

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement") is made and entered into this 7th day of September, 2017 (the "Effective Date") by and between the City of Waterford ("City"), a municipal corporation of the State of California, and Gilton Solid Waste Management, Inc a California corporation ("Collector"). The parties to this Agreement may each be referred to individually as a "Party" or collectively as the "Parties". There are no other parties to this Agreement.

RECITALS

A. The California State Legislature enacted the California Integrated Waste Management Act of 1989 ("AB 939") which authorizes local jurisdictions to make adequate provisions for solid waste handling within their jurisdictions; and

B. On October 6, 2011, the Legislature passed Assembly Bill 341 ("AB 341"), amending the California Public Resources Code (the "Public Resources Code") therein requiring cities to encourage and document commercial solid waste recycling programs; and

C. The collection and disposition of garbage, refuse and waste is governed and regulated by applicable provisions set forth in Chapter 8.04 of the Waterford Municipal Code (the "Code"), which may be amended from time to time and is incorporated herein by this reference; and

D. The City has entered into a Regional Solid Waste Partnership Proposal Memorandum of Understanding ("MOU") with Stanislaus County ("County"), Exhibit F, setting forth the City's obligations for waste disposal using County facilities and the County's tipping fees for a ten (10) year period beginning on June 1, 2015 and expiring on June 30, 2025;

E. The City and Collector desire to enter into this Agreement for a term of Ten (10) years pursuant to the terms and conditions set forth herein; and

F. It is the City's objective to engage Collector to provide refuse collection and disposal services for residential and commercial collection. By entering into this Agreement, Collector shall assist City in meeting its AB 939 and AB 341 requirements and that the performance of the Collector set forth in this Agreement shall be performed in accordance with the City's obligations in the MOU; and

G. The City's refuse program shall be consistent with the County Solid Waste and Integrated Waste Management Plan and comply with all regulations promulgated by the local Stanislaus County enforcement agency and the Department of Resources Recycling and Recovery; and

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and sufficient consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. Recitals The recitals set forth above (the “Recitals”) are incorporated herein by this reference and made a part of this Agreement. In the event any inconsistencies arise as between the Recitals and Sections 1 through 33 of this Agreement, Sections 1 through 33 shall prevail.

Section 2. Definitions Unless otherwise noted in this Agreement, capitalized terms herein shall have the meanings set forth in Exhibit A. Whenever any term used in this Agreement has been defined by Division 30, Part 1, Chapter 2 of the Public Resources Code or the City’s Code, those definitions shall apply unless the term is otherwise defined in Exhibit A. In the event there is a discrepancy between the definitions contained in the Public Resources Code and the City’s Code, the definitions set forth in the Public Resources Code shall supersede all other definitions.

Section 3. Franchise Area

3.1. Franchise Area Defined. The franchise area granted by this Agreement shall be all residential and commercial premises located within city limits of City, as more particularly shown on Exhibit B (“Franchise Area”). As provided below, the Franchise Area may be changed by annexation, de-annexation or re-organization.

3.2. Annexation Covered by Existing Franchise. All territories annexed during the Term of this Agreement shall be subject to this Agreement. However, properties served by another collector at the time of annexation, shall continue to be served by that source until the end of such collector’s franchise agreement or service contract with the subject landowner, whichever is sooner. Collector agrees to defend, indemnify and hold the City harmless against any claims by such other collector regarding its right to continue to serve the annexed area.

Section 4. Waste Collection and Disposal

4.1. Scope of Services. Except as set forth in Section 4.4, the City hereby grants Collector the exclusive franchise, right and privilege to collect all Solid Waste, Green Waste and Recyclables within the Franchise Area and to transport the same to a sanitary landfill, transfer station, compost/mulching site, or waste-to-energy facility outside the City, which has been approved by the governmental agency having jurisdiction of the territory in which said site is located (the “Services”). City may designate alternative processing facilities if public health, safety, or fiscal interest requires, or compliance with applicable law necessitates the alternative. Collector shall furnish all labor, supervision, materials, permits, licenses, and Equipment necessary to provide residential and commercial refuse collection Services for Customers within the Franchise Area of City. Collector shall perform its obligations under this Agreement in accordance with all applicable local, state, or federal laws and in a manner that maximizes the City’s Solid Waste diversion rate to the extent possible.

4.2. Residential Service. Collector shall provide Solid Waste, Recycling, and Green Waste collection services to all residential premises within the City using a Two (2) Carts and One Pass truck system.

4.3. Commercial Service. Collector shall provide Solid Waste collection services to all commercial premises within the City. Collector may provide Green Waste collection services to commercial premises within the City. Pursuant to the requirements set forth in AB 341, Collector shall offer to provide Recyclables collection services to any business that generates more than four cubic yards of commercial solid waste per week and to any multifamily residential dwelling of five units or more, and may provide

Recyclables collection services to other commercial Customers and multifamily residential dwellings not meeting these criteria.

4.4. Excepted Services. Collector's exclusive franchise in this Agreement shall not include or prevent or restrict the City or other parties from any of the following:

4.4.1. Governmental entities if and to the extent the City has no legal power to require such entities to use Collector's Services.

4.4.2. The City or any officer or employee thereof or any employee of the State, or any governmental subdivision thereof, collecting, removing, and disposing of Solid Waste, Recyclables, or Green Waste from the City or State facilities.

4.4.3. Private parties from donating or selling a recyclable or salvageable material (other than Food Waste) that has been segregated by such party from other materials to any party of their choice.

4.4.4. Allowing the self-hauling and disposal of construction and demolition debris, grass clippings, pruning's and other discarded materials, generated by an individual from non-commercial or non-industrial activities on his or her property, or which are generated directly as a result of the work of specialized and distinct business operations whose primary business is not janitorial, cleaning, or waste transportation or collection, including, without limitation, various contractors such as, landscapers, tree trimmers or gardeners.

4.4.5. Delivery of self-haul materials directly to a transfer station, materials recovery facility, or disposal facility in a manner consistent with City ordinances and codes and other applicable laws; provided, however, that this provision does not create an exemption from any law requiring payment for Collection services, whether those services are utilized or not.

4.4.6. Permitting other entities to haul and dispose of septic tank, sand trap and grease trap contents.

4.4.7. Providing the collection of Refuse in connection with the City's street cleaning service.

4.4.8. Permitting other entities to carry out the City's annual weed abatement program.

4.4.9. Provision of any other service that is not specified in this Agreement and that normally would not be considered to fall within Franchise Services, and that the Contractor explicitly waives its right to provide, by written notice to the City.

Section 5. Collection and Bins

5.1. Provision of Receptacles. Collector agrees to provide and maintain all Carts, Bins and Roll-Off Boxes for the proper and secure storage of Solid Waste, Green Waste or Recyclables for all residential and commercial Customers. All residential Cart Customers shall be serviced once per week between Monday and Friday, and commercial Bin Customers shall be serviced from one (1) to six (6) times per week between Monday and Saturday as requested by the Customer. Roll-Off Box Customers will be serviced as arranged between the Customer and Collector.

5.2. Hours of Collection. Collection service of all Carts in residential areas shall not start before 6:00 a.m. or continue after 6:00 p.m., subject to change by resolution of the Waterford City Council ("City Council"). Collection service of all Carts, Bins, and Roll-Off Boxes in commercial areas shall not start before 5:00 a.m. or continue after 9:00 p.m., subject to change by resolution of the Waterford City

Council ("City Council"). For commercial premises immediately adjacent to residential areas, collection services shall not start before 6.00 a.m. if an adjacent residential property owner complains about collection prior to 6:00 a.m. The hours of collection may be extended temporarily as a result of extraordinary circumstances or conditions with the prior consent of the Waterford City Manager ("City Manager"). In the event scheduled collection services fall on a Holiday, the Collector shall provide collection services on the following day, but under no circumstances on a Sunday.

5.3. Receptacle Replacement. Collector, without expense to City or any Customer, and within seventy-two (72) hours after notice, shall provide one replacement every four (4) years of lost or stolen Carts. Collector shall clean, paint over or replace, at its discretion, graffiti tagged Carts as needed. Collector shall replace Carts damaged due to normal wear and tear within the time frame of one collection cycle. Collector shall maintain records of lost, stolen, damaged and graffiti-tagged Carts by specific address. Collector may charge customers for additional replacement Carts based on the actual cost of the Carts and their delivery.

Section 6. Term of Agreement

The term of this Agreement shall commence on the Effective Date and expire on September 7, 2027, unless extended by the mutual consent of the Parties (the "Term").

Section 7. Acceptance; Waiver

Collector agrees to be bound by and comply with all the requirements of this Agreement. Collector waives any right or claim to serve the City or any part of the City under any prior grant of franchise, contract, license or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code.

Section 8. Rates and Fees

8.1. Rates. The maximum rates to be charged by Collector are set forth in Exhibit C ("Rate" or "Rates") and may be adjusted by the City Council by ordinance or resolution. For the first two (2) years of the Agreement, Collector shall charge rates that are no greater than the maximum rates as provided in Exhibit C. In years three (3) through ten (10) of the Agreement Term, the City will adjust the maximum charges made to Customers under this Agreement to reflect annual changes in the Consumer Price Index for All Urban Consumers ("CPI") published by the U.S. Department of Labor for the San Francisco-Oakland-San Jose, CA statistical area. Such adjustments shall not exceed two and a half percent (2.5%) per year. The adjustment shall become effective on the anniversary of the Effective Date and be based on the previous twelve month index analysis from September to August. In all subsequent years, the Collector may request, and the City Council shall consider, rate adjustments based on the above referenced CPI index, in addition to any other adjustments provided for under subsections 8.3. and 8.4.

8.2. Reimbursement for Notices. Collector shall be responsible for providing, or reimbursing the City for providing all required notices of any rate changes or increases expressly including, but not limited to, notices required under Proposition 218 and any law or regulations adopted to implement Proposition 218. City reserves the right to specify the form and content of any such notice required by law or by the Code. City shall determine when a notice of a Rate change is required in its sole and complete discretion.

8.3. Tipping Fees. The Parties acknowledge and agree that the maximum Rates include compensation to Collector for tipping, gate or other disposal fees charged by any applicable disposal facilities.

Notwithstanding any provision in this Agreement to the contrary, Collector, except in the case of Roll-Off Box Customers, shall not be entitled to receive from City, or any Customer, a separate or additional payment for tipping or gate fees. In addition to any other rate adjustments to which Collector may be entitled, Collector may request to increase its rates to the extent necessary to recover increased landfill, waste-to-energy facility, transfer station, and material recovery facility tipping or gate fees, provided that the landfill, waste-to-energy facility, transfer station, or material recovery facility is not owned or operated by Collector. Collector shall provide City with notice of the proposed new rates within thirty (30) days of such notice being received from Stanislaus County or other applicable authority, and shall provide the City with a copy of any notice regarding an increase in landfill or waste-to-energy facility tipping or gate fees. Collector shall not increase the Rates to recover increased tipping or gate fees, without prior written approval from City.

8.4. Extraordinary Cost Increases. Collector may petition City for an extraordinary rate adjustment or adjustments at any time during the Term of this Agreement, provided that such petition may be made based only upon increases in fuel costs or increased costs as a result of federal, state, or county mandates, or other documented impacts, which require changes in Collector's Services or operations under this Agreement. Collector shall include in its petition a financial presentation which demonstrates the extraordinary increase in operating costs. Any petition shall be heard by the City Council at a public hearing held after providing any required notices pursuant to this Section and applicable law. The City Council may grant or reject any such petition in its sole and complete discretion.

Section 9. Additional Services

In exercising the right and privilege to collect Solid Waste, Green Waste or Recyclables within the boundaries of City as herein granted, Collector agrees to act in accordance with the following. Collector agrees to provide without additional charge to the City or its customers:

9.1. Curbside Bulky Item Collection Program. Collector shall collect and dispose of bulky item wastes, as defined in Exhibit D, from residential Customers up to two (2) times per calendar year. Such collections will be made by appointment as arranged between Customer and Collector.

9.2. Illegal Dump Program. Collector shall provide for the collection and disposal of non-hazardous wastes from Public Property.

9.3. Curbside E-Waste Collection Program. Collector shall collect, recycle or dispose of specified E-Wastes (as defined in Exhibit E) from residential Customers up to four (4) times per calendar year. Such collections will be made by appointment as arranged between the Customer and Collector.

9.4. Christmas Tree Program. Collector will provide a residential Christmas tree collection and recycling program. Each year, during the first two (2) full weeks of January, Collector will pick-up Christmas trees from the front of residential properties in the City. Collections will be scheduled to coincide with the normal waste collection days.

9.5. City Facilities. Collector shall provide Solid Waste and Green Waste collection services to all City owned and operated facilities at no additional charge to the City. This does not include C&D Debris generated from City owned and operated facilities.

9.6. Community Events. At the City's request, Collector will provide staffing resources and waste containers, plus Solid Waste, Green Waste and Recyclables removal and disposal services for up to five (5) community events per year.

9.7. AB 939 Data. Collector agrees to continue to assist City in data collection and reporting pertaining to compliance with the Integrated Waste Management Act (AB 939), including any State required waste composition studies.

Section 10. Specific Service Requirements

10.1. Collector Duty of Care and Diligence. Collector and Collector's employees, contractors, sub-contractors, operators, officers, directors, supervisors, owners, board members, representatives, and agents ("Collector's Agents") shall exercise all reasonable care and diligence in performing their obligations under this Agreement. Every effort will be made to prevent spilling, scattering or dropping Refuse during the collection or transportation process. However, in the event that Refuse is spilled, scattered or dropped, the truck operator shall immediately clean up the material and place it in the truck and promptly notify the City Manager of the event. Every Cart, Bin and Roll-Off Box (collectively, "Container") must be replaced in an upright position. If a Container falls over, the operator must immediately set the Container in an upright position. It shall be further noted that Refuse collection easements are frequently co-located with other utility easements. Particular attention must be given to the location of water meters, transformers, guy wires, utility poles and irrigation structures. Authorization to use the easement does not abrogate Collector's responsibility to exercise caution to not infringe upon, damage, or trespass the property rights of other authorized users or property owners. Collector shall be familiar with, and operate within the guidelines set forth by the Occupational Safety Health Act (29 U.S.C. section 651 et. seq.). Collector is granted the right to use dedicated streets, alleys and refuse collection easements for the purpose of performing the Services, but this right is not exclusive. The Collector shall handle the Services in a manner that will cause the least inconvenience or annoyance to the general public and to property owners. Whenever the Collector's operations create a condition hazardous to traffic or to the public, Collector shall furnish, erect, and maintain such fences, barricades, lights, signs, and other devices, structures, or warnings and take any other protective measures as are necessary to prevent accidents or damage or injury to the public and immediately notify the City Manager of the hazard and the corrective measures taken by the Collector to address the hazard. Any barricade, lights, signs or other devices erected must conform to the requirements of the City Engineer and the Code.

10.2. Hazardous Waste. Under no circumstance shall Collector's employees knowingly collect Hazardous Waste or remove unsafe or poorly containerized Hazardous Waste from Customer premises. If Collector determines that material placed in a container for collection is Hazardous Waste, Excluded Waste, or other material that may not be legally accepted at an approved sanitary landfill, transfer station, compost/mulching site, waste-to-energy facility or other permitted disposal facility or that presents a hazard to Collector employees, Collector shall have the right to refuse to accept such material. Collector shall leave, at the time of non-collection, a non-collection notice with Customers indicating the reason for refusing the material. Collector shall contact the generator and request that the generator arrange for proper disposal service. If the Hazardous Waste, Excluded Waste, or other objectionable material is identified at time of delivery to the approved sanitary landfill, transfer station, compost/mulching site, waste-to-energy facility or other permitted disposal facility and the generator cannot be identified, Collector shall be solely responsible for handling and arranging transport and disposition of the Hazardous Waste, Excluded Waste, or other objectionable material.

10.3. Force Majeure. Collector shall not be in default under this Agreement in the event that the collection transportation, recycling and disposal services of Collector are temporarily interrupted or discontinued due to a "Force Majeure" event which is defined as: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods earthquakes, landslides and fires,

strikes, lockouts and other labor disturbances or other catastrophic events, which are beyond the reasonable control of Collector. Force Majeure does not include: Collector's financial inability to perform; Collector's failure to obtain any necessary permits or licenses from other governmental agencies; or Collector's failure to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Collector.

10.4. Independent Contractor. Collector is an independent contractor and not an officer, agent, servant or employee of City. Collector is solely responsible for the acts and omissions of its officers, agents, employees, contractors, and sub-grantees. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Collector. Neither Collector nor its officers, employees, agents or sub-grantees shall obtain any right to retirement or other benefits or right, which accrue to City employees. Collector shall obtain and maintain a business license with the City during the term of this Agreement.

10.5. Property Damage. Collector shall be responsible for any damage to City's driving surfaces, whether or not paved, resulting from vehicles providing Services under this Agreement. Collector shall be responsible for repairing or replacing any private or public property which is damaged due to the acts or omissions of employees, contractors, or agents of Collector to private or public property shall be repaired or replaced.

10.6 Right of Entry. Collector shall have the right, to enter or drive on any private street, court, place, easement or other private property for the purpose of collecting or transporting Refuse pursuant to this Agreement. This right of entry shall last until the sooner of the termination of this Agreement or receipt by Collector of a written notice from City revoking Collector's right of entry. This right of entry is limited to carrying out the Services required by this Agreement.

Section 11. Customer Service Requirements

11.1 Availability of Representatives. A responsible representative of Collector who is qualified to respond to public inquiries shall be available at Collector's office during office hours, excluding lunchtime closure, for communication with City, Customers or the public.

11.2. Employees. Collector shall exercise reasonable care to hire responsible employees, to supervise the work of such employees, and to discipline and, if necessary, discharge an employee failing to meet reasonable standards for performance of work set forth in this Agreement. Collector shall comply with applicable state and federal law pertaining to employment, including, but not limited to, applicable equal opportunity employment, workplace harassment and affirmative action requirements.

11.3. Enforcement and Clean-up of Illegal Dumps. Collector and City shall cooperate to eliminate illegal dumping within the City. When illegal dumps are found on public property the City will attempt to identify the responsible party and advise them to clean-up the wastes or utilize the Bulky Item Collection Program to eliminate the problem. If no responsible party is identified, the City will request for Collector to remove any such waste. Collector will have three (3) working days following the notification by the City to remove the illegally dumped material.

11.4. Manner of Collection. Collector shall perform all collection services in a quiet and courteous manner and ensure that all Carts are placed on the premises from which they were removed in an upright position, with lids closed, and within five (5) feet of where they were originally placed before collection.

11.5. Office Hours. Collector's office hours shall be, at a minimum, from 8 a.m. to 5 p.m. daily, except for a lunch hour and closed on Saturdays, Sundays, and federal or State recognized holidays. A representative of Collector shall be available during office hours for communication with the public at Collector's principal place of business.

11.6. Service Complaints. All Service complaints shall be directed to Collector. Collector shall respond to all complaints, other than missed pickups, within twenty-four (24) hours if the twenty-four (24) hour period ends during the office hours specified in subsection 12.5, otherwise on the next business day. Collector shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all complaints and shall use its best efforts to resolve any complaints within the two (2) business days following the date on which such complaint is received. Complaints that cannot be reasonably resolved may be appealed to the City Manager or designee for final resolution.

11.7. Complaint Log. Collector agrees to maintain a log of all oral and written service complaints registered with Collector from Customers or the public within the City ("Complaint Log"). Collector shall record in the log all written and oral complaints, noting the name and address of the complainant, date and time of complaint, nature of complaint, and method and date of resolution. Such log shall be kept so that representatives of the City, upon request, may conveniently inspect it. Collector shall deliver, along with the quarterly reports specified in Section 13 or otherwise upon request of the City, a summary of complaints by number and type and excerpts from the log reflecting action to date.

11.8. Missed Pickups. In the event of a missed pickup, Collector shall complete the pickup the same day if the complaint is received by 12:00 p.m. or by 12:00 p.m. the following business day if the complaint is received after 12:00 p.m.

Section 12. Reports

Collector shall provide the City with quarterly reports detailing Collector's operations within City during that time. Reports will contain the information required by the City for compliance with AB 939 and for City to measure Collector's performance of items in this Agreement. Collector agrees to provide additional reports regarding its collection services as may be reasonably requested by the City to meet future reporting requirements of the City or the State. City or a consultant to City, on request, shall have the right to review the collection records of Collector at reasonable times and upon reasonable notice.

Section 13. Vehicles

13.1. Compliance with Applicable Regulations. Collector shall at all times comply with all applicable rules, statutes, orders, and requirements adopted by any governmental agency with jurisdiction over air quality, including, but not limited to, the California Air Resources Board and the San Joaquin Valley Air Pollution Control District. In addition to any indemnification obligations set forth in this Agreement, Collector shall defend, indemnify, and hold harmless the City against any fines, penalties, losses, or claims arising out of Collector's failure to comply with this Section. All vehicles used by Collector under this Agreement shall be registered with the Department of Motor Vehicles of the State of California, be kept clean and in good repair, shall be uniformly painted, and shall be washed at least once every seven (7) calendar days. Collector's name, phone number, and vehicle number shall be prominently displayed on its vehicles.

13.2. Fluids and Waste. Collector shall immediately clean up any fluids or waste spilled from collection vehicles, and shall deploy and remove absorbent materials to the extent necessary to absorb all fluids. Collector shall provide the City with a copy of any spill report that Collector is required to provide, and at

the same time it is provided, to the State Office of Spill Prevention and Response. When necessary, Collector shall apply a suitable cleaning agent to the street surface or shall employ hydraulic steam cleaning to provide adequate cleaning. Collector shall comply at all times with all recommendations or limitations concerning laden weight of collection vehicles established by the State or any government agency, or the vehicle manufacturer. Collector will be required to comply with City's Municipal Separate Storm Sewer System (MS4) permit requirements.

Section 14. Collector's Employees

14.1. Prohibition of Drugs or Alcohol. Collector will prohibit use of intoxicating substances by Collector's Agents, including its drivers and crewmembers, while on duty or in the course of performing the Services. Upon request by City, Collector will demonstrate compliance with the federal alcohol and drug testing statutes and regulations.

14.2. Employee Uniform. Collector's employees shall be required to wear a clean uniform bearing Collector's name. Employees who normally and regularly come into direct contact with Customers, including drivers, shall bear some means of individual identification such as a name tag or identification card.

14.3. Identification Required. Collector shall provide every employee, contractor, grantees, or sub-grantees that are in contact with the public with identification cards and badges. Upon request of City, Collector shall notify all Customers of the form of identification that each employee shall be carrying or displaying so that all Customers may easily identify one of Collector's employees. Collector shall provide City with a list of current employees, contractors, grantees, and sub-contractors to City upon request.

14.4. Valid Driver's License. Employees driving Collector's vehicles shall at all times possess and carry a valid and appropriate vehicle operator's license issued by the State of California, including a commercial driver's license, if required.

14.5. No Employment Relationship with City. Collector's Agents are not and shall not identify themselves as being employees of the City at any time, for any reason.

14.6. Employee Behavior. All contact by Collector with Customers will be done with courtesy and respect. Any incident with a Customer must be reported immediately to the City.

14.7. Employee Conduct. All superintendents, foremen and workers, or contractors employed by the Collector shall be capable and safety conscious workers, skilled in their respective trades. Collector shall not employ any person who is incapable or negligent in the due and proper performance of his or her duties. Collector shall furnish such supervision, labor and Equipment as is considered necessary for the fulfillment of the Services in an acceptable manner at a satisfactory rate of progress. City reserves the right to request for any worker of Collector to be prohibited from providing Services to City without cause for any reason.

14.8. Supervision. It is the Collector's responsibility to supervise the Services rendered and to provide direction to its employees and agents in the field. While City employees may suggest possible solutions to problems or unusual situations, Collector retains the responsibility for all Services and how the Services will be delivered and conducted to the City and the Customers.

Section 15. Franchise Fees, Billing and Reports.

15.1. Franchise Fees. Collector agrees to pay the City for the privilege herein granted to Collector, a sum equal to Eight (8.0%) percent of the Gross Revenues from residential accounts and the Collector shall pay the City Seven (7.0%) percent of the gross revenues from commercial accounts received by Collector for the removal of Solid Waste, Green Waste or Recyclables from within the boundaries of City during the Term, or any extension thereof (the "Franchise Fees"). The Franchise Fees shall be paid by Collector to City on or before the last day of the month following the previous calendar quarter that the monies are collected by Collector.

15.2. Billing. Collector shall provide regular billing statements to all customers (residential, commercial or industrial) for which Collector provides service, covering the monthly period in which services are rendered.

Section 16. Collector's Books and Records: Audits

The books and records of Collector shall be subject to audit and inspection for the purpose of reviewing billing operations, accounts receivable and customer service, by City, its auditors or agents. Collector shall maintain all records relating to the Services, including, but not limited to, Customer lists, billing records, maps, AB 939 compliance records, AB 341 compliance records, and Customer complaints (collectively, the "Records"), for no less than three (3) years after the termination or expiration of the Term, or as may or any longer period required by applicable law. City shall have the right, upon five (5) business days advance notice, to inspect all Records, and other like materials of Collector which reasonably relate to Collector's compliance with the provisions of this Agreement. Collector's Records shall be made available to City at a City facility, if reasonably practicable, or at Collector's regular place of business during regular business hours. The City shall initially bear the cost of such audit. If such audit discloses an underpayment of the Franchise Fees or other sums due under this Agreement in excess of three percent (3%) of the amount which should have been paid, Collector shall promptly tender to the City the amount of such underpayment, together with interest at the rate of ten percent (10%) computed from the date of underpayment, and shall further reimburse the City for the entirety of its audit costs, including, without limitation, auditor's costs and expenses, internal costs and expenses, and legal and other third party expenses. If such audit discloses an underpayment of less than three percent (3%), Collector shall promptly tender to City the amount of such underpayment, together with interest at the rate of ten percent (10%) per annum computed from the date of underpayment, and City shall bear the costs of the audit. If such audit discloses an overpayment, the City shall promptly repay such underpayment to Collector and the City shall bear the costs of the audit.

Section 17. Indemnification

17.1. Indemnification of City. Collector agrees that it shall protect, defend, indemnify and hold harmless City, its elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("City's Agents") from and against any claim, action or proceeding that arises from this Agreement or any Services performed pursuant to or in connection with this Agreement ("Claim"), including but not limited to all losses, liabilities, fines, penalties, claims, damages, liabilities, judgments, attorney's fees, costs incurred for staff time, court costs, other expenses of litigation, or expenses of litigation awarded to the prevailing Party or Parties. This indemnification does not include gross negligence or willful acts of the City, or City's Agents. At City's discretion, Collector shall satisfy the obligation of this Section by reimbursing City for tendering its own defense. If Collector undertakes the defense of a Claim by providing City-approved representation, City may, participate in the defense of

any such Claim. To the extent permitted by Public Resources Code Section 40059.1, and to the extent noncompliance is caused by Collector's breach of or noncompliance with a provision of this Agreement, Collector agrees to protect and defend City or City's Agents, with counsel selected by the City, and to indemnify and hold harmless City or City's Agents from and against all fines or penalties imposed by the State if the waste diversion goals specified in the Public Resources Code are not met by the City with respect to the Solid Waste collected by Collector under this Agreement. Collector shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City and City's Agents from and against all claims, damages (including but not limited to special, consequential, and natural resources damages), injuries, response mediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and attorney and expert fees for the adverse party and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the forgoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the City or City's Agents arising from or attributable to the negligence or willful misconduct of Collector or its affiliates and their respective officers, directors, employee and shareholders in handling Hazardous Waste either knowingly or under circumstances in which a reasonable person would or should have known that Hazardous Waste was being handled. The foregoing indemnity is also intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section 25364, to defend, insure, protect, hold harmless and indemnify the City from liability.

17.2. Indemnification of Collector. City shall indemnify, defend and hold Collector, its affiliates and their respective officers, directors, employees and shareholders harmless from and against any and all liabilities, losses, damages, claims, actions and causes of action, costs and expenses (including reasonable attorney's fees) arising from or in any manner arising out of City's obligations in this Agreement as well as the grossly negligent or willful acts of City or City's Agents. Subject to this indemnification, and upon demand of Collector, made by and through Collector's counsel, City shall appear in defense of Collector, and its officers, employees and agents in any claims or actions, whether judicial, administrative or otherwise arising out of the exercise of this Agreement.

Section 18. Insurance

Collector will continue to carry insurance, which shall be placed with insurers with a current A M Best's rating of no less than A VII, and which shall include all of the following:

18.1. Required Insurance.

18.1.1 Worker's Compensation. Collector shall obtain and maintain in full force and effect throughout the Term, worker's compensation insurance in accord with the provisions and requirements of the California Labor Code. Endorsements that implement the required coverage shall be filed and maintained with the City Clerk throughout the Term. The policy providing coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. The policy shall also be amended to waive all rights of subrogation against the City, its elected or appointed officials, employees, agents or representatives for losses which arise from the Services performed by the Collector pursuant to this Agreement.

18.1.2. General Commercial Liability Insurance. Collector shall carry commercial or comprehensive general liability insurance with a combined single limit of Five Million Dollars (\$5,000,000.00) per occurrence / aggregate for bodily injury, personal injury and property damage. Coverage shall be at least

as broad as Insurance Services Office Commercial General Liability coverage (occurrence form GG 00 01 11 88).

18.1.3. Automobile Liability Insurance. Collector shall carry automobile insurance with a combined single limit of Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury, personal injury, and property damage, and which shall provide coverage for rented and non-owned vehicles. Coverage shall be at least as broad as Insurance Service form number CA 00 01 06 92 covering Automobile Liability, code 1 (any auto).

18.1.4. Public Liability Insurance. Collector shall carry public liability insurance with a combined single limit of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury, and property damage. **18.1.5. Pollution or Environmental Liability Insurance.** Collector shall carry Environmental or Pollution liability coverage appropriate for the waste activity contemplated in this Agreement, including sudden and accidental upset pollution liability for the amount of One Million Dollars (\$1,000,000.00) per claim or occurrence and One Million Dollars (\$1,000,000.00) in the aggregate.

18.2. Additional Insurance Requirements. Within five (5) days of the Effective Date, Collector shall provide City with certificates of insurance for all of the policies required under this Section 18 ("Certificates"), excluding the required worker's compensation insurance. With the exception of the worker's compensation insurance, all of the insurance policies required in this Section 18 shall: provide that the policy will not be cancelled, allowed to expire, or materially reduced in coverage without at least thirty (30) days' prior written notice, or ten (10) days' in the case of non-payment of premium by Collector (as per insurance industry standard), to City of such cancellation, expiration, or reduction and each policy shall be endorsed to state such; name City, and City's Agents as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Collector or operations performed by or on behalf of the Collector to perform the Services including materials, parts, or Equipment furnished in connection with the Services or operations by endorsement; be primary with respect to any insurance or self-insurance programs covering City or City's Agents and any insurance or self-insurance maintained by City or City's Agents shall be excess of Collector's insurance and shall not contribute to it; and contain standard separation of insured provisions.

18.3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to City and City's Agents, or Collector shall provide a financial guarantee satisfactory to City guaranteeing payment of loss related investigations, claim administration and defense expenses.

18.4. Verification of Coverage. Before the Services commence, Collector shall furnish City with original Certificates and endorsements effecting coverage required by this Section 18. The endorsements shall be on forms approved by the City which contain all of the information required in this Section 18.

18.5. Subcontractors. Collector shall include all subcontractors as additional insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated in this Section 18. Said insurance shall protect Collector and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from the Services, whether such operations be by Collector itself, or by its agents, employees, contractors or sub-grantees. Copies of the policies or endorsements evidencing the above insurance coverage shall be filed with the City Clerk. All of the

following endorsements are required to be made a part of the insurance policies required by this Agreement.

18.6. Increase in Coverage Requirements. The limits for the insurance coverage required under this Section 19 and the ratings required for insurance companies shall be subject to review and approval by the City Attorney every year and may be increased at that time, at the City Attorney's discretion, to match the coverage provided by the City's own liability insurance policy.

Section 19. Collector Liability for Damage to Street

Any physical damage caused by the negligent or willful acts or omissions of employees of Collector to public or private property shall be repaired or replaced by Collector at Collector's sole expense. Collector shall be responsible for damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear.

Section 20. Title to Solid Waste

All Solid Waste, Recyclables, and Green Waste collected pursuant to this Agreement shall remain the property of the Customer until such time as it is collected for disposal. It is expressly understood that all Solid Waste, Recyclables, and Green Waste collected under this Agreement becomes the property of Collector upon collection, subject to the requirement of delivery to an appropriate disposal site. Collector is hereby granted the right to retain, dispose of, and otherwise use such Solid Waste, Recyclables, and Green Waste, or any part thereof, in any fashion or for any lawful purpose desired by Collector, and to retain any benefit or profit resulting therefrom. Solid Waste which is disposed of at a disposal site shall become the property of the owner or operator of the disposal site once deposited there by Collector.

Section 21. Rights of City to Perform During an Emergency

Should Collector, for any reason whatsoever, excluding a Force Majeure as defined in Section 10.2, be unable to perform any of the Services required by this Agreement, for a period of more than seventy-two (72) hours, and the City Manager reasonably finds that the resulting accumulation of Refuse in City endangers or menaces the public health, safety or welfare, then, City shall have the right to temporarily take possession of and use Collector's Equipment to carry out Collector's obligations under this Agreement, upon twenty-four (24) hour prior written notice to Collector. Collector agrees that in such event it will fully cooperate with City to affect such a transfer of possession for City's use. Collector agrees that, in such event, City may take temporary possession of and use all of said Equipment and facilities without paying Collector any rental or other charge, provided that when City takes possession of Collector's Equipment and facilities under this Section 21, City shall assume complete responsibility for the proper and normal use of such Equipment and facilities. City agrees that it shall immediately relinquish possession of all of the abovementioned property to Collector upon receipt of written notice from Collector stating it is able to resume its normal responsibility under this Agreement.

Section 22. Customer Confidentiality

Collector shall strictly observe and protect the right of privacy of the Customers. Information identifying individual Customers, or the composition or contents of a Customer's Refuse, shall not be revealed to any person, governmental unit, private agency or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude Collector from preparing, participating in, or assisting in the preparation of waste

characterization studies or waste stream analyses which may be required by AB 939. Collector shall not market or distribute, without City's advance written consent, which City may withhold in its sole and absolute discretion, mailing lists with the names or addresses of Customers. The rights accorded Customers pursuant to this Section shall be in addition to any other privacy right accorded Customers pursuant to federal or state law.

Section 23. Reports and Adverse Information

23.1. Reports. Within one hundred twenty (120) days after the close of Collector's fiscal year, Collector shall submit a written annual report, in a form approved by City, including, but not limited to, the following information:

23.1.1. A report on City's progress in meeting and maintaining its ability to meet its goals under AB 939 as applied to the Franchise Area, along with any recommended changes. Collector shall also provide the City's Public Works Director with quarterly reports on the quantity (by weight) of all Commercial Solid Waste, Residential Solid Waste, Recyclables, Compostables, and Green Waste collected.

23.1.2. A list of Collector's officers and member of its board of directors.

23.1.3. A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in Collector and any subsidiaries.

23.1.4. The most current annual audited financial statement, upon request. To the extent permitted by the Public Records Act, this document shall remain confidential.

23.1.5. A current financial statement, upon request.

23.2. Adverse Information. Collector shall provide City two (2) copies of all reports, or other material adversely affecting this Agreement, which Collector submits to: the State or federal Environmental Protection Agency; the Department of Resources Recycling and Recovery; or any other federal, State, or local agency. Copies shall be submitted to City simultaneously with Collector's filing of such matters with said agencies. Collector's routing correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request. Collector shall submit to City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Collector to any federal, state and local courts, regulatory agencies and other government bodies relating to Collector's performance of Services pursuant to this Agreement, as well as copies of all decisions, correspondence and actions by such agencies. Any confidential data exempt from public disclosure shall be retained in confidence by City or its authorized agents and shall only be made available for public inspections, as required by law. Collector shall submit to City such other information or reports in such forms and at such times as City may reasonable request or require. All reports and records required under this or any other section herein shall be furnished to City at the sole expense of Collector.

23.3. Failure to Report. The refusal, failure, or neglect of Collector to file any report required, or the inclusion of any materially false or misleading statement or representation made intentionally, willfully, or knowingly by Collector in such report, may be deemed a material breach of this Agreement, and may subject Collector to all remedies, legal or equitable, which are available to City under this Agreement or otherwise.

Section 24. Bonds and Security

24.1 Performance Bonds. Contemporaneously with the execution of this Agreement, Collector shall secure and execute a performance bond to be held by the City (the "Performance Bond") to ensure performance of Collector for the total amount of Fifty Thousand and No/100 Dollars (\$50,000.00). The Performance Bond shall be on terms and in a form acceptable to the City Attorney and shall be issued by a California admitted insurer. The Performance Bond shall serve as security for the faithful performance by Collector of all the provisions and obligations of this Agreement. Thirty (30) days following Collector's failure to pay City an amount owed under this Agreement, if ever, the Performance Bond may be assessed by City upon five (5) days prior written notice to Collector for purposes including, but not limited to:

- A. Failure of Collector to pay City any sums due under the terms of the Agreement.
- B. Reimbursement of costs borne by City to correct violations of this Agreement, after five (5) days' advance written notice to Collector.
- C. Monetary remedies or damages assessed against Collector due to a breach of this Agreement.

24.2. Replenishment of Bond. Collector shall restore the bond to its original amount of Fifty Thousand Dollars (\$50,000.00), within thirty (30) days receipt of notice from the City that any amount has been withdrawn from or assessed against the Performance Bond.

Section 25. Breach of Agreement

25.1. Determination of Breach. If the City Manager reasonably determines that Collector's performance pursuant to this Agreement has not been in conformity with reasonable industry standards obtained in similar cities in Central California, the provisions of this Agreement, the requirements of the Department of Resources Recycling and Recovery, including, but not limited to, requirements for source reduction and recycling (as to the waste stream subject to this Agreement) or any other applicable federal, state or local law or regulation, including but not limited to the laws governing transfer, storage or disposal of Hazardous Waste, the City Manager may advise Collector in writing of such deficiencies. If Collector commits a material breach of this Agreement ("Breach"), City may terminate this Agreement, impose Liquidated Damages, or avail itself of any and all remedies set forth in Section 26 of this Agreement, in addition to all other remedies available to the City in law or equity.

25.2. Events that Constitute a Breach. A Breach includes but is not limited to the following:

25.2.1. Misrepresentation. Collector commits, or attempts to commit, any fraud, intentional material misrepresentation or deceit upon the City in relation to this Agreement or in the statements or materials submitted to City by Collector in connection with this Agreement as of the time the representation or disclosure is made.

25.2.2. Seizure or Attachment of Equipment. There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating Equipment of Collector, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair Collector's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and City-approved holidays.

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

25.2.4. Court Order or Decree. Any court having jurisdiction enters a decree or order for relief with respect to Collector, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Collector consents to or fails to oppose any such proceeding, or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official of Collector or for any part of Collector's operating equipment or assets, or order the winding up or liquidation of the affairs of Collector.

25.2.5. Failure to Notify City. Collector fails to notify City in a timely manner of any receipt of notice of violation or official communication from those regulatory agencies regulating Solid Waste, Recyclables, and Green Waste collection, transport, processing, or disposal activities.

25.2.6. Lapse of Financial Requirement. If Collector fails to provide or maintain in full force and in effect, the following: any of the insurance policies required pursuant to Section 15 herein; the full amount of the Performance Bond required under Section 24.1 herein; or the full amount of the Payment Bond required under Section 24.2 herein.

25.2.7. Regulatory Violation. Collector violates any orders or filings of any regulatory body having jurisdiction over Collector relative to this Agreement, provided Collector may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred.

25.2.8. Cessation of Services. Collector ceases to provide collection, transportation, processing, or recycling services as required under this Agreement for a period of three (3) consecutive business days or more, for any reason within the control of Collector.

25.2.9. Failure to Meet Payment or Reporting Requirements. Collector fails to make any payment required under this Agreement or refuses to provide City with required information, reports, or records in a timely manner as provided for in the Agreement.

25.2.10. Violation of AB 939. Any other act or omission by Collector, which materially violates the terms, conditions or requirements of the AB 939 as may be amended from time to time; or any other directive rule or regulation issued thereunder; unless the violation is corrected or remedied within the time set on the written notice of violation; or if Collector cannot reasonably correct or remedy the violation within the time set forth in such notice, Collector commences to correct or remedy such violation within the time set forth in such notice and diligently and in good faith continues to cure, correct, or remedy such violation thereafter.

25.2.11. Unremedied Acts or Omissions. Collector commits any act or omission which violates the terms, conditions, or requirements of this Agreement, or any other applicable laws and which is not corrected or remedied within the time set in the written notice of the violation or, if Collector cannot reasonably correct or remedy the breach within the time set forth in such notice, Collector should fail to

commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

25.2.12. Failure to Correct Breach. Collector fails to correct any Breach within the applicable Cure Period.

25.3. Cure Rights. Notwithstanding any other provision of this Section 25 to the contrary, City shall provide Collector with reasonable notice of and a reasonable opportunity to cure any Breach of this Agreement during the time periods set forth below (the "Cure Period"). Collector shall begin cure of any Breach as soon as it becomes aware of the Breach, whether discovered by Collector or through notice from the City. Upon becoming cognizant of the Breach, Collector shall proceed to cure such Breach as follows:

25.3.1. Immediately, if the City determines the Breach endangers the health, safety, or welfare of the public; or

25.3.2. Within thirty (30) days of giving or receiving notice of the Breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, Collector shall have such additional time as is reasonably needed, no longer than sixty (60) days to expeditiously complete a cure. During any Cure Period, Collector shall provide City weekly written status updates informing City of Collector's progress curing the Breach.

25.4 Right to Appeal. Collector may submit a response to claims of Breach contained in any written notice from the City within thirty (30) days of receipt of such notice. The City Manager shall review Collector's response and refer the matter to the City Council or decide the matter and notify Collector of that decision, in writing. A decision or order of City Manager shall be final and binding on Collector, if the Collector fails to file a "Notice of Appeal" with the Council within thirty (30) days of receipt of the City Manager's decision. Within ten (10) working days of receipt of a Notice of Appeal, the City Manager shall refer any Collector Notice of Appeal timely received to the City Council for proceedings in accordance which shall be conducted as follows: Upon receiving a Notice of Appeal the City Council, shall set the matter for hearing within a reasonable time. City shall give Collector and any other person requesting the same, fourteen (14) days written notice of the time and place of the City Council hearing on the appeal. At the hearing, the City Council shall consider the report of the City Manager indicating the deficiencies, and shall give the Collector, or its representatives and any other interested person a reasonable opportunity to be heard. Based upon the evidence presented at the public hearing, the City Council shall determine whether the decision or order of the City Manager should be upheld. If, based upon the record, the City Council determines that the performance of Collector is in breach of any material term of this Agreement or any material provision of any applicable federal, state or local statute of regulation, the City Council has sole and absolute discretion to terminate this Agreement or impose damages as set forth herein. The decision of the City Council shall be final and conclusive, and there shall be no appeal of the City Council decision. Collector's performance under this Agreement is not excused during the period of time prior to the Council's final determination as to whether such performance is deficient.

Section 26. Termination, Liquidated Damages and other Remedies

26.1. Termination. In the event Collector commits a Breach of this Agreement, City shall have the right to terminate this Agreement ("Termination").

26.2. Liquidated Damages.

26.2.1. City finds, and Collector agrees, that as of the Effective Date of this Agreement, it is impractical, if not impossible to reasonably ascertain the extent of damages which will be incurred by City as a result of a Breach by Collector of its obligations under this Agreement. Some reasons for the impracticability of ascertaining damages include, but are not limited to: the difficulty in estimating the substantial damage that results to Customers who are denied Solid Waste disposal services or denied quality or reliable service; and the difficulty valuing the damage caused from the inconvenience, anxiety, frustrations and deprivation of the benefits provided under the Agreement to individual members of the general public for whose benefit this Agreement exists. The Parties agree that these damages manifest in subjective ways and in varying degrees of intensity, and are incapable of measurement in precise monetary terms. The Parties agree that any remedy for such breaches, including the termination of this Agreement are, at best, a means of future correction and not remedies, which can adequately make the public whole for past breaches.

26.2.2. The City Council may, at its discretion, assess liquidated damages not to exceed the sum of Two Thousand Dollars (\$2,000) per day, for each calendar day that the Services are not provided by Collector in accordance with this Agreement for a period not to exceed forty-five (45) days ("Liquidated Damages"). In addition, the City Council may order assessment against the Performance Bond and Payment Bonds required by Section 25 as set forth herein, the termination of this Agreement, or both.

26.2.3. The City finds, and Collector acknowledges and agrees that the above described liquidated damages provision represent a reasonable sum in light of all of the circumstances. Said liquidated damage sums shall be applicable to each calendar day of delay during which Collector has been found by the City Council to be in Breach pursuant to Section 26. Collector shall pay any Liquidated Damages assessed by the City Council within thirty (30) days after they are assessed. If they are not paid within the thirty-day (30) period, City may withdraw said amount from the Performance Bond or Payment Bond, as appropriate, pursuant to Section 25, order the Termination of the Franchise granted by this Agreement, or both.

26.3. Remedies Not Exclusive. The right of Termination or to impose Liquidated Damages are in addition to all other rights of City upon a failure of Collector to perform its obligations under this Agreement, including but not limited to the rights provided in Section 27.

Section 27. City's Additional Remedies

In the event Collector commits a Breach of this Agreement, and the City has terminated this Agreement, in addition to the remedies set forth in Section 26, City shall have the following rights:

27.1. Rental of Collector Equipment. Notwithstanding the provisions set forth in Section 22 of this Agreement, City shall have the right to rent or lease Equipment from Collector for the purpose of collecting, transporting and disposing of Refuse which Collector is obligated to collect, transport and dispose of pursuant to this Agreement, for a period not to exceed six (6) months. If such Equipment is not owned by Collector, Collector shall assign to City, to the extent possible, the right to possess the Equipment. If City exercises its rights under this Section, City shall pay to Collector the reasonable rental value of the Equipment so taken for the period of City's possession thereof.

27.2. Right to License others to Provide Disposal Services for the City. City shall have the right to license others to perform the Services otherwise to be performed by Collector hereunder, or to perform such Services itself.

27.3. Right to Other Damages. City shall have the right to obtain damages or injunctive relief. The Parties recognize and agree that in the event of Breach by Collector, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of this Agreement by Collector and to enjoin the Breach thereof.

Section 28. Compliance with Applicable Law

Collector agrees that it shall comply with all applicable federal, state, and local laws and regulations, expressly including the provisions set forth in the Code which are applicable to the work or business in which it is herein franchised, and with any and all amendments to such applicable provisions during the Term.

Section 29. Assignment

The Franchise granted by this Agreement shall not be transferred, sold, hypothecated, sublet or assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold or transferred, either in whole or in part nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except Collector, either by act of the Collector or by operation of law, without the prior written consent of City expressed by a resolution or ordinance approved by the City Council, which may be withheld for any reason, conditioned or granted in the City's sole discretion. Any attempt by Collector to assign this Franchise without the consent of City shall be null and void. If Collector attempts to transfer the Franchise prior to obtaining City consent, all of the profits or twenty-five percent (25%) of the gross revenues received pursuant to the Services provided under this Agreement, from the date of attempted transfer until the date of City consent, whichever is greater, shall be returned to City.

Section 30. Franchise Transfer: Fees

Any application for a Franchise transfer shall be made in a manner prescribed by the City Manager. The application shall include a transfer fee in an amount to be set by the City by resolution or ordinance of the City Council, to cover the cost of all direct and indirect administrative expenses, including consultants and attorneys, necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses. In the event that City's actual costs exceed the amount of the transfer fee, Collector shall reimburse City for all additional costs which are not covered by the transfer fee, up to, but not exceeding Five Thousand Dollars (\$5,000.00). Bills shall be supported with evidence of the expense or cost incurred. The applicant, for any such transfer, shall pay such bills within thirty (30) days of receipt. The Franchise transfer fees detailed in this Section are over and above any franchise fees specified in the other portions of this Agreement.

Section 31. City Must Approve Change in Control of Collector

City consent is required for any change in control of Collector. Collector is a corporation, and any acquisition of more than twenty-five percent (25%) of Collector's voting stock by a person, or group of persons acting in concert shall be deemed a change in control. Any change in control of the Collector occurring without prior City approval shall constitute a material breach of this Agreement.

Section 32. Amendment to Agreement

This Agreement is intended to carry out City's obligations to comply with the provisions of the AB 939, and implemented by regulations of the Department of Resources Recycling and Recovery

("Regulations"), as they may from time to time be amended. In the event that AB 939, or other state or federal laws or regulations enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Except for Rate adjustments made pursuant to Section 9, this Agreement may be amended or modified only by a written agreement duly authorized and executed by both the City and Collector.

Section 33. General Provisions

33.1. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of California. Venue for all legal proceedings arising from this Agreement shall be in the Superior Court for the County of Stanislaus in the State of California. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Eastern District of the State of California.

33.2. Notices. Any notice or communication required hereunder between City and Collector must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

City: City of Waterford 101 E Street Waterford, CA 95386 Attn: City Clerk, Tel: (209) 874-2328

Legal: Mason, Robbins, Browning, Godwin 700 Loughborough Dr # D Merced, California 95348
Attention: Corbett Browning, Tel: (209) 383-9383

Collector: Gilton Solid Waste Management, Inc. 755 S. Yosemite Ave, Oakdale, Ca 95361
Attention: President, Tel: (209) 527-3781.

33.3. Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

33.4. Exhibits Incorporated. The following “Exhibits” are attached hereto and incorporated herein by this reference: Exhibit A Definitions, Exhibit B Franchise Area, Exhibit C Rates, Exhibit D Bulky Item Collection Program, Exhibit E Specified E-Waste.

33.5. Time of Essence. Time is of the essence for the Agreement and each provision contained within and each provision is made and declared to be a material, necessary and essential part of the Agreement.

33.6. Authority. All Parties to the Agreement warrant and represent that they have the power and authority to enter into the Agreement and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into the Agreement. By entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

33.7. Drafting and Ambiguities. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of the Agreement. Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

33.8. Entire Agreement. This Agreement, together with its specific references, attachments and Exhibits, constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, understanding and agreements with respect hereto, whether oral or written.

33.9. Supersedes Prior Agreement. It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations or agreements, written, electronic or oral, between the Parties with respect to the subject matter of this Agreement.

33.10. Captions. The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

33.11. Mandatory and Permissive. “Shall” and “will” and “agrees” are mandatory. “May” and “can” are permissive.

33.12. Successors and Assigns. All representations, covenants, and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of, any or all of the Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors and assigns.

33.13. Counterparts. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

33.14. Attorney’s Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

33.15. Necessary Acts and Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of the Agreement.

33.16. Waiver. No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, this Agreement has been entered into by and between City and Collector as of the Effective Date.

CITY:

City of Waterford, a municipal corporation of the State of California

DocuSigned by:
By: Matt Erickson
Matt Erickson, Interim City Manager

Date Signed: 9/14/2017

Approved as to Form:

DocuSigned by:
By: Corbett Browning
Corbett Browning, City Attorney

Attest:

DocuSigned by:
By: Miranda Lutzu
Miranda Lutzu, City Clerk

GILTON:

Gilton Solid Waste Management, Inc., a California Corporation

DocuSigned by:
By: Richard Gilton
Richard Gilton, President

Date Signed: 9/19/2017

EXHIBIT A Definitions

Capitalized words in the Agreement shall have the following meanings:

1. "AB" shall mean an Assembly Bill of the California Legislature.
2. "AB 341" shall mean the amendments to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), Chapter 476, as amended, supplemented, superseded, and replaced from time to time.
3. "AB 939" shall mean 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.
4. "Agreement" shall mean this Franchise Agreement between the City and Collector, including all exhibits and future amendments.
5. "Bin" or "Bins" shall mean receptacles provided by Collector for commercial customers which is picked up by Collection trucks by means of a front-loading apparatus.
6. "Bulky Items" shall mean large items of Solid Waste such as appliances, furniture, branches, and other oversize wastes whose large size precludes or complicates their placement in containers or handling by normal collection, processing, or disposal methods, but excluding Excluded Waste; items larger than five cubic yards or heavier than 500 pounds; and items of excessive size or density, such as engine blocks, spas, boats, and trailers. A list of acceptable and unacceptable Bulky Items is attached as Exhibit D.
7. "Breach" shall be as defined in Section 26.1 of this Agreement.
8. "Cart" or "Carts" shall mean industry standard receptacles for disposal of residential Solid Waste, Green Waste, and Recyclables, in a range of sizes. A Cart has wheels, a handle for ease of movement, and a tight-fitting, attached lid and is designed to be dumped manually or mechanically into a Solid Waste collection vehicle.
9. "Certificates" shall be as defined in Section 18.2 of this Agreement.
10. "City" shall mean the City of Waterford, Stanislaus County, State of California.
11. "City's Agents" shall be as defined in Section 17.1 of this Agreement.
12. "City Attorney" shall mean the city attorney for the City of Waterford.
13. "City Council" shall mean the City Council of the City of Waterford.
14. "City Engineer" shall mean the city engineer for the City of Waterford.
15. "City Manager" shall mean the city manager for the City of Waterford.
16. "Claim" shall be as defined in Section 16.1 of this Agreement.
17. "Collector" shall be as defined in the Preamble to this Agreement.

18. "Construction and Demolition Debris" or "C&D Debris" shall mean waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements and on houses, commercial buildings, and other structures, but not including any Excluded Waste.

19. "Container" or "Containers" shall be as defined in Section 10.1 of this Agreement.

20. "Cure Period" shall be as defined in Section 25.3. of this Agreement.

21. "Customer" or "Customers" shall mean an individual(s), entity or entities that receive any services provided by Collector pursuant to this Agreement. Customer shall also mean the person, organization, or corporation receiving services to which billing statements are sent.

22. "Effective Date" shall be as defined in the Preamble to the Agreement.

23. "Electronic Waste" or "E-Waste" shall mean waste containing or consisting of electronic devices and components, such as computers, monitors, terminals, computer cards and components, computer peripheral devices, main frame computers, keyboards, mice, printers and scanners, mini-systems, power supply units, servers, connectors/cables, storage discs, consumer electronics, printed circuit boards, televisions, chips and components, cellular and other phones, telecommunications equipment, and fax machines and copiers, but not including Excluded Waste.

24. "Equipment" shall mean Collector's vehicles, tools, and equipment for the Services for which it is responsible under this Agreement.

25. "Excluded Waste" shall mean Hazardous Waste; Medical and Infectious Waste; liquid wastes; volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material; waste that Collector reasonably believes would, as a result of or upon disposal, be a violation of local, state, or federal law, regulation, or ordinance, including land use restrictions or conditions; waste that cannot be disposed of in Class III landfills; waste that in Collector's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance, or otherwise create or expose Collector or the City to potential liability. Excluded Waste does not include de minimis volumes or concentrations of waste of a type and amount normally found in residential Solid Waste after implementation of programs for the safe collection, recycling, treatment, and disposal of Household Hazardous Wastes in compliance with Sections 41500 and 41802 of the Public Resources Code.

26. "Exhibits" shall be as defined in Section 33.4. of this Agreement.

27. "Force Majeure" shall be as defined in Section 10.2. of this Agreement.

28. "Franchise Area" shall be as defined in Section 3.1. of this Agreement.

29. "Franchise Fees" shall mean both the fees retained by City and paid by Collector to City as defined in Section 15.1.

30. "Green Waste" shall mean all tree and plant trimmings, grass cuttings, dead plants, weeds, leaves, branches, and similar plant materials, but not including Excluded Waste, palm material, or items longer than five (5) feet or with a diameter greater than six (6) inches.

31. "Gross Revenues" shall mean the total revenue received before any deductions or allowances.

32. "Hazardous Waste" shall mean a waste, or combination of wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may do either of the following: a. Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness. b. Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed. (Public Resources Code Section 40141.)

33. "HDPE (High Density Polyethylene)" shall mean a recyclable plastic that includes, but is not limited to, milk jugs.

34. "Holiday" shall mean any holiday recognized by the collector.

35. "Household Hazardous Waste" shall maintain the meaning set forth in Title 14, California Code of Regulations, Section 18502 or successor laws and regulations as may be amended from time to time.

36. "Liquidated Damages" shall be as defined in Section 26.2.1 of this Agreement.

37. "Medical and Infectious Waste" shall mean biomedical waste generated at residences in excess of legal limits or at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments.

38. "Notice of Appeal" shall be as defined in Section 25.4 of this Agreement.

39. "Party" or "Parties" shall be as defined in the Preamble to this Agreement.

40. "Payment Bond" shall be as defined in Section 24.2 of this Agreement.

41. "Performance Bond" shall be as defined in Section 24.1 of this Agreement.

42. "PET (Polyethylene, Terephthalate)" PET means a recyclable plastic that includes, but is not limited to, 2-liter soda bottles.

43. "Rates" shall mean the rates charged by Collector or City to Customers within the City as set forth in Section 8.1.

44. "Recitals" shall be as defined in Section 1 of this Agreement.

45. "Records" shall be as defined in Section 12 of this Agreement.

46. "Recyclable Materials" or "Recyclables" shall mean those materials that may be separated on a commercially reasonable basis from Solid Waste and returned 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. Subject to mutually agreed revision by the Parties, Recyclable Materials or Recyclables include, newspaper (including inserts, coupons, and store advertisements), corrugated cardboard, mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, Kraft bags and Kraft paper, paperboard, egg containers, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, and cereal and other similar food boxes), glass containers (including colored glass bottles and jars), aluminum (including beverage containers, foil, food containers, and small scrap metal), plastic milk and juice containers, steel or tin cans, small scrap metal, PETE and HDPE plastic containers (natural and colored), used motor oil

and oil filters, and any other commercially viable recyclable materials mutually agreed to by Collector and the City.

47. "Refuse" shall mean general term for waste, including Solid Waste.

48. "Regulations" shall be as defined in Section 32 of this Agreement.

49. "Roll-Off Box" shall mean a container, with a minimum capacity of ten cubic yards, designed for mechanical emptying with a vehicle, and used for the storage and transportation of solid waste, green waste, recyclables, and other commodities.

50. "Services" shall be as defined in Section 5.1 of this Agreement.

51. "Solid Waste" shall mean and include all forms of residential and commercial waste generated within City limits and intended for disposal. Solid Waste as defined in Public Resources Code, Section 40191 and regulations promulgated thereunder and without limitation includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, Refuse, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid or semisolid wastes, and other discarded solid and semisolid wastes. Excluded from the definition of Solid Waste are Excluded Waste, Recyclable Materials, and Green Waste. Notwithstanding any provision to the contrary, "Solid Waste" may include de minimis volumes or concentrations of waste of a type and amount normally found in residential solid waste after implementation of programs for the safe collection, recycling, treatment, and disposal of Household Hazardous Waste in compliance with Sections 41500 and 41802 of the Resources Code. For the purposes of this Agreement the Collector may, but is not required, to collect, haul, dispose or recycle any liquid wastes, abandoned vehicles, and parts thereof, industrial appliances; dewatered, treated or chemically fixed sewage sludge or manure.

52. "State" shall mean the State of California.

53. "Term" shall be as defined in Section 6 of this Agreement.

54. "Termination" shall be as defined in Section 26.1 of this Agreement.

55. "Universal Waste" shall mean any waste matter which the State of California classifies as 'universal waste,' including, but not limited to, items and materials listed in 22 CCR 66261.9, as it may be amended, as well as any items listed below not classified by the State of California as 'universal waste.' Universal Waste includes, but is not limited to, the following: E-Waste; Batteries (except automobile batteries); Thermostats; Lamps with fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and other lamps with hazardous waste characteristics; Cathode ray tubes; Aerosol cans; Mercury-containing items, including light switches, pressure gauges, and thermometers; Appliances, devices, and other objects containing electronic components, including (but not limited to) computers, computer monitors, cellular telephones, copiers, fax machines, DVD players, VCRs, and televisions; and Prescription and non-prescription drugs, not including controlled substances.

EXHIBIT B

Solid waste franchise agreement area map (city limits)

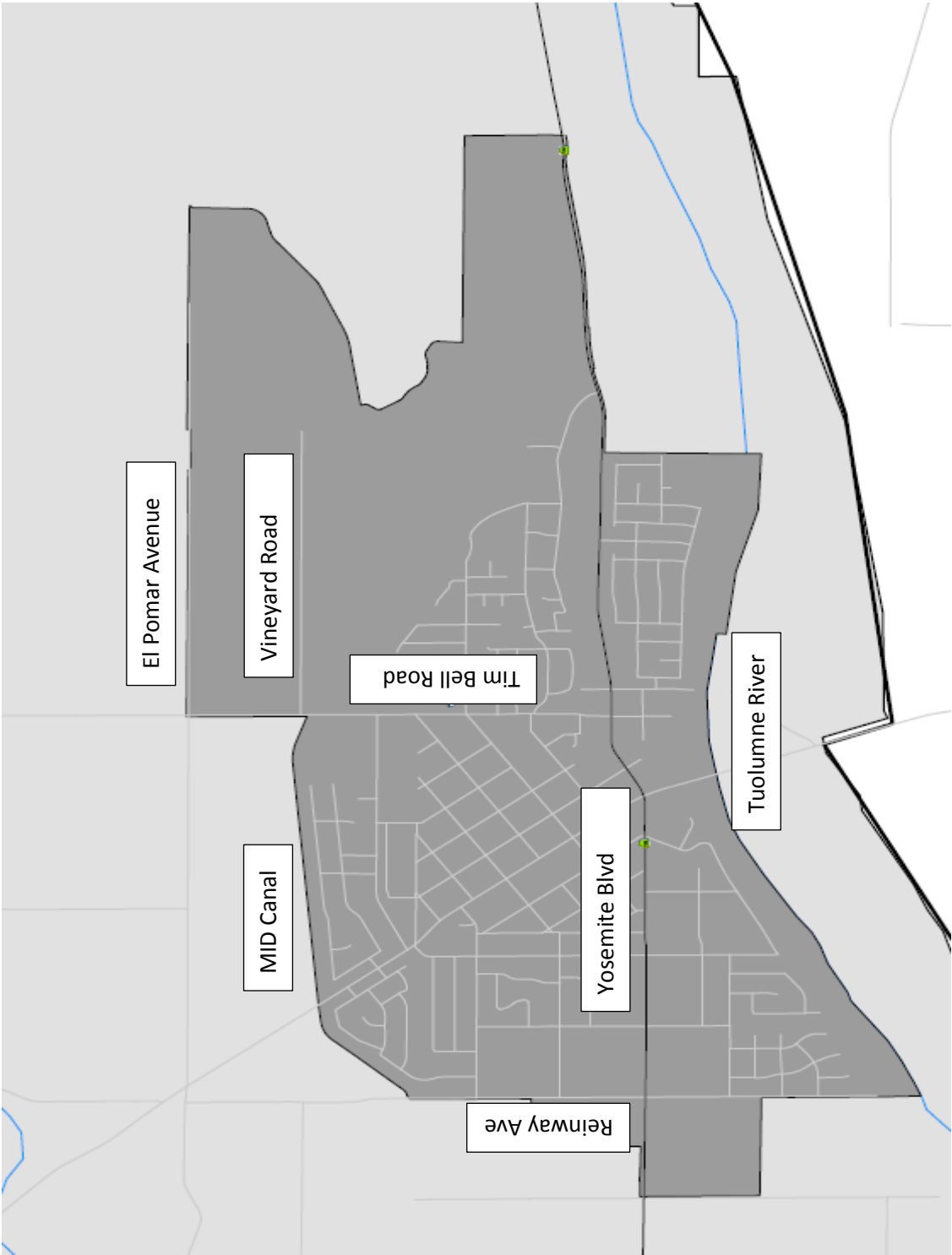


EXHIBIT C**Rates****RESIDENTIAL CART RATES - SEPT 2017****STANDARD SERVICE**

	<u>Monthly Charge</u>	<u>Physically Impaired/ Senior Rates</u>
1. 1- 96 Gallon Waste Cart 1 X Per Week		
Includes: 1-96 Organic Cart (EVERY Week)	\$ 22.13	\$ 19.53

Additonal 96 Gallon Cart

Waste	\$ 6.95
Organic Waste	\$ 6.95

ADDITIONAL CHARGES

Go-Back (Cart NOT out; one courtesy / year)	\$ 7.50	Per Event
Extra Collection	\$ 10.00	Per Event
Bad/ Returned Check	\$ 28.85	
Restart Fee with delivery	\$ 50.00	
Replacement Fee- without a case number	\$ 75.00	
Replacement Fee- with a case number	\$ 20.00	
Contamination Fee	\$ 10.00	
Service Charge- of billed amount when late	1.5%	

VALUE ADDED SERVICES

The above monthly rates include the following Value Added Services

Value Added Services

Curbside Bulky Item Collection Program- Two Appointments per Customer per Year
 Curbside Electronic Waste Collection Program- Four Appointments per Customer per Year
 Illegal Dump Clean-Up Program
 Christmas Tree Collection Program

Rates**FRONT LOADER BINS RATES - SEPT 2017**

Bin Size	Collection Frequency	Monthly Charge
2 Cubic Yard	1	\$81.74
2 Cubic Yard	2	\$147.81
3 Cubic Yard	1	\$109.35
3 Cubic Yard	2	\$210.12
4 Cubic Yard	1	\$145.87
4 Cubic Yard	2	\$268.42
6 Cubic Yard	1	\$194.57
6 Cubic Yard	2	\$371.64

Additional Charges:

Go-Back	\$15.00	Per Event
Extra Dump	\$20.00	Per Event
Lock Installation- Locking Bar (One time charge)	\$30.00	
Master Lock (per lock)	\$25.00	
Disk Lock (per lock)	\$35.00	
Bad/ Returned Check	\$28.85	
Restart Fee without delivery	\$20.00	
Restart Fee with delivery	\$100.00	
Replacement Fee- without a case number	\$219.66	
Replacement Fee- with case number	\$60.00	
Contamination Fee	\$60.00	
Service Charge- of billed amount when late	1.50%	

Rates

SENIOR/DISABLED CRITERIA

Senior:

1. Named account holder must be age 65 years or older
2. Provide proof of age
3. Provide proof of residency at the service address

Disabled:

To qualify as a disabled household, the head of household must be afflicted with one of the following disabilities, supported by recognition from a legal source, such as a medical doctor, Federal, State, or Local agency, or organization for the treatment of the disability. The disabilities listed are not meant to be exclusive and other disabilities may be considered on a case by case basis. However, the disabilities must be so severe as to cause restrictions to walking, carrying, lifting, or strenuous activity.

1. Arthritis
2. Blindness/visual impairment
3. Cardio-vascular disease
4. Developmental disabilities
5. Neurological
6. Orthopedic
7. Renal failure
8. Spinal cord conditions

EXHIBIT D

City of Waterford Bulky Item Collection Program

- The Bulky Item Collection Program is available to all residential customers within the City of Waterford.
- Customers are allowed to request up to two (2) collections per calendar year.
- To arrange collection, the customer must contact Collector and set up an appointment.
- Appointments will be scheduled by Collector and will occur within two (2) weeks of the customer's request.
- Bulky Items are limited to those items that will not fit within the customer's existing garbage container.
- Bulky Items are limited to those items listed below as "Acceptable", or to those items approved by Collector at the time the appointment is requested.
- Customers must place all Bulky Items on the paved street surface in front of their residence without blocking driveways or traffic, and must be easily accessible to Collector's vehicle.
- Customers must place all Bulky Items out for collection no earlier than 6:00 P.M., California time, before the scheduled collection day or no later than 6:00 A.M., California time, on the scheduled collection day.

ACCEPTABLE ITEMS

Refrigerators * Freezers*
Air Conditioners
Washers/Dryers
Dishwashers/Toilets/Sinks/Tubs
Couches/Sofas/Tables/Chairs
Dressers/Mattresses
Bed frames/Furniture
Hot tubs/BBQs
Patio furniture/Doors/ladders/Lawnmowers
Bicycles, Exercise Equipment, Bundled Dry Cardboard

UNACCEPTABLE ITEMS

Automobile parts/Tires/Water heaters
Garbage/Commercial waste
Construction waste/Concrete / Asphalt
Sheetrock/Hazardous waste
Paints / Solvents/Dirt / Sod
Liquid of any kind/Glass
Green waste/Dead animals/Microwaves
Televisions Computer monitors

* Doors must be removed or locked to prevent access by minors

EXHIBIT E

Acceptable E-Waste for Curbside Collection Program

Computers, Televisions, Cathode Ray Tubes, Printers, Computer Monitors, Copiers, Flat Screen Televisions, Scanners, Lap Top Computers, Fax Machines, Networking Equipment, Telephones, Printed Circuit Boards, Cellular Telephones, Servers, Stereos, Main Frame Units, DVD/VHS Players.

EXHIBIT F

**Regional Solid Waste Disposal Plan
Memorandum of Understanding (MOU)
Between The City of Waterford and Stanislaus County**

**REGIONAL SOLID WASTE DISPOSAL PLAN
MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF WATERFORD AND STANISLAUS COUNTY**

This Regional Solid Waste Disposal Plan Memorandum of Understanding (the "Agreement") is made and entered into by and between the County of Stanislaus, ("County") and the City of Waterford ("City") on May 12, 2015. City and County may herein be referred to individually as a "Party" and collectively as the "Parties". There are no other parties to this agreement.

RECITALS

WHEREAS, pursuant to Public Resources Code section 40976 the County and the Cities of Ceres, Hughson, Newman, Oakdale, Patterson, Riverbank, Turlock and Waterford entered into a Memorandum of Understanding, dated August 26, 1994, regarding the use and distribution of AB-939 funds to achieve the waste reduction and diversion goals specified in AB-939 (the "AB-939 MOU");

WHEREAS, on or about December 30, 1999, the County and the above cities entered into Amendment 1 of the AB-939 MOU to provide for payment of the cities' proportional share of the costs for services provided by the County pursuant to AB-939;

WHEREAS, on August 1, 2001, the City of Riverbank and on March 29, 2012, the City of Waterford entered into Amendment 2 of the AB-939 MOU to provide for payment of each city's proportional share of the costs for services provided by the County pursuant to AB-939;

WHEREAS, revenue to fund the AB-939 and Household Hazardous Waste services provided by the County is derived in part from tipping fees to the Waste-to-Energy Facility;

WHEREAS, the County, together with the Cities of Ceres, Hughson, Newman, Oakdale, Patterson, Riverbank, Turlock and Waterford formed the Stanislaus County Regional Solid Waste Planning Agency (hereinafter referred to as "Regional Agency") by entering into a Joint Powers Agreement on June 19, 2001, and the formation of the Regional Agency was approved by the California Integrated Waste Management Board on July 9, 2002.

WHEREAS, the purpose of the formation of the Regional Agency JPA was to allow the participating entities to share diversion credits and to prepare a single planning document for the entire region;

WHEREAS, the purpose of this Agreement is for members of the Regional Agency to implement a Regional Solid Waste Disposal Plan (the "Plan") to support the continued operations of the Fink Road Landfill (hereinafter referred to as "Landfill"), and the WTE Facility by ensuring sufficient solid waste is delivered to both facilities to ensure their economic viability, and to provide regional AB 939 and Household Hazardous Waste services;

WHEREAS, the Plan (as set forth by this Agreement and the exhibits incorporated hereto) includes a ten (10) year commitment from the Regional Agency cities to guarantee delivery of a portion of their solid waste to the Landfill and WTE Facility, and a ten (10) year schedule of tipping fees ("Disposal Rates") to be paid to the County pursuant to the Plan; and

WHEREAS, by entering this Agreement the Parties desire to terminate the AB-939 MOU and its amendments and to implement the Plan.

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the Parties hereby agree as follows:

AGREEMENT

1. Incorporation by Reference. The above Recitals are incorporated into this Agreement by this reference. Schedule 1 and Schedule 2 are attached to this Agreement and are incorporated hereto and made a part of this Agreement by this reference.
2. Term. The term of this Agreement ("Term") shall begin on June 1, 2015 (the "Effective Date") and end June 30, 2025 (the "Termination Date"). If mutually agreeable to both Parties, this contract may be extended up to an additional five (5) year period, unless one Party delivers to the other written notice of nonrenewal, which notice shall be delivered no later than 90 days prior to the termination date. Either Party may terminate this Agreement by providing 90 days prior written notice to the other.
3. City's Guaranteed Delivery of Solid Waste to WTE Facility and Landfill.
 - a. The Cities shall deliver to the WTE Facility and the Fink Road Landfill no less than the committed percentage of their Acceptable Solid Waste as set forth in Schedule 1 and the Waste to Energy (WTE) tonnage as set forth in Schedule 2 each month.
 - b. "Acceptable Solid Waste" means that portion of Solid Waste which has characteristics such as that collected and disposed of as part of the normal collection of Solid Waste in the Contracting Cities, such as, but not limited to: garbage, trash, rubbish, refuse, offal, beds, mattresses, sofas, bicycles, baby carriages, automobile or small vehicle tires, as well as processible portions of commercial (including cannery) and industrial Solid Waste, and logs if no more than four (4) feet long and six (6) inches in diameter, branches, leaves, twigs, grass and plant cuttings, excepting, however, unacceptable waste and hazardous waste.
 - c. "Solid Waste" means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes normally collected by the City's solid waste hauler. Solid Waste does not include hazardous waste, radioactive waste, or medical waste.
4. Tipping Fees.
 - a. For the Term of this Agreement, the City's franchise hauler shall pay the Disposal Rates set forth in Schedule 1 and Schedule 2.

5. County's Obligations. The County agrees to provide and maintain the following programs and services for the City:

a. All AB 939 Program Services as required by law including but not limited to the following:

- i. Preparation of all required State diversion reporting and tracking;
- ii. Countywide public education/outreach;
- iii. Administration of the Recycling Market Development Zone;
- iv. Application for and administration of regional grants for used oil recycling, used tire recycling, and tire enforcement;
- v. Serve as staff to the Local Task Force on Solid Waste and Regional Solid Waste Planning Agency (Regional Agency);
- vi. Monitor proposed solid waste legislative and regulatory changes;
- vii. Administration of the County's Food Processing By-Product Program; and
- viii. Administration of the Waste to Energy Service Contract with the City of Modesto.

b. The following Household Hazardous Waste (HHW) Programs:

- i. The County will conduct a minimum of two mobile collection events each year for each Regional Agency city, except Ceres;
- ii. Access to the permanent Household Hazardous Waste Facility for the collection of Countywide residents' e-waste, used oil, oil filters, paints, pesticides, batteries, sharps, medications and other miscellaneous household chemicals;
- iii. Access to the permanent Household Hazardous Waste Facility for the collection of Countywide qualified/approved Conditionally Exempt Small Quantity Generators' hazardous waste; and
- iv. Countywide public education/outreach.

6. Default.

- a. Cure. In the event a Party fails to perform pursuant to the terms and conditions of this Agreement, the Party to whom an obligation is owed will provide the non-performing Party with at least 30 days prior written notice of said non-performance, upon which the non-performing Party will have the opportunity to comply with the request for performance, or in the event of continued non-performance, the Parties shall have the right to then pursue any and all available legal remedies.

- b. Failure to give Notice. Failure to give, or delay in giving, Notice of Default shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any rights and remedies as to any breach shall not operate as a waiver of any breach or of any such rights or remedies. Delay by either Party in asserting any of its rights and remedies shall not deprive such Party of the right to institute and maintain any action or proceeding which it may deem appropriate to protect, assert or enforce any such rights or remedies.
7. Attorney Fees. In the event that a Party commences litigation to enforce the performance of this Agreement, the prevailing Party shall be entitled to an award of its costs of litigation, including the cost of expert and attorneys' fees.
8. Severability. In the event that any provision of this Agreement shall for any reason be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.
9. Necessary Acts. The Parties hereby authorize their respective officers and employees to do all things reasonably necessary to accomplish the purposes of this Agreement.
10. Modification Only in Writing. This Agreement may not be modified, amended, changed, added to, or subtracted from, except by written mutual consent of the Parties hereto and only if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to this Agreement to maintain continuity. Notwithstanding anything to the contrary, no oral agreement or directive from or between either Party, or their designees, shall operate to amend or change the terms of this Agreement.
11. Entire Agreement. This Agreement contains the entire Agreement of the Parties, and no representations, inducements, promises, or agreements otherwise between the parties, not embodied herein, or incorporated herein by reference shall be of any force or effect. Notwithstanding anything to the contrary, no term or provision hereof may be changed, waived, discharged, or terminated unless the same is in writing executed by the Parties.
12. Amendment. This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the Parties hereto if such amendment or change is in written form and executed by the City and by the County.
13. Duplicate Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart, executed telecopy, fax or photocopy shall be deemed to be an original instrument, but all of which together shall constitute one and the same Agreement.

14. Legal Requirements. The Parties shall comply with all applicable federal, state, and local laws in performing this Agreement.

15. Force Majeure. Except as otherwise expressly provided in this Agreement, if the performance of any act required to be performed by either County or City is prevented or delayed or made impracticable by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, Change in Law or regulations, or any other cause (except financial inability) not the fault of the Party required to perform the act, the time for performance of the act will either be extended for a period equivalent to the period of delay or performance of the act will be excused.

- a. "*Change in Law*" as used herein means the enactment, promulgation, amendment or official interpretation or reinterpretation by any order, decision or judgment of any federal, state or local court, administrative agency or governmental body after the Effective Date of (i) any federal statute or regulation not enacted, promulgated, amended, interpreted or reinterpreted on or before the Effective Date, as applicable, or (ii) any state, County or City statute, ordinance, or regulation that was not so enacted, promulgated, amended, interpreted or reinterpreted on or before the Effective Date, as applicable, or establishes requirements making the ownership, operation or maintenance of the Landfill more burdensome than the most stringent requirements (x) in effect as of the Effective Date, (y) agreed to in any applications of the County for official permits, licenses, or approvals, or (z) contained in any official permits, licenses, or approvals with respect to the Landfill obtained as of the Effective Date; provided that a lawful change in federal, State, County, City, or any other tax law shall not be a Change in Law.
- b. If there is a Change in Law that materially affects operations of the Fink Road Landfill and/or the WTE Facility, the Parties hereto agree to act in good faith to amend or renegotiate this Agreement to effectuate the purpose of this Agreement as stated herein above.
- c. If there is a Change in Law that materially affects the requirements for the Cities regarding the reuse, recycling, composting or any other form of diversion of solid waste from disposal, including, but not limited to an increase in the percentage of solid waste required to be diverted, as well as changes to applicable diversion credits, the Parties hereto agree to act in good faith to amend or renegotiate this Agreement.
- d. The Party whose performance of this Agreement is affected pursuant to this Section shall give notice of the conditions affecting performance to the other Party within thirty (30) calendar days that the Party becomes aware that any Change in Law will materially affect performance of this Agreement.
- e. Upon receiving notice pursuant to this Section, the Parties will have one hundred eighty (180) days to renegotiate this Agreement. If the Parties do not agree that a Change in Law materially affects performance of this Agreement pursuant to this Section, then either Party may request binding mediation, to be paid equally by both Parties, to determine whether the Change in Law is material. Either Party may terminate the Agreement upon three days written notice if it is

determined that a material Change in Law has occurred, and the Parties do not renegotiate the Agreement within one hundred eighty (180) days.

16. Venue. The laws of the State of California shall apply to the construction and enforcement of this Agreement. Any action at law, suit in equity, or judicial proceedings for the enforcement of this Agreement or any provision hereto shall be in the Superior Court of Stanislaus County.

17. Notices. All notices permitted or required by this Agreement or by law to be served on or given to either party hereto by the other party, shall be in writing and shall be effective when personally delivered to the party to whom it is directed, or in lieu of personal service, when deposited in the United States mail addressed as follows, or any other address designated by the party:

To: County of Stanislaus:
Department of Environmental Resources
3800 Cornucopia Way, Suite C
Modesto, CA 95358
Attn: Susan M. Garcia, C.P.M

To: City of Waterford:
Tim Ogden, City Manager
City Hall
P.O. Box 199
Waterford, CA 95386

18. Indemnification.

- a. County will indemnify, defend and hold harmless the Cities, their officers, board members, employees and agents, from any claim, expense or cost, damage or liability imposed for injury occurring by reason of the negligent acts or omissions or willful misconduct of the County arising out of and/or relating to the provision of the programs and services described in paragraph 5 herein above.
- b. Cities will indemnify, defend and hold harmless the County, its officers, board members, employees and agents, from any claim, expense or cost, damage or liability imposed for injury occurring by reason of the negligent acts or omissions or willful misconduct of the Cities arising out of and/or relating to their performance under this Agreement.


19. Insurance. The Parties shall maintain their own liability insurance coverage, against any claim of civil liability arising out of the performance of this MOU, and provide appropriate evidence of such coverage of the other Party upon request.

Signatures on Following Page

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written above.

COUNTY OF STANISLAUS

CITY OF ~~OAKDALE~~ WATERFORD

By: 
Terrance Withrow,
Chairman


By: 
Michael Van Winkle,
Mayor

Date: 4/16/2015

ATTEST:
Christine Ferraro Tallman,
Clerk


ATTEST:

By: 
Liz King,
Assistant Clerk

By: 
Lori Martin
City Clerk

APPROVED AS TO CONTENT:

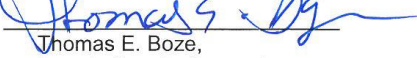
APPROVED AS TO FORM:
CITY ATTORNEY

By: 
Jami Aggers
Director

By: 
Corbett Browning
City Attorney

APPROVED AS TO FORM:

John P. Doering
County Counsel

By: 
Thomas E. Boze,
Deputy County Counsel

SCHEDULE 1**SOLID WASTE TONNAGE GUARANTEE**

<u>CITY</u>	<u>GUARANTEED PERCENTAGE⁽¹⁾</u>
CERES	90%
HUGHSON	90%
NEWMAN	90%
OAKDALE	50%
PATTERSON	90%
RIVERBANK	40%
TURLOCK	90%
WATERFORD	50%

DISPOSAL RATES (per ton) ⁽²⁾:

<u>Fiscal Year</u>	<u>Waste To Energy Facility</u>	<u>Fink Road Landfill</u>
2015/2016	\$33.78	\$26.00
2016/2017	\$34.78	\$26.00
2017/2018	\$35.78	\$26.00
2018/2019	\$37.00	\$27.00
2019/2020	\$38.00	\$27.00
2020/2021	\$39.00	\$27.00
2021/2022	\$40.00	\$28.00
2022/2023	\$41.00	\$28.00
2023/2024	\$42.00	\$29.00
2024/2025	\$43.00	\$29.00

(1) Percentage of total Acceptable Solid Waste under the City's jurisdictional authority.

(2) The total tonnage delivered by each agency shall be billed as follows: 62% of total tonnage at the WTE rate up to the scheduled tonnage per Schedule 2 and 38% of total tonnage at the Fink Road Landfill rate.

SCHEDULE 2**WTE PROPOSED MONTHLY DELIVERY SCHEDULE**

CITY OF TURLOCK		CITY OF CERES	
July	1,895.94	July	1,429.56
August	2,086.75	August	1,573.43
September	1,895.94	September	1,429.56
October	1,848.23	October	1,393.59
November	1,895.94	November	1,429.56
December	1,895.94	December	1,429.56
January	2,153.63	January	1,623.86
February	2,003.56	February	1,510.70
March	2,091.62	March	1,577.10
April	1,464.31	April	1,104.11
May	2,084.37	May	1,571.63
June	1,896.41	June	1,429.92
Total	23,212.64	Total	17,502.58

CITY OF HUGHSON		CITY OF OAKDALE	
July	182.50	July	425.83
August	200.86	August	468.68
September	182.50	September	425.83
October	177.90	October	415.11
November	182.50	November	425.83
December	182.50	December	425.83
January	207.30	January	483.70
February	192.86	February	450.00
March	201.33	March	469.77
April	140.95	April	328.88
May	200.63	May	468.15
June	182.54	June	425.93
Total	2,234.37	Total	5,213.54

CITY OF PATTERSON

July	456.24
August	502.16
September	456.24
October	444.76
November	456.24
December	456.24
January	518.25
February	482.14
March	503.33
April	352.37
May	501.59
June	456.36
Total	5,585.92

CITY OF NEWMAN

July	299.09
August	329.19
September	299.09
October	291.57
November	299.09
December	299.09
January	339.74
February	316.07
March	329.96
April	231.00
May	328.82
June	299.17
Total	3,661.88

CITY OF RIVERBANK

July	273.74
August	301.30
September	273.74
October	266.86
November	273.74
December	273.74
January	310.95
February	289.28
March	302.00
April	211.42
May	300.95
June	273.81
Total	3,351.53

CITY OF WATERFORD

July	101.39
August	111.59
September	101.39
October	98.84
November	101.39
December	101.39
January	115.17
February	107.14
March	111.85
April	78.31
May	111.46
June	101.41
Total	1,241.33

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Matt Erickson
merickson@cityofwaterford.org
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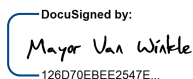
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Mayor Van Winkle
mvanwinkle@cityofwaterford.org
Security Level: Email, Account Authentication (None)


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Miranda Lutzow
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City of Waterford
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Screen Resolution:	800 x 600 minimum
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