. City and Franchisee further agree that if such facilities are no longer able to accept City's Garbage, Organics, and/or C&D, Franchisee shall have the right but not the obligation to secure alternative capacity at another facility or facilities subject to the approval of the City and subject to the provisions of Section 7.1.C.
4. City and Franchisee further agree that in the event the Designated Composting Facility is no longer willing or able to accept City's Organics for Processing, the parties shall work cooperatively to identify an alternative facility subject to the provisions of Section 7.1.C. Until such time as an alternative facility is identified and a formal agreement for the Processing of the City's Organics is executed, Franchisee shall not be deemed in breach of this agreement for failure to comply with SB 1383 except to the extent the lack of a Designated Composting Facility or alternative facility is caused by the conduct of Franchisee.

H. Free Market Decision.

The Franchisee, without constraint and as a free market business decision in accepting this Franchise, agrees to use the Designated Disposal Site for disposal of Franchise Garbage, the Designated Composting Facility for Organics Processing, and the Designated C&D Processing Facility for C&D Processing. Such decision in no way constitutes a restraint of

trade, notwithstanding any change in law regarding flow control limitations or any definition thereof; provided, however, that if such facilities are no longer able to accept City's Garbage, Organics, and/or C&D, Franchisee shall have the right, but not the obligation, to secure alternative capacity at another facility or facilities subject to the approval of the City and subject to the provisions of Section 7.1.C.

I. Franchisee Investigation.

The Franchisee has made an independent investigation to its satisfaction of matters, conditions, and circumstances relating to its execution and delivery of this Franchise Agreement and its obligations hereunder, including the nature and amount of franchise refuse materials generated within the City of Scotts Valley and the source reduction and recycling programs now in effect or currently planned to be put into effect in the City.

## ARTICLE III FRANCHISE

### SECTION 3.1. GRANT AND ACCEPTANCE OF FRANCHISE.

#### A. Franchise Service.

Pursuant to Sections of the Act, The City of Scotts Valley hereby grants an exclusive franchise, on the terms and conditions set forth herein, to the Franchisee for the service in the Franchise Area of collecting, transporting, handling, processing and/or disposing of Solid Waste that are Franchise Materials, except Excluded Materials. By its executed acceptance hereof, the Franchisee accepts the franchise, license and privilege so granted by the City on and subject to the terms and conditions contained herein and agrees to perform all of the duties and obligations of a franchisee thereunder. Specifically, the Franchisee agrees to provide Franchise Services to any person within the Franchise Areas requesting such service, subject to the payment by such person of the Fees specified in this Franchise. The Franchisee shall provide Residential and Commercial Service, as requested by the Customer, for the Service specified in this Franchise Agreement.

#### B. Franchise Area.

The area with respect to which this Franchise is granted is the Franchise Area contained within the city limits of the City of Scotts Valley, California.

Except as otherwise specifically provided in this Section 3.1, it shall be the duty of Franchisee to collect Franchise Material in the manner hereinafter set forth from any and all persons within the territorial limits of City; provided, however, that Franchisee shall not be required to collect Franchise Materials from any Customer who cannot reasonably be provided such service due to inaccessibility of the area in which said Customer is located or any other factors that preclude the provision of such service, all as determined appropriate by the City Manager or the City Manager's designee in the exercise of reasonable discretion.

#### C. Materials to Which Franchisee is not entitled.

The franchise granted in this Franchise Agreement does not give the Franchisee the exclusive right to collect the materials listed below in this subparagraph C.

1. Materials which would otherwise constitute Recyclable Materials but which are collected by City approved youth, civic, and charitable organizations, and private recyclers (without payment of compensation of any type by the generator of such materials to such collectors).
2. Yard Waste or Wood Waste, removed from a premises by a contractor as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, construction or similar service offered by that contractor rather than as a hauling service and where the container and vehicle are owned by the contractor and the driver is an employee of the contractor.

3. Further, the provisions of this Franchise shall not preclude or prohibit the City or any officer or employees thereof or any employee of the State of California, or any governmental subdivision thereof, from collecting, removing, and disposing of Solid Waste from City or State facilities. In addition, the provisions of this Franchise shall not preclude or prohibit the owner or occupant of any Premises from Self-hauling.

D. Haulage by Third Parties.

This Franchise shall not prohibit haulers of Solid Waste other than Franchise Materials from hauling such waste over city streets in accordance with Applicable Law.

E. Non-Franchise Services by Franchisee.

This Agreement does not, however, limit the right of the Franchisee to provide other services. If the Franchisee elects to provide any such other services, it shall not be governed by the terms of this Agreement, but shall be subject to Applicable Law or mutual agreement of the Parties.

F. Mandatory Service

Except as heretofore provided, Franchise Material collection and disposal and Processing provided by Franchisee shall be mandatory for all Premises of City. Upon identification of Customers that have not signed up for collection and disposal services, Franchisee shall notify City of such Customers. Franchisee shall have the right to discontinue collection services for all Residential and Commercial Customers that fail or refuse to pay the charges for such services as they become delinquent. Amounts are deemed delinquent for Residential Customers that have not paid within sixty (60) days of the due date amounts are due and for Commercial Customers that have not paid within thirty (30) days of the date amounts are due for purposes of Franchisee exercising the right to discontinue service. Franchisee shall notify City of any discontinuance of service to any Customer.

**SECTION 3.2. ASSIGNMENT AND TRANSFER OF FRANCHISE.**

A. Consent of City Required.

This Franchise shall not be transferred, sold, pledged, hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be transferred, sold, pledged, hypothecated, leased or assigned, either in whole or in part, nor shall title hereto or thereto, either legal or equitable, or any right, interest, or property herein or therein, pass to or vest in any person, other than to a family member or relative who receives his or her interest through a trust, will, or other estate planning mechanism, except the Franchisee, either by action or inaction of the Franchisee or by operation of law, without the prior consent of the City, which may be withheld or delayed in its sole and reasonable discretion. Any attempt by the Franchisee to effectuate any of the forgoing without the consent of the City shall be null and void.

B. Imposition of Conditions.

The City may impose reasonable conditions and restrictions on any approval it may elect

to give of any transaction described in Sections 3.2.A. and 3.3 hereof, including without limitation, conditions relating to payment of all costs relating to such transfer and an additional fee of \$10,000 and requiring acceptance of amendments of this Franchise.

### **SECTION 3.3 CHANGE IN FRANCHISEE OWNERSHIP OR CONTROL.**

- A. Current Ownership and Control. The Franchisee represents that, as of the Franchise Date, all the voting stock of the Franchisee is owned by Green Waste Recovery Inc.
- B. Maintenance of Corporate Existence. The Franchisee covenants that during the Term of the Franchise it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not take any other action which would materially impair the ability of the Franchisee to perform the Franchise Services.
- C. Consolidation, Merger, Sale, Transfer and Change in Control. The Franchisee shall not, without the prior written consent of the City, which may be withheld or delayed in its sole and reasonable discretion, acquire any entity, consolidate with or merge with another entity, or permit one or more other entities to consolidate with or merge into it, in any manner which results in loss by Franchisee of operational or voting control of the Franchise.
- D. Transfer of Voting Stock. The City of Scotts Valley's written consent, which may be withheld or delayed in its sole and reasonable discretion, shall be required for the sale or transfer by any means whether by agreement or by operation of law (including transfers resulting from death, bankruptcy or divorce) of any of the voting stock of the Franchisee, which results in loss by Green Waste Recovery of operational or voting control of Franchisee. "Voting control," means the ownership of, and the right to vote, stock possessing at least 51 percent of the total combined voting power of all classes of Franchisee's capital stock issued, outstanding, and entitled to vote for the election of directors. Upon transfer of any of Franchisee's voting stock, City shall be given immediate notice of the class and number of shares transferred and of the number of outstanding shares of the class.

### **SECTION 3.4. PAYMENT OF CERTAIN COSTS BY FRANCHISEE.**

If the Franchisee requests the consent of the City for any transaction described in Section 3.2 or Section 3.3 hereof, the Franchisee shall reimburse the City for all costs and expenses incurred by the City in reviewing, examining, analyzing and acting on the request, including all direct and indirect administrative expenses of the City and consultants and attorneys' fees and expenses. In addition, the Franchisee shall pay a transfer fee in the amount of \$25,000 as described in Section 3.2(B). Bills shall be supported with evidence of the expense or cost incurred. The Franchisee shall pay such bills within thirty (30) days of receipt.

## ARTICLE IV SERVICES

### SECTION 4.1 COLLECTION AND PROCESSING SERVICES.

#### A. Commencement of Service.

The Franchisee shall provide the Franchise Services, as more particularly described.

#### B. Residential Service

##### 1. Hours and Days of Operation.

Franchisee shall collect all Garbage, Recyclables, and Organics generated by Residential Customers and placed for collection in Franchisee-provided Carts at least once per week on a Monday through Friday on a day or days designated by Franchisee. Collection shall not commence prior to 6:00am and be completed by 5:00pm. In response to a special Customer request, Franchisee may collect materials from a Residential Customer on Saturday.

Except otherwise provided in Sections 4.2.7 and 4.4.A, all Franchise Materials set out for collection by Franchisee must be placed within 5' of the accessible roadway.

##### 2. Franchisee Equipment

Franchisee shall utilize automated and/or semi-automated collection vehicles (as described in Appendix A, and required by Applicable Law and subject to Section 7.1.C.2) appropriate in each case to provide service to the Residential Customers in the Franchise Area, based on the size and service level requested by each Residential Customer. Franchisee shall provide Residential Customers with Carts for recurring subscription-based Collection services as described below.

##### 3. Residential Garbage Collection and Disposal.

Franchisee shall provide each Residential Customer one (1) gray Garbage Cart as provided in Appendix A and Residential Customers shall retain the right to select the size of Cart(s), as listed in Appendix A, and shall be charged the then-current rates listed in Appendix B-1. Upon request, Franchisee shall provide additional Garbage Carts at the then-current rates listed in Appendix B-1. Collection of periodic compliant setouts of excess Garbage shall be provided by Franchisee in accordance with Section 4.1.B.6 below and at the then-current rates listed in Appendix B-1.

Franchisee shall collect and deliver to the Designated Disposal Facility all Garbage collected from Residential Customers.

##### 4. Residential Recyclables Collection and Processing.

Franchisee shall provide each Residential Customer one (1) 64-gallon blue Recyclables Cart as listed in Appendix A for no additional charge. Upon request, Franchisee shall provide additional Recyclables Carts at the then-current rates listed in Appendix B-1. Collection of periodic compliant setouts of excess Recyclables shall be provided by

Franchisee in accordance with Section 4.1.B.6 below and at the then-current rates listed in Appendix B-1.

Franchisee shall collect and deliver to the Transfer Facility or the Designated Material Recovery Facility all Recyclables collected from Residential Customers. Franchisee shall accept as Recyclables the materials described in Appendix C. This list may not be reduced without City Manager approval. City Manager will approve changes reasonably necessitated by the markets or distribution channels for such materials but shall not be required to approve changes contrary to Applicable Law.

## 5. Residential Organics Collection and Composting

Franchisee shall provide each Residential Customer one (1) 64-gallon green Organics Cart as listed in Appendix A for no additional charge. Upon request, Franchisee shall provide additional Organics Carts at the then-current rates listed in Appendix B-1. Collection of periodic compliant setouts of excess Organics shall be provided by Franchisee in accordance with Section 4.1.B.6 below and at the then-current rates listed in Appendix B-1.

Franchisee shall offer to all Residential Customers one (1) kitchen pail designed to contain Food Waste prior to placement in the Residential Customer's Organic Materials Container for no additional charge. Franchisee shall offer the initial distribution of kitchen pails to Residential Customers by January 1, 2022 or when kitchen pails are received by Franchisee, whichever is later. Franchisee shall submit kitchen pail specifications to the City for review and approval prior to ordering the kitchen pails. Franchisee shall make available for purchase additional pails for those Residential Customers who have already received their one (1) kitchen pail provided at no additional charge.

Franchisee shall collect and deliver to the Designated Composting Facility all Organics collected from Residential Customers. The initial list of items accepted at Organics is included Section 1.1 of this Agreement; however, the definition of Organics is subject to change based on the requirements of the Processing Facilities provided any changes do not prevent the City from complying with Applicable Law.

## 6. Excess Materials

Franchisee shall collect Garbage, Recyclables, and/or Organics that do not fit within the Residential Customer's Franchisee-issued Carts when those material are set out for collection on the Customer's regular collection day in a manner that conforms to Franchisee's excess material specifications described below and when the Customer has place a standing authorization on their account or has contacted Franchisee in advance and authorized Franchisee to charge the then-current Rates listed in Appendix B-1. Charges for excess materials shall be based on the estimated volume (expressed in terms of equivalents to the volume of a 32-gallon container and by material type).

Franchisee shall collect excess materials set out for collection by Residential Customers that are compliant with the following specifications:

- Excess Garbage setouts shall be considered compliant when the Garbage is

placed in a Customer-provided lidded can or tightly cinched black or gray bag with a capacity that is equal to or less than 32-gallons and properly labeled.

- Excess Recyclables setouts shall be considered compliant when the Recyclables are placed in a Customer-provided lidded can or tightly cinched clear bag with a capacity that is equal to or less than 32-gallons and properly labeled. Cardboard setouts shall also be considered compliant when they are securely bundled/tied such that when lifted they remain secure, and each set out must be smaller than 3' x 1' x 1'. Non-compliant setouts may be collected and charged as Garbage.
- Excess Organics setouts shall be considered compliant when the Organics are placed in a Customer-provided and lidded can and properly labeled. Setouts for woody Yard Trimmings shall also be considered compliant when they are securely bundled/tied such that when lifted they remain secure, and each set out must be smaller than 3' x 1' x 1'. Non-compliant setouts may be collected and charged as Garbage.

#### 7. Special Services.

Franchisee shall provide, without additional charge or compensation, special manual carry-out services for those Residential Customers who are determined by the City Manager, or his or her designee, to have exceptional difficulty doing so themselves due to physical disabilities or frailty and where no other able-bodied persons reside in the household. Franchisee shall offer such services to all Residential Customers at the then-current rates listed in Appendix B-1.

Franchisee shall also make available to qualifying Residential Customers a 40 percent discount on weekly Garbage Service. To qualify for this discounted rate, the Customer must: (1) be a Residential Customer; (2) use a single 35-gallon Cart or less, once a week for Garbage service; and (3) participate in the PG&E Care Program.

#### 8. Drop Box/Roll Off Services.

Franchisee shall provide Roll-off Collection services for Franchise Materials, as requested by Residential Customers, at the then-current Rates shown in Appendix B-2.

Franchisee shall deliver collected Franchise Material collected by Residential Customers to the Designated Disposal Facility or the appropriate Processing Facility for Processing.

#### 9. Used Motor Oil and Filter Collection.

Franchisee shall provide, without additional charge or compensation, a used motor oil and filter collection program for all Residential Customers and shall provide the used motor oil jug and bags upon Customer request. Franchisee shall only be required to collect used motor oil and filters in Franchise-provided containers, in amounts up to five gallons, from Residential Customers when placed alongside the Recyclables Cart.

10. Residential Cart Weight Limitations.

When set upon the curb for collection, no Residential Cart shall exceed the following weight: maximum weight for 35-gallon Carts - 125 lbs.; maximum weight for 64-gallon Carts - 200 lbs.; maximum weight for 96-gallon Carts - 250 lbs.; maximum weight for 32-gallon cans – 70lbs.

11. Used Household Battery Collection.

Franchisee shall collect used household batteries when the customer has bagged and placed them on top of Recyclables Cart. Franchisee shall dispose of the used household batteries through a qualified disposal company at the Franchisee's cost.

C. Commercial Services

1. Hours and Days of Operation.

Franchisee shall collect all Garbage, Recyclables and Organics generated by Commercial Customers and placed for collection in Carts and/or Bins provided by Franchisee at least once per week and up to six (6) days per week on a Monday through Saturday schedule. Commercial collection shall not begin any earlier than 5:30 am and completed by 5:00pm.

2. Franchisee Equipment

Franchisee shall utilize automated and/or semi-automated side-load, front load, and/or rear-load collection vehicles (as described in Appendix A) appropriate in each case to provide service to the Commercial Customers in the Franchise Area, based on the material type, Container type and Container size requested by each Commercial Customer. Franchisee shall provide Commercial Customers with Carts and/or Bins for all recurring subscription-based Collection services as described below.

3. Commercial Garbage Collection.

Franchisee shall provide each Commercial Customer the number and kind of gray Garbage Containers described in Appendix A, and at the frequency requested and/or that is that is sufficient to contain the Garbage generated between collections and shall be charged the then-current rates listed in Appendix B-2. Franchisee shall service Bins with locks at no additional charge to the Commercial Customer.

Franchisee shall collect and deliver to the Designated Disposal Facility all Garbage collected from Commercial Customers. Collection of periodic compliant setouts of excess Garbage shall be provided by Franchisee in accordance with Section 4.1.C.6 below and at the then-current rates listed in Appendix B-2.

4. Commercial Recycling Collection.

Franchisee shall provide each Commercial Customer the number and kind of blue Recyclables Containers described in Appendix A, and at the frequency requested and/or that is sufficient to contain the Recyclables generated between collections and shall be charged at the then-current Rates listed in Appendix B-2. At a minimum, and unless

otherwise exempted by the City, Franchisee shall provide one (1) 64-gallon Recyclables Cart to Commercial Customers. Franchisee shall service Bins with locks at no additional charge to the Commercial Customer.

Franchisee shall collect and deliver to the Transfer Facility or the Designated Material Recovery Facility all Recyclables collected from Commercial Customers. Collection of periodic compliant setouts of excess Recyclables shall be provided by Franchisee in accordance with Section 4.1(C)6 below and at the then-current rates listed in Appendix B-2.

#### 5. Commercial Organics Collection.

The Franchisee shall provide each Commercial Customer the number and kind of green or brown Organics Containers described in Appendix A, and at the frequency requested and/or that is sufficient to contain the Organics generated between collections and shall be charged the then-current rates listed in Appendix B-2. At a minimum, and unless otherwise exempted by the City, Franchisee shall provide one (1) 64-gallon Organics Cart to Commercial Customers. Franchisee shall service Bins with locks at no additional charge to the Commercial Customer. Franchisee shall, upon request, assist Commercial Customers with determining the appropriate type of Organics Container

Franchisee shall collect and deliver to the Designated Composting Facility all Organics collected from Commercial Customers. Collection of periodic compliant setouts of excess Organics shall be provided by Franchisee in accordance with Section 4.1.C.6 below and at the then-current rates listed in Appendix B-2.

#### 6. Excess Materials.

Franchisee shall collect Garbage, Recyclables, and/or Organics that do not fit within the Commercial Customer's Franchisee-issued Containers when those material are set out for collection on the Customer's regular collection day in a manner that conforms to Franchisee's excess material specifications described below and when the Customer has place a standing authorization on their account or has contacted Franchisee in advance and authorized Franchisee to charge the then-current Rates listed in Appendix B-1. Charges for excess materials shall be based on the estimated volume (expressed in terms of equivalents to the volume of a 32-gallon container and by material type).

Franchisee shall collect excess materials set out for collection by Commercial Customers that are compliant with the following specifications:

- Excess Garbage setouts shall be considered compliant when the Garbage is placed in a Customer-provided lidded can or tightly cinched black or gray bag with a capacity that is equal to or less than 32-gallons and properly labeled.
- Excess Recyclables setouts shall be considered compliant when the Recyclables are placed in a Customer-provided lidded can or tightly cinched clear bag with a capacity that is equal to or less than 32-gallons and properly labeled. Cardboard setouts shall also be considered compliant when they are securely bundled/tied such that when lifted they remain secure, and each set out must be smaller than 3' x 1' x 1'. Non-compliant setouts may be collected and charged as Garbage.

- Excess Organics setouts shall be considered compliant when the Organics are placed in a Customer-provided and lidded can and properly labeled. Setouts for woody Yard Trimmings shall also be considered compliant when they are securely bundled/tied such that when lifted they remain secure, and each set out must be smaller than 3' x 1' x 1'. Non-compliant setouts may be collected and charged as Garbage.

7. Drop Box / Roll Off.

Franchisee shall provide Roll Off collection service for Franchise Materials, as requested by Commercial Customers, at the then-current rates listed in Appendix B-3.

Franchisee shall deliver collected Franchise Material collected by Residential Customers to the Designated Disposal Facility or the appropriate Processing Facility for Processing.

D. Commercial Technical Assistance.

Franchisee shall, without additional charge or compensation, within thirty (30) days of execution of this Agreement, provide a Commercial Technical Assistance Plan for review and modification by the City Manager. The plan shall be designed to encourage Commercial Customers to subscribe to the combination of Commercial Garbage, Recyclables, and Organics collection services that will reduce the amount of overflow of Commercial Containers in the City and assist with container sizes and signage location most appropriate for each business. The Franchisee shall report to the City Manager, on a quarterly basis, the status of the technical assistance program.

E. Multi-Family Services.

Franchisee shall work with the landlord to ensure that the premises receive an adequate level of Garbage service, including Recyclables and Organics collection equivalent to that described in Section 4.1.B. Disputes between the Franchisee and owners of multi-family buildings regarding the type and level of service required shall be referred to the City Manager who may determine the appropriate type and level of service at his or her discretion.

F. Services to Public Facilities and of Public Containers

The Franchisee shall, without charge or compensation, collect Garbage, Organics, and Recyclables from City buildings and facilities and shall collect Garbage and Recyclables from Publicly accessible Containers at City owned properties, City buildings, and City Parks. The City Manager, in his or her sole discretion, may add locations when reasonably necessary to achieve adequate collection.

G. Community Events.

Each franchise year, the Franchisee shall, without additional compensation, provide and collect one equivalent 30 cubic yard roll off collection container (or such other size and number of containers as may be reasonably designated by the City Public Works Director) for the disposal of franchise refuse materials and containers for Recyclables and Organics for 4 major community events (such as the Scotts Valley Art and Wine Festival, Cops and Rodders, Ice

Cream Social, City's 4<sup>th</sup> of July parade and celebration) by the City Manager.

H. Bulky Goods.

Franchisee shall collect Bulky Goods from Residential Customers and Commercial Customers in accordance with this Section at the then-current rates provided for in Appendix B-1 and B-2 respectively. To arrange for a Bulky Goods pickup, a Customer must call the local office of the Franchisee Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. to arrange for a mutually acceptable time and day for the collection of said material. The Franchisee shall then pick up the material at the agreed upon day and time. Unless otherwise agreed by the Customer, this day and time shall be within the week following the date when the Customer first called for this service.

I. Spring and Fall Cleanup Program.

Twice each calendar Year, over a one-week period, Franchisee shall, without additional charge or compensation, undertake a "Spring and Fall Cleanup" program, pursuant to which the Franchisee shall collect and remove certain Garbage, Recyclables, Wood Waste, and Yard Waste. The dates shall be the regular collection day for each Residential Customer during the weeks beginning with the first Monday in each December and the first Monday in each April during the term of this Agreement. Franchisee shall collect from each Residential Customer any combination of up to ten (10) 32-gallon compliant set-outs described in Section 4.1.B.6 of this Agreement and a single Bulky Good per event.

J. Illegal Dumping Abatement.

Upon request of the City Manager, the Franchisee shall within seven (7) days collect and remove from the City's streets, alleys, parks and other public areas which are located in the City, Bulky Goods and Solid Waste in any volume which has been unlawfully abandoned or discarded.

K. Processing Services.

1. Franchise Recyclables Processing and Marketing.

- a. Marketing. The Franchisee shall be responsible for marketing materials recovered from Recyclable Materials Collected in the City and delivered to the Designated Material Recovery Facility.

Franchisee shall prepare and maintain a City-approved marketing plan for all Recyclable Materials Collected in the City and delivered to the Designated Material Recovery Facility. The plan shall be in place on or before the Commencement Date of this Agreement. The marketing plan shall fully describe the Franchisee's marketing methods and approach, and contingency plans if market conditions are severe.

Franchisee shall make available for inspection to the City documentation that all Recyclable Materials Collected are Processed and that recovered materials are marketed for Recycling, recovery, salvage, or reuse in such a manner that materials are not deemed landfill Disposal pursuant to 14 CCR Section

18983.1(a) and in a manner that materials are deemed Diversion pursuant to AB 939. All Residue from the Processing activities that is not marketed for use shall be disposed and accounted for as disposal tonnage at a permitted disposal Site. No Recyclable Material shall be transported to a domestic or foreign location if landfill disposal, as defined in 14 CCR Section 18983.1(a) of such material is its intended use.

- b. Disposal of Recyclable Materials Prohibited. Recyclable Materials may not be Disposed of in lieu of Recycling the material, without the written approval of the City which approval shall not be unreasonably withheld, delayed, or conditioned. If Franchisee believes that it cannot divert the Recyclable Material from landfill, then it shall prepare a written request for approval to dispose of such material. Such request shall contain the basis for its belief, describe the Franchisee's efforts to arrange for the diversion from disposal of such material, the period required for such disposal, the incremental costs or cost savings resulting from such disposal, and any additional information supporting the Franchisee's request. The City shall consider the Franchisee's request and inform Franchisee in writing of its decision within thirty (30) calendar days of the date of its written request for approval. If the City approves such request, any difference in the cost of such disposal compared to Diversion shall be adjusted in accordance with Section 8.7.

2. Payment for Recyclables Processing, Marketing and Residue Disposal Costs.

Franchisee shall be responsible for the payment of all costs and expenses associated with the transportation, processing and marketing of Recyclables collected or delivered by it under this Franchise, including any costs incurred by the Franchisee for Processing. In addition, the Franchisee will bear the costs of and is solely responsible for the proper and lawful disposal of all Processing Residues.

3. Franchisee Responsibility for Marketing.

Franchisee shall have full responsibility for marketing the Recyclables. The City shall have no responsibility for the availability of market for recycled products, nor shall it have any liability associated with or resulting from the markets for, or end-uses of, recycled products, and the Franchisee shall indemnify and hold the City harmless from same. Notwithstanding the foregoing, the Franchisee agrees to aggressively explore its ability to collect, process, and market additional materials when the markets for such material become viable.

4. Recycling Market Development Zone.

The Franchisee shall make recyclables available to remanufacturing businesses, identified by the City Manager, within reasonable distances, at the prevailing market prices, or at such other prices agreed to by the parties hereto. The Franchisee will use reasonable efforts to process Recyclables to the specifications desired by such businesses.

5. Franchise Organics Processing.

The Franchisee shall be responsible for the following activities:

- a. Collection of Franchise Organics.
  - b. The delivery of Franchise Organics to the Designated Composting Facility.
6. Payment of Organics Processing.

The Franchisee shall be responsible to make payment to the Designated Composting Facility for Organics delivered for Composting. Franchisee shall not be responsible for any costs associated with Processing and/or Marketing or any other activities related to Organics Processing, unless otherwise agreed upon by the Parties in writing.

7. Franchise C&D Processing.

The Franchisee shall be responsible for the following activities:

- c. Collection of Franchise C&D.
  - d. The delivery of C&D to the Designated C&D Processing Facility.
8. Payment of C&D Processing.

The Franchisee shall be responsible to make payment to the Designated C&D Processing Facility for C&D delivered for Processing. Franchisee shall not be responsible for any costs associated with Processing and/or Marketing or any other activities related to C&D Processing, unless otherwise agreed upon by the Parties in writing.

L. Public Outreach and Education.

1. Franchisee shall provide, without charge or compensation, a public outreach and education program to properly utilize the collection, enhance program participation and maximize diversion of Recycling and Organics. Within thirty (30) days of the effective date of this Agreement, the Franchisee shall submit a Public Outreach and Education plan for review and approval of the City Manager (or designated person). At a minimum, the Public Outreach and Education plan will include: information distribution, media relations, video and programming, publications, special events, displays and programs, community presentations, school activities, newsletters, billing inserts, and consumer surveys. Outreach materials shall target the generator, including renters, and be distributed directly to the generator (especially if the generator is not the property owner or billing party). The programs and budgets for each year shall be submitted to the City Manager (or designated person) for approval prior to implementation of such.
2. Franchisee agrees to provide, without charge or compensation, signage on all collection vehicles serving City. Signage is intended for public outreach and education purposes for City solid waste/recycling related programs. Signage content will be at the direction and subject to the approval of the City. Franchisee shall provide for up to four different sign campaigns each year. Reusing signs from year to year is acceptable as long as signs are in good condition and applicable to City related programs. City may choose to purchase additional signs for Franchisee to use to promote new or specific solid waste/recycling programs.

3. Prior to any changes in rates Franchisee shall provide via U.S. Mail, new rate and service listings to all existing Scotts Valley Customers and shall publish, at a minimum, a 4" x 5" advertisement, listing all new Residential Rates and service levels and indicating that certain changes are also being implemented for Commercial Rates and service levels (with more information available through telephone calls to Franchisee), in the Scotts Valley Banner and the Santa Cruz County Sentinel Newspapers. Advertisements shall be published one month prior to and two weeks prior to each change in rates.
4. Franchisee agrees to provide, via U.S. mail and on its website, a twice-annual newsletter to all Scotts Valley customers. Newsletters are to provide public education on the proper use and benefits associated with the Scotts Valley collection programs. Newsletters shall be mailed during the months of February and September of each year. City shall have the opportunity to assist Franchisee in the development of the Newsletter and have the opportunity to review the Newsletter prior to its distribution. The Newsletters are to be directed to and describe only benefits and programs available to Scotts Valley customers.
5. All advertisements and transmittals described in this Section shall be pre-approved by City staff. If any transmittals, hangers, or advertisements described in this section are released without City approval, are released in a format with a different content than the format pre-approved by City staff, or are distributed or placed after the time frames described in this section, Franchisee shall re-schedule and re-advertise the applicable events within one month at the sole cost of the Franchisee.

M. Customer Service Level Determination.

The Franchisee shall regularly monitor the amount of Franchise Garbage from each Customer, and, unless the Customer specifically requests otherwise, shall only provide that level of service, which the Customer is entitled to receive as a result of its classification.

N. Changes in Classification.

Any change in service level shall become effective on the first day of the week following the date of the request or the date Franchisee made such service level change, whichever is later. The Franchisee shall provide information on changes in classifications to the City Manager as a part of the quarterly reports.

O. Christmas Trees.

The Franchisee shall, without additional compensation, collect for delivery to the Designated Composting Facility all Christmas trees discarded by any Residential Customer or Commercial Customer on their first two (2) regularly scheduled collection days after New Year's Day, free of any additional charge to the City or such Customer.

Franchisee shall be responsible for individual Customer notification, posting notice on its website and newspaper advertisement prior to the collection program informing residents of the dates of collection. In addition, for the first two (2) weeks for each calendar year, the Franchisee shall provide, without additional compensation, up to two drop boxes or roll off boxes for Christmas trees, of at least 40 cubic yards in size (or smaller if requested by the City Manager), at locations designated by the City Manager. Franchisee shall be responsible for

delivering Christmas trees to the Designated Composting Facility without additional compensation.

P. Recycling Service to Schools.

Franchisee hereby agrees to provide unlimited collection of Recyclable Materials for no additional charge to the following schools located within the City of Scotts Valley without charge: Vine Hill Elementary, Scotts Valley Middle School, Scotts Valley High School, and Baymonte Christian School and will work with the schools to integrate Organics services.

Q. Additional Services.

The Franchisee shall provide those special services, if any, identified in the Service Fee Schedule, Appendices B-1, B-2, and B-3, at the rates specified therein. The Franchisee shall also have the right, but not the obligation, to establish rates and provide additional special services requested by any Customer, which are directly related and ancillary to any of the other Franchise Services authorized hereunder. Such special services may include, without limitation, steam cleaning of containers, providing roll-off containers to Customer for special events or other special collection needs, and compactor maintenance services.

R. Service Coordinator

Franchisee shall designate in writing on or immediately following the Franchise Date a person to transmit instructions, receive information and otherwise coordinate service and community relation's matters arising pursuant to this Franchise Agreement (each a "Service Coordinator"). The City Service Coordinator shall be the City Manager. Either party may designate a successor or substitute Service Coordinator at any time by written correspondence to the other party.

**SECTION 4.2. COLLECTION SERVICE OPERATING REQUIREMENTS.**

A. Collection Routes

The Franchisee shall establish and maintain collection routes in such manner as to provide for the uniform and efficient collection of Franchise Materials herein specified.

B. Collection Schedule Revisions.

Franchisee shall notify all affected Customers at least seven (7) days prior to implementing changes to any established collection schedule. Collection schedule revisions shall not be made by Franchisee without the City Manager's prior consent.

C. Route Books and Maps.

Franchisee shall prepare and maintain route books or computer print out route schedules and maps, which outline specific routing information regarding the scheduled daily collection of Franchise Materials. The route books shall be kept current and copies shall be provided to the City Manager upon request.

D. Hours of Service.

Except for special pickups, collecting missed pickups, or due to emergencies, the Franchisee, unless otherwise approved by the City Manager, shall schedule no collection earlier than 6:00 a.m. and no later than 5:00 p.m. for any Residential Customer, Monday through Friday and no earlier than 5:30 am or later than 5:00 p.m. for any Commercial Customer. The collection times for non-residential areas that are 200 feet or less from residential areas shall be fixed by mutual agreement of the City and the Franchisee. If the City and the Franchisee fail to agree, the Franchisee must take direction from the City.

E. Holidays.

Collection of Franchise Materials shall not be required on the following legal holidays: New Year's Day, Thanksgiving Day and Christmas Day, except in case of emergency or as otherwise required by the City Manager. Whenever a regular collection falls on such a holiday, the collection shall be made on the following working day, and collections shall become current within one (1) week immediately thereafter.

F. Contaminated Recyclables and Organics.

Franchisee is not required to, pick up Recycling Containers containing greater than or equal to ten percent (10%) by weight Non-Recyclable Materials or Organics Containers containing greater than or equal to one percent (1%) by weight Non-Compostable Materials; provided, however, that the allowable percentage of Non-Compostable Material contamination in Organics Containers is subject to change based on the Organics Processing Facility. In the event that Franchisee determines that a particular Container contains more than the allowable amount of Non-Recyclables or Non-Compostables, Franchisee may do any of the following:

- Not collect the Container and shall place a tag on such Container not collected informing the Customer of the reason for non-collection, wherein the standard form for such tag is subject to the approval of the City Manager, or
- Collect the Container despite the contamination, or
- Collect the Container as Garbage and charge the Customer then then-current rate for 1x/week Garbage collection based on Container size.

In the event that the Franchisee determines that excessive amounts of Contamination are being deposited in Containers for Recyclable Materials or Organics collected by the Franchisee, it may so notify the City and the Franchisee shall take steps to identify Customers who are the source of such excessive Contamination and instruct them to curtail such Contamination. Such steps may include heightened examination of Containers by drivers or other employees of the Franchisee, increased educational efforts, or other steps directed by the City Manager.

**SECTION 4.3 CONTAINERS.**

A. City Regulations.

The type, size and other specific physical requirements for Containers are specified in Appendix B for Commercial Customers, Residential Customers and may not be changed

without the prior written approval of the City Manager.

B. Repair.

The Franchisee shall repair or replace, at its own expense, any Container provided by the Franchisee: (i) damaged by the Franchisee; (ii) damaged by the Customer (through normal wear and tear); (iii) damaged by others; or (iv) stolen. Commercial containers that need to be replaced will be replaced within five (5) working days and Commercial Containers that need to be delivered will be delivered by next service day available. Residential Carts that need to be replaced will be replaced within five (5) working days and Residential Carts that need to be delivered will be delivered prior to the Customer's next service day.

C. Franchisee Provision of Containers to Residential Customers and Commercial Customers

1. Provision of Containers - Residential

- a) The Franchisee shall provide each Residential Customer with separate Carts for Garbage, Recyclables, and Organics. Residential Customer's may choose the size of the Cart(s) for Garbage and Franchisee shall provide one (1) 64-gallon Cart for Recyclables and one (1) 64-gallon Cart for Organics for no additional charge. Additional Carts may be requested by Residential Customers at the then-current rates provided in Appendix B-1.
- b) Franchisee shall also maintain an adequate supply of backyard home composting bins, including worm composting bins, and provide such bins to Residential Customers who request such bins. Brand or specifications for home composting bins shall be approved by the City Manager prior to purchase of such bins. The fee for such bins shall be Franchisee's actual cost.
- c) Franchisee shall provide to all Residential Customers one (1) kitchen pail designed to contain Food Waste prior to placement in the Residential Customer's Organic Materials Cart for no additional charge. Franchisee shall offer the initial distribution of kitchen pails to Residential Customers prior to January 1, 2022 or when kitchen pails are received by Franchisee, whichever is later. Franchisee shall submit kitchen pail specifications to the City for review and approval prior to ordering the kitchen pails. Franchisee shall make available for purchase additional pails for those Residential Customers that have already received their one (1) kitchen pail provided at no additional charge.
- d) All Franchisee-provided Carts will remain the property of the Franchisee.

2. Provision of Containers - Commercial.

- a) Franchisee shall supply each Commercial Customer with separate Containers for Garbage, Recyclables and Organics. The Commercial Customer may choose the size of the Container(s) for Franchise Garbage, Recyclables, and Organics based on the options listed in the Commercial Service Schedule in Appendix B-2; provided, however, that unless otherwise exempted by the City, all Commercial Customers shall be provided a minimum of one (1) 64-gallon Recyclables Cart and one (1) 64-gallon Organics Cart and charged for 1x/week collection at the then-current rates provided in Appendix B-2.

- b) Franchisee shall provide a list of recommended container types to all restaurants upon request and provide Technical Assistance as needed to facilitate integration of Organics collection programs.
- c) All Franchisee-provided Containers will remain the property of the Franchisee.

3. Minimum Container Requirement.

All Containers shall meet the requirements of Appendix A and Federal O.S.H.A requirements and minimum industry standards for safety and effectiveness. Upon request of any Commercial Customer, due to repeated incidents of illegal dumping or scavenging, the Franchisee shall provide such Customer with a locking mechanism for the Container for an additional one-time charge.

4. Franchisee Responsible for Cost of Containers.

Franchisee shall provide all Containers at the Franchisee's cost and expense without any compensation beyond the then-current Service Fees set forth in Appendices B-1, B-2, and B-3.

5. Assembly and Distribution, Repair, Maintenance of Containers.

Franchisee shall assemble and distribute all Containers required pursuant to this Franchisee and the Franchisee's cost and expense without any compensation beyond the then-current Service Fees set forth in Appendices B-1, B-2, and B-3.

Franchisee shall be responsible for the general maintenance and repair of Commercial Containers as provided to the Commercial Customers and shall institute and maintain an effective program to repair, clean and repaint all such Commercial Containers twice per year without interruption in service. Franchisee shall clean Commercial Containers used by restaurants as needed (determined by City Manager) without additional charge or compensation. If more frequent repairing, maintenance, cleaning, and or repainting is required as a result of neglect or misuse on the part of any Customer, the Franchisee shall be entitled to charge such a Commercial Customer a fee, as approved by the City Manager, to compensate the Franchisee for the cost thereof. The Franchisee shall, within five (5) working days from the date such request is received or the Franchisee otherwise becomes aware of the need for such repair or replacement, repair or replace any damaged or dilapidated Container.

**SECTION 4.4 COLLECTION LOCATIONS.**

A. General.

Except as otherwise specified in Section 4.2.F, Franchisee is responsible for the collection of all Franchise Materials placed for collection in Franchisee-provided Containers or in compliant setouts described in Sections 4.1.B.6 and 4.1.C.6 at the roadside, or in the event that physical conditions prohibit roadside placement, at a location within a reasonable distance of roadside, visible to the Franchisee.

Franchisee shall immediately notify the City Manager or City Public Works Director of any condition at or near any collection location, which creates a safety hazard or accessibility problem. In such circumstances, upon authorization by City staff, the Franchisee shall arrange with the Customer for a temporary collection location until the safety hazard or accessibility problem is corrected. The Franchisee shall, where necessary, traverse private roads in order to collect Containers deposited by Customers for collection; provided, however, that the Franchisee shall not be required to utilize private roads if the owner of such road prohibits the use of such road by the Franchisee. The Franchisee shall also provide any other special services reasonably requested by a Customer; provided, however, that the Franchisee shall be entitled to reasonable compensation for providing such services, as specified in Appendix B-2, or if no rate is specified in Appendix B-2, at such rates as may be determined by Franchisee and approved by the City Manager.

B. Enclosures.

Where the collection location is within a private Commercial Customer enclosure constructed pursuant to the requirement of, or approved by, the City, the Franchisee shall be responsible for the removal, replacement and closure of all lids and doors of all Containers properly placed therein. The Franchisee shall use sufficient care in the handling of such Containers so as to prevent any damage to the enclosure, the enclosure doors, and adjacent facilities or improvements. The Franchisee shall repair at its own expense, and within thirty (30) working day after notification from the City Manager, any such City code constructed enclosures or adjacent facilities or improvements damaged by it.

**SECTION 4.5 GENERAL REQUIREMENTS RELATING TO COLLECTION.**

A. Clean Up.

Franchisee shall cause all spills of Franchise Materials occurring during the collection process (including waste spills due to tipping by animals or vandals of containers legally placed for collection) to be cleaned up immediately upon occurrence or discovery of the spill. Franchisee shall close all gates after making collections and shall avoid crossing private or public planting areas and grounds or jumping over hedges and fences.

B. Employees Uniform.

Franchisee shall take all steps necessary to ensure that its employees performing collection services conduct themselves in a workmanlike manner, and as quietly as possible. All such employees shall at all times of employment be dressed in industry standard uniforms with suitable identification. No employee may remove any portion of his or her uniform while working.

C. Record of Non-Collection.

When any Franchise Materials set out by a Customer for collection are not collected by the Franchisee, the Franchisee shall leave a tag indicating the reason(s) for such non-collection and the local telephone number of the Franchisee at which the Customer can inquire as to the circumstances relating to the non-collection. This information shall be in writing or by means of a check mark on a form tag. The Franchisee shall maintain, at its place of

business, a log listing all such circumstances in which Franchise Materials set out for collection does not occur. The logbooks shall contain the names of the Premises involved, the date of such tagging, the reason for non-collection, and the date and manner of disposition of each case. The log shall be kept so that it may be conveniently inspected by the City Manager upon request. The log relating to any particular tagging shall be retained for a period of one year following the tagdate.

D. Fees and Gratuities.

Franchisee shall not, nor shall it permit, any agent, employee or subcontractor employed by it, to request, solicit, demand or accept, directly or indirectly, any compensation or gratuity for providing Franchise Services, except such compensation as is specifically provided for herein.

**SECTION 4.6 EVENTS ALLOWING FRANCHISEE TO REFUSE COLLECTION.**

The Franchisee is not required to pick up the following:

- A. Excluded Materials
- B. Franchise Materials left for pick-up in a non-compliant manner that are not deposited in the appropriate Container.
- C. Materials not left for pick up at the proper locations, as provided in Section 4.4.A and Section 4.1.B.
- D. Materials contain contamination in excess of those percentages and types described in Section 4.2.F of this Agreement.
- E. The Franchisee may decline to collect any manually dumped Containers which weigh in excess of 100 pounds per Franchisee provided Residential Customer 64-gallon Carts, or have been compacted or otherwise placed, kept or accumulated in a manner such that the Franchise Materials will not, of their own weight, fall out of the Container in which they were placed, when the Container is turned upside down. The Franchisee shall tag any Container, which it does not collect, pursuant to this Section, identifying the reason for such non-collection.

**SECTION 4.7 DISPOSAL**

A. Disposal Location and Methods.

Subject to the limitations described herein, the City shall have the right and the obligation during the Term hereof to designate the Designated Disposal Site, or multiple concurrent Designated Disposal Sites, in its sole and absolute discretion. The Designated Disposal Site shall be the Marina Landfill owned by the Monterey Waste Management District. The City Manager shall have the right to designate alternative Designated Disposal Sites (subject to the indemnification requirements described in Section 10.1 of this Franchise); provided, however, that if the City changes the Designated Disposal Site and delivery to the new Designated Disposal Site adds more than ten (10) miles round trip to Franchisee's haul routes, the City and Franchisee agree to meet and confer on a reasonable adjustment

to Franchisee's compensation.

The City shall notify the Franchisee in writing of any changes in, or additions to, the Designated Disposal Site. The Franchisee shall transport and dispose of all Garbage, which it collects, and does not divert from landfill disposal at the Designated Disposal Site, in accordance with the requirements of Applicable Law, and shall comply with the requirements, rules and regulations of the owner or operator of the Designated Disposal Site. The Franchisee agrees that it shall not dispose of Recyclables or Organics at any disposal site, through any other type of disposal or, in the case of Recyclable Materials, through incineration, except as may be required in emergencies resulting from Uncontrollable Circumstances with the prior written approval of the City Manager.

B. Disposal Records.

Franchisee shall keep and maintain such logs, records, manifest, bills of lading or other documents as the City Manager may deem to be reasonably necessary or appropriate to confirm compliance by the Franchisee with this Franchise and shall retain all weight slips or other call information provided to the Franchisee's drivers by the owner or operator of the Designated Disposal Site.

C. Payment of Disposal Fees.

Franchisee shall pay, or make arrangements for the payment of, all tipping fees and other transfer or disposal charges imposed by the owner or operator of the Designated Disposal Site for the disposal of Garbage generated by Customers in the City of Scotts Valley and collected by Franchisee.

## **SECTION 4.8 COMPOSTING**

A. Composting Facility.

Subject to the limitations described herein, the City shall have the right and the obligation during the Term hereof to designate the Designated Composting Facility, or multiple concurrent Composting Facilities, in its sole and absolute discretion. The Designated Composting Facility shall be the Marina Landfill owned by the Monterey Waste Management District. The City Manager shall have the right to designate alternative Designated Composting Facility (subject to the indemnification requirements described in Section 10.1 of this Franchise); provided, however, that if the City changes the Designated Composting Facility and delivery to the new Designated Composting Facility adds more than ten (10) miles round trip to Franchisee's haul routes, the City and Franchisee agree to meet and confer on a reasonable adjustment to Franchisee's compensation.

The City shall notify the Franchisee in writing of any changes in, or additions to, the Designated Composting Facility. The Franchisee shall deliver all Organics which it collects to the Designated Composting Facility, in accordance with the requirements of Applicable Law, and shall comply with the requirements, rules and regulations of the owner or operator of the Designated Composting Facility. The Franchisee agrees that it shall not dispose of Organics at any disposal site, except as may be required in emergencies resulting from Uncontrollable Circumstances with the prior written approval of the City Manager.

In the event the Designated Composting Facility is no longer willing or able to accept or able to accept City's Organics for Processing, the parties shall work cooperatively to identify an alternative facility subject to the provisions of Section 7.1.C. Until such time as an alternative facility is identified and a formal agreement for the Processing of the City's Organics is executed, Franchisee shall not be deemed in breach of this agreement for failure to comply with SB 1383 except to the extent the lack of a Designated Composting Facility or alternative facility is caused by the conduct of Franchisee.

B. Composting Records.

Franchisee shall keep and maintain such logs, records, manifest, bills of lading or other documents as the City Manager may deem to be reasonably necessary or appropriate to confirm compliance by the Franchisee with this Franchise and shall retain all weight slips or other call information provided to the Franchisee's drivers by the owner or operator of the Designated Composting Facility. The data shall be provided to the City quarterly and include all information required by SB 1383 as of the date of this Agreement. If additional requirements are subsequently added to SB 1383, Franchisee's obligation to meet those additional requirements are subject to the provisions of Section 7.1.C.2.

C. Payment of Composting Fees.

Franchisee shall pay, or make arrangements for the payment of, all tipping fees and associated charges imposed by the owner or operator of the Designated Composting Facility for the composting of Organics generated by Customers in the City of Scotts Valley and collected by Franchisee.

**SECTION 4.9 C&D**

A. C&D Facility.

Subject to the limitations described herein, the City shall have the right and the obligation during the Term hereof to designate the Designated C&D Facility, or multiple concurrent Composting Facilities, in its sole and absolute discretion. The Designated C&D Facility shall be the Marina Landfill owned by the Monterey Waste Management District. The City Manager shall have the right to designate alternative Designated C&D Facility (subject to the indemnification requirements described in Section 10.1 of this Franchise); provided, however, that if the City changes the Designated C&D Facility and delivery to the new Designated C&D Facility adds more than ten (10) miles round trip to Franchisee's haul routes, the City and Franchisee agree to meet and confer on a reasonable adjustment to Franchisee's compensation.

The City shall notify the Franchisee in writing of any changes in, or additions to, the Designated C&D Facility. The Franchisee shall deliver all C&D which it collects to the Designated C&D Facility, in accordance with the requirements of Applicable Law, and shall comply with the requirements, rules and regulations of the owner or operator of the Designated C&D Facility. The Franchisee agrees that it shall not dispose of C&D at any disposal site, except as may be required in emergencies resulting from Uncontrollable Circumstances with the prior written approval of the City Manager.

B. C&D Records.

Franchisee shall keep and maintain such logs, records, manifest, bills of lading or other documents as the City Manager may deem to be reasonably necessary or appropriate to confirm compliance by the Franchisee with this Franchise and shall retain all weight slips or other call information provided to the Franchisee's drivers by the owner or operator of the Designated C&D Facility.

C. Payment of C&D Fees.

Franchisee shall pay, or make arrangements for the payment of, all tipping fees and associated charges imposed by the owner or operator of the Designated C&D Facility for the Processing of C&D generated by Customers in the City of Scotts Valley and collected by Franchisee.

**ARTICLE V  
OPERATING ASSETS**

**SECTION 5.1 FRANCHISEE OPERATING ASSETS.**

A. Obligation to Provide.

Franchisee shall acquire and maintain at its own cost and expense Franchise Operating Assets which in number, nature and capacity, shall be sufficient to enable the Franchisee to provide the Franchise Services in accordance with the terms hereof.

B. Vehicle and Equipment Identification.

Franchisee's name, local, toll-free phone number and vehicle or equipment number shall be visibly displayed on both sides of its vehicles or other collection equipment used by the Franchisee. No other signs or markings, other than safety or recycling related, shall be placed upon the Franchisee's vehicles or equipment without prior approval of the City Manager.

C. Vehicle Specifications, Maintenance and Appearance.

All vehicles used by the Franchisee in providing the Franchise Services shall be kept clean and in good repair, and shall be uniformly painted. Vehicles used to collect or transport Franchise Materials shall be kept covered at all times except when such material is actually being loaded or unloaded or when the vehicles are moving along a collection route in the course of collection. Any cover or screen shall be so constructed and used that Franchise Materials shall not blow, fall or leak out of the vehicle onto the street. Franchise Materials collection vehicles shall be washed at least once every seven (7) days and cleaned and painted as required to maintain a sanitary, like-new, appearance. No advertisement or other display shall be carried on any Franchise Materials collection vehicle, other than those specified in Section 5.1.B, without the prior written approval of the City Manager. All Franchisee vehicles used in connection with this Franchise may be required to be inspected by the City Manager on an annual basis for compliance with this sub-section C. He/she may also require an inspection conducted by the California Highway Patrol, or other similar designated governmental agency.

D. Inventory of Operating Assets.

Franchisee shall maintain an inventory of Operating Assets used by the Franchisee to provide Franchise Services under this Franchise and shall update the inventory at least annually. Such inventory shall indicate the type, capacity and location of each vehicle and of each piece of equipment, and the date of acquisition and disposition. The inventory of Operating Assets shall be provided to the City Manager upon request.

**SECTION 5.2 OPERATING AND MAINTENANCE OF THE OPERATING ASSETS.**

Franchisee, at its sole cost and expense, shall at all times operate, or cause to be operated, the Operating Assets properly and in a sound and economical manner; shall maintain, preserve, and keep the Operating Assets or cause the Operating Assets to be maintained, preserved and kept in good repair, working order and condition; shall staff the Operating Assets with the appropriate

number of hourly and salaried employees consistent with good management practice; and shall from time to time make, or cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the Operating Assets may be properly and advantageously conducted. The Franchisee shall maintain the safety of the Operating Assets at a level consistent with Applicable Law and prudent solid waste management practices. Franchisee shall obtain and maintain all insurance necessary to comply with this section.

**SECTION 5.3 COMPLIANCE WITH APPLICABLE LAW.**

Franchisee shall comply with the rules and regulations governing the operation, use and services of the Designated Disposal Site, the Designated Composting Facility, and the Designated C&D Processing Facility, shall observe and perform all of the terms and conditions contained in the Act, the Municipal Code and all other Applicable Law, shall obtain and maintain all Legal Entitlements required for the Operating Assets and the Franchise Services, and shall comply with all valid acts, rules, regulations, order and directions of any Governmental Body applicable to the Operating Assets and the Franchise Services provided hereunder.

**SECTION 5.4 TAXES, FEES AND UTILITY CHARGES.**

The Franchisee shall pay all Taxes and Fees lawfully levied or assessed upon or in respect of the Operating Assets or the Franchise Services, or upon any part thereof or upon any revenues of the Franchisee there from and provide and pay the cost of all Utilities necessary for the operation of the Operating Assets and the provision of the Franchise Services, when the same shall become due.

**ARTICLE VI  
GENERAL REQUIREMENTS**

**SECTION 6.1. PUBLIC ACCESS TO THE FRANCHISEE.**

A. Office Facilities.

Franchisee shall establish and maintain at all times during the Term hereof a local access toll free customer service number that shall be identified on all publications, bills and correspondence.

B. Office Hours.

Franchisee's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. daily, except Saturdays, Sundays and holidays. A weekend/after hour's voicemail service shall be provided. Calls to the weekend/after hours voicemail system will be responded to on the next businesses day.

C. Availability of Representatives.

A representative of the Franchisee shall be available at the Franchisee's office hours for communication with the City Manager and the public. This requirement is not met merely by providing a message recorder, voice mail, etc. The phone system used during regular business hours must be such that callers can ordinarily directly speak with a knowledgeable representative within thirty (30) seconds of the first ring into the call queue.

D. Emergency Telephone Number.

Franchisee shall maintain an emergency telephone number for use during other than normal business hours. The Franchisee shall have a representative, or an answering service to contact such representative, available at the emergency telephone number during all hours other than normal office hours. The Franchisee shall provide the City Manager with night and weekend telephone numbers for senior officials of the Franchisee for use by the City Manager in case of emergencies.

E. Continuation of Franchise Services During Labor Actions.

Franchisee shall prepare and submit to the City Manager, a contingency plan for uninterrupted continuation of Franchise services in the event of labor actions such as strikes, sick-outs, work stoppages or slow downs, or any other reasonably foreseeable labor action intended to negatively impact, reduce or stop Franchisee services. The plan shall not prevent the Franchisee, workers or labor organizers from exercising their lawful rights as defined by applicable law.

F. Transition to Next Franchisee at End of Agreement.

If applicable, before expiration or earlier termination of this Agreement, Franchisee will take direction from City and cooperate with the subsequent contractor to assist in a timely and orderly transition of services from Franchisee to subsequent collector. In response to City's direction, Franchisee shall provide route lists which identify each customer on the route, its service level and scheduled collection day and any special collection notes and

detailed customer account and billing information.

## **SECTION 6.2 SERVICE COMPLAINTS AND DEFICIENCIES.**

### **A. Complaints to Franchisee.**

Franchisee shall maintain during office hours a complaint service satisfactory to the City Manager. All service complaints will be directed to the Franchisee. The Franchisee shall provide bilingual, Spanish-speaking customer service representatives. Copies of all complaints shall be given to the City Manager upon request. The Franchisee shall record all complaints, including date and time, complainant name and address, and nature and date and time of resolution of complaint. This log shall be available to the City.

### **B. Required Response to Complaints.**

Missed pick-ups that are called in by 12:00 p.m. and are not late put outs, shall be picked up on the same day; missed pick-ups called in after 12:00 p.m. and are not late put outs, shall be picked up on the next scheduled business day. Drivers shall call in to the Dispatch office between 11:30 a.m. and 1:00 p.m. daily to receive and act on missed pick-ups. For service complaints, the field supervisor shall have 48 hours to resolve or attend to the complaint. Customer services representatives shall call customer after complaint resolution to confirm satisfactory results. For all other valid complaints or failure to provide a Franchise Service to a customer, corrective action shall commence the next business day following the complaint.

### **C. Penalties for Failure to Meet Requirements of Franchise.**

The City Manager may establish and collect penalties in the amounts listed below for Franchisee's failure to meet the requirements of this Franchise. The provisions of this subparagraph D shall not constitute a mandatory election of remedies. The City Manager's decision to not impose any such penalty shall not be deemed a waiver of any breach by the Franchisee under this Franchise. Except as provided in Section 10.2, the City Manager may, but shall not be obligated to, impose the penalties listed below for the corresponding deficiency in performance by the Franchisee. If the City Manager determines the issuance of penalties are appropriate, the City Manager shall issue a written notice to Franchisee ("Notice of Assessment") of the penalty and the basis on which the determination was made, including supporting documentation.

1. Failure to correct a missed pick ups within the times set forth in Sections 4.1.B.1, 4.1.C.1, and 4.2.D: \$100.00 per occurrence; each additional 24-hour working day period: \$100.00;
2. Failure to provide Containers to initial Customer within seven days of request for service: \$100.00 per day;
3. Failure to deliver collected Franchise Garbage to the Designated Disposal Site: \$1,000 per ton;
4. Failure to repair or replace any Container, when so required by this Agreement: \$100.00 per occurrence;

5. Undertaking Residential collection operations earlier or later than specified in Sections 4.1.B.1 or 4.2.D: \$100.00 per occurrence;
6. Failure to maintain Operating Assets in neat and orderly manner, after notice by the City Manager and within a reasonable time to remedy: \$100.00 per day;
7. Failure to record a response to a Customer complaint or request within 24 hours of resolution: \$100 per occurrence;
8. Failure to clean up spillage or litter during Franchisee collection activity: \$100.00 per occurrence;
9. Failure to take reasonable steps to resolve a legitimate billing complaint within seven working days from the complaint: \$100.00 per occurrence;
10. Additional penalty when Franchisee receives more than 25 valid service-related complaints in any 30-day period: \$500.00;
11. Failure to tag materials not collected due to contamination or inappropriately prepared: \$100.00 per occurrence;
12. Failure to attain final complete deployment of containers and automated pick up vehicles for Recycling or Franchise Yard Waste on the date required by this agreement: \$500.00 per day;
13. Failure to remit City fees by the fifteenth of the month: \$100.00 per occurrence plus late fees of three-quarters of one percent per month for every month thereafter until paid;
14. Failure to maintain or submit documents and reports as required under the terms of this Agreement after ten days notice: \$100 per incident per day;
15. An improper refusal to pick up materials when the stated or ostensible basis for the refusal is one of the grounds listed in Section 4.6 \$100 per incident per day.
16. Failure to comply with Container labeling and color requirements pursuant to Section 7.5 of this Agreement: \$100 per container,
17. Failure to perform any individual education and outreach activity as required and in the timeframe specified by this Agreement: \$500 per occurrence,
18. Failure to submit any individual report or provide access to records in compliance with and in the timeframe specified in this Agreement. Incomplete and/or inaccurate reports shall be considered a failure to submit until such time as all information in the report has been provided in a complete and accurate form. In the event the City determines an errant or incomplete report more than ten (10) Business Days after submittal by Franchisee, Franchisee shall be given ten (10) Business Days to complete and correct and any pending Liquidated Damages shall be tolled during that period: \$500 per report/occurrence.
19. Failure of Franchisee Collection personnel to issue contamination notices and maintain

documentation of issuance when contamination is the reason for non-collection: \$100/occurrence.

Any penalty due under this section shall be paid to the City in accordance with Section 7.1.B.

D. Procedure for Review of Administrative Charges.

The penalties assessed shall become final unless, within ten (10) calendar days of the date of the Notice of Assessment, Franchisee provides a written request for a meeting with the City Manager to present evidence that the assessment should not be made. The City Manager shall schedule a meeting between Franchisee and the City Manager as soon as reasonably possible after timely receipt of Franchisee's request. The City Manager shall review Franchisee's evidence and render a decision sustaining or reversing the penalties as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to Franchisee.

**SECTION 6.3 ACCOUNTING AND RECORDS.**

A. Maintenance and Audit of Records.

Franchisee shall maintain in its principal office full and complete financial and accounting records prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit and inspection by the City and its authorized officers, agents or employees, at any reasonable time at the Franchisee's principal office. The gross receipts derived from the Franchise Services under this Franchise, whether such services are performed by the Franchisee or by a subcontractor or subcontractors, shall be recorded as revenues in the accounts of the Franchisee. The Franchisee shall maintain and preserve all disposal records and service level records for a period of not less than three (3) years following the expiration or termination of the Franchise. The City Manager may require a Customer audit in order to verify that Customers are receiving the level of service for which they are being billed.

B. Inspection of Franchisee's Accounts and Records.

The Franchisee's service levels and disposal records shall be available at the: Franchisee's local office at any time during regular business hours for inspection by the City Manager during the term of this Franchise and for a period of three (3) years following the expiration or termination of the Franchise.

C. Delivery of Financial Reports to City.

Annually the Franchisee shall furnish at its sole cost and expense complete annual financial statements of the Franchisee to the City Manager necessary in order for the City to reconcile any financial determination related to this Franchise. Such statements should include those records applicable to the services defined in this Franchise. The statement shall be examined by an independent Certified Public Accountant, and shall include the unqualified opinion of such accountant as to whether such statement is a fair representation of the data included therein. The financial information shall include a report on the service classification of each Customer within the Franchise Area. The Franchisee shall have a complete audited financial statement available to the City by July 15 of each year.

D. Recycling and Organics Information.

Franchise shall maintain in its principal office full and complete financial and accounting records pertaining to cash, billing, purchase, processing, shipping and sale of Recyclables processed and sold under the provisions of this Franchise. Except where Franchisee would be required to disclose certain confidential and proprietary corporate information belonging to Franchisee and that constitute Franchisee's Trade Secrets under the California Civil Code section 3426.1(d) ("Trade Secrets") that are not of public knowledge or general knowledge in the trade or business, and that have an intrinsic value preserved by, being safeguarded from disclosure, said records shall be subject to inspection by the City Manager.

E. Computer System.

Franchisee shall maintain a computer database which specifies the service address of each Customer within the Franchise Area covered by the Franchise Agreement, the service classification applicable to each Premises, and any special services provided to such Premises. The Franchisee computer system shall allow the City to review for each Customer:

1. Record of missed pick ups or late put out by the customer,
2. Records of daily container (refuse, recycling, yard waste, home composting) delivery,
3. Route identification,
4. Container servicing, and
5. Tagging for contamination, placement or other reasons.

The Franchisee shall provide the City convenient access to this information, including printouts, if requested.

**SECTION 6.4 RULES AND REGULATIONS OF THE CITY MANAGER.**

The City Manager or City Council shall have the power to establish rules and regulations relating to the accumulation, collection, recycling and disposal of Franchise Materials not inconsistent with the provisions of this Franchise, provided such rules and regulations are found to be reasonably necessary by the City Manager for enforcement of the provisions of this Franchise, or any and all Applicable Laws.

**SECTION 6.5 PERFORMANCE BOND.**

Franchisee shall furnish to the City and maintain and file with the City of Scotts Valley no later than 30 days after the Franchise Date a corporate surety bond, or other acceptable surety, approved as to form by the City of Scotts Valley City Attorney executed by the Franchisee as principal and by a corporate surety, in the sum of \$1,000,000.00. Such bond shall permit the City to draw upon it in the event the Franchisee fails to perform its obligations hereunder and fails to pay any liquidated damages required to be paid as a result of such non-performance. The surety bond shall serve to secure the performance of the Franchise Services, and the amount thereof shall in no way limit the damages which may be payable hereunder upon any breach hereof by the Franchisee.

**SECTION 6.6 SUBCONTRACTORS.**

Franchisee shall not utilize any subcontractors for the performance of the Franchise Services except with the consent of the City, which may be withheld or delayed in its sole and reasonable discretion.

## **SECTION 6.7 MONITORING AND REPORTING.**

### **A. Records.**

Franchisee shall maintain in its local office records for the City of the quantities of (i) Garbage collected and disposed under the terms of this Franchise, (ii) Recyclables collected, processed, sold, donated or given for no compensation, and residue disposed, and (iii) Organics collected and delivered to the Designated Composting Facility for Processing. Quantities by type of Recyclables collected by Franchisee may be determined by estimate based on load sampling to characterize the contents of each commingled material load, using a sample protocol established by mutual agreement of the City and Franchisee. Said records shall be subject to inspection by the City Manager.

### **B. Waste Disposal and Characterization Studies.**

Franchisee shall, at no additional compensation, conduct one seasonal characterization study per year during the course of this agreement on the Franchise Recyclables in order to determine the content of said material for marketing and public outreach purposes. The study shall be performed in the first calendar quarter during the first year of the Agreement and each year thereafter, shall be performed in the calendar quarter following the prior year's study.

### **C. Collection Monitoring.**

Franchisee shall allow a person designated by the City Manager to ride with the Franchisee collection vehicles on any route or routes with the proper Franchisee indemnification of liability, or liability waiver provided by the City of Scotts Valley. The City Manager will inform the Franchisee at least one week in advance prior to date of route monitoring. Franchisee shall also perform ongoing contamination monitoring required for SB1383 as described in Appendix D.

### **D. Reporting.**

Unless waived in writing, the Franchisee shall submit the following reports to the City:

#### **1. Quarterly Report Submittals.**

Quarterly reports shall be submitted no later than the 25<sup>th</sup> of the month following the reporting period.

##### **a) Franchise Garbage Materials Data – Quarterly.**

Identify Residential and Commercial quantities collected.

##### **b) Recycling and Diversion Data – Quarterly.**

Identify, by diversion type (Residential and Commercial), amounts of collected Recyclables, which are recycled or diverted from landfill disposal.

c) Franchise Organics Data - Quarterly.

Identify residential Franchise Organics quantities collected, processed and delivered to the Designated Composting Facility. Include gross tons collected weekly.

d) Praises Complaints Missed Pickups and Resolutions - Quarterly.

Provide the City Manager with a quarterly report summary of compliments and complaints received. In particular, such summary will specifically identify any complaints, which require the payment by the Franchisee of liquidated damages pursuant to this Article.

e) Problems and Actions Taken – Quarterly.

Provide summary narrative of problems encountered with collection and processing activities and actions taken. Indicate instances of and responses to property damage or injury, poaching or scavenging, significant changes in operation in response to such problems.

2. Annual Report Submittals.

Unless another date is provided herein, or specified by the City Manager, Annual reports shall be submitted no later than forty-five (45) days following the end of the Franchise Year.

a) Public Education and Information - Annually.

Provide a summary description of public education and information activities undertaken. Include distribution of individual customer literature, collection notification tags, community information and events, tours and other activity involvement.

b) Annual Report Contents.

The Annual Report shall summarize: the numerical information contained in the monthly reports, changes, and customer complaints or comments.

E. State Diversion Mandates

Franchisee agrees to operate collection program for Franchise Materials from Residential Customers and Commercial Customers in such a way to assist the City with efforts to comply with State Mandates and to Process Recyclables to maximize possible diversion from landfill to meet the requirements of current State mandates, including, but not limited to, CIWMB Act of 1989, AB 939, AB 341, AB 1594, AB1826 and SB 1383, and provide all of the necessary data and documentation, to the extent Franchisee controls such data, for reporting to CalRecycle. To the extent future State mandates require new or different requirements or processes, Franchisee may submit a request for a special rate adjustment

subject to the provisions of Section 7.1.C.2.

## **SECTION 6.8. RESEARCH AND DEVELOPMENT.**

Franchisee agrees to take a proactive approach on its own initiative and, in addition, to cooperate with the City in pursuing new technologies, management techniques and markets through pilot programs or other similar activities to improve cost-efficiencies and product quality and to increase material recovery from the collection and processing services described herein. The Franchisee and the City, by mutual agreement, will determine the scope of work, timing, costs, and compensation, if any, due Franchisee to accomplish the purposes of this paragraph. The Franchisee shall provide the City, on request, with a written summary report identifying the results and conclusions of such research or pilot programs. In the context of the objectives of this paragraph, the Franchisee will meet with the City, as requested, to evaluate the performance of the Franchise Services and to examine new market opportunities for the processed materials produced by the Franchise services.

## **SECTION 6.9. CITY RIGHT TO DIRECT CHANGES.**

The City may direct the Franchisee to perform additional services or modify the manner in which it performs existing services; provided, however, that City's request shall not impact the exclusivity provisions of this Agreement. Franchisee shall be entitled to an adjustment in its compensation for providing such additional or modified services in accordance with Section 7.1.C.2 of this Agreement.

### **A. Franchisee Proposal Process**

If requested by the City, the Franchisee shall present, within 30 days of the request, a proposal to provide additional or modified services. The proposal shall contain a complete description of the following when applicable; (i) collection methodology to be employed, (ii) equipment to be utilized, (iii) labor requirements, (iv) type of containers to be utilized, (v) provision of program marketing and public education, (vi) a projection of the financial results of the program's operations for the remaining Term of the Agreement in a balance sheet and operating statement format including documentation of key assumptions underlying the projections and the support for the assumptions, (vii) materials processing facility to be used, and (viii) proposed rate adjustment.

## **SECTION 6.10. DISPUTE RESOLUTION**

- A. If the parties are unable to resolve a dispute arising under this Agreement in a cooperative manner, either party may call for mediation, as hereafter described. The party calling for mediation shall serve notice in writing upon the other party setting forth the question or questions to be mediated. The costs of mediation shall be borne equally by the parties.
- B. Within ten (10) days after delivery of the notice called for under Section 6.10.A, the parties shall select a mutually acceptable mediator from the Judicial Arbitration and Mediation Service (JAMS) or other mutually agreeable organization.

In the event the parties are unable to agree on a mediator, both parties shall provide two names

of two proposed mediators and the mediator shall be selected randomly from the proposals. However, either side may reject the proposed mediator and JAMS will select another. Within ten (10) days thereafter the parties shall meet with the mediator in a good faith attempt to resolve their dispute. The parties shall continue to meet with the mediator until their dispute is resolved or the mediator indicates that he or she does not believe that further efforts are likely to result in a successful resolution at which time litigation may be commenced.

**ARTICLE VII  
COMPENSATION**

**SECTION 7.1. SERVICE RATE SCHEDULE/BILLING PROCEDURES.**

A. Formula.

Except as otherwise provided in Sections 7.3 and 7.4 of this Agreement, commencing with the first regular billings mailed after the effective date of this Agreement, the Franchisee shall be entitled to retain all Customer Revenue billed in accordance with the Service Rate Schedule for the Franchise Services provided by the Franchisee hereunder in accordance with the provisions of this Article and Appendices B-1, B-2, and B-3. Service Fees shall be adjusted from time to time as provided in Section 7.1.C of this Agreement.

Franchisee shall offer qualifying Residential Customers participating in the PG&E Care Program discounted services as described in Appendix B-1. In order for a Residential Customer to be eligible for a discounted rate, the Customer may only be subscribed to a single 10-gallon, 20-gallon or 35-gallon Garbage Cart

Except as otherwise expressly provided in this Agreement, the revenue from the Service Rate Schedule, less the monthly remittance due to City described in Section 7.3 and 7.4, constitutes the entire compensation of the Franchisee for the Franchise Services. Except as otherwise provided in this Agreement, Franchisee waives any right it has or may have at any time during the Term of this Franchise to seek to have the Service Rate Schedule increased in a manner not set forth in this Agreement under any theory of fact or law by any Governmental Body.

B. Damages.

All penalties and/or damages shall be paid by the Franchisee directly to the City, or persons subject to receive payment for damages, within 25 days following the end of the month in which determination for payment has been concluded.

C. Modification of the Service Rate Schedules.

1. Annual Rate Adjustments

Service Rate Schedules herein provided in Appendices B-1, B-2, and B-3 shall become effective January 1, 2022 to provide adequate time to notice Customers of upcoming rate changes. Commencing on July 1, 2022 and on July 1st of each subsequent year during the Term of the Franchise, the Service Rates contained in the Service Rate Schedules herein provided in Appendices B-1, B-2, and B-3 shall be changed as follows:

- a. Service Rates without components shall be adjusted by 100% of the change in the Consumer Price Index for All Urban Consumers for All Items for the area of San Francisco-Oakland-Hayward from the prior December to the December of the current adjustment year and shall include any changes in Fees pursuant to Section 7.3 and 7.4 of this Agreement.
- b. Commercial Recyclables Service Rates shall be determined by taking eleven percent (11%) of the then-current Commercial Garbage rate by Container type,

Container size and collection frequency.

- c. Where Residential and Commercial Service Rates for Garbage and Organics that include a Service Fee Component and a Processing Fee Component, each component shall be adjusted independently, and the resulting components shall be added together to determine the new Service Rate as follows:
  - i. The Service Fee Component of such rates shall be adjusted by 100% of the change in the Consumer Price Index for All Urban Consumers for All Items for the area of San Francisco-Oakland-Hayward from the prior December to the December of the current adjustment year and shall include any changes in the Fee pursuant to Section 7.3 and 7.4 of this Agreement.
  - ii. The Processing Fee Component of such rates shall be adjusted by 100% of the percentage change in the per ton fees by Franchise Material type at the Designated Disposal Facility and/or the Designated Composting Facility and then grossed up for the Fees described in Sections 7.3 and 7.4 of this Agreement as well as any changes in the Fees described in these Sections.

On or before April 1 of each year of this Agreement, Franchisee shall present to City the indices on which the adjustments are to be calculated, and the proposed adjusted Service Rates.

Rate changes shall not be applied to services which have already been billed (whether or not performed) prior to Franchisee's mailing of notice of rate increase to Customers. The City Manager or designee shall review the rate change calculations for accuracy and provided the calculations are accurate, the new Service Rate Schedules shall be considered approved and Franchisee may commence charging the newly adjusted Service Rates 30 days after written notice has been provided to Customers.

## 2. Special Rate Adjustments

Any City-directed changes in scope, a Change in Law, changes to per ton fees made by the Designated Disposal Facility and/or the Designated Composting Facility that do not coincide with the beginning of a new rate period (July 1<sup>st</sup>) or other changes which cannot be foreseen and such individual or cumulative change(s) materially affects the Company's annual cost of operations, may be the basis for a special adjustment of the Franchisee's Service Rates. Franchisee may request a Special Rate Adjustment at any time. Special Rate Adjustments will be at the reasonable discretion of the City, based on the written request and documentation provided by the Franchisee.

In the event Franchisee requests a Special Rate Adjustment as a result of a Change in Law, Franchisee shall have the burden of demonstrating to the reasonable satisfaction of the City Manager that the failure of City to adjust the rates will result in the Franchisee incurring new and unanticipated costs or reduced revenues due to the Change in Law. The Franchisee will have to demonstrate new and unanticipated costs or reduced revenues by allowing for the City Manager review of financial statements and/or other supporting documentation reasonably necessary to determine the impact of the change. Any resulting rate adjustment shall be subject to the review of the City Council; provided, however, if the necessary rate adjustment required for Franchisee to continue to operate within

Applicable Law is not approved, Franchisee may petition the City Council to offset Franchisee's increased costs using Franchise Fees or reducing other services provided under this Agreement and not approved, Franchisee retains the right to initiate dispute resolution procedures described in Section 6.10 or to take any action and seek any remedy at law or in equity.

**SECTION 7.2. MONTHLY SERVICE FEE CUSTOMER STATEMENT.**

Franchisee shall continue to bill (frequency and timing) in accordance with its present practices in City. No significant changes shall occur without City Manager approval.

**SECTION 7.3. FRANCHISE FEE.**

Commencing upon the date that the City executes the Franchise Agreement, Franchisee shall be assessed by the City a Franchise Fee equal to twenty percent (20%) of all Fees and Assessments charged by Franchisee to Residential and Commercial Customers.

**SECTION 7.4. CITY SURCHARGES.**

The City may, at its sole and absolute discretion, require the Franchisee to include in its bill to Customers, collect, and pass through to City without any additional charge, any applicable fees or surcharges as may be imposed by the City Council, including, but not limited to, recycling fees, disposal fees, street sweeping fees or AB 939 fees. The Franchisee may separately list and describe any such fees or charges.

**SECTION 7.5. DISPUTES REGARDING EXTRA SERVICES.**

If a Residential or Commercial Customer disputes any statement billing amount for extra Customer-requested service above the established Service Fee Rate, the Franchisee shall provide the Residential or Commercial Customer with a written verification of the amount billed. If the Customer and the Franchisee are not able to resolve such dispute within 30 days after the date of Customer's written objection, either party may refer such dispute to the City Manager for review. If the City Manager accepts the matter for review, the City Manager's determination shall be final. The City Manager may decline to accept the matter for review, in which case the parties shall have normal recourse to the courts.

**ARTICLE VIII  
DEFAULT, TERMINATION FOR CAUSE AND DISPUTE  
RESOLUTION**

**SECTION 8.1. TERMINATION, PRE-CONDITION FOR BREACH.**

The parties agree that, in the event that either party breached any obligation under this Franchise or any representation made by either party hereunder is untrue in any material respect, the other party shall have the right to take any action and seek any remedy at law or in equity it may have to enforce the payment of any damages for the performance of such other obligation hereunder. The Franchisee acknowledges that the City intends to rely on the Franchisee to provide Franchise Materials collection, transportation to the Designated Disposal Site, Designated Transfer Facility, Designated Composting Facility and Designated C&D Processing Facility and other services hereunder for the protection of the public health, safety and welfare, and that therefore the City may enforce any action for specific performance of the Franchisee's obligations hereunder to provide the Franchise Services on the terms and conditions provided herein. Neither party shall have the right to terminate this Franchise for cause except after an Event of Default determined in accordance with the provisions of this Article VIII has occurred, and has not been remedied.

**SECTION 8.2. RIGHT OF THE CITY TO PERFORM SERVICES IN CERTAIN CIRCUMSTANCES.**

Franchisee Failure to Collect for any Reason. Should the Franchisee, for any reason whatsoever, fail, refuse or be unable to collect, transport and dispose of any or all Franchise Materials which it is herein obligated to collect, transport and Dispose, deliver for Processing or Process in the time and manner as herein in the Franchise provided, for a period of more than seventy-two (72) hours, exclusive of the 24-hour period that is Sunday, or if in any lesser time period Garbage and/or Organics should accumulate in the City to such an extent, in such manner, or for such time that the City Manager or City Council should find that such accumulation endangers or menaces the Public Health, safety or welfare, then, in any of those events, the City shall have the right, upon notice to the Franchisee, after such notice, to cause the Garbage and/or Organics to be collected. All of the reasonable costs of such collection shall be paid by Franchisee. In such event the City shall submit a reimbursement statement to the Franchisee. Each statement shall list such costs and expenses, and the reimbursement shall be made no later than five (5) days from and after each such submission. In the event the reimbursement is not made, the City may draw upon any bond or other security required to be maintained thereunder.

**SECTION 8.3. EVENTS OF DEFAULT OF FRANCHISEE.**

A. Event of Default Defined. Each of the following shall constitute an Event of Default on the part of the Franchisee:

1. Certain Events of Non-Compliance.

Any transaction not complying with the requirements of Section 3.2. or Section 3.3. hereof.

2. Failure of Deliveries to the Designated Disposal Site.

Except for Uncontrollable Circumstances and where City fails to secure capacity for any

Franchise Materials pursuant to the provisions of Section 2.1.G, the failure by the Franchisee for any reason, without any requirement of notice or cure opportunity, to deliver to the Designated Disposal Site, on a consecutive or cumulative basis though out the Term of this Franchise, Garbage that it collects from Customers in any significant amount.

3. Missed Collections. The failure of the Franchisee, except as may be excused by Uncontrollable Circumstances, to, in any Franchise Year, make at least 99.95% of the gross number of scheduled collections placed at the curb by Residential - Customers or at the designated collection points by Commercial Customers.

4. Improper Disposal of Recyclables or Organics.

Except for Uncontrollable Circumstances, Disposal by the Franchisee in any landfill of Recyclables or Organics.

5. Refusal to Timely Provide or Falsification of Report.

Intentional refusal to timely provide, or falsification by the Franchisee of, any report or document required to be provided by the Franchisee under this Franchise.

6. Voluntary Bankruptcy.

The written admission by either the Franchisee or Guarantor that it is bankrupt, or the filing by the Franchisee or either Guarantor of a voluntary petition under the Federal Bankruptcy Code, or the consent by the Franchisee or either Guarantor to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of the Franchisee's or either Guarantor's property or business and where Franchisee can no longer perform its obligations under this Agreement.

7. Involuntary Bankruptcy.

The final adjudication of the Franchisee or either Guarantor as a bankrupt after the filing of an involuntary petition under the Bankruptcy Act, but no such adjudication shall be regarded as final unless and until the same is no longer being contested by the Franchisee nor until the order of the adjudication shall be regarded as final unless and until the same is no longer being contested by the Franchisee nor until the order of the adjudication is no longer appealable and where Franchisee can no longer perform its obligations under this Agreement.

8. Failure to Provide Performance Bond.

The failure of the Franchisee to provide or maintain the performance bond required pursuant to Section 6.5. hereof.

9. Other Failure to Perform, Notice.

Failures described in sub-paragraphs 1, 2, 6, 7 and any falsification of reports are events

for which City may, at its sole election, terminate this Franchise without prior notice. On all other matters listed in this section, and for Franchisee's failure or refusal to perform any material term, covenant, obligation or condition contained in the Franchise, the City shall have the right to terminate this Franchise under this Section when:

- (a) The City has given prior written notice to the Franchisee, stating that a specific failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Franchise on the part of the Franchisee and which will, in its opinion, give the City a right to terminate this Franchise for cause under this Section unless such default is corrected within the time specified in Part B of this Section 8.3; and
- (b) The Franchisee has neither challenged in an appropriate forum the City's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Franchise nor corrected or diligently taken steps to correct such default within 15 days from receipt of the notice given. However, if the Franchisee has diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the Franchisee is expeditiously continuing to take such steps to correct such default.

**B. Termination Liquidated Damages Payable to the Cities.**

If this Franchise is terminated by the City for cause as a result of an Event of Default by the Franchisee hereunder, the Franchisee immediately upon receipt of the City termination notice shall pay to the City as damages:

1. All amounts payable to the City by the Franchisee as damages for actions occurring prior to such date of termination,
2. An amount equal to the sum of all increased payments, damages, penalties incurred by or on behalf of the City under or Applicable Law as a result of the termination of this Franchise, and
3. \$250,000.00 as compensation for the cost (including but not limited to staff and consultant time) and dislocation, which results from having to hurriedly obtain other service and another Franchisee.

**C. Adequacy of Termination Liquidation Damages.**

The parties agree that upon termination of the Franchisee for cause under Section 8.3, actual damages would be difficult or impossible to ascertain, that the termination liquidated damages provided for are herein intended to place the City in an economic position equivalent to that which it would have been in the Event of Default or material breach permitting termination for cause had not occurred. The obligation to pay such termination liquidated damages shall not impair or limit the obligation of the Franchisee or the City under any other provision of this Franchise, which expressly survives termination hereunder.

**SECTION 8.4. EVENT OF DEFAULT BY THE CITY.**

- A. Event of City Default Defined. The following shall constitute an Event of Default on the Part of the City:

The failure of the City to pay undisputed amounts due and owing to the Franchisee under this Franchise within 90 days following receipt of a Franchisee invoice therefore relative to direct payment of invoices submitted in excess of the free service provided to the City under the terms of this Franchise Agreement only.

#### **SECTION 8.5. NO WAIVERS.**

No action of the City or Franchisee pursuant to this Franchise (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Franchise. No course of dealing or delay by the City or Franchisee in exercising any right, power or remedy under this Franchise shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the City or of the Franchisee under this Franchise shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

#### **SECTION 8. 6. PUNITIVE DAMAGES.**

In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any punitive or similar damages (except for penalties herein provided) based upon claims arising out of or in connection with the performance of non-performance of its obligations or otherwise under this Franchise, or the material inaccuracy of any representation made in this Franchise, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

#### **SECTION 8.7. FORUM FOR DISPUTE RESOLUTION.**

All legal actions and proceedings related to this Franchise or to the Franchise Services or to any rights or any relationship between the parties arising therefrom shall, unless precluded by federal jurisdiction mandates, be solely and exclusively initiated and maintained in the courts of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Santa Cruz. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision of the Agreement, the prevailing party of such action shall be entitled to recover its reasonable litigation expenses, including attorney fees.

#### **SECTION 8.8. ADMINISTRATIVE REVIEW OF DISPUTES.**

Either party hereto may give the other party written notice of dispute relating to matters, which are ongoing or unresolved. The parties shall try to arrange a mutually satisfactory time and place to meet. If they cannot agree, the City Manager shall set a time, during business hours, approximately one week from the date of the notice, for a meeting at City Hall. The parties shall attempt to resolve such dispute. The City Manager shall keep a record of the proceedings conducted and information presented during such meeting. In the event that such dispute cannot be resolved by the parties hereto within 30 days of delivery of the initial notice, either party may initiate the dispute resolution procedures in Section 6.10 and if unsuccessful, may avail itself of any other remedy. This Section shall not apply: when City has declared a default under Section 8.3; when city has assessed a

penalty under Section 6.2(D); when City claims reimbursement under Section 8.2 or for matters covered by Section 8.9.

### **SECTION 8.9. CRIMINAL ACTIVITY OF THE FRANCHISEE.**

Should the Franchisee or any of its officers or directors be "found guilty" of felonious conduct relating to the Franchise Services, or other felonious conduct involving (i) a price fixing conspiracy in connection with Franchise Services, (ii) illegal transport or disposal of hazardous or toxic materials, or (iii) bribery of public officials, the City reserves the right to do any of the following:

1. To unilaterally terminate this Franchise Agreement; or
2. Exercise all other remedies available to the City in instances of default; or
3. Accept such other sanctions (which may include financial sanctions or any other condition deemed appropriate short of termination) as the City and Franchisee shall mutually agree.

Such action shall be taken after the Franchisee has been given notice and an opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that the Franchisee or any of its officers, directors or employees is guilty, and any admission of guilty by the Franchisee, or any of its officers, directors, or employees including, but not limited to, the pleas of "guilty", nolo contendere", "no contest" or "guilty of a lesser felony" entered as part of any plea bargain. Notwithstanding the foregoing, if such officers, director or employees are acting in their own behalf in their individual capacities as officer, directors or employees, the Franchisee shall dismiss or remove such officers, directors or employees and take all action necessary and appropriate to remedy any breach of this Franchise Agreement.

## **ARTICLE IX**

### **TERM**

SECTION 9. 1. TERM. The term of this Franchise shall commence on July 1, 2021 and shall end on June 30, 2030. The City hereby grants Franchisee the exclusive option to submit a proposal for extending the Franchise Agreement beyond June 30, 2030. Franchisee must submit any such proposal no later than February 28, 2029 and if no such proposal is forthcoming on or before February 28, 2029, Franchisee's exclusive option to submit a proposal as herein set forth shall automatically terminate. If Franchisee submits such a proposal but City and Franchisee have not agreed to terms for a Franchise Agreement extension on or before October 1, 2029, City at its sole discretion, may solicit proposals for waste and recycling collection services of the types provided for in this Franchise Agreement from any other firm or vendor.

**ARTICLE X  
MISCELLANEOUS PROVISIONS**

**SECTION 10.1 INDEMNIFICATION.**

The Franchisee agrees that it will protect, indemnify and hold harmless the City and its representatives, officers, employees and subcontractors (as applicable in the circumstances), (the "City Indemnified Parties") from and against (and pay the full amount of) all "Loss-and-Expenses."

Franchisee will defend the City Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of:

- A. The negligence or wrongful conduct of the Franchisee or any of its officers, members, employees, agents, representatives or Subcontractors in connection with its obligations or rights under this Franchise,
- B. The collection, transportation, handling, storage, processing, marketing, or disposal of Franchise Materials,
- C. Any Franchisee Breach,
- D. Any claim for any finder's or brokerage fee or other commission resulting from any services alleged to have been rendered to or performed on behalf of the Franchisee with respect to this Franchise or any of the transactions contemplated hereby,
- E. Any action taken by the City pursuant to its rights under Section 8.2. hereof upon a failure to collect, transport, process, or dispose of Franchise Materials,
- F. The performance or non-performance of the Franchisee's obligations under this Franchise,
- G. Non-compliance with the Act, excluding instances where non-compliance is the result of city's action and not to activities herein contemplated to be performed by Franchisee,
- H. Any alleged violation of the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. Section 9601 et seq.,
- I. Any liability associated with Franchisee's use of any Designated Disposal Site, Designated Composting Facility and/or Designated C&D Facility.
- J. The Franchisee shall not however, be required to reimburse or indemnify any City Indemnified Party for any Loss-and-Expense to the extent any such Loss-and-Expense is due to (1) any City Breach, or (2) the negligence or other wrongful conduct of any City Indemnified Party. "Loss-and-Expense" means any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, claim, demand, charge, tax, or expense including all Fees-And-Costs.

A City Indemnified Party shall promptly notify the Franchisee of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Franchisee the opportunity to defend such claim and shall not settle the claim without the approval of the

Franchisee. These indemnification provisions are for the protection of the City Indemnified Parties only and shall not establish, of themselves, any liability to, third parties. The provisions of this subsection shall survive termination of this Franchise.

## **SECTION 10.2 UNCONTROLLABLE CIRCUMSTANCES GENERALLY.**

### **A. Performance Excused.**

Except as otherwise specifically provided in this Franchise, neither the Franchisee nor the City shall be liable to the other for any failure or delay in the performance of any obligation under this Franchise (other than any payment at the time due and owing) to the extent such failure or delay is due to the occurrence of an Uncontrollable Circumstance.

### **B. Notice, Mitigation.**

The party experiencing an Uncontrollable Circumstance shall notify the other party by telecommunication or telephone and in writing, within 24 hours after the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within two days by a written description of:

1. The Uncontrollable Circumstance and the cause thereof (to the extent known),
2. The date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed, and
3. Potential mitigating actions, which might be taken by the Franchisee or City.

Each party shall provide written notice of the cessation of such Uncontrollable Circumstance within 24 hours thereof. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefore and resume performance under this Franchise. While the delay continues, the Franchisee or City shall give daily notice to the other party updating the information. Neither party to this Franchise shall have any responsibility whatsoever with respect to services provided or contractual obligations or liabilities assumed by the other party.

## **SECTION 10.3. RELATIONSHIP OF THE PARTIES.**

The Franchisee is an independent contractor and franchise holder and nothing in this Franchise shall be deemed to constitute either party a partner, agent or legal representative of the other party.

## **SECTION 10.4. NO DISCRIMINATION.**

The Franchisee shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex, sexual orientation or physical or mental disability. The Franchisee will take all actions deemed reasonably necessary to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, national origin, sex, sexual orientation or physical or mental disability. Such action shall include, without limitation,

recruitment and recruitment advertising; layoff or termination; upgrading, demotion, transfer, rate of pay or other form of compensation; and selection for training, including apprenticeship. The Franchisee shall impose the non-discrimination provision of this Section by contract on all Subcontractors hired with City consent to perform work related to performance of its obligations hereunder and shall take all reasonable actions necessary to enforce such provisions.

**SECTION 10.5. ACTIONS OF CITY IN ITS GOVERNMENTAL CAPACITY.**

Nothing in this Franchise shall be interpreted as limiting the rights and obligations of the City in a governmental or regulatory capacity, or as limiting the right of the Franchisee to bring any legal action against the City, not based upon this Franchise, arising out of any act of omission of the City in governmental or regulatory capacity.

**SECTION 10.6. BINDING EFFECT.**

This Franchise shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provision hereof.

**SECTION 10.7. AMENDMENTS.**

Neither this Franchise nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by both parties.

**SECTION 10.8. NOTICE OF LITIGATION.**

Each party shall deliver written notice to the other of any Legal Proceeding to which it is a party and which questions the validity or enforceability of this Franchise or any other related agreement executed by the Cities or the Franchisee or Legal Entitlement issued in connection herewith.

**SECTION 10.9. NOTICES.**

Any notices or communications required or permitted hereunder to be given to the City shall be writing and shall be sufficiently given only if delivered in person to the City Manager. Notices and communications given by mail hereunder shall be deemed to have been given 5 days after the date of dispatch; all other notices shall be deemed to have been given upon receipt.

If to City:                      City Manager  
    City of Scotts Valley  
    One Civic Center Drive  
    Scotts Valley, CA 95066  
    (831) 440-5600  
    (831) 438- 2793 (facsimile)

With Copy to:                 Kirsten Powell, City Attorney  
    Logan & Powell, LLP  
    15466 Los Gatos Blvd., Suite  
    1099  
    Los Gatos, CA 95032  
    (408) 402-9542  
    (408) 402-8441 (facsimile)

If to Franchisee: Jim Moresco  
General Manager  
Green Waste Recovery, Inc.  
P.O. Box 2345  
Watsonville, CA 95077  
(831) 768-4722  
(831) 768-9901 (facsimile)

**10.10. CHANGE IN CONTROL – LIMITED ASSIGNMENT**

**A. Consent to Change in Control.**

Notwithstanding any provision in this Agreement to the contrary, the City hereby approves and consents to the change of control of Franchisee to MIP V Waste, LLC, a Delaware limited liability company (“Company”) (“COC Approval”). The COC Approval shall in no event be deemed an event of default or cause or result in any default or violation under, termination of, or any other effect on this Agreement. The COC Approval shall become effective immediately upon execution by City of this Agreement unless Franchisee furnishes written notice to City that it will not consummate the Transaction, at which time the COC Approval and this Section 10.9 shall be deemed null and void.

**B. Consent to Future Assignment.**

City acknowledges that Company may cause Franchisee and its affiliates to undergo a reorganization and, in connection therewith, Franchisee may assign the Agreement to an affiliate of the Company (“Proposed Assignee”) in a manner that would otherwise constitute an assignment pursuant to Sections 3.2 and/or 3.3 of the Agreement (“Future Assignment”). For the purposes of this Section 10.9, “affiliate” of the Company shall only include MIP V Waste (ECI) AIV, L.P. (together with Macquarie Infrastructure Partners V, L.P., Macquarie Infrastructure Partners V SCSp and any special purpose vehicles, portfolio companies or subsidiaries thereof).

**SECTION 10.11. FURTHER PERFORMANCE.**

Each party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Franchise.

CITY OF SCOTTS VALLEY

GREEN WASTE RECOVERY, INC.

BY: \_\_\_\_\_  
City Manager

BY: \_\_\_\_\_

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

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

Approved as to form:

\_\_\_\_\_  
CITY ATTORNEY

**APPENDIX A  
EQUIPMENT AND CONTAINER  
SPECIFICATIONS**

The Franchisee agrees to provide Containers as described below. Carts shall be made with at least 25% post-consumer recycled material, with attached secure-fitting lids and large wheels. Bins shall be metal or plastic and be leak-proof with attached secure-secure fitting lids and wheels, as appropriate. Container colors may either be both the body and the lid or just the lid.

<b>Residential Customers</b>			
<b>Material Type</b>	<b>Container Color</b>	<b>Included w/ Base Service</b>	<b>Available for a Charge</b>
Garbage	Gray or Black	n/a	10 gallons 20 gallons 32 or 35 gallons 64 or 65 gallons 95 or 96 gallons
Recyclables	Blue	64 or 65 gallons	32 or 35 gallons 64 or 65 gallons 95 or 96 gallons
Organics	Green	64 or 65 gallons	32 or 35 gallons 64 or 65 gallons 95 or 96 gallons

<b>Commercial Customers</b>			
<b>Material Type</b>	<b>Container Color</b>	<b>Cart Service</b>	<b>Bin Service</b>
Garbage	Gray or Black	32 or 35 gallons 64 or 65 gallons 95 or 96 gallons	1 cubic yard 2 cubic yards 3 cubic yards 4 cubic yards 6 cubic yards 8 cubic yards
Recyclables	Blue	32 or 35 gallons 64 or 65 gallons 95 or 96 gallons	1 cubic yard 2 cubic yards 3 cubic yards 4 cubic yards 6 cubic yards 8 cubic yards
Organics	Green	64 or 65 gallons	1 cubic yard 1.5 cubic yards

**DROP BOXES OF THE FOLLOWING CAPACITIES: 15 Yd , 20 Yd, 30 Yd, 40 Yd.**

**COLLECTION VEHICLES:**

- Rear Loader and/or Front Loader – Bin Services
- Fully Automated Side Loader – Cart Services
- Roll-off Truck – Debris Box Services

All collection vehicles with diesel engines shall be in full compliance with Monterey Bay Unified Air Pollution Control District and California Air Resources Board regulations.

**APPENDIX B**  
**SERVICE RATE SCHEDULE**

**APPENDIX B-2**  
**MONTHLY SERVICE RATES - COMMERCIAL GARBAGE**

Garbage CARTS			Current Rate	Rate Components		New Rate (01/01/2022)
Quantity	Size	Frequency		Service	Disposal	
1	64-gal	1x/week	\$ 45.56	\$ 45.41	\$ 6.07	\$ 51.48
1	96-gal	1x/week	\$ 68.27	\$ 68.04	\$ 9.10	\$ 77.14

Each Business subscribing to Garbage service in Carts only will receive one (1) 64-gallon Recyclables Cart and one (1) 64-gallon Organics Cart collected 1x/week on the same day as Garbage for no additional charge.

Garbage BINS			Current Rate	Rate Components		New Rate (01/01/2022)
Quantity	Cart Size	Frequency		Service	Disposal	
1	1 cu yd	1x/week	\$ 149.89	\$ 149.38	\$ 19.99	\$ 169.37
1	1 cu yd	2x/week	\$ 259.34	\$ 258.47	\$ 34.58	\$ 293.05
1	1 cu yd	3x/week	\$ 442.95	\$ 441.47	\$ 59.06	\$ 500.54
1	1 cu yd	4x/week	\$ 573.56	\$ 571.64	\$ 76.48	\$ 648.12
1	1 cu yd	5x/week	\$ 729.74	\$ 727.30	\$ 97.30	\$ 824.61
1	1 cu yd	6x/week	\$ 873.12	\$ 870.20	\$ 116.42	\$ 986.62
1	2 cu yd	1x/week	\$ 247.19	\$ 246.37	\$ 32.96	\$ 279.33
1	2 cu yd	2x/week	\$ 466.00	\$ 464.44	\$ 62.14	\$ 526.58
1	2 cu yd	3x/week	\$ 669.55	\$ 667.31	\$ 89.28	\$ 756.59
1	2 cu yd	4x/week	\$ 868.96	\$ 866.06	\$ 115.87	\$ 981.92
1	2 cu yd	5x/week	\$ 1,104.01	\$ 1,100.32	\$ 147.21	\$ 1,247.53
1	2 cu yd	6x/week	\$ 1,321.27	\$ 1,316.85	\$ 176.18	\$ 1,493.03
1	3 cu yd	1x/week	\$ 334.92	\$ 333.80	\$ 44.66	\$ 378.46
1	3 cu yd	2x/week	\$ 619.83	\$ 617.76	\$ 82.65	\$ 700.41
1	3 cu yd	3x/week	\$ 954.77	\$ 951.58	\$ 127.31	\$ 1,078.89
1	3 cu yd	4x/week	\$ 1,239.70	\$ 1,235.56	\$ 165.30	\$ 1,400.86
1	3 cu yd	5x/week	\$ 1,574.70	\$ 1,569.44	\$ 209.97	\$ 1,779.41
1	3 cu yd	6x/week	\$ 1,884.63	\$ 1,878.34	\$ 251.30	\$ 2,129.63
1	4 cu yd	1x/week	\$ 404.66	\$ 403.31	\$ 53.96	\$ 457.27
1	4 cu yd	2x/week	\$ 751.15	\$ 748.64	\$ 100.16	\$ 848.80
1	4 cu yd	3x/week	\$ 1,155.83	\$ 1,151.97	\$ 154.12	\$ 1,306.09
1	4 cu yd	4x/week	\$ 1,502.31	\$ 1,497.29	\$ 200.32	\$ 1,697.61
1	4 cu yd	5x/week	\$ 1,907.03	\$ 1,900.66	\$ 254.28	\$ 2,154.94
1	4 cu yd	6x/week	\$ 2,282.59	\$ 2,274.96	\$ 304.36	\$ 2,579.33
1	6 cu yd	1x/week	\$ 589.57	\$ 587.60	\$ 78.61	\$ 666.22
1	6 cu yd	2x/week	\$ 1,095.25	\$ 1,091.60	\$ 146.04	\$ 1,237.64
1	6 cu yd	3x/week	\$ 1,684.81	\$ 1,679.18	\$ 224.65	\$ 1,903.83
1	6 cu yd	4x/week	\$ 2,190.53	\$ 2,183.21	\$ 292.08	\$ 2,475.30
1	6 cu yd	5x/week	\$ 2,780.16	\$ 2,770.88	\$ 370.71	\$ 3,141.58
1	6 cu yd	6x/week	\$ 3,271.93	\$ 3,261.00	\$ 436.28	\$ 3,697.28

1	8 cu yd	1x/week	\$ 743.14	\$ 740.66	\$ 99.09	\$ 839.75
1	8 cu yd	2x/week	\$ 1,406.88	\$ 1,402.19	\$ 187.59	\$ 1,589.78
1	8 cu yd	3x/week	\$ 2,086.04	\$ 2,079.07	\$ 278.15	\$ 2,357.23
1	8 cu yd	4x/week	\$ 3,226.80	\$ 3,216.03	\$ 430.26	\$ 3,646.29
1	8 cu yd	5x/week	\$ 3,797.63	\$ 3,784.95	\$ 506.38	\$ 4,291.32

Garbage Front-Load Compactor			Current Rate	Rate Components		New Rate (01/01/2022)
Quantity	Size	Frequency		Service	Disposal	
1	1 cu yd	1x/week	n/a	\$ 149.38	\$49.96	\$ 199.35
1	1 cu yd	2x/week	n/a	\$ 258.47	\$86.45	\$ 344.92
1	1 cu yd	3x/week	n/a	\$ 441.47	\$147.66	\$ 589.13
1	2 cu yd	1x/week	n/a	\$ 246.37	\$82.40	\$ 328.77
1	2 cu yd	2x/week	n/a	\$ 464.44	\$155.34	\$ 619.78
1	2 cu yd	3x/week	n/a	\$ 667.31	\$223.19	\$ 890.51
1	3 cu yd	1x/week	n/a	\$ 333.80	\$111.64	\$ 445.44
1	3 cu yd	2x/week	n/a	\$ 617.76	\$206.62	\$ 824.39
1	3 cu yd	3x/week	n/a	\$ 951.58	\$318.27	\$ 1,269.86
1	4 cu yd	1x/week	n/a	\$ 403.31	\$134.89	\$ 538.21
1	4 cu yd	2x/week	n/a	\$ 748.64	\$250.39	\$ 999.03
1	4 cu yd	3x/week	n/a	\$ 1,151.97	\$385.30	\$ 1,537.26

**Excess Material Pick-up (Non-Recurring)**

Material Type	Per Collection	Plus Dismount Fee	Regular Service Day	Non-Service Day
Extra Set-Out (Non-GWR Container)*	\$ 6.44	\$ 3.50	n/a	+ \$30.00
Extra Collection (GWR Container)	25% of 1x/wk	\$ 3.50	n/a	Trip Fee

\*Charged in 32-Gallon Increments

**Bulky Item Collection**

Material Type	Collection Charge	Containing CFCs	Regular Service Day	Non-Service Day
Bulky Good	\$ 45.00/item	n/a	n/a	+ \$30.00 Trip Fee
Appliances	\$ 30.00/item	+ \$10.00/ea	n/a	
Carpet/Padding	\$ 1.00/sq.ft.	n/a	n/a	

Description	Charge	Frequency
Bin Locks	\$ 30.00	/each
Re-Start Fee	\$ 25.00	/occurrence

**APPENDIX B-2**  
**MONTHLY SERVICE RATES - COMMERCIAL RECYCLING**

Recycling CARTS			Current Rate	Rate Components		New Rate (01/01/2022)
Quantity	Size	Frequency		Service	Processing	
1	64-gal	1x/week	n/a	\$ 3.30	\$ 2.36	\$ 5.66
1	96-gal	1x/week	n/a	\$ 4.95	\$ 3.54	\$ 8.49

Recycling BINS			Current Rate	Rate Components		New Rate (01/01/2022)
Quantity	Cart Size	Frequency		Service	Processing	
1	1 cu yd	1x/week	n/a	\$ 10.86	\$ 7.77	\$ 18.63
1	1 cu yd	2x/week	n/a	\$ 18.79	\$ 13.44	\$ 32.24
1	1 cu yd	3x/week	n/a	\$ 32.10	\$ 22.96	\$ 55.06
1	1 cu yd	4x/week	n/a	\$ 41.56	\$ 29.73	\$ 71.29
1	1 cu yd	5x/week	n/a	\$ 52.88	\$ 37.82	\$ 90.71
1	1 cu yd	6x/week	n/a	\$ 63.27	\$ 45.26	\$ 108.53
1	2 cu yd	1x/week	n/a	\$ 17.91	\$ 12.81	\$ 30.73
1	2 cu yd	2x/week	n/a	\$ 33.77	\$ 24.15	\$ 57.92
1	2 cu yd	3x/week	n/a	\$ 48.52	\$ 34.70	\$ 83.23
1	2 cu yd	4x/week	n/a	\$ 62.97	\$ 45.04	\$ 108.01
1	2 cu yd	5x/week	n/a	\$ 80.00	\$ 57.22	\$ 137.23
1	2 cu yd	6x/week	n/a	\$ 95.75	\$ 68.49	\$ 164.23
1	3 cu yd	1x/week	n/a	\$ 24.27	\$ 17.36	\$ 41.63
1	3 cu yd	2x/week	n/a	\$ 44.92	\$ 32.13	\$ 77.05
1	3 cu yd	3x/week	n/a	\$ 69.19	\$ 49.49	\$ 118.68
1	3 cu yd	4x/week	n/a	\$ 89.84	\$ 64.26	\$ 154.09
1	3 cu yd	5x/week	n/a	\$ 114.11	\$ 81.62	\$ 195.73
1	3 cu yd	6x/week	n/a	\$ 136.57	\$ 97.69	\$ 234.26
1	4 cu yd	1x/week	n/a	\$ 29.32	\$ 20.97	\$ 50.30
1	4 cu yd	2x/week	n/a	\$ 54.43	\$ 38.93	\$ 93.37
1	4 cu yd	3x/week	n/a	\$ 83.76	\$ 59.91	\$ 143.67
1	4 cu yd	4x/week	n/a	\$ 108.87	\$ 77.87	\$ 186.74
1	4 cu yd	5x/week	n/a	\$ 138.20	\$ 98.85	\$ 237.04
1	4 cu yd	6x/week	n/a	\$ 165.41	\$ 118.31	\$ 283.73
1	6 cu yd	1x/week	n/a	\$ 42.72	\$ 30.56	\$ 73.28
1	6 cu yd	2x/week	n/a	\$ 79.37	\$ 56.77	\$ 136.14
1	6 cu yd	3x/week	n/a	\$ 122.09	\$ 87.33	\$ 209.42
1	6 cu yd	4x/week	n/a	\$ 158.74	\$ 113.54	\$ 272.28
1	6 cu yd	5x/week	n/a	\$ 201.47	\$ 144.10	\$ 345.57
1	6 cu yd	6x/week	n/a	\$ 237.11	\$ 169.59	\$ 406.70
1	8 cu yd	1x/week	n/a	\$ 53.85	\$ 38.52	\$ 92.37
1	8 cu yd	2x/week	n/a	\$ 101.95	\$ 72.92	\$ 174.88
1	8 cu yd	3x/week	n/a	\$ 151.17	\$ 108.13	\$ 259.29
1	8 cu yd	4x/week	n/a	\$ 233.84	\$ 167.26	\$ 401.09
1	8 cu yd	5x/week	n/a	\$ 275.20	\$ 196.84	\$ 472.05

**Excess Material Pick-up (Non-Recurring)**

<b>Material Type</b>	<b>Per Collection</b>	<b>Plus Dismount Fee</b>	<b>Regular Service Day</b>	<b>Non-Service Day</b>
Extra Set-Out (Non-GWR Container)*	\$ 0.71	\$ 3.50	<i>n/a</i>	+ \$30.00
Extra Collection (GWR Container)	25% of 1x/wk	\$ 3.50	<i>n/a</i>	Trip Fee

*\*Charged in 32-Gallon Increments*

**APPENDIX B-2**  
**MONTHLY SERVICE RATES - COMMERCIAL FOOD WASTE**

Food Waste CARTS			Current Rate (01/01/2020)	Rate Components		New Rate (01/01/2022)
Quantity	Size	Frequency		Service	Processing	
1	64-gal	1x/week	\$ 47.93	\$ 48.53	\$ 5.63	\$ 54.16
1	64-gal	2x/week	\$ 95.87	\$ 97.06	\$ 11.27	\$ 108.33
1	64-gal	3x/week	\$ 143.81	\$ 145.60	\$ 16.90	\$ 162.50
1	64-gal	4x/week	\$ 191.74	\$ 194.14	\$ 22.53	\$ 216.67

Food Waste BINS			Current Rate	Rate Components		New Rate (01/01/2022)
Quantity	Cart Size	Frequency		Service	Processing	
1	1 cu yd	1x/week	\$ 176.38	\$ 178.58	\$ 20.73	\$ 199.31
1	1 cu yd	2x/week	\$ 304.48	\$ 308.28	\$ 35.78	\$ 344.06
1	1 cu yd	3x/week	\$ 521.22	\$ 527.73	\$ 61.25	\$ 588.98
1	1 cu yd	4x/week	\$ 674.62	\$ 683.05	\$ 79.28	\$ 762.33
1	1.5 cu yd	1x/week	\$ 230.80	\$ 233.71	\$ 27.13	\$ 260.84
1	1.5 cu yd	2x/week	\$ 422.87	\$ 428.14	\$ 49.70	\$ 477.84
1	1.5 cu yd	3x/week	\$ 652.55	\$ 660.69	\$ 76.69	\$ 737.38
1	1.5 cu yd	4x/week	\$ 845.60	\$ 856.15	\$ 99.38	\$ 955.53

**Excess Material Pick-up (Non-Recurring)**

Material Type	Per Collection	Plus Dismount Fee	Regular Service Day	Non-Service Day
Extra Set-Out (Non-GWR Container)*	\$ 6.77	\$ 3.50	n/a	+ \$30.00
Extra Collection (GWR Container)	25% of 1x/wk	\$ 3.50	n/a	Trip Fee

\*Charged in 32-Gallon Increments

**APPENDIX B-3**  
**SERVICE RATES - BOXES & BINS**

Debris Box			Current Rate (01/01/2020)	Rate Components		New Rate (01/01/2022)	
Quantity	Size	Frequency		Service	Disposal	Recyclable Materials*	All Other Materials
1	10 cu yd	per pull	\$ 633.46	\$ 586.97	<i>Per Ton + 30%</i>	\$ 440.23	\$ 586.97
1	20 cu yd	per pull	\$ 762.61	\$ 706.64	<i>Per Ton + 30%</i>	\$ 529.98	\$ 706.64
1	30 cu yd	per pull	\$ 1,020.93	\$ 945.99	<i>Per Ton + 30%</i>	\$ 709.49	\$ 945.99
1	40 cu yd	per pull	\$ 1,248.25	\$ 1,156.63	<i>Per Ton + 30%</i>	\$ 867.47	\$ 1,156.63
1	Compactor	per pull	<i>n/a</i>	\$ 586.97	<i>Per Ton + 30%</i>	\$ 440.23	\$ 586.97

InstaBin			Current Rate	Rate Components		New Rate (01/01/2022)
Quantity	Size	Frequency		Service	Disposal	
1	3 cu yd	per pull	\$ 174.25	\$ 157.92	\$ 38.99	\$ 196.91

*\*Service component of Debris Box Rate for Recyclable Materials is lower as the material haul distance is shorter.*

**APPENDIX C  
ACCEPTABLE RECYCLABLES**

<b>Acceptable Recyclables – Must Be Clean and Free of Food and Liquid</b>	
<b>Material</b>	<b>Definition</b>
Tin/Steel	Includes steel food, beverage, aerosol and paint cans. “Tin” cans fall into this category. Tin or other coatings are often applied to a steel food can.
Aluminum	Aluminum used beverage containers, post-consumer aluminum beverage cans.
Metal – Misc.	Electrical motors, hangers ( <i>bundled</i> ), keys, nuts and bolts, metal pipe, propane tanks ( <i>empty</i> ), scrap metal, tools ( <i>drained of all fluids</i> ), toys, doors and screens.
PET	<b>#1 Polyethylene Terephthalate (PET, PETE).</b> PET is clear or mostly clear and tough. Commonly used in soft drink bottles and many injection molded consumer product containers.
NHDPE CHDPE	<b>#2 (Natural High Density Polyethylene).</b> Includes milk, water and other bottles that are HDPE and are of a natural or translucent color. <b>(Colored High Density Polyethylene).</b> Includes juice, detergent and other bottles that are HDPE and are of a colored or opaque color.
Mixed Plastic #3-7	<b>#3 PVC: Polyvinyl Chloride.</b> Commonly used in film for meat packaging and some rigid plastic containers. Does <u>not</u> include hard PVC (e.g. pipe). <b>#4 LDPE: Low Density Polyethylene.</b> Commonly used in newspaper and grocery bags. Only clean and clear film plastic is acceptable and only when all clean/clear film plastics are bagged together. <b>#5 PP: Polypropylene.</b> Commonly used in yogurt containers and deli trays. <b>#6 PS: Polystyrene.</b> (not typically recycled including Styrofoam) Commonly used <i>in</i> plastic cups and plates and to-go containers. <b>#7 OTHER: Other mixed resins.</b> Commonly used in mixed plastic containers or plastic products.
Glass – Clear	<b>Clear Glass Bottles and Containers</b> means clear glass beverage and food containers and glass dishware with or without a CRV label. Examples: Whole or broken clear soda and beer bottles, fruit juice bottles, peanut butter jars, and mayonnaise jars. Does <u>not</u> include glass bakeware, Pyrex or ceramics.
Glass – Colored	<b>Colored Glass Bottles and Containers</b> includes food and beverage containers – three subtypes described below: <b>Green Glass Bottles and Containers</b> means green-colored glass containers with or without a CRV label. Examples: Whole or broken green soda, beer and wine bottles. <b>Brown Glass Bottles and Containers</b> means brown-colored glass containers with or without a CRV label. Examples: Whole or broken brown soda, beer and wine bottles.

<b>Acceptable Recyclables – Must Be Clean and Free of Food and Liquid</b>	
<b>Material</b>	<b>Definition</b>
	<b>Other Colored Glass Bottles and Containers</b> means colored glass containers and bottles other than green or brown with or without a CRV label. Examples: Whole or broken blue or other colored bottles and containers.
Glass – 3 Mix	A collection of flint, amber, and green beverage or food container glass. It may contain normal container labels and metal tops.
Mixed Paper	A mixture of various grades of recyclable waste paper not limited by fiber content and includes most types of clean and dry paper including glossy, white ledger and computer papers, colored paper, newspapers, magazines, catalogs, phone books, shredded paper, cards, laser- printed white ledger, windowed envelopes, sticky notes, paperboard, paper egg cartons and often contains corrugated and brown paper, gable top cartons, aseptic and tetrapak. Does <u>not</u> include photographs, carbon paper, tissue, napkins or waxed/coated fiber or mixed fiber products that may include coffee cups, ice cream containers,. Food soiled materials and materials with visible water marks are <u>not</u> accepted.
News	Known as ONP (old news print), ONP has two major sub-grades: No. 8 is sorted newspapers only. No. 6 may have some magazines mixed in and may be tied in bundles or gathered in brown bags. Food soiled materials and materials with visible water marks are <u>not</u> accepted.
OCC	Used boxes and sheets of corrugated board of various qualities. Corrugated is known as OCC (old corrugated container). OCC is clean cardboard made from unbleached, unwaxed paper with a fluted (corrugated) inner liner. Does <u>not</u> include pizza boxes. Food soiled materials and materials with visible water marks are <u>not</u> accepted.
eWaste:	Includes calculators, cameras, cell phones, computer mice, cords, DVD players, DVRs, fax machines, keyboards, small printers, radios, scanners, smart phones, stereos, telephones, VCRs. Inkjet/toner cartridges are <u>not</u> acceptable in the commingled container but are acceptable if collected separately.

**APPENDIX D**  
**ONGOING CONTAMINATION MONITORING**

Franchisee shall perform the following ongoing contamination monitoring activities to support City compliance with SB1383.

1. Initial Contamination Monitoring.

Within 90-day of the effective date of this Agreement, Franchisee shall develop a proposal to conduct the Container inspections compliant with 14 CCR Section 18984.5(b) during calendar year 2022 for all Residential and Commercial routes. Franchisee may propose to conduct route reviews that include annual inspection of the contents of Customers' Containers for contamination for a minimum of twenty-five (25) Containers for each type of Container on each route, or an alternative remote monitoring method that is compliant with SB 1383. For Residential routes, Franchisee may propose to conduct route reviews that include annual inspection of the contents of Customers' Collection Containers for contamination for a minimum of forty (40) Containers for each type of Container on each residential route, or an alternative remote monitoring method that is compliant with SB 1383. Upon approval from the City, Franchisee shall commence providing monitoring for Commercial routes, and for Residential routes if so directed. Should CalRecycle notify Franchisee or City that the methodology is inadequate to meet the requirements of 14 CCR Section 18984.5(b), Franchisee shall revise the methodology and, after obtaining City or CalRecycle approval, conduct additional route reviews, increased Container inspections, or implement other changes using the revised procedure, and be compensated as provided in 7.1.C.2 if applicable.

2. Ongoing Contamination Monitoring

- a. Residential Contamination Monitoring. Commencing on or before January 1, 2023, and if so directed in any calendar year by the City, Franchisee shall conduct annual route reviews for contamination in Collection Containers from Residential Premises as approved by the City, deemed safe by the Franchisee, and in a manner that results in all routes being reviewed annually.
- b. Commercial Contamination Monitoring. Commencing on or before January 1, 2023, and if so directed in any calendar year by the City, Franchisee shall conduct annual route reviews for contamination in Collection Containers from Commercial Premises as approved by the City, deemed safe by the Franchisee, and in a manner that results in all routes being reviewed annually.

3. Hauler Route Review Scheduling.

The City's Contract Manager may request, and Franchisee shall reasonably accept, modifications to the review schedule to permit observation of the route reviews by the City.

4. Noticing of Generators with Contamination, Non-Collection, and Disposal of Materials.

Upon identification of Container Contaminants in a Customer's Container, Franchisee shall provide the Customer with a with a non-Collection notice or courtesy notice as required in Section 4.2.F of this Agreement.

5. Reporting Requirements.

Franchisee shall maintain records and report to the City on contamination monitoring activities and actions taken, in accordance with Section 6.7 of this Agreement.

## City of Scotts Valley CITY COUNCIL STAFF REPORT

**DATE:** September 29, 2021

**TO:** Honorable Mayor and City Council

**FROM:** Chris Lamm, Public Works Director

**APPROVED:** Brian Haddix, Interim City Manager

**SUBJECT:** **SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION CALL FOR PROJECTS – RESOLUTION AUTHORIZING APPLICATION FOR GRANT FUNDS**

### **SUMMARY OF ISSUE**

On July 30, 2021, the Santa Cruz County Regional Transportation Commission (SCCRTC) issued a call for projects. The call for projects is for the use of 2021 Consolidated Regional Transportation Grants. Grants funds available are from a variety of sources including Surface Transportation Block Grants (STBG)/Regional Surface Transportation Program Exchange (RSTPX), State Transportation Improvement Program (STIP), Federal Highway Infrastructure Program (HIP).

Applications for projects are due October 4, 2021. SCCRTC Staff will work with projects sponsors and the Interagency Technical Advisory Committee (ITAC) to determine the most appropriate funding source for each project that is recommended and approved for funds, taking into consideration funding source-specific eligibility criteria, project schedules and potential delivery risks, size, and other factors. SCCRTC Staff will try to focus funds which have more requirements (such as federal and STIP funds) to fewer projects that can more easily navigate such requirements and will work with project sponsors to coordinate and expedite use of funds.

Public Works Staff have reviewed deferred maintenance needs from the 2017 Pavement Management Program Report and multimodal improvements identified in the City of Scotts Valley Active Transportation Plan (ATP), accepted by City Council in March of 2021 to identify a project that would be competitive candidate project to submit.

Public Works Staff had previously identified the repaving of the Granite Creek Overpass (Scotts Valley Drive to Santas Village Road) as a need for utilization of Senate Bill 1 (SB1)

funds, however due to many needs across the City there were insufficient funds to complete this work. The Granite Creek Overpass had a reported Pavement Condition Index (PCI) of 62 in 2017. With continued deterioration and heavy vehicular usage on the road as the primary access to Highway 17 on the North end of the City, it is estimated that the current PCI would be in the 53-55 range. Staff proposes to include the repaving of the Granite Creek overpass between Scotts Valley Drive and Santas Village Road, including the intersection of Santas Village Road and Meadow Way.

Additionally, the Granite Creek Overpass is identified in the ATP with both short-term and long-term projects. The short-term project was identified as the highest scoring individual project (95) in the ATP and includes narrowing travel lanes to 11-feet to widen shoulders or add bike lanes; installation of a bike box to allow left turn movement from Granite Creek onto Scotts Valley Drive and sharrows in the right turn movement lane; at the intersection of Santa's Village Road, installation of a thru bike lane to improve bicycle movement across the intersection and sharrows in the right turn movement lane; and at both intersections installation of dashed green bike lanes where the bike lane would cross the right turn movement lane.

In addition to inclusion of the short-term project, staff intends to include elements of the long-term project in the project application. While unfeasible at this time to completely replace the overpass, pedestrian improvements will be proposed to replace the existing pathway with an ADA compliant pathway and correcting settling/erosion that is occurring with new retaining walls. In addition, improvements will be made at both intersections to improve ADA accessibility.

**FISCAL IMPACT**

The cost of the project is estimated to be \$530,000. The grant funds require a local 11.47% (\$60,791) match. If successful, Staff would propose to use SB1 funds, reallocate Measure D funds, or appropriate General Capital funds to meet the local match requirements.

**STAFF RECOMMENDATION**

It is recommended that the City Council adopt the Resolution No. 2005, which authorizes the City of Scotts Valley to apply for the grant funds in the 2021 Call for Projects issued by the Santa Cruz County Regional Transportation Commission for the Granite Creek Overpass roadway, bicycle and pedestrian improvements project.

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**RESOLUTION NO. 2005**

**RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF SCOTTS VALLEY AUTHORIZING AND APPROVING APPLICATION FOR  
GRANT FUNDS TO THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION  
COMMISSION FOR THE GRANITE CREEK OVERPASS ROADWAY,  
BICYCLE AND PEDESTRIAN IMPROVEMENTS PROJECT**

**WHEREAS**, On July 30, 2021, the Santa Cruz County Regional Transportation Commission (SCCRTC) issued a call for projects for 2021 consolidated regional transportation grants from a variety of sources including Surface Transportation Block Grants (STBG)/Regional Surface Transportation Program Exchange (RSTPX), State Transportation Improvement Program (STIP), Federal Highway Infrastructure Program (HIP); and

**WHEREAS**, Project applications should be representative of the highest priorities in the applicant agency; and

**WHEREAS**, Public Works Staff had previously identified the repaving of the Granite Creek Overpass (Scotts Valley Drive to Santas Village Road) as a need in the 2017 Pavement Management Program Report; and

**WHEREAS**, the Granite Creek Overpass is identified in the City of Scotts Valley Active Transportation Plan (ATP) with both short-term and long-term projects; and

**WHEREAS**, the SCCRTC requires the applicant have the legal authority to nominate projects and to finance, acquire, construct and/or implement the proposed project; and

**WHEREAS**, the SCCRTC requires the applicant will commit the funds necessary to ensure this project is fully funded.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** that the City Council of the City of Scotts Valley hereby:

1. Approves the filing of project application for the Granite Creek Overpass Roadway, Bicycle, and Pedestrian Improvements Project to the SCCRTC in the 2021 consolidated call for projects; and
2. Delegates the authority to the City of Scotts Valley's City Manager, or designee to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the project grant scope; and
3. Certifies that the City has or will have available, prior to commencement of project work utilizing grant funding awarded, sufficient funds to complete the project.

The above and foregoing resolution was duly and regularly adopted by the City Council of the City of Scotts Valley at a special meeting held on the 29th day of September, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Approved: \_\_\_\_\_  
Derek Timm, Mayor

Attest: \_\_\_\_\_  
Tracy A. Ferrara, City Clerk