

Contract Report

As directed by the Board of Supervisors, the Clerk shall maintain the official file of all Contracts that have been executed by the Board. A Contract Report is to be completed and submitted with all Contracts to the Board of Supervisors' Division of the County Clerk's Office. If the Department Head is authorized to execute a Contract, the department will monitor and maintain the official file of such Contracts. Department Heads are responsible for administration of assigned Contracts and required insurance certificates.

1962			
Contract Number	Delineator	Trait	Fiscal Year

Delineator = .a, .b, etc = Subcontracts

.1, .2, etc = Contract Amendments

Fiscal Year = (optional to be used for new FY Contracts in same # continuing Contract)

Traits = P/Pending - Original Contract Not on File/to be submitted

GP/Grant Pending - Original Contract to be submitted if grant is awarded

E/Exempt - Original Contract Exempt from Filing with Clerk

A/Acknowledgment - Contract Acknowledgment Pending

Contract Category:	Franchise	(Construction, Franchise, Interagency, JPA, Maintenance, Miscellaneous, Property Lease, Service, State, Grant)
Administering Department:	Public Works Agency	
Contract Executed By:	Board of Supervisors	
Authority for Execution:	Minute Order #6 12-17-2019	
Contractor:	USA Waste of California	
Description of Contract:	Master Franchise Agreement for Waste Collection and Recycling	
Service Contracts: Contractor's Tax ID #		

Beginning Term Date:	1/1/2020	If no termination date is specified within the Contract, indicate recommended review date not to exceed one year increments
Ending Term Date:	12/31/2029	
Recommended Review Date:		

Contract Amount Paid BY County:	
Contract Amount Paid TO County:	
Not to Exceed:	\$0.00
Other Terms:	Eligible for 3 yr term extension(s)
	(Other Terms: Rate per month/hour/quarter, etc.)

Insurance Required by County?:	Yes
Insurance End Term or Review Date:	
Insurance Requirement Waived by County Counsel	

Contract Notes:
Refuse and Garbage Collection and Transport to County Transfer Station, Recyclables Collection, Diversion and Processing

Please indicate other changes to be made to data base and whether contract is open, closed, renewal being processed, etc.

Clerks Notes:

Monitored by:
Audited By:
Prepared by:
Status:
Report Completed
New File
Existing File
To Dept for filing with Contract

MASTER FRANCHISE



USA Waste of California, Inc.

Waste Collection & Recycling

Refuse & Garbage Collection and Transport to County Transfer Station

Recyclables Collection, Diversion and Processing

3 Contracts – County, Orland and Willows

Franchise Date: January 1, 2020

Expiration Date: December 31, 2029

Transfer

Refuse & Garbage
from Transfer Station
to Disposal Facility

1 Contract

Disposal

Refuse & Garbage
Disposal at Disposal Facility

1 Contract

Preamble

This Master Franchise is an “umbrella” or master agreement with sub-agreements for the following five (5) contracts:

1. Collection Franchise (County);
2. Collection Franchise (Orland);
3. Collection Franchise (Willows);
4. Transport Franchise (County); and
5. Disposal Franchise (County).

The Cities of Willows and Orland will each enter into their own Collection Franchise.

The County and Collection Franchisee intend that the Cities are third-party beneficiaries of the Master Franchise. The Cities may administer and enforce this Master Franchise in conjunction with their respective Collection Franchises. Thus, there will be this Master Agreement and five (5) sub-agreements for: (1) Collection in Orland, (2) Collection in Willows, (3) Collection in the County, (4) Transport for the County, and (5) Disposal for the County.

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The County of Glenn, a political subdivision of the State of California (County), and USA Waste of California, Inc., a Delaware corporation (Franchisee), enter into this Master Franchise on the franchise date.

"Franchise date" is the date identified on cover of this Agreement.

FINDINGS. The County Board determines and finds as follows:

1. Safe, adequate and reliable solid waste management is fundamental to the health, safety, and welfare of the County's public and the environment.
2. The County must protect public health and the environment. The County is not only authorized but *required* to provide solid waste handling services to its citizens, including: source reduction; recycling and composting; and collection, transfer and disposal of solid waste within the County boundaries subject to its solid waste handling jurisdiction, under California Public Resources Code (PRC) §40057. (California Integrated Waste Management Act (sometimes referred to as "AB 939") PRC §40000, *et seq.*)
3. The County must also implement waste diversion and commercial recycling and organics programs. Under the California Integrated Waste Management Act the County must promote recycling and maximize the use of feasible source reduction, recycling and composting options to reduce the amount of solid waste that must be disposed of by land disposal. In particular:
 - A. Diversion - County must implement its Source Reduction and Recycling Element (SRRE) and at least 44% of that solid waste from disposal or face possible fines of up to \$10,000 per day (AB 939), including under PRC 41850.
 - B. Mandatory Commercial Recycling. County must make good faith efforts to implement a mandatory commercial recycling program for certain businesses multi-family premises, including all of the following: education; outreach; monitoring; and reporting to CalRecycle. (AB 341 Chesbro (Chapter 476, Statutes of 2011) / PRC 42649.3 ff.)
 - C. 75% Diversion. In addition, under AB 341 the State has set a goal to divert 75% of solid waste from disposal.
 - D. Future Mandatory Commercial Organics Diversion. County will have to make good faith efforts to implement a mandatory organic waste recycling program for certain businesses and multi-family premises, including all of the following: education; outreach; monitoring; and reporting to CalRecycle. (AB 1826 Chesbro (Chapter 727, Statutes of 2014) PRC 42649.8 ff.)
 - E. Preparing for Organics Recycling. CalRecycle has granted the County an extension for compliance with SB 1826, to January 1, 2020, with possible further extension, but this Master Franchise now: helps County demonstrate its good faith efforts by gathering

information necessary to implement a future organics collection program; and educates businesses and multi-family premises about how they can meet their future organics recycling obligations.

- F. Reducing Methane Emissions. County must generally reduce disposal of organic waste by targeted 50% of 2014 levels by 2020, and 75% by 2015, and specifically 20% of edible food by 2025. (CA Short-lived Climate Pollutants / Organic Waste Methane Emissions Reductions legislation, AB 1383 Lara [Chapter 395, Statutes of 2016] HSC 39730.6 ff).
4. Reasons for Procurement.
- A. Expiration of Prior Agreement. The Franchise Agreement between the County and USA Waste of California, Inc., dba Glenn County Disposal, a subsidiary of Waste Management, Inc. expires on December 31, 2019. It provides for integrated waste management services, including collection, and transport to, and disposal at the County's landfill.
 - B. Landfill Closure. The County has built a transfer station to replace its landfill which closed in October of 2019. Consequently, it now is procuring new services to transport waste from the transfer station to a new disposal site.
5. Three Franchises. County requested proposals for each of those services under a separate contract, including:
- A. Collection and Recycling: Collecting solid waste, including mixed refuse (rubbish and garbage) discarded by residents (generally in carts), businesses (generally in dumpsters) in one container, and source separated recyclables discarded in a second container; Delivering the refuse and garbage to the County owned-and-operated transfer station; and Processing and selling the recyclables.
 - B. Transportation. Transporting refuse and garbage from the County transfer station to the disposal site (a landfill).
 - C. Disposal. Disposing of refuse and garbage.
6. "Good faith effort". By entering into these contracts, County demonstrates "good faith effort" not only to comply with law but also to maximize diversion of solid waste from landfill disposal.
7. Authorization. The County is authorized to procure this Master Franchise with or without competitive bidding and on a (non)exclusive basis (PRC 40059(a)(1)&(2)). County finds that competitively procuring this Master Franchise on an exclusive basis is in the best public interest.

Glossary

Words in this Master Franchise have the meanings given this Glossary, whether they are capitalized or in lower case font.

Defined Term	Definition / Section Cross-Reference
AB 939	California Integrated Waste Management Act, PRC 40,000 <i>et seq.</i>
Affiliates	All persons (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Franchisee because of direct or indirect ownership interests or common management, including any or all of the following: <ul style="list-style-type: none"> • Subsidiaries: a business in which Franchisee owns a direct or indirect ownership interest; • Parents: a business which has a direct or indirect ownership interest in Franchisee; and • Siblings: a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Franchisee.
Agreement	This Agreement, including all exhibits, appendices and attachments, as may be amended.
Annual report	10B
Assurance of Performance	12C
Breach	13A
Calendar year	January 1 through December 31
Collection Franchise	The franchise of that title appended to this Master Franchise.
County	Preamble
County business day	4C
County Board	Governing body of County
County Code	County Code of Ordinances
County Insureds	Attachment 12 #2
County office hours	4C
County Reimbursement Cost	Attachment 12B
County Representative	15E
CPI	Consumer Price Index identified in Attachment 8B.
Criminal Conduct	4F
Day	Calendar day
Disposal Franchise	The franchise of that title appended to this Master Franchise.
Event of default	13B and Attachment 13B
Franchise date	The date on the cover page of this Agreement.

Franchise fee	1D
Franchise service(s)	All Franchisee's obligations under this Master Franchise and the Service Franchises, including keeping records, giving reports, timely responding to County, to both of the following: 1. Customers; and 2. County
Franchise Area	1A
Franchise term	2A, including any extensions
Franchise year	January 1 – December 31. <i>For example, see service fee adjustment in Attachment 8B.</i>
Franchisee	Preamble and Franchisee's successors and assigns.
Franchisee Representative	15E2 (see Key Personnel)
Guarantor, Guaranty	The Guaranty Agreement attached to this Master Franchise as Exhibit 13B.
1. herein 2. hereof 3. hereunder 4. hereinbefore 5. hereinafter	1. in this Agreement, 2. of this Agreement, 3. under this Agreement 4. before the franchise date 5. after the franchise date
Including	"including, without limitation", "including, but not limited to"
Indemnification	11E, including defense, hold harmless and indemnification
Independent MSW Expert	Attachment 8B-C
Key personnel	4E
Law	4D
Liabilities	11E
Master Franchise	This contract, including all exhibits and attachments, as may be amended. The Service Contracts incorporate this Master Franchise.
Master Franchisee	USA Waste of California, Inc.
Notice (or Notify)	Notice in form required under 15B (or to give Notice in that form).
"Due Notice"	Notice given under 15B
Ownership	15C2
Parties	Franchisee and County
Permits	4D2
Person	Means any of the following: 1. individual; 2. firm, association, organization; 3. partnership, corporation, joint venture; 4. trust; 5. the United States;

	<p>6. the State;</p> <p>7. the county, a municipality or special purpose district; or other entity.</p>
Reasonable	Prudent, done in good faith, and corresponding to commonly accepted commercial practices to one similarly situated.
Reasonable business efforts	Good faith efforts that are reasonable in the judgment of someone engaged in for-profit business, considering how much it costs.
Records	9
Regulatory authority	4D
RFP	Request for Proposals issued by the County to procure this Master Franchise, to which Franchisee responded.
Service Franchises	Referenced together, the Collection Franchise, Transport Franchise, and Disposal Franchise between the County and one or more Franchisees incorporated into this Master Franchise.
Service day	Day when Franchisee must provide service in each respective Service Contract.
Service fee	8A
Service Fee Schedule	Attachment 8
Solid waste	<p>“Solid waste “defined in PRC 40191 that is discarded in the franchise service area, including the following: refuse (rubbish and garbage); recyclables discarded and mixed with other solid waste; green waste discarded and mixed with other solid waste; bulky waste; and Construction & Demolition debris. <i>See also types of solid waste (refuse, rubbish, garbage, recyclables, green waste, bulky waste and C&D debris) in Glossary of the Collection Franchise.</i></p> <p>The following are <i>not</i> solid waste: Recyclables discarded separately from other solid waste; Green Waste discarded separately in bags during Community Cleanup Events under the Collection Franchise; and materials identified by the County that are difficult to handle.</p>
Solid waste management	3B
State	State of California
Transfer, Transfer Costs, Transport Deposit	15C
Transport Franchise	The franchise of that title appended to this Master Franchise.
Uncontrollable circumstances	Attachment 13B
Unpermitted waste	4
Violation	Attachment 13B item (5)
Year	A calendar year of January 1 through December 31, <i>unless</i> “franchise year” is specified. (For example, of “calendar year”, see provisions for liquidated damages and submitting reports.)

Gender. Words stated (or implied) in the masculine gender include correlative words of the feminine and neuter genders, and vice versa. For example, “he” and “she” are used interchangeably. In addition, words relating to individuals in neuter gender include correlative masculine and feminine gender. For example, “customer” refers to both men and women, whether the related adjective “his” or “her” is used; and “County Representative” includes both male and female staff.

References. References to “sections” means sections in this Master Franchise unless a Service Contract is explicitly stated. References to “subsections” means references to the section of which the subsection is a part.

Presumed Reasonableness and Exercise of Discretion

Presumed Reasonableness.

“Discretionary action” means approval, disapproval, or consent; option, election, or choice; opinion; determination; or discretion under this Agreement or interpretation of this Agreement.

Each party will exercise any discretionary action in a manner that is reasonable, unless it reserves sole discretion.

Exercise of Discretion.

“Sole discretion” means that the exercise of any discretionary action is in a party’s sole, exclusive or absolute discretion, control or judgment.

Recognizing that franchise services are essential to public health and safety, where this Master Franchise explicitly provides that County reserves sole discretion, Franchisee will not question or challenge County’s exercise thereof and where Franchisee reserves sole discretion, County will not question or challenge Franchisee’s exercise thereof.

SECTION 1 - FRANCHISE GRANT

- A. **Exclusive Grant and Acceptance.** County grants to Franchisee and Franchisee accepts the exclusive right and privilege, together with the obligation, to provide franchise services in the Franchise Area described respectively in this Master Franchise and the Service Franchises, except for the exclusions set forth in subsection B. Franchisee may enforce its exclusive right and privilege and take action against anyone who is violating that exclusive right and privilege.

"Franchise Area" means (i) the entire unincorporated territory included within the County limits as of the Effective Date of this Agreement; and, (ii) such additional unincorporated area as may thereafter become included with the County limits from time to time due to annexation, de-annexation or other means; provided, however, that the Franchise Area shall not include the area in the vicinity of Stony Creek that, as of the Effective Date, is served by the Stony Creek Garbage Company, provided, further, that any portion of such area that ceases to be served by the Stony Creek Garbage Company during the term of this Agreement shall be added to the Franchise Area if so agreed by County and Franchisee.

- B. **Exclusions.** This franchise is subject to exclusions under the Service Franchises.
- C. **Definition of Rights.** Franchisee acknowledges that this Master Franchise does not grant Franchisee any rights under PRC §49520 and the Franchisee does not have the right to make any claim under PRC §49520 but only under this Agreement. Upon expiration or termination of this Agreement, Franchisee will stop providing franchise services even if the expiration or termination occurs before the end of the period described in PRC § 49520. After expiration or termination of this Agreement, County may re-procure one or more agreements for franchise services with Franchisee or other persons/entities. Those agreements may be exclusive, partially exclusive, or wholly exclusive franchises, contracts, licenses, permits or otherwise, with or without competitive bidding.

- D. **Franchise Fee.**

"Franchise fee" means the fee or assessment to be paid to a Collection Franchisor pursuant to its Collection Franchise with Franchisee, which, among other things, is intended to offset the County's expenses in administering this Master Franchise (including the Collection, Transport and Disposal Franchises), to fund other waste management activities, for Contractor's use of public rights of way granted by this Master Franchise, and to compensate the County for damages to its roads, curbs, sidewalks and other infrastructure resulting from Contractor's exercise of its rights under the exclusive Franchise. **"Franchise Fee"** does not include any fee

within the meaning of Public Resources Code Section 41901 or within the scope of California Government Code Section 66016.

As of the franchise date, the franchise fee is 10% of gross revenues that Franchisee receives under its Collection Franchise with a Collection Franchisor. **"Gross revenues"** means all payments that Collection Franchisee receives from customers without deduction or offset. "Gross revenue" is *not* net franchise fees. It does exclude receipts from sales of recyclable materials.

In consideration for this franchise, Franchisee will pay County the franchise fee in the amount, at the time, and in the manner provided under any or all County Code, ordinance and resolution. Franchisee acknowledges all of the following: (1) The elimination of competition with private persons for franchise services in the County under this exclusive Master Franchise has significant monetary value to Franchisee, and the franchise fee is consideration for that exclusivity; (2) The franchise fee is a cost of doing business, like capital, fuel and labor costs; (3) Paying County the franchise fee is an obligation of Franchisee and *not* customers; and (4) Franchisee will not separately identify the franchise fee to customers, including in correspondence such as subscription orders, bills, or invoices or on its web site.

SECTION 2 - TERM

- A. 10-Year Term.** The term of this Master Franchise is ten (10) years beginning on the franchise date. Upon written agreement between the parties, the term may be extended for a period or periods not to exceed three (3) additional years.
- B. Continuing Obligations.** The following provisions will survive the expiration or termination of this Agreement: (1) All acknowledgments, representations, warranties, indemnities, defenses and releases, including the Indemnification; (2) Obligations with respect to records, reports and financial statements; and (3) Any other provisions of this Master Franchise (including the Service Franchises) stated to survive the expiration or termination of this Agreement.
- C. Undepreciated Assets.** Franchisee acknowledges that it has no right to recover an amount equal to the undepreciated value of assets it uses to provide franchise services that might remain at the expiration or termination of this Master Franchise, from either the County or customers, *except* for amounts that County must pay Franchisee if County exercises its option to purchase carts under the Collection Franchise.

D. Conditions to Effectiveness of Agreement. The effectiveness of this Agreement and the obligation of each Party to perform its undertakings provided for in this Agreement, is subject to the satisfaction or waiver of all the conditions below, each of which may be waived, in written form, in whole or in part by County or by Franchisee.

1. **Accuracy of Representations.** The Franchisee's representations and warranties made in Franchisee's Proposal are true and correct in all material respects on and as of the Franchise Date, except as otherwise modified herein.
2. **Furnishing of Payment and Performance Bond.** Franchisee has on or prior to the Franchise Date furnished the Payment and Performance Bond that is satisfactory to the County.
3. **Absence of Litigation.** To the best of Franchisee's knowledge, after reasonable investigation, as of the Franchise Date there is no action, suit, proceeding, or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency, or instrumentality decided, pending, or threatened against Franchisee wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would:
 - a. Materially adversely affect the performance by Franchisee of its obligations hereunder;
 - b. Adversely affect the validity or enforceability of this Agreement;
 - c. Have a material adverse effect on the reputation of the Franchisee, its parent or Affiliates; or
 - d. Have a material adverse effect on the financial condition of Franchisee, or any surety or entity guaranteeing Franchisee's performance under this Agreement.
4. **Legal Challenge.** Franchisee understands and acknowledges that the award of this Agreement and related decisions may be subject to review and repeal by the County's citizens through a referendum or similar petition, and to various types of legal and environmental challenges (such referenda, similar petition and legal and environmental challenges being referred to collectively as "Legal Challenges"). In the event of a legal challenge, the Parties will cooperate with each other in responding to such action and if it is determined that the Agreement is invalid, neither Party shall owe any obligation to the other, except as may be determined by a court of competent jurisdiction.
5. **Related to Propositions 218 and 26.** Should there be a change in applicable law or a new judicial interpretation of applicable law, including, but not limited to, Article XIII C and D of the California Constitution (Commonly Proposition 218 and Proposition 26),

which impacts the County's ability to set or change Maximum Service Rates for the Collection Services established in accordance with this Agreement and the Collection Agreement, Franchisee agrees to meet and confer with the County to discuss the impact of such change in law or new judicial interpretation on either Party's ability to perform under this Agreement.

The County shall not be in default of this Agreement if it is determined by a court of competent jurisdiction that County lacks the authority to set Maximum Service Rates or increase Maximum Service Rates for charges related to providing Collection Services under this Agreement or the Collection Agreement. Should a court of competent jurisdiction determine that the Franchisee cannot charge and/or increase its Maximum Service Rates to cover any amounts incorporated into Maximum Service Rates under this Agreement, Franchisee shall reduce (and/or not increase) the Maximum Service Rates it charges customers correspondingly, and shall be relieved from the obligation to pay such amounts, providing said amounts disallowed by the court are not related to the cost of providing service hereunder and had been incorporated in the Maximum Service Rates charged by Franchisee to its customers. If the amounts disallowed by the court are related to the cost of providing service hereunder, then Franchisee's obligations hereunder shall be reduced (in a manner mutually agreed by County and Franchisee) so that they are commensurate with the rates that Franchisee can legally charge.

Nothing herein is intended to imply that Proposition 218 or Proposition 26 apply to the Maximum Service Rates established for services provided under this Agreement or the Collection Agreement; rather this section is provided merely to allocate risk of an adverse judicial interpretation between the Parties.

- E. Execution of Collection Franchise Agreements.** The effectiveness of this Agreement and the obligation of each Party to perform its undertakings provided by this Agreement is subject to Collection Franchise agreements being executed, on or before January 1, 2020, between Franchisee and County, Franchisee and the City of Orland, and Franchisee and City of Willows. Franchisee may waive this requirement at its discretion.

SECTION 3 - SCOPE OF SERVICES

- A. Franchisee Autonomy.** Franchisee acknowledges that County is not responsible for supervising or performing franchise services. Franchisee has full freedom, discretion and responsibility to solely determine the manner of providing franchise services.

B. Scope of Franchise Services.

1. **Services.** Upon County request, Franchisee will promptly provide solid waste management services like franchise services provided under its Service Contract in health and safety emergencies determined by County (such as an earthquake, mudslides or fire). Franchisee will charge County no more than the Franchisee charges anyone else for substantially the same service, *unless* County authorizes different charges that have been requested and cost-substantiated by Franchisee.

“Solid waste management” means **“Solid waste handling”** including collection, transportation storage, transfer or processing recyclables and green waste and disposal of processing residue.

2. **Documentation.** Franchisee will file information with County, the State or Federal officials related to cost of providing the emergency services (such as number or quantity of vehicles, fuel, employees, tonnage, and disposal fees).

- C. Change in Scope of Franchise Services.** County may direct a change in scope of franchise services. Within ten (10) days of County direction (or longer time acceptable to County), Franchisee will present a plan to implement the proposed change, including the manner of implementing the change; the implementation schedule; and the effect, if any, on the service fee. County may withdraw its request at any time, for any reason.

Before implementing a franchise service change that is not a revision of current franchise services, but rather an additional service such as organics collection, County will request a proposal from Franchisee. If County and Franchisee cannot agree upon a service fee adjustment within the time required under the rate adjustment protocol set forth in Attachment 8B, County may implement proposed additional service itself or through others if Franchisee’s service fees are not decreased and if Franchisee’s results of operations are not negatively impacted.

If County and Franchisee cannot agree to any service fee adjustment with respect to franchise services within the time required under the rate adjustment protocol set forth in Attachment 8B, then either may request review by the Independent MSW Expert; or if neither requests a review, County may implement the proposed change in franchise services itself, or through others, if Franchisee’s service fees are not decreased and if Franchisee’s results of operations are not negatively impacted.

SECTION 4 - SERVICE STANDARDS

- A. **Solid Waste Management.** Franchisee will provide franchise services meeting the standards under the Service Franchises.
- B. **County Review.** At least two (2) weeks prior to distribution, Franchisee shall provide to County, copies of all materials that reference franchise services, including: sales brochures; commercial advertisements; and news releases. County may comment on the materials and Franchisee agrees that they shall be in a form satisfactory to County before distribution.
- C. **Responsiveness to County.** Franchisee will: (1) Respond to County telephone calls by the end of the next business day when practicable, but in no event later than three (3) business days after the call; (2) Meet with County during County office hours within one week of County's oral or written request, at the location directed by County; (3) Respond to all e-mails from County within three (3) business days; and (4) Respond to written correspondence from County within one week of receiving it.

"County office hours" means hours that County administration building is open to do business with the public.

"County business day" means days that County administration building is open to do business with the public.

- D. **Compliance with Law.** Franchisee will comply with all law applicable to this Agreement, franchise services and Franchisee's operations. Provisions of law are incorporated into this Master Franchise by reference as Franchisee's contractual obligations. As a contracting party, County may enforce those provisions as breaches of this Agreement. If Franchisee does not comply with the County Code, County may: (1) Enforce the Code (subject to fines or penalties); (2) Treat such violations as breaches of this Master Franchise (subject to remedies under this Agreement); or (3) Both. County has no obligation to enforce law. The Service Franchises contain examples of law. County and Franchisee acknowledge that "law" includes County ordinances. Franchisee acknowledges that law, including section 7.08.540 (Health Department Authority) of the Glenn County Code, authorizes the County Health Department to make rules and regulations, subject to approval by the County Board, such as: (1) Accumulation of refuse and garbage; (2) Collection and transportation of refuse; and (3) Administration of County Code.

"Law" means any or all laws, statutes, rules, regulations, guidelines, policies, licenses, permits, actions, determinations, orders or requirements, including their future amendments, supplements, restatements, recodifications or replacements enacted,

adopted, promulgated, issued, ruled, ordained, determined or otherwise made by any regulatory authority with respect to franchise services, this Master Franchise, and/or the Franchisee's operations.

"Regulatory authority" means any federal, state, local or foreign governmental unit (whether a separate entity or a department or division) that promulgates law applicable to Franchisee's operations, Franchise services, or this Master Agreement and Service Franchises; Regulates franchise services or operations of Franchisee; or Enforces law applicable to franchise services or operations of Franchisee.

Examples of regulatory authorities include: CA DOT; CA DMV; AQMD or water board; EDD, U.S. Immigration and Naturalization Services; or the state and federal departments of labor; IRS, CA Franchise Tax Board, SEC, federal and state Departments of Justice; County, and the Local Enforcement Agency for the County.

"Permit(s)" means any or all permits, orders, licenses, approvals, authorizations, consents and entitlements that are required under law with respect to franchisee administration and operations, and franchise service.

E. Key Personnel.

1. **Acknowledgements.** Franchisee acknowledges that providing franchise services is personal in nature, since it requires continuous and extensive communication between Franchisee's personnel and County staff; knowledge of County streets and highways, terrain, and weather conditions; and, familiarity with detailed contract requirements under this Master Franchise (such as reporting). Franchisee will identify those key personnel in either or both Attachment 4B of this Master Franchise and in Service Franchises.
2. **Franchisee Notice of Change.** No later than 30 days prior to any Franchisee-directed change in any or all of those identified key personnel, Franchisee will use reasonable business efforts to notify County. In its notice, Franchisee will include the name and professional qualifications of the replacement personnel, if known.
3. **Unsatisfactory Performance of a Franchise Representative.** If the County believes that the performance of a Franchise Representative is unsatisfactory, County shall alert Franchisee of the performance issues and Franchisee shall take those steps reasonably necessary to correct those performance issues.

F. Criminal Conduct

1. **Notice.** Franchisee will inform County of any Conviction or Plea with respect to Criminal Conduct by any Franchisee Representative immediately upon learning of any Conviction or Plea. Franchisee will inform County of any Conviction or Plea with respect to Criminal Conduct by any Franchise Manager within 30 days of learning of any Conviction or Plea.

“Franchisee Manager” includes any or all of the following: (1) the Franchisee; (1) any Franchisee Representative; (3) any Franchisee officers or directors; or, (4) anyone in a Position of Influence.

“Position of Influence” means the authority or responsibility to directly or indirectly administer, manage, direct, supervise, monitor or oversee franchise services or this Agreement, including any or all of the following: (1) Reviewing or negotiating Franchisee’s contracts (including this Agreement); (2) Providing in-house legal services with respect to franchise services or this Agreement; (3) Preparing or overseeing Franchisee’s operating and capital budget; or (4) Establishing policies and procedures related to the Criminal Conduct.

“Conviction” means any or all of the following: (1) a criminal conviction; (2) a permanent mandatory or prohibitory injunction; or (3) a final judgment or order from a regulatory authority of competent jurisdiction with respect to any Criminal Conduct.

“Plea” means either or both of the following: (1) pleading “guilty”; or (2) entering a plea of “nolo contendere” or “no contest” to Criminal Conduct.

“Criminal Conduct” means any or all of the following: (1) fraud or criminal offense (other than offenses constituting infractions) in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to recyclables, green waste or solid waste services of any kind (including collection, hauling, transfer, processing, composting or disposal), including this Agreement; (2) bribery or attempting to bribe a public officer or employee of a local, state, or federal agency by Franchisee or by any Franchisee Manager in that Franchisee Manager’s official capacity; (3) embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a

felony; (4) unlawful disposal of hazardous or special waste, the occurrence of which Franchisee or any of its Franchise Managers knew or should have known; (5) violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation; or (5) violation of unfair and anti-competitive trade practice laws, including the inflation of waste collection, hauling or disposal service fees, and predatory pricing.

2. **Cure.** Upon the occurrence of any Conviction or Plea of one or more Franchise Managers with respect to Criminal Conduct, Franchisee must remove the offending Franchise Manager, or each individual responsible for the Criminal Conduct, from a Position of Influence unless: (1) otherwise directed or ordered by regulatory authority of competent jurisdiction and/or authority; (2) prohibited by law; or (3) replacement would subject Franchisee, an affiliate or any of its Franchise Managers to substantial liability for breach of any labor agreement entered into after the franchise date. Franchisee will not place anyone who is the subject of any Conviction or Plea under this Master Franchise to a position (for example, in another affiliate) where that person would continue to be in a Position of Influence.
 3. **County Remedy.** County, in its sole discretion, may terminate this Master Franchise or may impose other sanctions that it deems proper, including financial, temporary suspensions or any other condition County deems appropriate, in any or all of the following events: (1) Franchisee or any affiliate fails to implement the cure under the preceding subsection; (2) the Criminal Conduct is related to this Master Franchise or to the County, or (3) the Criminal Conduct is both a felony and is related to this Agreement, unless the Criminal Conduct is the unlawful disposal of hazardous or special waste and Franchisee did not have actual knowledge of that Criminal Conduct. Franchisee must be given the opportunity to present mitigating evidence during the preceding notice period and County will consider that evidence before exercising any right that it may have under this paragraph.
- G. Unpermitted Waste Handling.** Franchisee will follow its Unpermitted Waste Handling Protocol submitted to County under the Service Franchises. If Franchisee delivers unpermitted solid waste to any facility (such as the Collection Franchisee to the Transfer Station or a recyclables processing facility, or the Transport Franchisee to the Disposal Facility) or accepts unpermitted solid waste (such as the Disposal Franchisee at the Disposal Facility), Franchisee will take the following actions: make a reasonable business effort to determine who discarded the unpermitted waste and cooperate with the facility owners or

operators to arrange for proper disposal under law.

H. Definitions.

“Unpermitted waste” means materials that cannot be disposed of in a Class II landfills described in 27 CCR 20250, such as any or all the following: (1) hazardous waste; (2) e-waste; or (3) universal waste.

“Hazardous waste” means a material which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics, may: (1) cause or significantly contribute to an increase in mortality or an increase in serious illness; or (2) pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise mismanaged; or (3) is regulated under law such as a hazardous or toxic waste, a hazardous chemical substance or mixture, or asbestos, including but not limited to: (a) "Hazardous Waste" defined in Section 40141 of the California Public Resources Code; (b) all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste under Sections 25110.02, 25115, and 25117 of the CA H&SC (the California Hazardous Waste Control Act); (c) section 25100 et seq. of the CA H&SC and 23 California Code of Regulations sections 2521 and 2522; (d) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., (including the Solid Waste Disposal Act Amendments of 1980), and related federal, State and local laws and regulations; (e) materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq. and California Toxic Substances Account Act, CA H&SC 25300 et seq.; (f) materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq.; (g) materials regulated under any future additional or substitute laws pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or hazardous waste; and (f) household hazardous waste. If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste", for purposes of collection, transportation, processing and/or disposal, the more stringent definition is used under this Agreement.

“Household hazardous waste” means any hazardous waste generated incidental to owning or maintaining a place of residence, excluding any Hazardous Waste generated during operation of a business concern at a residence, under Section 25218.1 of the California Health and Safety Code.

"E-waste" means waste that is powered by batteries or electricity including, but not limited to, computers, calculators, telephones, answering machines, radios, stereo equipment, tape-players/recorders, phonographs, video-cassette players/recorders, compact disc players/recorders, and calculators, and covered electronic devices as defined in California Public Resources Code Section 42463 which include cathode ray tube (CRT) device (including television and computer monitors), LCD desktop monitors, laptop computers with LCD displays, LCD televisions, plasma televisions, and any other covered electronic devices listed in the regulations adopted by the California Department of Toxic Substances Control pursuant to California Health and Safety Code Section 25214.10(b) including household hazardous waste.

"Universal waste" means materials that which the California Department of Toxic Substances Control considers universal waste, including materials listed in 22 CCR 66261.9, such as: batteries; aerosol cans; certain mercury-containing devices; thermostats, lamps, cathode ray tubes; computers; calculators; telephones, answering machines; radios, stereo equipment; tape-players/recorders; phonographs; video-cassette players/recorders; compact disc players/recorders; and some appliances.

SECTION 5 - RESERVED.

SECTION 6 - DIVERSION (Service Franchises).

SECTION 7 - OWNERSHIP OF SOLID WASTE; DISCLAIMERS.

- A. Ownership.** Ownership of permitted solid waste (which includes recyclables) becomes the property of the Franchisee: (1) when Franchisee picks up the permitted waste under the Collection Franchise; (2) transports it under the Transport Franchise; or (3) disposes of it under the Disposal Franchise (assuming Franchisee is the Disposal Franchisee). The parties acknowledge that following the closure of County's landfill, the "county disposal areas" referenced in County Code 7.08.260 means the Disposal Facility.
- B. Disclaimer.**
- 1. No County Representations or Warranties.** County makes no representations or warranties with respect to content of solid waste, any solid waste disposal characterization study, or projections by solid waste material type. County expressly disclaims any representations and warranties, either express or implied, as to the merchantability or fitness of solid waste for any purpose.

2. **Disclaimers Regarding Unpermitted Waste.** Neither County nor Franchisee assume ownership of any unpermitted waste under any these franchise agreements. Neither County nor Franchisee warrant that solid waste does not contain unpermitted waste except that this disclaimer shall not apply to any waste collected from a County facility.
3. **No Franchisee Claims.** Franchisee will not make any claim against County based on any estimates, statements or interpretations made by any officer, employee, agent, or consultant of County in connection with the procurement of this Agreement, including the County's Request for Proposals, which differ from the actual under this Franchise.

SECTION 8 - SERVICE FEES / CUSTOMER BILLING.

- A. **Service Fees.** County will pay Franchisee the service fee monthly under the Service Franchises.
- B. **Adjustment.** Service fees will be adjusted under Attachment 8B and the Service Franchises.

SECTION 9 - RECORDS.

- A. **Acknowledgements.** Franchisee acknowledges County's right to obtain and audit records for reasons including:
 1. **Tonnage:** Determining diversion and quantity of diverted recyclables and green waste reported to the County;
 2. **Gross receipts:** Corroborating the amount of franchise fees owed and paid to County;
 3. **Contract compliance and enforcement:** Monitoring Franchisee's performance of its obligations under this Master Franchise and the Service Franchises; and enforcing customers' and County's rights under this Agreement;
 4. **Pollution claims:** Possibly responding to claims (including superfund claims under CERCLA) with respect to materials that Franchisee handled under this Master Franchise and Service Franchises
 5. **Correspondence with Regulators:** All correspondence between Franchisee and regulatory authorities, including notices of permit violations or, with respect to the Disposal Contract, Areas of Concern.

- B. Maintenance.** Franchisee will keep accurate records in two formats satisfactory to County with respect to franchise services and Franchisee as a corporate entity.

“Records” includes information in print or electronic media, such as with respect to subscriptions, billing files, complaints logs, regulatory correspondence, financial books, tonnage receipts and correspondence related to franchise services.

Franchisee will keep records under the Service Franchises and related to franchise services necessary for: (1) County to determine whether Franchisee is complying with its obligations under this Agreement; (2) County submission of reports to CalRecycle, satisfactory to CalRecycle; and (3) Under County Code 7.08.530 to determine that Franchisee is complying with County Code.

- C. Retention.** Franchisee will keep records for the following amounts of time:

Financial	4 years following the close of Franchisee’s last fiscal year of the franchise term.
Disposal	Continually, unless Franchisee gives County the option to take over possession of the records.
Other	The franchise term plus 4 years

- D. County Custody.** If the County believes that records may be lost, discarded, or destroyed, the County may direct the Franchisee to give County any or all records required to be kept hereunder.
- E. County Inspection.** County, its staff and outside auditors may inspect, audit, and copy records at Franchisee's office between the hours of 8:00 a.m. to 5:00 p.m. on County business days, after notifying Franchisee by telephone or in writing 5 days in advance, or lesser time if County determines it is in the public’s best interest. If Franchisee’s office is outside the County, promptly upon County request Franchisee will bring records to County’s offices.
- F. Audit Costs.** Within 30 days of County request, Franchisee will reimburse County for the County Reimbursement Cost of audit and copying expenses if the audit reveals a discrepancy of the greater of 3% or \$500 between the amount contained in the records (such as the tons of recyclables diverted, processing residual disposed, customers’ subscription levels or the amount of Franchisee’s gross receipts), and the amount reported or paid to County (such as franchise fees); or, representation of any amount that Franchisee made or information that it submitted to County.

- G. **Copies.** Franchisee will give County copies of records without charge (except charges for records copied during an audit), by the following times:

RECORDS	TIME
Regarding customer or Disposal Facility complaints:	Immediately (no longer than two hours after receipt).
In electronic form:	Same day as requested.
Other:	Within two service days

SECTION 10 - REPORTS.

- A. **Service Franchises.** Franchisee will give County reports under the Service Franchises.

B. **Timing, Form and Content.**

1. **Quarterly Report.** Within 30 days following the end of each quarter of a calendar year, Franchisee will submit a report for that quarter.

“Quarterly Report” means the report described in this subsection.

2. **Annual Report.** Within 30 days following the end of each calendar year, Franchisee will submit a report for that year, containing a summary of the information in Quarterly Reports.

“Annual Report” means the report described in this sub-sub section.

3. **Operations Report.** Within 10 days, under County Code 7.08.530, give County Health Department operations reports.

4. **Form.** Franchisee will draft reports in format, media and content satisfactory to County.

- C. **Statements and Information.** Franchisee represents that the information and documentation submitted by, or on behalf of, the Franchisee to County in connection with: the application for and securing of County licenses; and, permits and the procurement and negotiation of this Agreement; was correct and complete in all material respects at the time originally submitted and on the date of this Agreement. Franchisee will not make any claim against County based upon any estimates, statements or interpretations of information in connection with the Request for Proposals and procurement of this Contract, including solid

waste quantities or characterization. In this paragraph "County" includes any officer, employee, agent, or consultant of County.

D. Financial Statements. Franchisee will give County 3 copies of its financial statements in a form acceptable to County annually within 60 days after the close of Franchisee's fiscal year, with the following attachments:

1. Representation of a certified public accountant that she has audited Franchisee's financial statements in accordance with Generally Accepted Auditing Principles; and
2. The accountant's following opinion that the statements: have been prepared in accordance with Generally Accepted Accounting Principles consistently applied; and fairly present the financial position, the results of operations and the cash flows of the Franchisee; and
3. Either of the following statements of Franchisee's Chief Financial Officer: (1) A representation that no events subsequent to the preparation of the last financial statement submitted under this Master Franchise have materially changed Franchisee's financial status or condition; or (2) A description of any material changes in Franchisee's financial status or condition since the preparation of the last financial statement.

Franchisee will allow County and its representatives to review the accountant's audit plan and work papers. Within two (2) weeks of County's request, Franchisee and its accountant(s) will meet with the County and its representatives to discuss the audit. If Franchisee provides a guaranty in form required by the County of a related entity satisfactory to the County, Franchisee may give County copies of that guarantor entity's audited financials complying with this Section.

E. Requests under the Public Records Act. If County receives a request under the California Public Records Act for material which Franchisee has marked "confidential", County will provide notice to Franchisee prior to the release of those documents and will allow Franchisee to provide legal authority that supports Franchisee's position that the material is exempt from disclosure. If County determines that the material is not exempt from disclosure, County shall inform Franchisee of its finding and give Franchisee an opportunity to obtain a court order enjoining that release. If County determines that the material is exempt from disclosure and that determination is ultimately challenged in court, County will inform Franchisee and will not oppose a motion by Franchisee to intervene in the action. Franchisee must either intervene in the action or accept the release of the material. County is not obligated to defend the action and may release the material sought without any liability.

SECTION 11 – INDEMNIFICATION, HOLD HARMLESS AND DEFENSE.

- A. Indemnification.** Franchisee will indemnify County from and against any and all liabilities arising out of, or in any way connected to, the franchise services, including reimbursing County for County liabilities to someone other than Franchisee (such as damages resulting from a suit against County by a customer).
- B. Release and Hold Harmless.** Franchisee will release and hold harmless County from and against any and all liabilities arising out of, or in any way connected to, the franchise services, including refraining from seeking reimbursement from County for Franchisee's liability to someone else (such as damages resulting from a suit against Franchisee by a customer).
- C. Defense.** Immediately upon commencement of any lawsuit, claim, complaint, cause of actions or other demand brought against County for liabilities arising out of or in any way connected to franchise services, Franchisee will either: (1) defend County with counsel approved by County; or (2) fund County Reimbursement Costs of defense. County may retain co-counsel at its own cost and expense and Franchisee will direct Franchisee's counsel to assist and cooperate with County co-counsel.
- D. County Sole Negligence Excluded.** Franchisee is not obligated to indemnify, release and hold harmless, or defend County to the extent that County is found negligent by a court of competent jurisdiction after County has exhausted all appeals, or the liability results from a County breach or violation of applicable law.
- E. Definitions.** In this Section, "County" includes everyone described in the definition of "County Insureds".

"Liabilities" includes: (1) Lawsuits, claims, complaints, cause of actions and other demands; (2) Citations, fines and other penalties; (3) Investigations (such as costs of audits) related to another type of liability (such as a fine); (4) Judgments, liens, cleanup orders, and damages in contract or tort, including personal injury or death and property damage; (5) Losses, injuries, costs and expenses (including all costs and expenses of litigation, mediation or arbitration), including but not limited to: Attorneys' fees, whether County Attorney or Franchisee's staff attorneys or outside attorneys; Accountants' fees, whether County Finance Director or outside accounts; Appraisers' fees; and Expert witness fees.

Reference to “**Indemnification**” or “**Indemnity**” in this Master Franchise includes the indemnification, release, hold harmless or defense under this Section and the Service Franchises.

F. Scope of Liabilities. For purposes of this Indemnification, liabilities must be paid, incurred or suffered by, or asserted against, County arising from, or attributable to, any repair, cleanup or detoxification pursuant to, or preparation and implementation of, any removal, remedial, response, closure, or another plan (regardless of whether undertaken due to governmental action) concerning any unpermitted waste at any place owned or operated by Franchisee, where Franchisee delivers, stores, processes, recycles, composts or disposes of solid waste to the extent that liabilities are caused by any of the following:

1. **Franchisee Negligence or Misconduct:** Franchisee’s wrongful, willful or negligent act, error or omission, or misconduct; or
2. **Non-customer Materials:** Franchisee’s handling of any materials, including unpermitted waste, which are generated by someone other than customers or collected from premises other than customers' premises; or
3. **Failure to Comply with Hazardous Waste Protocol:** Franchisee’s or any subcontractor’s failure to undertake unpermitted waste training procedures required by law with respect to their employees or the Unpermitted Waste Handling Protocol, whichever is more stringent; or
4. **Franchisee-identified Hazardous Waste:** Franchisee's improper or negligent handling of unpermitted waste that it collects and identifies.

County acknowledges that the mere presence of household hazardous waste in the solid waste does not constitute negligence and create any Liability on the part of Franchisee absent any of the circumstances described in this section.

SECTION 12 – INSURANCE AND FINANCIAL ASSURANCE.

A. Insurance. Franchisee will carry insurance under County Code 7.08.420 (Public Liability & Bodily Injury Insurance) and Attachment 12A, unless the Franchisee is self-insured. If a Franchisee is self-insured in whole (such as a public entity) or part (such as a private entity), the County may accept that self-insurance if it determines, in its sole discretion, that self-

insurance adequately protects the County. If the Franchisee is self-insured in part, it must defend the contracting County in the same manner as would its insurer.

- B. Payment and Performance Bond** Franchisee will provide to County Payment and Performance Bonds under Attachment 12B until the last to occur of the following events: (1) This Master Franchise has expired or terminated for a period of 180 days or other preference period provided under law with respect to bankruptcy or insolvency of Franchisee; or (2) Franchisee has substituted an alternative Payment and Performance Bond, letter of credit, or other security document acceptable to County in County's sole discretion; or (3) Franchisee does not owe County any money.

The County can draw on the Payment and Performance Bonds in one or more drawings, in any of the following events: (1) Franchisee does not timely pay County any monetary obligation, including the following: Liquidated or compensatory damages assessed by County; County Reimbursement Costs under County's invoice for those costs; and, Franchise fees; (2) Franchisee does not pay any self-insured retention under any insurance policy; (3) Franchisee does not replace an expiring Payment and Performance Bond (including expiration for non-renewal) with a new Payment and Performance Bond at least 90 days before the expiration date; (4) Franchisee does not honor an Indemnification requirement; (5) Someone, such as a trustee in bankruptcy, recovers from the County money that Franchisee has previously paid County; or (6) An event of default.

Payment and Performance Bonds shall be with content and in sureties with financial ratings satisfactory to County.

- C. Guaranty.** If in its proposal to the County, Franchisee submitted financial information from another entity, such as a corporate parent, Franchisee must provide a financial guaranty from that entity in form that is satisfactory to County.
- D. Further Assurance.** In addition to all other rights and remedies it may have, within five (5) days of County request, Franchisee will provide reasonable assurances that Franchisee can timely and fully meet its franchise obligations in any or all of the following events: (1) Franchisee is the subject of any labor unrest (including work stoppage or slowdown, sick-out, picketing and other concerted job actions); (2) Franchisee does not pay wages to its employees, provide workers' compensation insurance required by law, or pay employment-related taxes or fees; (3) Franchisee does not pay County any County Reimbursement Costs; (4) Franchisee does not regularly pay its bills when due, which in the County's sole judgment, jeopardizes Franchisee's ability to timely and fully meet franchise obligations; or (5) Criminal Conduct with respect to a Franchisee Manager.

"Assurance of Performance" means any or all of the following actions, as County requests: (1) Reduction or elimination of insurance deductibles or self-insured retention; (2) Increasing the size of a Payment and Performance Bond; or (3) Providing an additional Payment and Performance Bond, certificate of deposit or another instrument.

SECTION 13 – BREACHES AND DEFAULTS.

A. Breach, Notice, Cure. If the County determines that Franchisee is in breach of this Agreement, the County may give Notice to Franchisee identifying and describing the breach. County will hold a conference with Franchisee within five (5) days of Franchisee's request. Franchisee will cure the breach within thirty (30) days of receipt of the Notice, or a shorter period directed by County if County determines that public health and safety so require. Franchisee may request additional time to correct the breach, but County may accept or reject that request in its discretion. Either the County Board of Supervisors or the County Representative may make the determination, or the acceptance or rejection.

"Breach" means any failure by Franchisee to meet one or more of its obligations under this Agreement.

B. Default. Events of default are listed in Attachment 13B.

"Event of default" means each item listed in the table in Attachment 13B.

SECTION 14 – ENFORCEMENT OF AGREEMENT/REMEDIES.

A. Remedies Under Law. Either party may avail itself of any remedy available under law or equity.

B. Additional Remedies. County may enforce this Master Franchise in any or all of the following ways: (1) If Franchisee's breach is a default, execute alternative agreements to provide franchise services like those under this Agreement; (2) Seek to obtain injunctive relief and/or damages; and/or (3) Assess damages. County's choice of enforcement does not limit its option to exercise other remedies available under this Agreement, in law or at equity.

C. Injunctive Relief. Franchisee acknowledges that County's remedy of damages for a breach may be inadequate for many reasons, including any or all of the following: (1) The urgency of timely, continuous and high-quality franchise service, including collection, transportation and/or transfer for disposal of putrescible wastes which constitute a threat to public health; (2) The long time and significant investment of money and personnel (both County staff and

private consultants, including financial advisors, procurement counsel and elected County officials) that would be required to again request and evaluate qualifications and proposals for replacement service comparable to franchise service for the price under this Agreement, and to negotiate new agreements for those service; (3) County reliance on Franchisee's technical solid waste management expertise; or (4) Franchisee's delivery of unpermitted waste to the Transfer Facility, or its failure to transport and deliver solid waste to the Disposal Facility or to properly dispose of solid waste may increase County risk of liability for environmental damage due to release or threatened release of hazardous or toxic substances, petroleum products and other materials, including any or all of the following: (a) Water or ground water contamination from those Facilities; (b) Replacement or restoration of natural resources; or (c) Repair, cleanup or detoxification of the solid waste management facility and any related removal, remedial, response, closure or other plan, whether under Section 107(e) of CERCLA Section 9607(e), California Health and Safety Code Section 25364, or other law. Consequently, County is entitled to all available equitable remedies, including injunctive relief.

D. Damages.

1. **Compensatory.** Franchisee will pay compensatory damages, including amounts equal to any franchise fees, liquidated damages or other amounts that Franchisee has paid to County but that are subsequently recovered from County by a trustee in bankruptcy (for example, as preferential payments).
2. **Liquidated.** The parties acknowledge the following: (1) That County incurred considerable time and expense procuring this Master Franchise to secure an improved level and quality of recycling and compliance with solid waste diversion mandates; (2) Consistent and reliable franchise services are of the utmost importance to County's compliance with law relating to the diversion of solid waste; and (3) The following liquidated damages represent a reasonable estimate of the amount of damages, considering all the circumstances existing on the franchise date, including: the relationship of the sums to the range of harm to County that reasonably could be anticipate; and anticipation that proof of actual damages would be costly or inconvenient. Therefore, Franchisee will pay any or all of the following liquidated damages as follows: (1) County shall provide notice to Franchisee of its intention to impose liquidated damages; (2) Franchisee shall have five (5) business days thereafter to meet and confer with County and to provide the basis for the alleged non-compliance; (3) If County elects to impose liquidated damages, County will provide Franchisee with notice of that determination; and (4) Franchisee will pay any liquidated damages imposed within seven (7) days of the date of County's notice. Events of default are not subject to the notice-and-confer requirements of this subsection, but of the

requirements under Section 13. County claims for liquidated damages must be made within ninety (90) days of the underlying event or the date upon which County became aware of, or should have reasonably become aware of, the underlying event.

Reference to "failure" refers to each occurrence of specified breach (such as for each customer and each container order, record entry, or complaint) and not for aggregate occurrences of those breaches (such as for all customers on a given day).


SECTION	FAILURE(s) Under cited sections	LIQUIDATED DAMAGES
4B; Through-out	Give County documentation to review or comment, or obtain any County approval, consent or other permission	\$300/day per occurrence or retraction / correction of misinformation
4C	≥ 2# / calendar month to timely return County calls or e-mails	\$500
4C	≥ 2 #/ year to meet timely with County	\$500
4G	Follow Unpermitted Waste Handling Protocol	\$500
9E, F	Allow County to inspect, audit or copy records	\$150
Exhibit 4A	Transport excess weight	\$1,500
Through-out	Submit complete and correct information or reports on time which is not cured within 5 days of County's request to complete or correct information following County's second or subsequent request, 1. quarterly 2. annual 3. AB 939, or 4. other	Until corrected or completed 1. \$200/day 2. \$300/day 3. \$150/day 4. \$100/day For example <ul style="list-style-type: none"> • A report is due on the first of the month. • Franchisee gives it to County on the 25th day of the preceding month. • The report is missing required information. • The report is not deemed submitted


		until Franchisee returns the report to the County with the missing information.
Any other breach	Failure to meet any obligation under this Agreement	\$50/day

By placing initials below at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of liquidated damage provisions of the time that the Master Franchise and this Disposal Franchise was made.

Contractor

County

Initial Here: 

Initial Here: 

- E. County's Reimbursement Costs.** Franchisee will pay County promptly within five (5) days of County's request, the County Reimbursement Costs relating to conducting a non-routine investigation of any established breach, and/or those costs incurred as a consequence of any breach.
- F. Suspension or Termination of Agreement.** Together with any other rights that County may have under this Agreement, the County may suspend or terminate this Agreement, in whole or in part, in the following events:
1. **Suspension:** In event of a default, immediately upon Notice or later date prescribed by County. The suspension will continue only until the following, whichever occurs first: Passage of forty-five (45) days following Notice; or before those forty-five (45) days have passed, if Franchisee demonstrates to County's satisfaction that Franchisee can once again fully perform its obligations under this Agreement.
 2. **Termination.** Upon the occurrence of an event of default (or period following the occurrence of the default specified by the County), and Notice to Franchisee under Attachment 13B, County may terminate one, two, or all three Service Franchises.
- G. Waiver.** County's waiver of any specific breach is not a waiver of any other breach of that same provision. County's failure to enforce this Master Franchise is not a waiver of any breach.

H. Jurisdiction, Venue, Service of Process.

1. **Exclusive State Court Jurisdiction.** Parties will bring any lawsuits arising out of this Master Franchise in State courts, which will have exclusive jurisdiction over the lawsuits.
2. **Venue.** Venue is made in and will be performed in courts sitting in the County of Glenn.
3. **Location.** Parties will conduct any other hearing or action, regarding this Agreement, whether arbitration or non-judicial, in the County of Glenn.
4. **Service of Process.** Franchisee will accept service of process at the address where it receives Notices.

SECTION 15 – GENERAL PROVISIONS.

- A. Independent Status.** Franchisee and Subcontractors are independent entities and are not officers, agents, servants or employees of the County. This Master Franchise is between County and Franchisee and is not intended, and cannot be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association between County and Franchisee, nor County and Subcontractors, including for purposes of Workers' Compensation. Franchisee is solely responsible for the acts and omissions of its officers, agents, employees and subcontractors.
- B. Notices.** When capitalized in this Agreement, "**Notices**" (or other variations thereof, such as "Notify) must: (1) Be in writing; (2) Be delivered by personal delivery (effective immediately), registered or certified mail, return receipt requested, (effective 3 days after mailing), or commercial delivery service that provides written receipt (effective on day of receipt); and (3) Be addressed as specified under Exhibit 15B (or to other address provided by a party, dated and acknowledged by the other party).
- C. Transfer of Master Franchise.**
1. **County Transfer.** County may Transfer this Master Franchise to the Glenn County Regional Waste Management Agency or other public entity succeeding to the major portion of County's solid waste management rights and obligations under this Agreement. County may Transfer this Master Franchise to anyone else if it determines that the transferee is financially capable of meeting County obligations under this Agreement.

2. **Franchisee Transfer.** Franchisee acknowledges that County entered into this Master Franchise for reasons including Franchisee's description in Franchisee's proposal of named individuals who will provide services under this Master Franchise (such as a resume or professional qualification) and therefore franchise services are personal in nature. Franchisee will not Transfer this Agreement, or any rights or duties under it, in whole or in part, whether voluntarily or involuntarily, without County's prior consent exercised in County's sole discretion.

"Transfer" means an action (or inaction) that has any of the following direct (or indirect) effects: (1) The effective control of any of the following has changed: franchisee; franchise services; this Master Franchise and the corresponding Service Contract; or assets used to provide franchise services (including subcontracting any part of franchise services without County consent) *unless* Franchisee proves to County's satisfaction that effective control has not changed more than 10% of effective control; (2) Ownership interest has changed, changing all or a portion of ownership interest (actual or constructive) of Franchisee (including buyout, merger, acquisition, consolidation, recapitalization, stock (re)issuance, voting trust, pooling agreement, escrow arrangement, dissolution, or liquidation, unless Franchisee proves to satisfaction of County that ownership has changed less than 50%; but excluding change of control or ownership interest to a corporation that in which Waste Management, Inc. owns 100% of the shares); (3) The effective control or the ownership (actual or constructive) of assets used to provide franchise services has changed, *except* for sales or transfers to the Immediate Family or trust created primarily to benefit the Immediate Family; or (4) Someone other than Franchisee performs franchise services or assumes the obligation to provide franchise services (including substitution of someone else by a surety company providing a Payment and Performance Bond, contract assignment, transfer, conveyance, or sublease or licensing). For purposes of this definition, an action or inaction) includes any or all of the following: assignment by operation of law, such as insolvency or bankruptcy; making assignment for the benefit of creditors; or writ of attachment of an execution, or appointment of a receiver taking possession of any of Franchisee's tangible or intangible property.

"Ownership" means the state or fact of being the direct or indirect, actual or constructive owner of property, such as a parent holding corporation owning stock of a subsidiary corporation that in turn owns stock in its own subsidiary corporation or corporations.

“Immediate Family” means any or all of the following individuals having a shareholder or other equity interest in Franchisee: parent; grandparents; siblings; children; and grandchildren of any owner in whole or in part of the Franchisee.

Any Transfer or attempted Transfer of this Master Franchise by Franchisee or any rights and duties under it, made without County consent, is null and void at County option.

- 3. Payment of County Transfer Costs.** Franchisee must request County’s consent in the manner prescribed by County. Franchisee will pay County a Transfer Deposit before County is obligated to consider Franchisee’s request. County will return to Franchisee any amount of Transfer Deposit greater than the Transfer Costs that County incurred. Within thirty (30) days of County request, Franchisee will further pay County the County’s additional Transfer Costs greater than the Transfer Deposit, whether County consents to the Transfer. Within thirty (30) days of County request Franchisee will pay County the County’s Reimbursement Costs for fees and investigation costs that County deems necessary to enjoin the Transfer or to otherwise enforce this provision.

“Transfer Deposit” means County Reimbursement Costs for considering and reviewing Franchisee request for transfer, investigating the suitability of the transferee, or determining whether or not to give consent to the transfer, including fees of consultants and attorneys necessary to analyze the application and to prepare the documents to effectuate the Transfer as well as County staff costs.

D. Amendments.

- 1. Changes to Documentation.** County Representative may make changes to the types of documentation that Franchisee gives to County under this Agreement, such as updating identified key personnel, or improving the Unpermitted Waste Handling Protocol.
- 2. Mutual Consent.** Following mutual consent, County Director of Public Works and Franchisee may make changes to the Franchisee’s obligations under this Master Franchise that do not result in a service fee adjustment or those immaterial changes in franchise services (such as changing the date that a report is due).
- 3. Amendments.** The following changes in this Master Franchise are effective only upon approval and execution of a written amendment to this Master Franchise by the County Board of Supervisors, including any warranties by the parties: (1) Changes in franchise services that result in a service fee adjustment; and (2) Material changes in franchise services such as changes to County remedies for contract breach; or the definition of “Events of Default” or “uncontrollable circumstances”.

E. Representatives.

1. **County Representative.** County delegates to County Representative the authority to administer this Agreement and to exercise County rights, remedies and options under this Master Franchise except with respect to extending the term or the Agreement; suspending or terminating the agreement; approving or disapproving Transfer of this Agreement; or exercising any delegation of authority contrary to law.

“County Representative” means the Public Works Director, or designee, and someone else named in County’s Notice to Franchisee.

2. **Franchisee Representative.** Franchisee delegates authority to administer this Master Franchise to Franchisee Representative. Franchisee Representative must have at least 5 years’ experience in solid waste management services prior to being named Franchisee Representative.

“Franchisee Representative” means the individual named under Attachment 4E Key Personnel.

SECTION 16 – DEFINITIONS AND INTERPRETATION OF AGREEMENT.

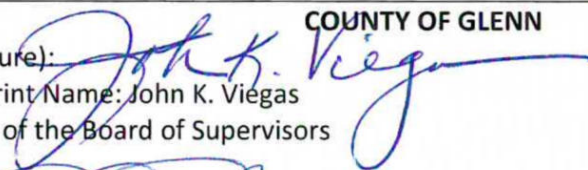

- A. **Inconsistencies.** If any provision of this Master Franchise from Section 1 through the signature page is inconsistent or conflicts with any Attachment or Exhibit (other than Attachment 3A), then the provision in this Master Franchise will govern unless the County determines that is contrary to the public interest.
- B. **Integration.** This Master Franchise contains the entire agreement between the parties and all their rights and responsibilities under this Agreement, except with respect to incorporation of law by reference. This Master Franchise completely and fully supersedes all prior oral and written understandings and agreements between the parties with respect to those rights and responsibilities, such as the County’s Request for Proposals, Franchisee’s proposal and correspondence exchanged between them during the procurement of this Master Franchise.
- C. **Governing Law.** This Master Franchise is governed by and construed and enforced in accordance with the laws of the State of California, without giving effect to the State's principles of conflicts of laws.

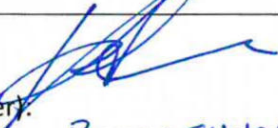

- D. **Severability.** If any provision of this Master Franchise is ruled illegal, invalid, nonbinding, or unenforceable by any court of competent jurisdiction, it will be severed from this Master Franchise and this Master Franchise will be construed as if it did not exist.
- E. **Interpretation.** This Master Franchise will be interpreted and construed neither for, nor against, either party, regardless of the degree to which either party participated in its drafting. Franchisee acknowledges that it determined to provide franchise services and to enter into this Master Franchise upon its own choice and initiative. Each party represents and warrants that it and its counsel have reviewed this Agreement.

SECTION 17 – EXECUTION OF AGREEMENT.

- A. **Execution in Counterparts.** The Parties may sign any number of original counterparts of this Agreement. Counterparts constitute one and the same agreement.
- B. **Authority to Execute.** Each party respectively warrants that it has duly authorized the individual below to sign this Master Franchise on its behalf and that individual has the full right, power, and authority to bind its related party to this Agreement.

IN WITNESS WHEREOF, by due authorization and direction of its County Board of Supervisors, the Chairman of the Board has signed this Master Franchise as of the franchise date. By due authorization and direction, Franchisee’s officers have signed this Agreement, as of the franchise date.

By (signature):  Type or Print Name: John K. Viegas Chairman of the Board of Supervisors	COUNTY OF GLENN
ATTEST:  Type or Print Name: Di Aulabaugh Clerk of the Board	

By (signature):  (Name of Officer): Type or Print Name: Barry Skolnick, President	FRANCHISEE
ATTEST:  Type or Print Name: David Stratton	

THIRD PARTY BENEFICIARIES.

Intent. County and Franchisee intend to make the Cities of Orland and Willows ("Cities") the third-party beneficiaries of this Master Franchise with respect to the Cities' Collection Franchises. The Cities intend to be third-party beneficiaries with respect to their Collection Franchises.

The County, Franchisee, City of Orland, and City of Willows evidence their intent by their signatures below.

Mutual Benefit. By making the Cities third party beneficiaries of this Master Franchise, the County benefits by procuring lower franchise service costs for County's residents and businesses. The Franchisee benefits by securing greater revenues from the collective franchises.

County procured this franchise in conjunction with the Cities of Orland and Willows, California, to create an incentive for solid waste management businesses to submit proposals to provide franchise services.

- (1) By combining the County's and Cities' populations, potential customers and services, the value of the aggregate franchises is greater than the value of any one franchise, which makes the franchises a more attractive business enterprise.
- (2) The combination also creates economies of scale which reduce the franchisee's cost of providing service.

Greater competition for the franchises and lower costs to provide franchise services reduce the unit cost of franchise services correspondingly lowers costs of subscribing to services.

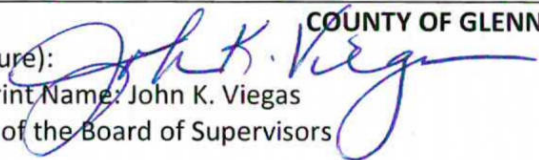

By agreeing to be third party beneficiaries of this Master Franchise, the Cities of Orland and Willows also benefit by procuring lower franchise service costs for their residents and businesses.

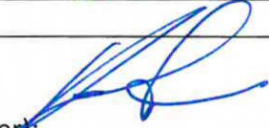

Further Benefits. The County and Franchisee made the Cities third party beneficiaries of this Master Franchise instead of Franchisee and each City being a party to this Master Franchise to facilitate the procurement of franchise services. The County and Cities are members of the Waste Management Regional Agency, a joint powers agency under CA law. The County and Cities have limited financial and staff resources. The County provides administrative support to the Agency. Similarly, the County supported the Cities by developing the documentation for this procurement, including this Master Franchises and the forms of Collection Franchises. Cities' focused their limited money and time primarily on tailoring the franchise service programs for their jurisdiction. County's support minimized aggregate procurement costs of County and Cities, prevented redundant efforts and costs, and achieved substantial uniformity of contract terms.


Enforcement. Franchisee acknowledges that California Civil Code 1559 applies to this Master Franchise: A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it. Either City may exercise its rights to enforce this Master Franchise under this Master Franchise and its Collection Contract, and under law.

Furthermore, Consistent with Judicial Council of California Civil Jury Instructions, CACI No.301, the Cities are not party to the Master Franchise. However, they may be entitled to damages for breach of contract if they prove that County and Franchisee intended for them to benefit from the Master Franchise. The signatures of the County and Franchisee below prove that the County and Franchisee intended that the Cities benefit from the Master Franchise.


County is not obligated to enforce Cities' rights under this Master Franchise. However, upon request of a City, in County's sole discretion, County can sue for specific performance of Franchisee's obligations to the Cities, to the extent provided by law and under this Master Franchise with respect to specific performance.

COUNTY OF GLENN
By (signature): 
Type or Print Name: John K. Viegas Chairman of the Board of Supervisors
ATTEST: 
Type or Print Name: Di Aulabaugh County Clerk of the Board

FRANCHISEE
By (signature): 
(Name of Officer): Type or Print Name: Barry Skolnick, President
ATTEST: 
Type or Print Name: Secretary David Stratton

CITY OF ORLAND
By (signature): 
Type or Print Name: BRUCE T. Roundy
Chair of the City Council

ATTEST:
Type or Print Name: Janet Wackerman
City Clerk

CITY OF WILLOWS
By (signature): 
Type or Print Name: Kerri Wallen
Chair of the City Council Mayor City of Willows

ATTEST:
Type or Print Name: Tara Rustenhaven
City Clerk

ATTACHMENT 4E - Key Personnel

Franchisee Representative

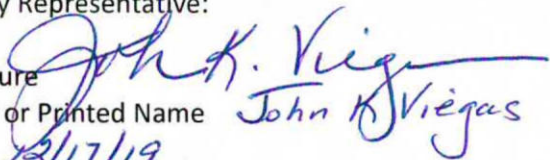
Name	Diana Ramirez
Telephone number	530-720-0890
e-mail address	Dramir13@wm.com
Mailing address	3281 Hwy 99 W, Corning, CA 96021
Franchisee office address	Same

Individual in Franchisee's financial accounting department responsible for submitting reports to County with respect to FRANCHISE FEES

Name	
Telephone number	
e-mail address	
Mailing address	
Franchisee office address	

Acknowledgment: Franchisee has submitted, and County has received, this list of Key Personnel as of the later of the following dates:

1. The Franchise Date, evidenced by each of their signatures on the Agreement, or
2. With respect to subsequent changes, the following date, as evidenced by their following signatures:

County Representative:
Signature 
Typed or Printed Name John K. Viegas
Date 12/17/19

Franchisee Representative
Signature
Typed or Printed Name
Date

ATTACHMENT 8B - Service Fee Adjustments

The service fee includes all Franchisee's costs of providing franchise services, such as labor, fuel, capital depreciation, maintenance, tipping fees and the franchise fee.

- A. Annual Adjustments.** The service fee may be adjusted (increased or decreased) effective each January 1, under this Subsection and the Service Franchises if the Franchisee submits its calculations of the adjustment by no later than November 1st for County/City review, County/City verifies the calculations, and Board of Supervisors/City Council approves the adjustment. Approval of the proposed adjustment shall not be unreasonably withheld by the County/City. The service fee may only be increased if Franchisee is not in default of this agreement. The total CPI adjustment for a particular agreement, whether upward or downward, may not exceed 5% in any one calendar year (January 1 – December 31). If any index is discontinued or revised, County/City and Franchisee will substitute another index that they agree to be comparable. The service fee will be adjusted for changes under the Service Franchises. Indices referenced in the Service Franchises include the following:

"CPI" means the most recent Consumer Price Index / Urban Consumers – Western States (1982-1989 =100) published by the Bureau of Labor Statistics at the time of service fee adjustment.

"DOE CNG" means the Nationwide Average Price for Fuel – Compressed Natural Gas Average Prices by Region from Clean Cities Sources, published quarterly in Energy Efficiency and Renewable Energy/Clean Cities Alternative Fuel Price Report from the United States Department of Energy website, or if that is permanently discontinued, another CNG price published by a state or the federal government selected by the Director. http://www.eere.energy.gov/afdc/price_report.html

"EIA LNG" means the average for fuel – Product / All Types for Area / California (Period: Annual) price published monthly in the Official Energy Statistics from the United States Energy Information Administration website, or if that is permanently discontinued, another CNG price published by a state or the federal government selected by the Director. http://tonto.eia.doe.gov/dnav/ng/ng_pri_sum_dcu_SCA_m.htm

"Change in law" means any or all of the following:

1. The adoption, promulgation, modification, or change in law (including County/City's change in or addition of franchisee fees) or in judicial or

- administrative interpretation of the law occurring after the date this agreement is first executed by a party);
2. Any order or judgment of any regulatory authority issued after the date this agreement is first executed by a party if the order or judgment is not also the result of the willful misconduct or negligent action or inaction of either of the party relying thereon, or anyone for whom that party is directly responsible; and the party relying on the order or judgment makes reasonable business efforts to contest that order or judgment, unless the other party excuses it from contest; or
 3. A regulatory authority imposes any new or different material conditions in connection with the issuance, renewal, or modification of any permit after the franchise date; or
 4. A regulatory authority fails to issue or renew permit or suspends, interrupts or terminates any permit after the franchise date and the regulatory authority's actions is not also the result of the willful misconduct or negligent action or inaction of the party relying thereon or anyone for whom that party is directly responsible.

B. Adjustment Process

1. **Adjustment Requests, Review, Consent.** Upon either Party's request for adjustment in the service fee, the Parties will follow the following protocol. Examples of request include: Franchisee's request for an increase in service fees following County/City's change in scope of services, such as a adding a new program mandated by CalRecycle which is required by law or County/City's request for an annual adjustment, Changes in Law, and changes in applicable third-party fees.

RATE ADJUSTMENT PROTOCOL		
County/City	Franchisee	Response Time (or longer period reasonably required)
<p>(1) County/City Request- Request information from Franchisee or its affiliates related to adjustment of the service fee.</p>	<p>(1) Response. Give County/City any information from Franchisee or its affiliates related to adjustment of the service fee.</p> <p>(2) Franchisee Proposal. Request County/City to adjust service fee. Request must be received by no later than November 1st of the year in which the request is made.</p> <p>Franchisee will attach the following information in any request it might have for adjustment of the service fee:</p>	<p>(1) Response. 15 business days.</p> <p>(2) N/A</p>

	<ul style="list-style-type: none"> • The amount of the requested adjustment, • The change in law or franchise service specifications and Franchisee's direct cost of providing new or different franchise service, and the consequent change in Operations Portion of the service fee. • Franchisee's calculations to support its request, and • All financial and other records related to its request. 	
<p>Additional Information. County/City request for any additional information from Franchisee or Franchisee's affiliates related to adjustment of the service fee.</p>	<p>Response. Franchisee gives County/City requested information.</p>	10 business days.
<p>Review and Determination. After County/City review and audit of the requested information, and upon approval of the Board of Supervisors/City Council which shall not be unreasonably withheld, County/City may adjust the service fee as of January 1, subject to Franchisee dispute under this Section, below.</p>	<p>(1) Provide Services. Franchisee provides franchise services at service fee consistent with County/City response; or</p> <p>(2) Dispute Determination. Franchisee requests dispute resolution.</p>	N/A
DISPUTES		
<p>Independent MSW Expert.</p> <p>(1) County/City and Franchisee prepare a separate list of 5 independent persons having experience in Solid Waste, recycling and construction and demolition debris collection, as applicable in the parties' dispute, in numerical order with the first preference at the top, and exchange and compare lists. The expert ranking highest on the 2 lists by having the lowest total rank order position on the 2 lists will be the Independent MSW Expert.</p> <p>(2) In case of a tie in scores, the expert having the smallest difference between the rankings of the 2 parties will be selected; other ties will be determined by a coin toss.</p> <p>(3) If no expert appears on both lists, this procedure will be repeated.</p>		<p>(1) 5 days</p> <p>(2) 3 days</p> <p>(3) Same as (1)</p>

<p>(4) If selection is not completed after the exchange of 2 lists or 10 days, whichever comes first, then each Party will select one expert having experience described above.</p> <p>(5) The County/City choice and Franchisee choice will together select an Independent Expert.</p>	<p>(4) 10 days</p> <p>(5) 10 days</p>
<p>Information Exchange.</p> <p>(1) County/City and Franchisee will forward information provided during prior rate adjustment protocol.</p> <p>(2) Independent MSW Expert asks for additional information or documentation.</p> <p>(3) Parties give Independent Expert requested items and simultaneously give other the party a copy. Information or documentation that either sends to the Expert absent request they will simultaneously give the other party a copy.</p>	<p>(1) 3 days</p> <p>(2) 5 days</p> <p>(3) 10 days</p>
<p>Determination of Service Fee Adjustment. The intent of a service fee adjustment is to compensate Franchisee to the extent events beyond Franchisee's reasonable control increase its costs or reduce revenue. The Independent MSW Expert will make its determination of the service fee adjustment (if any) based on the parties' submissions, the provisions of this Agreement, its experience with similar services and disputes, and other factual determinations it may make regarding the dispute. A rate adjustment should reflect considerations including any increase (or decrease) in Franchisee's:</p> <ul style="list-style-type: none"> • Capital investments (<i>such as additional trucks or containers, recyclables processing equipment, landfill construction</i>), and • Labor costs (<i>such as more drivers, recyclables pickers or landfill employees / slower recyclables sorting, longer shifts</i>) and other costs. • Franchisee's revenue. <p>(1) Binding. Determinations that do not involve a service fee adjustment will be binding.</p> <p>(2) Non-Binding. Determinations that involve a service fee adjustment will be non-binding</p>	<p>15 days</p>

2. **Calculations.** All calculations are rounded to the nearest 1/100th decimal place (for example, 101.9656% to 101.97%, or 101.9637% to 101.96). The decimal 5 is rounded down (for example, 101.965% to 101.96%). Adjustments to the service fee are rounded to the nearest penny (for example, \$25.34).

3. **Changes to Dispute Resolution Protocol.** County/City and Franchisee may revise the protocol and/or any response times contained therein, upon agreement of the parties. The existing service fee limit will remain in effect until parties resolve the dispute.

ATTACHMENT 12A - INSURANCE - Coverage Requirements

- A. **County Counsel Approval.** Franchisee will give County Counsel or other individuals named by the County certificates of insurance and corresponding endorsements for approval.
- B. **Filing with the Public Works Director.** Franchisee will file certificates with the Public Works Director annually, or whenever they change or are renewed.
- C. **County Board.** The County Board may require a policy change. Should the change increase Franchisee's insurance premium the service fee will be adjusted if Franchisee demonstrates to County's satisfaction, that the increase is due to changes in the market and not the adverse claim record of Franchisee.
- D. **Coverage Requirements.** Without limiting its Indemnities, Franchisee will carry (obtain and maintain) insurance coverage meeting the requirements in this Exhibit or under law, whichever is greater. Franchisee may use a combination of primary and excess insurance coverage to satisfy these requirements, but excess policies must provide coverage as broad ("follow form" over) the underlying primary policies. Franchisee will procure the following insurance unless it is self-insured under Section 12A. Franchisee will ensure each subcontractor provides evidence that subcontractor is maintaining insurance required by this Section protecting Franchisee and County interests against liabilities caused by the acts, errors or omissions of the subcontractor, or the subcontractor is maintaining that insurance itself. In the case where subcontractor does not provide adequate coverage and limits, Franchisee will provide required coverage and limits.
 1. **General Liability Insurance** written on ISO policy form CG 00 01 (occurrence) or its equivalent (and not CG 00 02 claims made) with combined single limit of not less than \$5 million per occurrence, including but not limited to:
 - a. Broad Form Property Damage.
 - b. Contractual Liability coverage for Insured Contracts by endorsement, schedule or other documentation, if necessary, to provide coverage
 - c. Premises and Operations
 - d. Products/Completion Operations Aggregate
 - e. Personal and Advertising Injury (\$5 million arising out of any one accident or occurrence).
 2. **Pollution Legal Liability Coverage** with a limit of not less than \$5 million per occurrence covering loss (including cleanup costs) that Franchisee becomes legally obligated to pay

as a result of claims for bodily injury, property damage, and cleanup costs (including expenses required by environmental laws or incurred by federal, state, or local governments or third parties) resulting from pollution conditions caused by transported cargo (including waste).

"Pollution conditions" includes the dispersal, discharge, release, or escape of any solid, liquid, gaseous or thermal irritant or contaminant (such as smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, and waste materials) into or upon land, any structure on land, the atmosphere, or any watercourse or body of water (including groundwater), provided the conditions are not naturally present in the environment in the amounts or concentrations discovered.

The liability coverage for pollution must provide contractual liability coverage for insured contracts.

3. **Automobile Liability Coverage** written on ISO policy forms CA 00 12 or CA 00 20 (or their equivalent) (occurrence) with a combined limit of liability not less than \$5 million for each accident, endorsed to delete the pollution exclusion and include pollution liability (using form CA 99 48 or its equivalent) for accidental spills and discharges while transporting and/or processing materials, and covering all vehicles (any auto): owned, non-owned or hired autos. If Franchisee is subject to federal regulations, Franchisee also will maintain any other coverage necessary to satisfy state or federal financial responsibility requirements.
 4. **Workers' Compensation and Employers' Liability** Workers' compensation benefits required by the California Labor Code or by any other state labor law, and for which Franchisee is responsible, and Employers' Liability coverage with limits of not less than the following: (a) Each accident - \$1 million; (b) Disease - policy limit - \$1 million; and, Disease - each employee - \$1 million.
- E. **Insurer Qualifications.** Franchisee will secure insurance provided by an insurer that is an admitted company in California and has a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.
- F. **Evidence of Coverage.**
1. **Provision.** Franchisee will provide copies of certificates with appropriate endorsements

with respect to Franchisee requested by and acceptable to County on or before the franchise date, as soon as practicable after policy's renewal, and within 10 County business days of County request. Neither County failure to obtain an insurance certificate or to object to a non-complying insurance certificate or endorsement or any other insurance documentation or information provided by Franchisee, Franchisee insurance broker(s) and/or insurer(s), can be construed as a waiver of any obligation under this attachment.

2. **Compliance with Terms of Insurance.** Franchisee must comply with all terms of insurance and insurers.
3. **Documentation.** Franchisee will give County the documentation required in this Attachment, including: Certificates of Insurance with evidence of insurer's qualifications; Endorsements; and Signature verification. Franchisee will ensure each subcontractor performing collection by providing evidence that either: franchisee is maintaining insurance required by this Section protecting Franchisee and County interests against liabilities caused by the acts, errors or omissions of the Subcontractor, or the subcontractor is maintaining that insurance itself.

ATTACHMENT 12-#1 - Certificates of Insurance

Franchisee will provide certificates (or other evidence of coverage) containing at a minimum, the following information with respect to Franchisee. Franchisee is responsible for obtaining certificates (or other evidence of coverage) from all subcontractors.

- A. Each certificate shall explicitly identify this Master Franchise (i.e. under description of operations) and if necessary, to secure contractual liability coverage as an “insured contract” or otherwise, include a schedule or endorsement that specifically identifies this Agreement. (If Franchisee’s direct or indirect parent is the named insured, the COI must state that Franchisee is also a named insured under all listed policies except for pollution legal liability where coverage applies to all sites owned or operated by the parent named insured);
- B. Specifically identify this Master Franchise by name or number;
- C. Name the insured party that matches the name of Franchisee executing this Agreement. If Franchisee’s direct (or indirect) parent is the named insured, the COI must state that Franchisee is also a named insured under all listed policies except for pollution legal liability where the coverage applies to all sites owned or operated by the parent named insured;
- D. Provide the full name of each insurer providing coverage and the insurer’s NAIC (National Association of Insurance Commissioners) identification number;
- E. Explicitly reference each type and corresponding limit of coverage required under this Agreement, together with the policy number, effective date, expiration date, and identification of each required ISO policy form or confirmation of its equivalency to ISO policy forms required under this Agreement (such as “auto liability ISO form CA 00 12”). Where the Agreement does not require a specific ISO policy form, the certificate of insurance must specifically reference the required type of coverage (such as “pollution liability” under TYPE OF INSURANCE – OTHER) together with a summary description of its coverage (such as “pollution conditions caused by transported cargo” under SPECIAL PROVISIONS);
- F. County must be given written Notice by mail at least 10 days in advance of cancellation, modification or reduction of limits (including with respect to cancellation for nonpayment of premium) for all policies evidenced on the certificate of insurance. Franchisee will be responsible for such notification;
- G. Any deductibles or self-insured retentions shall be for the account of the Franchisee’s parent

and/or Franchisee and shall be paid by them without contribution from the County. Policies must not obligate County to pay any part of any deductible or SIR. If anyone makes a claim against Franchisee exceeding the amount of any deductibles or self-insured reserves, Franchisee will inform the insurer within the time required under the policy;

- H. If any insurance coverage is written on a claims-made form (such as pollution liability), evidencing that the "retro date" is before the franchise date. Franchisee must maintain that coverage for at least 5 years after the expiration or termination of this Agreement. Within 5 days of upon County request, Franchisee must provide County with evidence of that coverage. FRANCHISEE'S OBLIGATION SURVIVES THE FRANCHISE TERM; and

[APPEND COIs AND EVIDENCE OF INSURER'S QUALIFICATIONS TO THIS ATTACHMENT.]

ATTACHMENT 12-#2 - Endorsements

Franchisee will give County copies of the following endorsements (or with respect to “additional insured” evidence of blanket or contractual additional insured status) or other documentation with respect to Franchisee satisfactory to County, including the following:

- A. Additional insured endorsement to each liability policy (except workers’ compensation and employers’ liability), explicitly adding County Insureds as additional insureds (coverage must not contain any special limitations on the scope of protection of County Insureds; the endorsement may be an automatic additional insured endorsement if it meets these requirements);
- B. Waiver of subrogation necessary to effect Franchisee waiver of its and its insurer(s)’ rights of recovery against County under all insurance, to the fullest extent permitted by law;
- C. Insurance is excess or primary and not contributing with any other insurance or self-insurance programs maintained by County Insureds;
- D. The full policy limits and scope of protection applies to each of County Insureds, even if those limits or scope exceed the minimum required insurance specifications in this Agreement; subject to the terms and condition of this contract, including indemnity obligations, but in no way beyond what is legally required.
- E. Clearly evidence that all liability policies provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured-versus-insured exclusions or limitations;
- F. Any failure to comply with reporting provisions of policies will not affect indemnification provided to County Insureds by the Franchisee or subcontractors; and
- G. Pollution Endorsement to Automobile Liability, or equivalent, must remove any pollution and from the policy.

“County Insureds” include the following individuals or entities related to the County and who have interest in this contract: the County’s officers, officials, employees, consultants, agents, assigns, and volunteers.

ATTACHMENT 12-#3 - Schedules or Broker's Letter.

Franchisee must provide schedules or other evidence (such as written confirmation of Franchisee's broker) that policies comply with this Agreement, including:

- A. Coverage will contain no special limitations on the scope of protection afforded to County as additional Insureds;
- B. Liability policies of Franchisee provide contractual liability coverage for Indemnities, such as listing this Agreements an "insured contract"; and
- C. Any failure to comply with reporting provisions of policies will not affect coverage provided to County Insureds.

[ATTACH SCHEDULES OR BROKER'S LETTERS TO THIS EXHIBIT.]

ATTACHMENT 12-#4 - Signature Verification

Upon County request, Franchisee must provide documentation verifying that the individual signing or countersigning the certificates, policies, endorsements, or other evidence of coverage of Franchisee is authorized to do so and identifies his or her company affiliation and title

ATTACHMENT 12B – Payment and Performance Bonds

- A. Stated Amount.** Franchisee will provide County with Payment and Performance Bonds for the Stated Amount. During the first franchise year the “Stated Amount” is listed in each Service Franchise.

- B. Term.** The term of the Payment and Performance Bonds must be either the same as the franchise term plus 180 days, or renewable annually or at other period up to the franchise term plus 180 days.

Franchisee may substitute another payment and Payment and Performance Bond acceptable to County.

[ATTACH PERFORMANCE BOND TO THIS EXHIBIT.]

ATTACHMENT 12 -

ATTACHMENT 13B - Events of Default

EVENT OF DEFAULT		TERMINATION DATE (# days following County Notice to Franchisee of default)
(1) Uncured breach	<p>Unless due to uncontrollable circumstances-</p> <p>(1) Franchisee does not cure any warranty, or breach of, this Master Franchise or any Service Franchise other than breaches listed as specific defaults in this table, within 30 days after County Notice of that breach, or</p>	30 days
(2) Payments to County	<p>Franchisee does not fully and timely pay County any amounts under this Master Franchise (payment of franchise fees and liquidated damages):</p> <p>(1) More than twice in any year;</p> <p>(2) Within 30 days of dated correspondence from the County stating that payment is due; or</p> <p>(3) With respect to payment of a shortfall in franchise fees, within 30 days of dated correspondence from the County identifying the shortfall.</p>	30 days
(3) Repeated violation of law	<p>(1) Franchisee does not remedy a material violation of law, directly related to performance under this agreement, to the satisfaction of the applicable regulatory authority (including County when acting as a regulatory authority), within 30 days of the regulatory authority's notice, assessment, or determination of that violation. The County in its sole discretion shall determine materiality.</p> <p>(2) If Franchisee is entitled to and does contest a notice, assessment, or determination of a violation by proceedings conducted in good faith, no default is deemed to have occurred until a final decision adverse to Franchisee is entered.</p> <p>"Violation" means any written notice, assessment or determination of non-compliance with law from any regulatory authority to Franchisee, whether or not a fine or penalty is included, assessed, levied or attached.</p>	Immediately
(4) Failure to meet insurance	Franchisee does not meet its obligations with respect to insurance	Immediate

(5) Default under the Guaranty	Guarantor defaults under the Guaranty.	Immediately
(8) Insolvency or bankruptcy	<p>(1) Franchisee becomes insolvent or files a voluntary petition to declare bankruptcy;</p> <p>(2) a receiver or trust is appointed for Franchisee; or</p> <p>(3) Franchisee executes an assignment for the benefit of creditors.</p> <p>Franchisee is deemed to be "insolvent" if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether Franchisee has committed an act of bankruptcy and whether Franchisee is insolvent within the meaning of the federal bankruptcy law or not.</p>	Immediately
(8) Fraud, misrepresentation or breach of warranties	<p>During the procurement of this Master Franchise or after the date of this Agreement, Franchisee does any of the following with respect to this Master Franchise or the County:</p> <ol style="list-style-type: none"> 1. Committed (or commits or attempts to commit) any fraud or deceit; 2. Made (or makes) any intentional or material misrepresentations; or 3. Made or (or makes) any false or misleading statement, representation, or warranty. 	30 days

"Uncontrollable circumstances" means any of the following events:

1. Riots, war, or emergency affecting the County declared by the President of the United States, Congress of the United States, the Governor of California, or the County Board;
2. Sabotage, civil disturbance, insurrection, explosion;
3. Natural disasters such as floods, earthquakes, landslides and fires that are not reasonably anticipated weather conditions in the County;
4. A change in law except, in the context of a County-claimed uncontrollable circumstance, for a change in law that meets both of the following conditions:
 - a. It is enacted by County (including County's change in franchisee fees), and
 - b. County is not required to enact it to comply with federal or State law; or
 - c. The failure of any public or private utility provider to provide water or electricity to the Franchisee office or maintenance facility.

ATTACHMENT 15B - Notices: Address


Franchisee	USA Waste of California, Inc.
Name	President
Phone Number	
e-mail Address	
Mailing Address	100 Vassar Street, Reno, NV 89502
Physical Address	100 Vassar Street, Reno, VN 89502

With a required copy to: Waste Management
Attn. Legal Counsel
222 South Mill Avenue, Suite 333
Tempe, AZ 85281

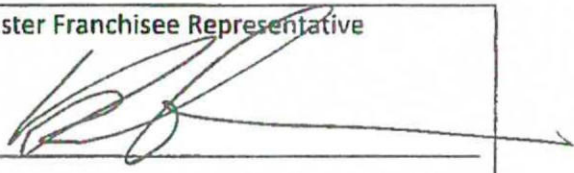
Acknowledgment: Franchisee has submitted, and County has received, this list of Key Personnel as of the later of the following dates:

1. The franchise date, evidenced by each of their signatures on the Contract, or
2. With respect to subsequent changes, the following date, as evidenced by their following signatures.

Date: 12/17/19

County Representative:


Master Franchisee Representative



A handwritten signature in black ink is written over a horizontal line. The signature is stylized and cursive, starting with a large initial letter. The line extends to the right of the signature box.