

RESOLUTION NO. 2011-113

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AWARDING EXCLUSIVE MULTIPLE PROVIDER FRANCHISE AGREEMENTS FOR TEMPORARY DEBRIS BOX AND ROLL-OFF COLLECTION SERVICES TO ROHNERT PARK DISPOSAL, INC. AND INDUSTRIAL CARTING

WHEREAS, Article XI, § 7 of the California Constitution authorizes cities to protect public health and safety by taking measures in furtherance of their authority over police and sanitary matters; and

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, ("**AB 939**") (codified at Public Resources Code §§ 4000 *et seq.*) established a solid waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse and recycling as integrated waste management practices for solid waste attributed to sources within their respective jurisdictions; and

WHEREAS, AB 939 provides that aspects of solid waste handling of local concern include but are not limited to frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste services; and

WHEREAS, AB 939 confers discretion on cities to provide for the delivery of refuse services to its residents by the city itself providing the services or by the city conferring the authority to do so on private profit-making entities; and

WHEREAS, when cities confer the authority to provide refuse services on private profit-making entities; cities are authorized to do so by means which include the award of a nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise; and

WHEREAS, when a city exercises its legislative discretion to provide refuse services to its residents itself, it assesses and collects a fee from residents to recover its costs for providing those services; and

WHEREAS, when a city exercises its legislative discretion to award a franchise to private profit-making entities to provide refuse services to residents, the private profit-making entities charges residents for those services from which it derives a profit, and

WHEREAS, the Rohnert Park Municipal Code implements Article XI, § 7 of the California Constitution and AB 939 in the City of Rohnert Park and protects public health and safety by authorizing the City Council to provide refuse service itself or to award one or more franchises to private solid waste enterprises to provide that service; and

WHEREAS the City Council has concluded, in the exercise of its legislative discretion, that it is in the best interests of the City and its residents for the City to franchise temporary debris box and roll-off collection service to private enterprises with the special skills, knowledge, facilities and other capabilities to ensure a high level of service and compliance with the existing statutory and regulatory requirements; and

WHEREAS; Rohnert Park Municipal Code sections 8.12.200 and 8.12.210 require that waste collection services be provided by contract and exclude any other enterprises from providing waste hauling services within the city limits during the contract period, thereby requiring all waste collection to be provided pursuant to an exclusive right;

WHEREAS, on June 28, 2011 the City Council directed the City Manager to solicit requests for proposal for single-provider and multiple-provider temporary debris box services. On September 13, 2011 the City Council found certain proposals responsive and others to be non-responsive pursuant to Resolution 2011-88. Ultimately, on October 25, 2011, the City Council rejected all proposals pursuant to Resolution No. 2011-104, awarded new, short-term (60 day) multiple-provider exclusive franchise agreements with the current providers, and directed the City Manager to negotiate agreements for temporary debris box and roll off collection services on the open market;

WHEREAS, the short-term multiple-provider exclusive franchise agreements will expire on December 31, 2011. Under Section 49520 of AB 939, Rohnert Park Disposal, Inc. and Industrial Carting's continuation rights are limited to the unexpired term of those agreement because each entity has an expressly exclusive franchise agreement with the City (as is required by RPMC sections 8.12.200 and 8.12. 210) allowing them to operate at the exclusion of all other haulers;

WHEREAS; the City Council has determined through an open market negotiation process for Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services that Rohnert Park Disposal, Inc. and Industrial Carting, by demonstrated experience, reputation and capacity, are qualified to provide for the Temporary Debris Box and Roll-off Collection Services within the corporate limits of the City, the transportation of such material to appropriate places for processing, recycling, composting and/or disposal; and City Council desires that Rohnert Park Disposal, Inc. and Industrial Carting be engaged to perform such services on the terms and conditions to be set forth in a franchise agreement ("Franchise Agreement"); and

WHEREAS; the Rohnert Park Disposal, Inc. and Industrial Carting, through its negotiations with the City, have proposed and represented that their company has the ability and capacity to provide for the Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services within the corporate limits of the City; the transportation of such material to appropriate places for processing, recycling, composting and/or disposal; and the processing of materials; and

WHEREAS, when a private profit-making entity is awarded a city franchise authorizing it to derive profit in providing refuse services to city residents for a fee, the award of this valuable franchise right provides for compensation to the city and its taxpayers through the imposition of a franchising fee on the private profit-making entity payable to the city and the amount of such fees is not limited by AB 939 or any other provisions of law; and

WHEREAS, the amount of the franchise fees contemplated in the Franchise Agreements was freely negotiated between Rohnert Park Disposal, Inc. and the City and between Industrial Carting and the City; and

WHEREAS, the California Constitution Articles XIIIC and XIIID, regulates a public agency's imposition of certain property related fees when the agency assess the resident for a fee for the provisions of services provided by the public agency; and

WHEREAS, the California Constitution does not restrict or regulate what a private profit-making entity may charge residents when those same services are provided by a private entity; and

WHEREAS, upon thorough analysis, the City, Rohnert Park Disposal, Inc. and Industrial Carting have determined that the rates and fees established by the Franchise Agreement are not subject to California Constitution Articles XIII C and XIII D because, among other reasons, the temporary debris box and roll-off services will be provided by private corporations and not by City; Rohnert Park Disposal, Inc. and Industrial Carting will independently establish, charge and collect the customer rates for said services; the receipt of said services is voluntary and not required of any property within City; and any owner or occupant of property within City has the opportunity to avoid the services provided under the Agreement either through self-hauling or use of property in such a manner that refuse is not generated; and

WHEREAS, the Franchise Agreement has been developed by and is satisfactory to the City, Rohnert Park Disposal, Inc., and Industrial Carting; and

WHEREAS, the City Council hereby determines and finds pursuant to California Public Resources Code § 40059 that the public interest, health, safety and well-being would be served if Rohnert Park Disposal, Inc. and Industrial Carting were to be awarded an exclusive multiple-provider franchise agreement for collection, recycling, diversion and disposal of temporary debris box and roll-off services in the City of Rohnert Park.

NOW, THEREFORE, BE IT RESOLVED that the above-referenced recitals are true and correct and material to this Resolution.

BE IT FURTHER RESOLVED, that in making its findings the City Council relied upon and hereby incorporates by reference all of the staff reports, consultants reports, Application materials, and other documentation presented to the City Council in their meeting.

BE IT FURTHER RESOLVED, that the City Council hereby finds that Rohnert Park Disposal, Inc. is qualified to provide the service and their proposal to be a provider of temporary debris box and roll-off collection services meets all of the City's requirements, with the exception of the insurance requirements, for the reasons set forth in the staff report and its exhibits which are incorporated by this reference.

BE IT FURTHER RESOLVED, that the City Council hereby finds that Industrial Carting is qualified to provide the service and their proposal to be a provider of temporary debris box and roll-off collection services meets all of the City's requirements, with the exception of the insurance requirements, for the reasons set forth in the staff report and its exhibits which are incorporated by this reference.

BE IT FURTHER RESOLVED, that pursuant to its police powers and the authority granted in Public Resources Code sections 40059 and 49300, a Franchise Agreement for multiple provider exclusive temporary debris box and roll-off collection services is hereby awarded to Rohnert Park Disposal, Inc. and Industrial Carting upon the terms and conditions set forth in the Application and Agreement, attached to the staff report.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute an agreement with Rohnert Park Disposal, Inc. and Industrial Carting in substantially similar form to the Agreement attached to the staff report for and on behalf of the City of Rohnert Park, provided however, that Rohnert Park Disposal, Inc. and Industrial Carting shall agree to and submit evidence of compliance with the insurance requirements established in said Agreement.

BE IT FURTHER RESOLVED that the City Council hereby finds that the activity taken by the City Council is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15301 (existing facilities), 15308 (actions by regulatory agencies for protection of the environment) and under 15061(b)(3) (the common sense exemption) for the reasons set forth in the staff report, and directs City staff to file a Notice of Exemption in substantially similar form to that attached to the staff report.

DULY AND REGULARLY ADOPTED by the City Council of the City of Rohnert Park this 22nd day of November, 2011.

CITY OF ROHNERT PARK

Mayor

ATTEST:

Chad Adams
City Clerk, Acting



AHANOTU: <u>AYE</u>	CALLINAN: <u>ABSENT</u>	MACKENZIE: <u>AYE</u>	STAFFORD: <u>AYE</u>	BELFORTE: <u>AYE</u>
AYES: (4)		NOES: (0)	ABSENT: (1) ABSTAIN: (0)	



Consulting Group, Inc.

Resources Responsibility Respect

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To: Gabriel A. Gonzalez and Cathy Orme, City of Rohnert Park
From: Carrie Baxter and Richard Tagore-Erwin, R3 Consulting Group
Date: November 21, 2011
Subject: Comparison of Applications Submitted for Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services

Purpose and Background

The purpose of this memorandum is to present an evaluation and analysis of the applications submitted in response to the City of Rohnert Park's (City's) request on November 17, 2011 to provide completed applications and a signed Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service Agreement (Service Agreement) for a projected start date of January 1, 2012.

The City sent a request to the following companies:

- Industrial Carting; and
- Ratto Group of Companies, Inc. (Ratto Group).

Applications were received from both companies within the requested time.

Application Evaluation

The following is a comparison of the two applications received for Multiple Provider Exclusive Collection Services (Collection Services).

Application Submittal Requirements

Applicants were required to submit one electronic copy, two sets of the Application and two signed sets of the Collection Agreement in binders with the cover indicating the company name and application title. Both applicants met these requirements.

Section 1: Company and Subcontractor Identification

Applicants were required to provide the Business Name or Name of the Company or Corporation, along with company or corporate office address and phone information. They were also required to provide the name, address, and phone number of all subcontractors directly involved in collection and processing operations.

Both applicants provided sufficient contact information, including their office address, phone information and website or email address. Neither applicant proposed to use subcontractors.

Section 2: Company Qualifications

Applicants were asked to identify the key staff persons, address and phone number of a local contact and a City business license number, as well as provide references for three governmental clients and litigation history. The applicants also were to provide written proof of insurance as required in the Collection Agreement. As an alternative to the insurance

requirement, applicants were asked to submit a commitment letter from a qualified insurance carrier as part of their Application and a \$20,000 proposal bond. In addition, a performance bond in an amount of \$10,000 or a commitment letter from a State of California licensed Surety Company was required to be provided as part of the Application.

Both applicants provided key staff, local contact information and references for three governmental clients. Industrial Carting provided references for the cities of Rohnert Park and Santa Rosa and the Town of Windsor. Ratto Group provided references for the City of Rohnert Park, Novato Sanitary District and the Town of Windsor. References that provided responses included Novato Sanitary District and the Town of Windsor. The City of Santa Rosa and City of Rohnert Park did not provide a reference for either applicant.

All survey questions were rated on a scale from 1 to 5, where 1 represents no satisfaction, 2 represents low satisfaction, 3 represents average satisfaction, 4 represents above average satisfaction and 5 represents extreme satisfaction. Overall, all questions were answered for both applicants with average satisfaction or higher. The results of the reference checks were as follows:

TABLE 1 Reference Results										
Survey Questions	Industrial Carting					Ratto Group				
	1	2	3	4	5	1	2	3	4	5
I. Diversion Programs										
A. How successful have the hauler's diversion programs been in your jurisdiction?	0%	0%	0%	100%	0%	0%	0%	0%	0%	100%
II. Equipment/Drivers										
A. How would you rate the appearance/quality of the hauler's vehicles and containers?	0%	0%	0%	100%	0%	0%	0%	0%	50%	50%
B. How would you rate the number of complaints filed against the hauler's drivers?	0%	0%	0%	0%	100%	0%	0%	0%	50%	50%
III. Customer Service										
A. How would you rate the hauler's relationship with the City/County?	0%	0%	0%	100%	0%	0%	0%	0%	50%	50%
B. How would you rate how the hauler responds to the requests made by the City/County?	0%	0%	100%	0%	0%	0%	0%	0%	0%	100%
IV. Overall Opinion										
A. Overall, how would you rate the hauling company and their services?	0%	0%	0%	100%	0%	0%	0%	0%	50%	50%

Ratto Group provided litigation history for three claims of \$100,000 or more. These included:

- California Sportfishing Protection Alliance v West Sonoma County Disposal Service, Inc., the United States District Court Northern District of California, Case No. 3:10-CV-03441-JCS, Civil Action, Pending resolution, No trial date set;
- MacGrail v North Bay Corporation, Sonoma County Superior Court, Case No. 238906, Civil Action, Personal Injury Claim, referred to insurance carrier. Case settled for confidential amount; and
- Pandolfi v North Bay Corporation, Sonoma County Superior Court, Case No. 235265, Personal Injury Claim, referred to insurance carrier, Case settled for \$300,000.

In addition, in May 2011, an investigation by the Air Resources Board showed that Reward Leasing (North Bay Corporation) failed to comply with the Solid Waste Collection Vehicle Program by neglecting to install legally required emission-reduction devices by applicable compliance dates. To settle the case, Reward Leasing agreed to the \$534,000 penalty and to comply with the SWCV Program, PSI program, and other ARB programs. The matter has been settled.

Industrial Carting listed no litigation history.

Both applicants submitted certificates of insurance. These do not appear to meet the requirements of the Service Agreement. In addition, both applicants submitted performance bonds in the amount of \$10,000 from Developers Surety and Indemnity Company as required.

Section 3: Technical Approach

In this Section, applicants were asked to provide a description of the manner in which the requested services are to be provided, including the following:

- How they will reduce wear-and-tear on City's streets by preventing overloaded or over weight containers or trucks, preventing damage to streets caused by containers, their placement, or the weight.
- Methods used to tarp or cover loads used to prevent litter or material blowing or spilling from containers.
- Customer outreach and load inspection program to prevent the acceptance and hauling of un-acceptable material or Exempt Waste. Also, when un-acceptable or Exempt Waste is found in the loads, how it will be handled.
- Vehicle and container maintenance program, including response/replacement/repair time for vehicles on route.
- Hazardous Waste and Universal Waste Management protocol.
- Health and safety management procedures.
- Inventory for all vehicles (active or backup) to be used for collection.
- Information for the recycling and transfer/processing facilities to be used, including any facilities located outside of Sonoma County.

Both applicants provided a technical approach in their application. The following is a summary for each applicant.

Industrial Carting – Industrial Carting stated that they would use lighter 6-wheeler trucks and route its trucks to use major thoroughfares to minimize traffic on residential streets and to

reduce the wear and tear on the City's streets. They will work with customers by providing clear instructions about how to load debris boxes and offer smaller boxes to customers describing collection material as "heavy" such as rock, dirt, sheetrock, etc. Heavy-duty tarps will be attached to full debris boxes before loading them onto the truck. A "Conditions of Use" form is signed by customers, informing them of restrictions and guidelines for use of the debris box.

Vehicle maintenance will be maintained at Industrial Carting's corporation yard in Santa Rosa. All equipment is maintained regularly and complies with the California Vehicle Code.

Workers are trained to identify types of materials that are hazardous or otherwise not accepted at the facility. If found, forms are completed and generators are required to collect and properly dispose of the hazardous material. Each employee receives a safety orientation and employee handbook containing the company's safety policy, job instructions, job descriptions, and instruction on hazardous materials. In addition, safety meetings are held monthly.

Industrial Carting has proposed to operate four vehicles under this Collection Agreement. These vehicles include three roll-off trucks (3 years, 21 years and 22 years old), and one bin truck (3 years old) all operated on diesel fuel.

Recycling facilities to be used by Industrial Carting are located in Sonoma and Marin County and include Sims Metals, Recycled Fibers, Wheeler-Zamaroni, and Redwood Landfill. The transfer/processing facility proposed by Industrial Carting is Global Materials Recovery Services (an Industrial Carting affiliate company) and the disposal facility proposed is Redwood Landfill in Marin County.

Ratto Group – To reduce wear-and-tear and damage on City's streets, Ratto Group will instruct the customers as to any volume or weight restrictions for heavy or dense materials to permit safe and legal transport on City streets. Tarps will be used on all boxes prior to transporting all material types. Drivers will inspect the debris boxes prior to loading them onto the collection vehicles. A waiver is currently used by Ratto Group to inform customers of prohibited materials and weight and volume limits.

The vehicle maintenance program will be conducted in accordance with applicable law and regulations. Ratto Group proposes to operate its own Maintenance and Repair shop, located in unincorporated County just south of Santa Rosa, for any needed repairs. In addition, the maintenance shop is where washing, repairs and painting of collection containers occurs on an ongoing basis.

The Route supervisor will direct the generator to remove improper materials, such as Hazardous Waste and Universal Waste. All route drivers are given instruction on safe driving practices on a recurring basis and safety meetings are held on an ongoing basis. Additionally, the Risk Manager performs on-site visits to accounts that potentially could involve safety concerns, to assure bins and carts are placed and collected in a manner that maximizes safety.

Ratto Group proposes to use one collection vehicle and two back up vehicles to operate under this Collection Agreement. Each of these vehicles are six years old and run on diesel fuel.

Recycling facilities to be used are all located in Sonoma County and include West Sonoma County Disposal/Timbercove Recycling and Novato Disposal Service. Transfer/Processing facilities proposed by Ratto Group are located in Sonoma and Marin County and include the Sonoma Transfer Station and Redwood Landfill; the disposal facility proposed is Sonoma Transfer Station.

Table 2 is a comparison of the facilities proposed by Industrial Carting and Ratto Group.

TABLE 2 Recycling, Transfer/Processing and Disposal Facilities							
	Facility Name	Address	Material Types Accepted	Processing/Tip Fee	Daily Permitted Capacity (TPD)	Local Land Use Permit Number	CalRecycle SWFP#
Recycling Facilities							
Proposed by Ratto Group	West Sonoma County Disposal/ Timbercove Recycling	3400 Standish Ave. Santa Rosa, CA	Source Separated Clean Recyclables	\$0.00	N/A	UPE96-0111	N/A
	West Sonoma County Disposal/ Timbercove Recycling	Standish Ave. Santa Rosa, CA	Source Separated Clean Recyclables	\$0.00	N/A	UPE03-0090	N/A
	Novato Disposal Service	2543 Petaluma Blvd., S. Petaluma, CA	Source Separated Clean Recyclables	\$0.00	99	PLP02-0072	N/A
Proposed by Industrial Carting	Sims Metals	600 S. 4 th St., Richmond, CA	Metals	N/A	N/A	N/A	N/A
	Recycled Fibers	2575 Grand Canal Blvd., Stockton, CA	Paper	N/A	N/A	N/A	N/A
	Wheeler-Zamaroni	3500 Petaluma Hill Rd., Santa Rosa, CA	Concrete, Asphalt, Porcelain and Brick	N/A	N/A	N/A	N/A
	Redwood Landfill	8950 Redwood Hwy., Novato, CA	Soil for Reuse, Wood for Composting	N/A	N/A	N/A	21-AA-0001

TABLE 2
Recycling, Transfer/Processing and Disposal Facilities

	Facility Name	Address	Material Types Accepted	Processing/Tip Fee	Daily Permitted Capacity (TPD)	Local Land Use Permit Number	CalRecycle SWFP#
Transfer/Processing Facilities							
Proposed by Ratto Group	Sonoma Transfer Station	4376 Stage Gulch Rd., Sonoma, CA	Construction And Demolition Site Materials, Including Wood, Concrete, Asphalt, Drywall, Dirt, Other Non-Putrescible Materials, Etc.	\$75.00 Per Ton	760	N/A	49-AA-0144
	Redwood Landfill	8950 Redwood Hwy., Novato, CA	Construction And Demolition Site Materials, Including Wood, Concrete, Asphalt, Drywall, Dirt, Other Non-Putrescible Materials, Etc.	\$75.00 Per Ton	2,300	N/A	21-AA-0001
Proposed by Industrial Carting	Global Materials Recovery Services (Industrial Carting Affiliate Company)	3899 Santa Rosa Ave., Santa Rosa, CA	Construction and Demolition Debris and Recyclable Materials	\$81.00 Per Ton	543.5	PLP 01-0064	49-AA-0390
Disposal Facilities							
Proposed by Ratto Group	Sonoma Transfer Station	4376 Stage Gulch Rd., Sonoma, CA	Construction And Demolition Site Materials, Including Wood, Concrete, Asphalt, Drywall, Dirt, Other Non-Putrescible Materials, Etc.	\$75.00 Per Ton	760	N/A	49-AA-0144
Proposed by Industrial Carting	Redwood Landfill	8950 Redwood Hwy., Novato, CA	Residual	\$60.00 Per Ton	2,300	N/A	21-AA-0001

Section 4: Diversion Standards

Both applicants offered to meet the 70% diversion standard set by the City.

Sections 5, 6 and 7: Franchise Fee, Proposal Development Fee and Non-Exclusive Franchise Award Fee

Over the years, the City has received a franchise fee between 10% and 20% of the gross receipts of the provider. This range is consistent with the rate other jurisdictions charge for franchise fees. Under the agreement with this application, the City will receive a fixed amount of the franchise fee upfront (\$50,000 from each Franchisee) and the remainder (15%) on an ongoing basis. Over the life of the agreement, the City expects that the total franchise fees will fall within that historic 10% to 20% range.

Both applicants have agreed to pay the Proposal Development Fee (\$25,000 from each Franchisee) and the minimum monthly Franchise Fee payment as set by the City.

Section 8: Application Certification

Both applicants signed the Application Certification with no exceptions.

Section 9: Forms A-C

Both applicants signed and included Form A: Certification of Non-Gratuities, Form B: Non-Collusion Affidavit of Proposer, and Form C: Process Integrity Rules.

Recommendation

Based on the overall evaluation of the applications, both companies are qualified to provide Collection Services. It is recommended that the City's Risk Manager review performance bonds and insurance forms submitted for compliance. The following items are next steps required in order to award Agreements to Ratto Group and Industrial Carting for Collection Services:

- Ratto Group shall:
 - Make a payment to the City in the amount of \$25,000 for the Proposal Development Fee, within 30 calendar days from the date the City Council approves the Agreement;
 - Submit a performance bond in the amount of \$10,000 in a form acceptable to the City within 10 calendar days from the date the City Council approves the Agreement; and
 - Make a payment to the City in the amount of \$50,000 within 30 days after the award of the Service Agreement.
- Industrial Carting shall:
 - Make a payment to the City in the amount of \$25,000 for the Proposal Development Fee, within 30 calendar days from the date the City Council approves the Agreement;
 - Submit a performance bond in the amount of \$10,000 in a form acceptable to the City within 10 calendar days from the date the City Council approves the Agreement; and
 - Make a payment to the City in the amount of \$50,000 within 30 days after the award of the Service Agreement.

Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service Agreement

Executed Between the
City of Rohnert Park
And

Rohnert Park Disposal

This ____ day of ____ 2011



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Collection Service Agreement**

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CITY OF ROHNERT PARK

This Agreement made and entered into this ____ day of _____, 2011, by and between the City of Rohnert Park, State of California, hereinafter referred to as "CITY" and _____, a California corporation, hereinafter referred to as "FRANCHISEE."

RECITALS

WHEREAS, Article XI, § 7 of the California Constitution authorizes cities to protect public health and safety by taking measures in furtherance of their authority over police and sanitary matters; and

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, ("**AB 939**") (codified at Public Resources Code §§ 4000 et seq.) established a solid waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse and recycling as integrated waste management practices for solid waste attributed to sources within their respective jurisdictions; and

WHEREAS, AB 939 provides that aspects of solid waste handling of local concern include but are not limited to frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste services; and

WHEREAS, AB 939 confers discretion on cities to provide for the delivery of refuse services to its residents by the city itself providing the services or by the city conferring the authority to do so on private profit-making entities; and

WHEREAS, when cities confer the authority to provide refuse services on private profit-making entities; cities are authorized to do so by means which include the award of a nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise; and

WHEREAS, when a city exercises its legislative discretion to provide refuse services to its residents itself, it assesses and collects a fee from residents to recover its costs for providing those services; and

WHEREAS, when a city exercises its legislative discretion to award a franchise to private profit-making entities to provide refuse services to residents, the private profit-making entities charges residents for those services from which it derives a profit, and

WHEREAS, the Rohnert Park Municipal Code implements Article XI, § 7 of the California Constitution and AB 939 in the City of Rohnert Park and protects public health and safety by authorizing the City Council to provide refuse service itself or to award one or more franchises, permits or licenses to provide that service; and

WHEREAS the City Council has concluded, in the exercise of its legislative discretion, that it is in the best interests of the City and its residents for the City to franchise temporary debris box and roll-off collection service to a private enterprise with the special skills, knowledge, facilities and other capabilities to ensure a high level of service and compliance with the existing statutory and regulatory requirements; and

WHEREAS, under AB 939 the City of Rohnert Park has the authority to award a nonexclusive, partially exclusive, or wholly exclusive franchise, contract, license, or permit for solid waste collection services pursuant to Public Resources Code section 40059;

WHEREAS; Rohnert Park Municipal Code sections 8.12.200 and 8.12.210 require that waste collection services be provided by contract and exclude any other haulers from providing waste hauling services within city limits during the contract period, thereby requiring all waste collection be provided pursuant to an exclusive right;

WHEREAS, the multiple-provider exclusive agreements with the City for Temporary Debris Box and Roll-Off Collection Services expired on October 31, 2011 and the City Council authorized the adoption of new, short-term multiple-provider exclusive franchise agreements for Temporary Debris Box and Roll-Off Collection Services with the then current providers, Rohnert Park Disposal, Inc. and Industrial Carting, which agreements will expire on December 31, 2011.

WHEREAS, on June 28, 2011 the City Council directed the City Manager to solicit requests for proposal for single-provider and multiple-provider temporary debris box services. On September 13, 2011 the City Council found certain proposals responsive and others to be non-responsive pursuant to Resolution 2011-88. Ultimately, on October 25, 2011, the City Council rejected all proposals pursuant to Resolution No. 2011-104 and directed the City Manager to negotiate agreements for temporary debris box and roll off collection services on the open market;

WHEREAS; the City Council has determined through an open market negotiation process for Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services that FRANCHISEE, and [INSERT OTHER HAULER'S NAME] by demonstrated experience, reputation and capacity, are qualified to provide for the Temporary Debris Box and Roll-off Collection Services within the corporate limits of the CITY, the transportation of such material to appropriate places for processing, recycling, composting and/or disposal; and City Council desires that FRANCHISEE be engaged to perform such services on the basis set forth in this Agreement; and

WHEREAS; the FRANCHISEE, through its negotiations with the CITY, has proposed and represented that it has the ability and capacity to provide for the Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services within the corporate limits of the CITY; the transportation of such material to appropriate places for processing, recycling, composting and/or disposal; and the processing of materials; and

WHEREAS, when a private profit-making entity is awarded a city franchise authorizing it to derive profit in providing refuse services to city residents for a fee, the award of this valuable franchise right provides for compensation to the city and its taxpayers through the imposition of a franchising fee on the private profit-making entity payable to the city; and

WHEREAS, the amount of the franchise fees provided for in this Agreement were freely negotiated between the franchisee and the City and the amount of such fees is not limited by AB 939 or any other provisions of law; and

WHEREAS, the California Constitution Articles XIII C and XIII D, commonly known as "Proposition 218", regulates a public agency's imposition of certain property related fees when the agency assess the resident for a fee for the provisions of services provided by the public agency; and

WHEREAS, the California Constitution does not restrict or regulate what a private profit-making entity may charge residents when those same services are provided by a private entity; and

WHEREAS, upon thorough analysis, the City and FRANCHISEE have determined that the rates and fees established by the Franchise Agreement are not subject to California Constitution Articles XIII C and XIII D because, among other reasons, the temporary debris box and roll-off

services are provided by a private corporation and not by City; FRANCHISEE independently establishes, charges and collects the customer rates for said services; the receipt of said services is voluntary and not required of any property within City; and any owner or occupant of property within City has the opportunity to avoid the services provided under the Agreement either through self-hauling or use of property in such a manner that refuse is not generated;

WHEREAS, this Agreement has been developed by and is satisfactory to the CITY and the FRANCHISEE,

Now, therefore, in consideration of the mutual covenants, conditions, and consideration contained herein, the CITY and FRANCHISEE hereby agree as hereinafter set forth:

ARTICLE 1. Definitions

For the purpose of this Collection Service Agreement, hereinafter referred to as "Agreement," the definitions contained in this Article shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Article, the definition of such word or phrase as contained in Division B6 of the CITY Municipal Code shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender.

1.01 AB 939. The California Integrated Waste Management Act (California Public Resources Code Sections 40000 et al.), as amended from time to time.

1.02 Agreement. The written document and all amendments thereto, between the CITY and the FRANCHISEE, governing the provision of Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services as provided herein.

1.03 Agreement Year. The first Agreement Year will be the six (6) month period from January 1st to June 30th, beginning January 1, 2012. Each subsequent Agreement Year will be the twelve (12) month period from July 1st to June 30th, beginning July 1, 2012.

1.04 Application. The Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Franchise Application submitted by FRANCHISEE to CITY to provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service.

1.05 Biohazardous or Biomedical Waste. Any waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are waste resulting from the operation of medical clinics, hospitals, and other facilities processing wastes which may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves.

1.06 Brown Goods. Electronic equipment such as stereos, televisions, VCR's, Personal Data Assistants (PDAs), telephones, and other similar items not containing cathode ray tubes (CRTs).

1.07 Business Service Unit. All retail, professional, wholesale and industrial facilities, and other commercial enterprises offering goods or services to the public.

1.08 CITY. The City of Rohnert Park, California.

1.09 City Representative. That person, or their designee, designated by the CITY to administer and monitor the provisions of this Agreement.

1.10 Collection. The process whereby Multiple Provider Exclusive Temporary Debris Box and Roll-offs materials are removed and transported to a processing facility that has appropriate State and local permits.

1.11 Commercial Service Unit. Business Service Units, and Mixed Use Dwellings that utilize a Garbage Cart or Bin for the accumulation and set-out of Solid Waste.

1.12 Composting. The controlled biological decomposition of Green Waste into a specific mixture of decayed organic matter used for fertilizing or soil conditioning.

1.13 Construction and Demolition Debris. Commonly used or discarded materials removed from construction, remodeling, repair, demolition, or renovation operations on any pavement, house, commercial building, or other structure, or from landscaping. Such materials include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastic pipe, roofing material, carpeting, concrete, wood, masonry, rocks, trees, remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, packaging and rubble resulting from Construction, remodeling, renovation, repair and demolition operations on pavements, houses, commercial buildings and other structures. With the exception of soil, dirt, concrete, and asphalt, Construction and Demolition Debris does not include Garbage and Exempt Waste.

1.14 County. Sonoma County, California.

1.15 Customer Rates. FRANCHISEE's charges to customers for the provision of temporary debris box and roll-off collection services.

1.16 Disposal Facility. The licensed and permitted facility designated by the FRANCHISEE for the disposal of Solid Waste and other materials as appropriate.

1.17 Diversion. Means activities that reduce or eliminate the amount of solid waste, garbage, green waste, and construction and demolition debris that is disposed of in a solid waste or other permitted landfill.

1.18 Dwelling Unit. Any individual living unit in a single family dwelling (SFD) or multi-family dwelling (MFD) structure or building intended for, or capable of being utilized for, residential living other than a Hotel or Motel.

1.19 E-Waste. Discarded electronics equipment such as cell phones, computers, monitors, televisions, and other items containing cathode ray tubes (CRTs).

1.20 Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste, Household Hazardous Waste, Sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, and those wastes under the control of the Nuclear Regulatory Commission.

1.21 Franchise. The exclusive right and privilege granted by this Agreement.

1.22 Franchise Fee. The voluntarily negotiated payment agreed upon by the City and FRANCHISEE in consideration of City's grant of the Franchise to FRANCHISEE and which, *inter alia*, is intended to compensate the City for the City's agreement to give up its right to provide temporary debris box and roll-off collection services and to award FRANCHISEE a franchise right to exclude other haulers and to act as an exclusive provider in the City for the term of the Agreement by occupying the City streets and rights of way in a manner that other entities may not.

1.23 FRANCHISEE. _____

1.24 Garbage. All putrescible waste which generally includes, but is not limited to, kitchen and table food waste, animal, vegetative, food or any other waste that is attendant with, or results from the storage, preparation, cooking or handling of food materials attributed to normal activities of a Service Unit. Garbage must be generated by and at the Service Unit wherein the Garbage is collected. Garbage does not include those items defined herein as Green Waste or Exempt Waste.

1.25 Green Waste. Any vegetative matter resulting from normal yard and landscaping maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in diameter and fits in the Green Waste Cart utilized by the Service Recipient. Green Waste includes plant debris, such as Palm, Yucca and Cactus, grass clippings, leaves, pruning, weeds, branches, brush, Holiday Trees, and other forms of vegetative waste and must be generated by and at the Service Unit wherein the Green Waste is collected. Green Waste does not include items herein defined as Exempt Waste.

1.26 Green Waste Processing Facility. Any facility selected by the FRANCHISEE that is designed, operated and legally permitted for the purpose of receiving and processing Green Waste, Vegetative Food Waste and Large Green Waste.

1.27 Hazardous Waste. Any material which is defined as a hazardous waste under California or United States law or any regulations promulgated pursuant to such law, as such, law or regulations may be amended from time to time.

1.28 Household Hazardous Waste. Any Hazardous Waste generated at an SFD or MFD Service Unit.

1.29 Large Green Waste. Oversized Green Waste such as tree trunks and branches with a diameter of not less than six (6) inches and not more than two (2) feet and a length of not more than five (5) feet in its longest dimension, which are attributed to the normal activities of a SFD, MFD, or City Service Unit. Large Green Waste must be generated by and at the Service Unit wherein the Large Green Waste is collected.

1.30 Materials Recovery Facility (MRF). Any facility, selected by the FRANCHISEE and approved by the CITY, or specifically designated by the CITY, designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Materials for sale and/or recycling.

1.31 MFD Service Unit. Any combination of Dwelling Units in the Service Area utilizing a common Garbage Bin for the accumulation and set-out of Solid Waste.

1.32 Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service. *Collection utilizing 1 – 8 cubic yard bins serviced by scout trucks (not front-end or rear loaders), or 10 - 40 cubic yard containers serviced by roll-off vehicles that are provided to Service Units for collection of non-putrescible waste and Construction and Debris Materials by a person or company that holds a valid Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Franchise from the CITY and the delivery of that material to an appropriate facility. Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service does not include Collection of Garbage generated from the on-going activities of a Service Unit, or collection from any Service Unit that receives Permanent Debris Box and Roll-off Service from Rohnert Park Disposal, Inc.*

1.33 Permanent Debris Box and Roll-off Service. Permanent Debris Box and Roll-off Service refers to those Service Units receiving collection service by Rohnert Park Disposal, Inc. (the CITY'S exclusive franchised waste hauler) that receive regularly scheduled cart, bin, debris boxes, roll-off, or compactor collection service. Permanent Debris Box and Roll-off Service also include Service Units serviced by bins, debris boxes or roll-offs that have been placed and are pulled by Rohnert Park Disposal, Inc. on scheduled or on-call basis as part of the daily, normal activities of the Service Unit receiving the service.

1.34 Processing Facility. The licensed and permitted facility that meets local zoning and land use requirements that has been designated by the FRANCHISEE for the processing of

recyclable materials, green waste, solid waste material, Construction and Demolition Debris, and other materials as appropriate.

1.35 Recyclable Materials. Those materials which are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste. Recyclable Materials include those materials defined by the CITY, including newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; scrap and cast aluminum (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); steel including "tin" cans, aerosol cans (empty, non-toxic products) and small scrap (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; plastic bottles (#1-7); aluminum foil and pans; dry cell household batteries when contained in a sealed heavy-duty plastic bag; and those materials added by the FRANCHISEE from time to time.

1.36 Roll-off Container. A metal container that is normally loaded onto a motor vehicle and transported to an appropriate facility.

1.37 Rubbish. All refuse, accumulation of paper, excelsior, rags, wooden boxes and containers, sweep-ups and all other accumulations of a nature other than Garbage and Green Waste, resulting from the normal activities of a Service Unit. Rubbish must be generated by and at the Service Unit wherein the Rubbish is collected. Rubbish does not include items herein defined as Exempt Waste.

1.38 Service Area. That area within the corporate limits of the City of Rohnert Park, California.

1.39 Service Recipient. An individual or company receiving Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service.

1.40 Service Unit. SFD Service Units, MFD Service Units, and Commercial Service Units.

1.41 SFD Service Unit. Any Dwelling Unit in the Service Area utilizing a Garbage Cart, or any combination of Dwelling Units sharing Garbage Carts, for the accumulation and set out of Solid Waste.

1.42 Sludge. The accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects.

1.43 Solid Waste. Garbage and Rubbish resulting from the normal activities of a Service Unit. Solid Waste must be generated by and at the Service Unit wherein the Solid Waste is collected and does not include items defined herein as Exempt Waste.

1.44 Source Separated Recyclable Materials. Recyclable Materials that are separated from all other Solid Waste, Rubbish, or Green Waste at the Service Unit prior to collection by the FRANCHISEE.

1.45 "SCWMA" means the Sonoma County Waste Management Agency.

1.46 Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Franchise. The Franchise granted by the CITY to the FRANCHISEE to provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service.

1.47 Transfer Facility. The licensed and permitted facility designated by the FRANCHISEE for transfer of Construction and Demolition Debris, and other materials as appropriate prior to deliver to a Processing Facility.

1.48 White Goods. Discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.

1.49 Work Day. Any day, Monday through Saturday that is not a holiday as set forth in Article 3.09 of this Agreement.

ARTICLE 2. Term of Agreement

2.01 Term. The term of this Agreement shall be for a four (4) year and six (6) month period beginning January 1, 2012 and terminating on June 30, 2016.

2.02 Extensions. At the sole discretion of the CITY, the CITY may extend the term of this Agreement in up to twelve (12) month increments for a maximum of four (4) years.

2.02.1 Beginning on or about January 15, 2015, and each January 15th thereafter, provided the City Manager determines that the FRANCHISEE has met all the Diversion Standards set forth in Article 5 and the Record Keeping and Reporting Requirements set forth in Article 8, the CITY may offer the FRANCHISEE in writing a twelve (12) month extension of this Agreement. FRANCHISEE shall provide written notice to the CITY as to whether FRANCHISEE accepts or rejects the CITY'S offer within twenty (20) Work Days of the date of the offer. If FRANCHISEE fails to provide such notice to the CITY within twenty (20) Work Days, the CITY's offer of an extension shall be deemed withdrawn.

2.03 Maximum Term. The maximum term of the Agreement, including all extensions, shall not extend beyond June 30, 2020.

ARTICLE 3. Services Provided by the FRANCHISEE

3.01 Grant of Multiple Provider Exclusive Agreement. Except as otherwise provided in this Agreement, the FRANCHISEE is herein granted an agreement to provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service within the Service Area. No other solid waste or recycling service shall be provided by the FRANCHISEE.

3.02 Limitations to Scope of Multiple Provider Exclusive Agreement.

3.02.1 No Collection of Garbage, Green Waste or Recycling carts or bins from any Service Unit covered under the Franchise Agreement between the City of Rohnert Park and Rohnert Park Disposal, Inc.

3.02.2 Large Items removed from a premises by a property cleanup or maintenance company as an incidental part of the total cleanup or maintenance service offered by the company rather than as a hauling service;

3.02.3 Animal waste and remains from slaughterhouse or butcher shops for use as tallow;

3.02.4 By-products of sewage treatment, including Sludge, ash, grit and screenings;

3.02.5 Hazardous Waste regardless of its source; and

3.02.6 Residential Waste, Commercial Waste, City Waste, or Recyclable Materials that are removed from a premise by a company through the performance of a service that the FRANCHISEE has elected not to provide.

3.03 FRANCHISEE acknowledges and agrees that the CITY may permit other persons besides the FRANCHISEE to collect any and all types of materials excluded from the scope of this Agreement, as set forth above, without seeking or obtaining approval of FRANCHISEE. If FRANCHISEE can produce evidence that other persons are servicing Collection containers or are Collecting Solid Waste, Recyclable Materials, Large Items and/or Green Waste in a manner that is not consistent with the CITY'S Municipal Code or this Agreement, it shall report the location, the name and phone number of the person or company to the CITY along with FRANCHISEE's evidence of the violation of the exclusiveness of this Agreement and CITY shall take appropriate action to enforce the Code and this Agreement.

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

3.04 Service Standards. FRANCHISEE shall perform all Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services under this Agreement in a thorough and professional manner. Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services described in this Agreement shall be performed regardless of weather conditions or difficulty of Collection.

3.05 Hours and Days of Collection.

3.05.1 Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service shall be provided at SFD and MFD Service Units, commencing no earlier than 6:30 a.m. and terminating no later than 6:00 p.m. and in commercial areas, commencing between the hours of 4:00 a.m. and terminating no later than 6:00 p.m. (except for holiday service as set forth in Article 3.09 of this Agreement in which case normal Collection hours may be utilized). The hours, days, or both of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the City Representative.

3.05.2 The CITY may direct FRANCHISEE to reduce the collection hours in areas around schools to 3:00 p.m. and in high traffic areas during peak commute hours. The CITY may direct FRANCHISEE to reduce the collection hours in areas around schools to 3:00 p.m. and in high traffic areas during peak commute hours. When the CITY is conducting road overlay or slurry projects, the CITY reserves the right to temporarily redirect or restrict FRANCHISEE from collection in the affected areas or temporarily change the collection hours if needed. The hours of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the City Representative. In the event that

Commercial Service Units are within 100 feet of SFD Service Units, or the CITY or the FRANCHISEE receives repeated noise complaints from residents, the Hours of collection for Commercial Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services shall be the same as SFD Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services as specified in Section 3.05.2 herein.

3.06 Manner of Collection. The FRANCHISEE shall provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services with as little disturbance as possible and shall leave any debris box in an upright position at the same point it was collected without obstructing alleys, roadways, driveways, sidewalks, or mail boxes.

3.07 Containers.

3.07.1 Ownership of Roll-off Containers. Ownership of Roll-off Containers distributed by the FRANCHISEE shall rest with the FRANCHISEE except in the case of the termination of the Agreement prior to the expiration of the initial term or optional extension term due to the default of the FRANCHISEE. Under such circumstances, the CITY shall have the right to take possession of the containers and shall retain such possession until satisfactory arrangements can be made to provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services using other equipment. Such time of possession shall not be limited and regardless of the time of possession, there shall be no monies owing to the FRANCHISEE from the CITY for the use of the equipment. Upon the receipt of written notice from the CITY, FRANCHISEE shall submit to the City Representative an inventory of containers, including their locations.

3.07.2 Inspection and Cleaning. FRANCHISEE shall inspect all debris boxes and containers prior to delivery. Debris boxes shall be in safe, sanitary, and operable condition with working doors, hinges, locking devices, safety devices, floors and side walls without holes, free of material or material build up, and without broken wheels, welds, or ladders that could cause street damage or harm to users. All containers will have the name of the FRANCHISEE and a local toll free phone number visible as reviewed and approved by the City.

3.07.3 FRANCHISEE shall remove any and all graffiti within 24 hours of being identified by the FRANCHISEE or City Representative. FRANCHISEE shall not deliver a container without FRANCHISEE information or with any graffiti visible on the container.

3.08 Labor and Equipment. FRANCHISEE shall provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of FRANCHISEE's obligations under this Agreement. FRANCHISEE shall at all times have sufficient backup equipment and labor to fulfill FRANCHISEE's obligations under this Agreement. No compensation for FRANCHISEE's services or for FRANCHISEE's supply of labor, equipment, tools, facilities or supervision shall be provided or paid to FRANCHISEE by CITY or by any Service Recipient except as expressly provided by this Agreement.

3.09 Holiday Service. The CITY observes January 1st, Independence Day, Labor Day, Thanksgiving Day, and December 25th as legal holidays. FRANCHISEE shall not provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services on the designated holidays. In any week in which one of these holidays falls on a Work Day, SFD Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services for the holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week with normally scheduled Friday Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services being performed on Saturday.

3.10 Transfer, Recycling, Processing and Disposal.

3.10.1 Transfer, Recycling, Processing and Disposal Facilities. FRANCHISEE shall select the transfer, recycling, processing and disposal facilities. Material collected under this Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service Agreement shall be delivered to facilities that comply with the California Department of Resources Recycling and Recovery (CalRecycle) regulations under Title 14, Chapter 3, Minimum Standards for Solid Waste Handling and Disposal (Article 5.9 – Sections 17380-17386). Except as set forth below, all material collected as a result of performing Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services must be transported to, and delivered on the same day as collection, to a properly permitted recycling or processing facility. All material collected will be weighed and documented through a weight ticket using certified scales located at the receiving facility. In the event the recycling or processing or disposal facility is closed on a Work Day, the FRANCHISEE shall transport the material at such other legally permitted facility. FRANCHISEE must assure that all recycling and processing facilities are properly permitted to receive material collected under the Multiple Provider Exclusive Temporary Debris Box and Roll-Off Services Agreement. Failure to comply with this provision shall result in the levy of Liquidated Damages as specified in Article 11 of this Agreement and may result in the FRANCHISEE being in default under this Agreement. FRANCHISEE may deliver Source Separated Recyclables to a recycling facility that is exempt from Title 14, Chapter 3, Minimum Standards for Solid Waste Handling and Disposal (Article 5.9 – Sections 17380-17386), provided that such an exempt recycling facility is approved to accept Source Separated Recyclables, and is fully licensed and permitted and meets local land use and zoning requirements.

3.10.2 FRANCHISEE must assure that all transfer, recycling, processing or disposal facilities selected by FRANCHISEE shall possess all existing permits and approvals by local enforcement agencies, planning and land use departments for the transfer, recycling, processing or disposal site to be in full compliance with all regulatory agencies to conduct all operations at the approved location. FRANCHISEE shall, upon written request from the CITY, shall arrange for the facilities selected by the FRANCHISEE, provide copies of facility permits, notices of violations, inspection areas or concerns, or administrative action to correct deficiencies related to the operation. Failure to provide facility information shall result in the levy of Liquidated Damages as specified in Article 11 of this Agreement and may result in the FRANCHISEE being in default under this Agreement.

3.10.3 Processing and Disposal. FRANCHISEE shall process and dispose of all material collected from Service Units pursuant to this Agreement in accordance with the following hierarchy:

- Reuse
- Disassemble for reuse or recycling
- Recycle
- Transformation for biomass energy
- Disposal

3.10.4 FRANCHISEE shall not landfill such collected material unless the material cannot be reused or recycled.

3.11 Inspections. The CITY shall have the right to inspect the FRANCHISEE's facilities or collection vehicles and their contents at any time while operating inside or outside the CITY.

3.12 Spillage and Litter. The FRANCHISEE shall not litter premises in the process of providing Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services or while its vehicles are on the road. The FRANCHISEE shall transport all materials Collected under the terms of this Agreement in such a manner as to prevent the spilling or blowing of such materials from the FRANCHISEE's vehicle. The FRANCHISEE shall exercise all reasonable care and diligence in providing Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services so as to prevent spilling or dropping of and material and shall immediately, at the time of occurrence, clean up such spilled or dropped materials. All temporary containers and debris boxes will be tarped or covered transporting on CITY streets.

3.12.1 The FRANCHISEE shall not be responsible for cleaning up sanitary conditions caused by the carelessness of the Service Recipient; however, the FRANCHISEE shall clean up any material or residue that are spilled or scattered by the FRANCHISEE or its employees.

3.12.2 Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the FRANCHISEE's operations or equipment repair shall be covered immediately with an absorptive material and removed from the street surface. When necessary, FRANCHISEE shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. To facilitate such cleanup, FRANCHISEE's vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

3.12.3 The above paragraphs notwithstanding, FRANCHISEE shall clean up any spillage or litter caused by FRANCHISEE within two (2) hours upon notice from the CITY.

3.12.4 In the event where damage to CITY streets is caused by a hydraulic oil spill, FRANCHISEE shall be responsible for all repairs to return the street to the same condition prior to the spill. FRANCHISEE shall also be responsible for all clean-up activities related to the spill. Repairs and clean-up shall be performed in a manner satisfactory to the City Representative and at no cost to the CITY.

3.12.5 Ownership of Materials.

3.12.6 Title to Multiple Provider Exclusive Temporary Debris Box and Roll-off material shall pass to FRANCHISEE at such time as said materials are placed in the FRANCHISEE's Collection vehicle.

3.12.7 Title to material Collected as part of the City Requested Clean-up Service or Special Collection Service shall pass to FRANCHISEE at the time the material is placed in the Roll-off Container or other Collection vehicle or container approved for use at the event.

3.13 Hazardous Waste.

3.13.1 Under no circumstances shall FRANCHISEE's employees knowingly collect Hazardous Waste, or remove unsafe or poorly containerized Hazardous Waste, from a Collection container. If FRANCHISEE determines that material placed in any container for Collection is Hazardous Waste, or other material that may not legally be accepted at the Disposal Facility or one of the processing facilities, or presents a hazard to FRANCHISEE's employees, the FRANCHISEE shall have the right to refuse to accept such material. The

generator shall be contacted by the FRANCHISEE and requested to arrange for proper disposal service. If the generator cannot be reached immediately, the FRANCHISEE shall, before leaving the premises, leave a Non-Collection Notice, which indicates the reason for refusing to collect the material.

3.13.2 If Hazardous Waste is found in a Collection container that poses an imminent danger to people or property, the FRANCHISEE shall immediately notify the Rohnert Park Police Department. The FRANCHISEE shall immediately notify the CITY of any Hazardous Waste that has been identified.

3.13.3 If Hazardous Waste is identified at the time of delivery to the one of the transfer, recycling, processing or disposal facilities and the generator cannot be identified, FRANCHISEE shall be solely responsible for handling and arranging transport and disposition of the Hazardous Waste.

3.14 Regulations and Record Keeping. FRANCHISEE shall comply with emergency notification procedures required by applicable laws and regulatory requirements. All records required by regulations shall be maintained at the FRANCHISEE's facility. These records shall include waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

ARTICLE 4. Charges and Rates

4.01 Charges and Rates for Temporary Debris Box and Roll-off Collection Services. In consideration of and as compensation for the performance of temporary debris box and roll-off collection services, FRANCHISEE shall, in its sole discretion, establish, charge and collect Customer Rates. The Customer Rates shall be the full, entire and complete compensation due to FRANCHISEE under this Agreement.

4.02 Billing and Collection. The FRANCHISEE shall be responsible for the billing and collection of payments for all Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services. City shall not be liable for and FRANCHISEE shall release City from paying for or collecting any Customer's bills or charges. City shall not set or approve Contractor's Customer Rates.

4.02.1 Production of Invoices. The FRANCHISEE shall produce an invoice, in a form and format that is approved by the City Representative, for services received under this Agreement. The FRANCHISEE's invoice shall be remitted to the Service Recipient and will include at a minimum; date of service, material collected, weight collected, and total amount charged.

4.02.2 Methods of Payment. FRANCHISEE shall provide the means for customers to pay bills through the following methods: cash, checks, credit cards, internet payment service or automatic withdrawal from bank account.

4.03 FRANCHISEE's Payments to CITY. FRANCHISEE shall make payment to the CITY of such fees as may be specified in this Article 4.07.

4.03.1 Franchise Fee. To reimburse City for costs associated with administration of the Agreement, and in consideration of the franchise granted to FRANCHISEE by the Agreement, FRANCHISEE shall make the following Franchise Fee payments to the City;

4.03.1.1 Initial Franchise Fee Payments. Within thirty (30) days after award of a franchise under this Agreement, FRANCHISEE shall make a payment ("Initial

Franchise Fee Payment”) to CITY of Fifty Thousand Dollars (\$50,000). The Initial Franchise Fee Payment is in addition to, and shall not be treated as a prepayment of, the Monthly Franchise Payments described below.

4.03.1.2 Monthly Franchise Fee Payments. In addition to the Initial Franchise Fee Payment described in subsection 4.03.1.1 above, FRANCHISEE shall pay CITY a monthly Franchise Fee payment (“Monthly Franchise Fee Payment”) equal to fifteen percent (15%) of all gross revenue collected under the terms of the Agreement. Payment to CITY shall be due, on the fifteenth (15th) day of the month following the month the revenues are collected. Each such payment shall be accompanied by an accounting, which sets forth FRANCHISEE’s gross revenues collected during the preceding month. Gross revenue shall specifically include revenue received by the FRANCHISEE from any entity, including Federal, State, County, or other local facilities within the Service Area for the provision of Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services by the FRANCHISEE.

4.03.2 Out of County Disposal Fee. If the FRANCHISEE elects not to use Sonoma County’s solid waste facilities for transfer, processing or disposal of Construction and Demolition Debris Collected by the FRANCHISEE in accordance with this Agreement, FRANCHISEE shall pay any and all fees imposed by Sonoma County or the Sonoma County Waste Management Agency levied against the CITY for such non-use of the Sonoma County solid waste facilities. Any and all payments due by FRANCHISEE under this subsection shall be paid within thirty (30) days notice by the CITY.

4.03.3 Proposal Development Fee. The City requires the FRANCHISEE to reimburse the City a total of **Twenty-Five Thousand Dollars (\$25,000)** for the cost of this procurement. The reimbursement is a one-time payment due within 30 days after execution of the Multiple Provider Exclusive Agreement award. In addition, City requires the FRANCHISEE to reimburse the City for the costs of conducting environmental review pursuant to the California Environmental Quality Act (“CEQA”), which cost shall include consultants and attorneys fees, provided that such reimbursement shall be shared on a pro-rata basis between City, FRANCHISEE and [INSERT NAME OF OTHER HAULER].

4.04 No acceptance by CITY of any payment shall be construed as an accord that the amount is in-fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim CITY may have against FRANCHISEE for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recompilation by CITY. If, after the audit, such recompilation indicates an underpayment FRANCHISEE shall pay to CITY the amount of the underpayment and shall reimburse CITY for all reasonable costs and expenses incurred in connection with the audit and recompilation within ten (10) Work Days of receipt of written notice from CITY that such is the case. If, after audit, such recompilation indicates an overpayment, CITY shall notify the FRANCHISEE in writing of the amount of the overpayment, less costs and expenses incurred in connection with

the audit and recompilation. FRANCHISEE may offset the amounts next due following receipt of such notice by the amount specified therein.

ARTICLE 5. Diversion Standards

5.01 Tonnage Data. On or before April 15, 2012 and quarterly thereafter during the term of this Agreement, FRANCHISEE shall deliver to CITY a quarterly report as specified in Section 8.02.1 listing the actual tonnage delivered by the FRANCHISEE to the Recycling, Processing, or Transformation Facility (for biomass energy only), the tonnage of material discarded or landfilled including residue, and the tonnage of material recycled, composted, or transformed by material type (metal, wood, concrete, green waste, etc.) for the preceding quarter.

5.02 Minimum Diversion Standard. The CITY requires the FRANCHISEE to achieve the guaranteed diversion rate with a minimum annual diversion rate of seventy percent (70%) for Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services. The annual diversion rate will be calculated as "the tons of materials Collected by FRANCHISEE from the provision of Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services that are sold or delivered to a processing, transformation facility (for biomass energy only), recycler or re-user, net of all residue, as required by this Agreement, divided by the total tons of materials Collected under this Agreement by FRANCHISEE in each Calendar Year."

5.02.1 Failure to Meet Minimum Diversion Standard. FRANCHISEE's failure to meet the Minimum Diversion Standard set forth above in Article 5.02 will result in immediate termination of this Agreement.

5.03 Guaranteed Diversion Standard. The Guaranteed Diversion Standard will be the percentage that the FRANCHISEE proposed in the response to the RFP on the Franchise Application. The annual Guaranteed Diversion Standard will be calculated as "the tons of materials Collected by FRANCHISEE from the provision of Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services that are sold or delivered to a processing facility transformation facility (for biomass energy only), recycler or re-user, net of all residue, as required by this Agreement, divided by the total tons of materials Collected under this Agreement by FRANCHISEE in each Calendar Year."

Guaranteed Diversion Standard 70 %
FRANCHISEE Initial Here AK

5.03.1 Failure to Meet Guaranteed Diversion Standard. FRANCHISEE's failure to meet the Guaranteed Diversion Standard set forth above in Article 5.02 will result in the FRANCHISEE being required to pay a Franchise Fee of 35 percent of gross revenue for all Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services that are provided beginning on January 1st of the year following the year that the FRANCHISEE failed to meet the Guaranteed Diversion Standard. The Franchise Fee of 35 percent of gross revenue will remain in effect until the FRANCHISEE provides two consecutive quarterly reports that demonstrate compliance with the Guaranteed Diversion Standard. In addition, for failure to meet the Guaranteed Diversion Standard, FRANCHISEE will also have to pay the CITY the Administrative Fee's as specified in Article 11, and FRANCHISEE will not be eligible to receive term extensions as specified in Article 2.

ARTICLE 6. Collection Equipment

6.01 Equipment Specifications.

6.01.1 General Provisions. All equipment used by FRANCHISEE in the performance of services under this Agreement shall be of a high quality. The vehicles shall be designed and operated so as to prevent collected materials from escaping from the vehicles. All collection boxes or containers while driving on city streets shall be tarped, covered, or enclosed with screening material to prevent collected materials from leaking, blowing, or falling from the vehicles. All trucks and containers shall be watertight and shall be operated so that liquids do not spill during Collection or in transit.

6.01.2 Clean Air Vehicles. During the term of this Agreement, to the extent required by law, FRANCHISEE shall provide its Collection vehicles to be in full compliance with local, State and federal clean air requirements that were adopted or proposed to be adopted, including, but not limited to, the California Air Resources Board Heavy Duty Engine Standards as currently proposed to be contained in CCR Title 13, Section 2020 et seq; the Federal EPA's Highway Diesel Fuel Sulfur regulations and any other applicable air pollution control laws.

6.01.3 Safety Markings. All Collection equipment used by FRANCHISEE shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and warning flags. All such safety markings shall be subject to the approval of the CITY and shall be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time.

6.01.4 Vehicle Signage and Painting. Collection vehicles, except reserve equipment used on a temporary basis, shall be painted and numbered consecutively without repetition and shall have the FRANCHISEE's name, FRANCHISEE's customer service telephone number, and the number of the vehicle painted in letters of contrasting color as reviewed and approved by the City. No advertising shall be permitted other than the name of the FRANCHISEE. FRANCHISEE shall repaint or discontinue the use of a vehicle at the request of the City Representative to maintain a positive public image as reasonably determined by the City Representative.

6.01.5 Container Signage, Painting, and Cleaning. Temporary Boxes and Containers, shall be painted and numbered consecutively without repetition and shall have the FRANCHISEE's name, FRANCHISEE's customer service telephone number, and the number of the vehicle painted in letters of contrasting color, as reviewed and approved by the City. No advertising shall be permitted other than the name of the FRANCHISEE. Such containers as are provided by the FRANCHISEE shall be steam cleaned by the FRANCHISEE as frequently as necessary so as to maintain them in a sanitary condition. FRANCHISEE shall repaint or discontinue the use of a container at the request of the City Representative to maintain a positive public image as reasonably determined by the City Representative.

6.01.6 Vehicle Noise Level. All Collection operations shall be conducted as quietly as possible and must comply with U.S. EPA noise emission regulations currently codified at 40 CFR Part 205, and other applicable State, County and CITY noise control regulations.

6.01.7 Collection Vehicle Size Limitations. Debris Box collection trucks must not exceed a maximum GVWR of 53,000 lbs.

6.02 Vehicle Registration, Licensing and Inspection. On or before January 1, 2012, or as soon as practical, and on or before January 1st annually thereafter during the term of this

Agreement, FRANCHISEE shall submit documentation to the City Representative to verify that each of the FRANCHISEE's Collection vehicles are in compliance with all registration, licensing and inspection requirements of the California Highway Patrol, the California Department of Motor Vehicles, and any other applicable laws or regulations. FRANCHISEE shall not use any vehicle to perform Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services that is not in compliance with applicable registration, licensing, and inspection requirements.

6.03 Equipment Maintenance. FRANCHISEE shall maintain Collection equipment in a clean condition and in good repair at all times. All parts and systems of the Collection equipment shall operate properly and be maintained in a condition satisfactory to CITY. FRANCHISEE shall wash all Collection vehicles at least once a week.

6.04 Maintenance Log. FRANCHISEE shall maintain a maintenance log for all Collection vehicles. The log shall at all times be accessible to CITY by physical inspection upon request of City Representative, and shall show, at a minimum, each vehicles' FRANCHISEE assigned identification number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance of any additional maintenance, and description of additional maintenance performed.

6.04.1 Equipment Inventory. On or before January 1, 2012, or as soon as practical, and on or before January 1st annually thereafter during the term of this Agreement, FRANCHISEE shall provide to CITY an inventory of Collection vehicles and major equipment used by FRANCHISEE for Collection or transportation and performance of services under this Agreement. The inventory shall indicate each Collection vehicle by FRANCHISEE assigned identification number, DMV license number, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition, the decibel rating and the maintenance status. FRANCHISEE shall submit to the City Representative, either by Fax or e-mail, an updated inventory annually to the CITY or more often at the request of the City Representative.

6.04.2 Reserve Equipment. The FRANCHISEE shall have available to it, at all times, reserve Collection equipment which can be put into service and operation within one (1) hour of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the FRANCHISEE to perform the contractual duties.

ARTICLE 7. FRANCHISEE'S Office

7.01 FRANCHISEE'S Office. The FRANCHISEE shall maintain an office that provides toll-free telephone access to residents and businesses of the CITY and is staffed by trained and experienced Customer Service Representatives (CSR's). Such office shall be equipped with sufficient telephones that all Collection Service related calls received during normal business hours are answered by an employee within five (5) rings, and shall have responsible persons in charge during Collection hours and shall be open during such normal business hours, 8:00 a.m. to 6:00 p.m. on all Work Days. The FRANCHISEE shall provide either a telephone answering service or mechanical device to receive Service Recipient inquiries during those times when the office is closed. Calls received after normal business hours shall be addressed the next Work Day morning.

7.01.1 Emergency Contact. The FRANCHISEE shall provide the City Representative with an emergency phone number where the FRANCHISEE can be reached outside of the required office hours.

7.01.2 Multilingual/TDD Service. FRANCHISEE shall at all times maintain the capability of responding to telephone calls in English and one (1) other language (Spanish) as the CITY may direct. FRANCHISEE shall at all times maintain the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

7.01.3 Service Recipient Calls. During office hours, FRANCHISEE shall maintain a telephone answering system capable of accepting at least five (5) incoming calls at one (1) time. FRANCHISEE shall record all calls including any inquiries, service requests, and complaints into a customer service log.

7.01.4 In Coming Calls. All incoming calls will be answered within five (5) rings. Any call "on-hold" in excess of one and one-half (1.5) minutes shall have the option to remain "on-hold" or to be switched to a message center where Service Recipient can leave a message. FRANCHISEE's customer service representative shall return Service Recipient calls.

ARTICLE 8. Record Keeping & Reporting Requirements

8.01 Record Keeping.

8.01.1 Accounting Records. FRANCHISEE shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services provided under this Agreement, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit, copy, and inspection. FRANCHISEE shall report gross revenues received from provision of the Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services. FRANCHISEE shall maintain and preserve all cash, billing and disposal records for a period of not less than five (5) years following the close of each of the FRANCHISEE's fiscal years.

8.01.2 Agreement Materials Records. FRANCHISEE shall maintain records of the quantities of City Waste Collected and disposed under the terms of this Agreement, and (ii) Recyclable Materials, by type, Collected, processed, sold, donated or given for no compensation, and residue disposed.

8.01.3 Other Records. FRANCHISEE shall maintain all other records reasonably related to provision of Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services, whether or not specified in this Article 8 or elsewhere in the Agreement.

8.02 Reporting Requirements. Quarterly reports shall be submitted no later than thirty (30) calendar days after the end of the reporting quarter and annual reports shall be submitted no later than thirty (30) calendar days after the end of each Agreement Year. Quarterly and annual reports shall be submitted in hard copy, and shall be provided electronically via e-mail, or a compact disc using software acceptable to the CITY.

8.02.1 Quarterly Reports. Quarterly reports to the CITY shall include:

8.02.1.1 Material Collected Data. A listing of the tonnage collected from all Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services, diverted and disposed by the FRANCHISEE at the Processing, Recycling, Transformation (for biomass energy only), and Disposal Facility for the preceding quarter.

8.02.1.2 Recycling Data. The number of gross tons Collected, processed, and sold or delivered to a recycler (other than processing facility) by material type for the preceding quarter. Indicate, by material type (and grade where appropriate), quarterly

total of Recyclable materials processed and sold including facility name and location. Indicate any quantities, by material type, donated or otherwise disbursed without compensation. Indicate quarterly totals and location for Residue disposed.

8.02.1.3 Operational Problems and Actions Taken. Indicate instances of property damage or injuries, and any loads rejected, reason for rejection and disposition of load after rejection.

8.02.2 Annual Reports. The annual report to the CITY shall include all quarterly reports in Articles 8.2.1 through 8.2.1.3 summarized by quarter and totaled for the year. The FRANCHISEE shall include a historical comparison of the last Agreement Year and prior years with a brief explanation on any increases or decreases in tonnage and diversion figures of all Agreement Years. Annual reports shall be submitted to CITY each Agreement Year by March 15th, beginning on March 15, 2013.

8.02.2.1 A summary of the prior year's gross revenue received and Franchise Fees paid.

8.02.2.2 Updated complete inventory of collection and major processing equipment including stationary, rolling stock and collection containers by type and size.

8.03 Additional Reporting. The FRANCHISEE shall furnish the CITY with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period.

ARTICLE 9. Nondiscrimination

9.01 Nondiscrimination. In the performance of all work and services under this Agreement, FRANCHISEE shall not discriminate against any person on the basis of such person's race, sex, color, national origin, religion, marital status, age, disability, or sexual orientation. FRANCHISEE shall comply with all applicable local, state, and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

ARTICLE 10. Service Inquiries and Complaints

10.01 FRANCHISEE'S Customer Service. All service inquiries and complaints shall be directed to the FRANCHISEE. A representative of the FRANCHISEE shall be available to receive the complaints during normal business hours. All service complaints will be handled by the FRANCHISEE in a prompt and efficient manner. In the case of a dispute between the FRANCHISEE and a Service Recipient, the matter will be reviewed and a decision made by the City Representative.

10.01.1 The FRANCHISEE will utilize the Customer Service Log to maintain a record of all inquiries and complaints in a manner prescribed by the CITY.

ARTICLE 11. Quality of Performance of FRANCHISEE

11.01 Intent. FRANCHISEE acknowledges and agrees that one of CITY'S primary goals in entering into this Agreement is to ensure that the Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services are of the highest caliber, that Service

under this Agreement. FRANCHISEE's performance of work or services shall include performance by FRANCHISEE's employees, agents, representatives and subcontractors.

14.01.1 Minimum Scope of Insurance. Insurance coverage shall be at least this broad:

14.01.1.1 Insurance Services Office Form No. G0 0002 or, if approved by CITY, its equivalent, covering Comprehensive General Liability and Insurance Services Office Form No. GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

14.01.1.2 Insurance Services Office Form No. CA 0001 covering Automobile Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage shall also include code 8, "hired autos" and code 9 "non-owned autos."

14.01.2 Workers' Compensation Insurance as required by the California Labor Code and Employers Liability Insurance and/or Errors and Omissions.

14.01.3 Hazardous Waste and Environmental Impairment Liability Insurance.

14.01.4 Employee Blanket Fidelity Bond.

14.02 Minimum Limits of Insurance. FRANCHISEE shall maintain insurance limits no less than:

14.02.1 Comprehensive General Liability: **Ten Million Dollars (\$10,000,000.00)** combined single limit per occurrence for bodily injury, personal injury, and property damage.

14.02.2 Automobile Liability: **Ten Million Dollars (\$10,000,000.00)** combined single limit per accident for bodily injury and property damage.

14.02.3 Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of **Three Million Dollars (\$3,000,000.00)** per accident.

14.02.4 Hazardous Waste and Environmental Impairment Liability: **Three Million Dollars (\$3,000,000.00) each occurrence/Ten Million Dollars (\$10,000,000.00)** policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available without involvement of CITY, automatically broaden in its form of coverage to include legislated changes in the definition of waste material and/or irritants, contaminants or pollutants. This policy shall stipulate this insurance is primary and no other insurance carried by CITY will be called upon to contribute to the loss suffered by the FRANCHISEE hereunder and waive subrogation against the CITY and other additional insured's.

14.03 Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to, and approved by, CITY.

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

14.04.1 The CITY, its officers, employees, agents and volunteers are to be covered as additional insured's with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of FRANCHISEE; products and completed operations of FRANCHISEE; and with respect to liability arising from work or operations performed by or on

behalf of the FRANCHISEE including material parts or equipment furnished in connection with such work or operations; Pollution and/or Asbestos Pollution.

14.04.2 FRANCHISEE's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the FRANCHISEE's insurance and shall not contribute with it.

14.04.3 Each insurance policy required by this clause shall be occurrence-based, or an alternative form as approved by the CITY and shall be endorsed to state that coverage shall not be cancelled by the Insurer except after thirty (30) days prior written notice has been given to the CITY.

14.04.4 The FRANCHISEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

14.04.5 The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier act endorsement (MCS-90) TL 1005, TL 1007 and /or other endorsements required by federal or state authorities.

14.04.6 Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the CITY, its officers, officials, employees, and volunteers for losses arising from work performed by the Grantee for the CITY.

14.04.7 All Coverage's. Each insurance policy required by this clause shall be occurrence-based or an alternate form as approved by the CITY and endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

14.04.7.1 Any failure to comply with reporting provisions of the policies shall not affect FRANCHISEE's obligations to CITY, its officers, officials, employees, agents, or volunteers.

14.04.7.2 The CITY, its officers, officials, agents, employees and volunteers shall be named as additional insured's on all policies.

14.05 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted. If pollution and or Environmental Impairment and/or errors and omission coverage are not available from an "Admitted" insurer, the coverage may be written with the CITY'S permission, by a NON-admitted insurance company. A Non-admitted company should have an A.M. Best's rating of A: X or higher.

14.06 Verification of Coverage. FRANCHISEE shall furnish CITY with original certificates and with amendatory endorsements effecting coverage required by this clause. The endorsements are to be signed by a persons authorized by the Insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY, unless the insurer will not use the CITY'S forms. All endorsements are to be received and approved by the CITY before work commences. As an alternative to the CITY'S forms, the FRANCHISEE's insurer may provide complete copies of all required insurance policies, including endorsements effecting coverage required by these specifications.

14.07 Subcontractors. FRANCHISEE shall include all subcontractors as insured's under its policies or shall obtain separate certificates and endorsements for each subcontractor.

14.07.1 Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the CITY.

**Director of Administrative Services
Rohnert Park City Clerk
130 Avram Avenue
Rohnert Park, CA 94928**

14.08 Modification of Insurance Requirements. The insurance requirements provided in this Agreement may be modified or waived by the CITY, in writing, upon the request of FRANCHISEE if the CITY determines such modification or waiver is in the best interest of CITY considering all relevant factors, including exposure to CITY.

14.09 Rights of Subrogation. All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above-described insurance. FRANCHISEE shall ensure that any companies issuing insurance to cover the requirements contained in this Agreement agree that they shall have no recourse against CITY for payment or assessments in any form on any policy of insurance. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event of an Occurrence, Claim or Suit' as it appears in any policy of insurance in which CITY is named as an additional insured shall not apply to CITY.

ARTICLE 15. Indemnification and Release

15.01 Indemnification of the CITY. FRANCHISEE shall defend, indemnify and hold harmless, to the fullest extent allowed by law, CITY, its officers, officials, employees, volunteers agents and assignees (collectively "Indemnities"), from and against any and all loss, liability, penalties, forfeitures, claims, demands, actions, proceedings or suits, in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) (hereinafter "Claims") arising or resulting from or in any way connected with the following:

- (i) the operation of the FRANCHISEE, its agents, employees, FRANCHISEE's, and/or subcontractors, in exercising the privileges granted to it by this Agreement;
- (ii) any actions taken by the FRANCHISEE in performing acts under this agreement;
- (iii) the failure of the FRANCHISEE, its agents, employees, FRANCHISEE's, FRANCHISEE s, and/or subcontractors to comply in all respects with the provisions and requirements of this Agreement, applicable laws, ordinances and regulations, and/or applicable permits and licenses; and
- (iv) the acts of FRANCHISEE, its agents, employees, FRANCHISEE, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law.
- (v) the award of the Agreement and the privileges granted therein to the FRANCHISEE, its agents, employees, FRANCHISEEs, and/or subcontractors; and
- (vi) the failure of the CITY and/or its Indemnities to comply in any respect with the provisions and requirements of this Agreement, applicable laws, ordinances and regulations, and/or applicable permits and licenses in the award of this Agreement.

The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, action, suite injury, death, or damage is also caused in part by any of the indemnities' negligence.

15.02 The FRANCHISEE's obligation to defend, hold harmless, and indemnify shall not be excused because of the FRANCHISEE's inability to evaluate Liability or because the FRANCHISEE evaluates Liability and determines that the FRANCHISEE is not liable the claimant. The FRANCHISEE must respond within thirty (30) days to the tender of a claim for defense and indemnity by the CITY, unless this time has been extended by the CITY. If the FRANCHISEE fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due the FRANCHISEE under the by virtue of this Agreement as shall reasonably be considered necessary by the CITY, may be retained by the CITY until disposition has been made or the claim or suit for damages, or until the FRANCHISEE accepts or ejects the tender of defense, whichever occurs first.

With respect to third party claims against the FRANCHISEE, the FRANCHISEE waives any and all rights of any type to express or implied indemnity against the Indemnities.

15.03 Hazardous Substances Indemnification. City and FRANCHISEE are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of residential and commercial Solid Waste, including AB 939, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et. seq.*; the Electronic Waste Recycling Act of 2003 (SB 20, Sher, Chapter 526, Statutes of 2003; SB 50, Sher, Chapter 863, Statutes of 2004; AB 575, Wolke, Chapter 59, Statutes of 2011), laws governing Universal Waste, including, but not limited to, Universal Waste Electronics Devices ("UWED"), non-empty aerosol cans, fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and any other lamp exhibiting a characteristic of a hazardous waste, batteries (rechargeable nickel-cadmium batteries, silver button batteries, mercury batteries, small sealed lead acid batteries [burglar alarm and emergency light batteries] alkaline batteries, carbon-zinc batteries and any other batteries which exhibit the characteristic of a hazardous waste), mercury thermometers, mercury-containing switches. The CITY and FRANCHISEE agree that CITY is not a "generator" or an "arranger" as those terms are used in the context of CERCLA § 107(a)(3). It is FRANCHISEE, an independent entity, not CITY, which will arrange to collect, transport for recycling and disposal and dispose of construction and demolition materials and related refuse under this Agreement.

15.04 The FRANCHISEE shall indemnify, hold harmless, defend with counsel acceptable to the CITY, protect and hold harmless the CITY, its officers, officials, employees, agents, assigns and any successor or successors to the CITY'S interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, response mediation and removal costs, losses, demands, depts., liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including but not limited to attorney's and expert witness fees an costs incurred in connection with defending against any of the forgoing or enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against CITY or is officers, officials, employees, agents, assigns, or contactors arising from or attributable to acts or omissions including but not limited to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertake due to governmental action) concerning any hazardous substance or hazardous wastes at any place where FRANCHISEE transports,

stores, or disposes of Solid Waste pursuant to this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. sections 9607(c) and California Health and Safety Code Section 25364, to defend insure, protect, hold harmless and indemnify the CITY from liability.

15.05 FRANCHISEE agrees to protect, indemnify, hold harmless, and defend CITY with counsel selected by FRANCHISEE and approved by CITY, to pay all attorneys' fees, and to indemnify and hold CITY harmless from and against all fines or penalties imposed by the California Integrated Waste Management Board if the diversion goals specified in California Public Resources Code Section 41780 as of the date hereof and hereafter throughout are not met by the CITY with respect to the materials Collected by FRANCHISEE and if the lack in meeting such goals are attributable to the failure of the FRANCHISEE to implement and operate the recycling or diversion programs or undertake the related activities required by this Agreement.

15.06 As provided in the Recitals hereto, the parties have determined and agree that the rates and fees provided under this Agreement are not subject to California Constitution Articles XIIIC and XIIID. Nevertheless, this is a legal determination which is subject to changes in the law and further interpretations of the law. Accordingly, FRANCHISEE shall defend, hold harmless, and indemnify CITY, its officers, officials, employees, volunteers, agents and assignees (indemnities) from and against any loss, liability, penalties, forfeiture, claims, damages, demands, actions, proceedings or suits, in law or equity, of every kind and description, arising from the CITY'S award of this Agreement and/or in connection with the application of Article XIIIC and Article XIIID of the California Constitution to the imposition, payment, or collection of Customer Rates and fees for services provided by FRANCHISEE under this Agreement, and/or in connection with the establishment or payment of Franchise Fees under this Agreement.

15.07 Consideration. It is specifically understood and agreed that the consideration inuring to the FRANCHISEE for the execution of this Agreement consists of the promises, payments, covenants, rights, and responsibilities contained in this Agreement.

15.08 Obligation. The execution of this Agreement by the FRANCHISEE shall obligate the FRANCHISEE to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must also be complied with as set forth in Article 14 above.

15.09 Subcontractors. The FRANCHISEE shall require all subcontractors to enter into an Agreement containing the provisions set forth in the preceding subsection in which Agreement the subcontractor fully indemnifies the CITY in accordance with this Agreement.

15.10 Exception. Notwithstanding Articles 14.01, 14.02 and 14.03, FRANCHISEE's obligation to indemnify, hold harmless and defend CITY, its officers and employees shall not extend to any loss, liability, penalty, plain, damage, action or suit arising or resulting from acts or omissions constituting willful misconduct or sole negligence on the part of the CITY its officers or employees.

15.11 Damage by FRANCHISEE. If FRANCHISEE's employees or subcontractors cause any injury, damage, or loss to CITY property, including but not limited to CITY streets or curbs, FRANCHISEE shall reimburse CITY for CITY'S cost of repairing such injury, damage, or loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by FRANCHISEE for any such injury, damage, or loss. With the prior written approval of CITY, FRANCHISEE may repair the damage at FRANCHISEE's sole cost and expense. Disputes

between FRANCHISEE and its service recipients as to damage to private pavement are civil matters and complaints of damage will be referred to FRANCHISEE as matters within its sole responsibility.

15.12 Release and Waiver. FRANCHISEE hereby agrees to release and forever discharge CITY and its Indemnitees from any and all Claims, whether known or unknown, based upon, related to, arising out of, or in connection with this Agreement. FRANCHISEE fully understands and agrees that FRANCHISEE: (a) has carefully read and fully understands all of the provisions in this Agreement and in particular this Release and Waiver paragraph; (b) by and through this Release and Waiver, is releasing the City and its Indemnitees from any and all Claims based upon, related to, arising out of, or in connection with this Agreement that it may have against the City and its Indemnitees; (c) knowingly and voluntarily agrees to all of the terms set forth in this Release and Waiver; and (d) knowingly and voluntarily intends to be legally bound by this Release and Waiver.

FRANCHISEE hereby acknowledges that it is aware of the provisions of Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Having been so informed, FRANCHISEE hereby gives up and waives the provisions and benefits of Civil Code section 1542, effective upon the execution of this Release and Waiver. As a result, FRANCHISEE expressly agrees and acknowledges that by accepting the Agreement, FRANCHISEE is freely and voluntarily abandoning any and all rights to bring a Claim related to the Agreement, including Claims which INDEMNITY may not presently know or suspect exist.

ARTICLE 16. Default of Contract

16.01 Termination. The CITY may terminate this Agreement, except as otherwise provided below in this Article, by giving the FRANCHISEE thirty (30) calendar days advance written notice, to be served as provided in Article 33, upon the happening of any one of the following events:

16.01.1 The FRANCHISEE shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

16.01.1.1 By order or decree of a Court, the FRANCHISEE shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the FRANCHISEE, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) calendar days after the entry thereof, any notice of default shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated in which case, said default shall be deemed immediate; or

16.01.2 By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of the FRANCHISEE, and such possession or control shall continue in effect for a period of sixty (60) calendar days; or

16.01.3 The FRANCHISEE has defaulted, by failing or refusing to pay in a timely manner the Liquidated Damages or other monies due the CITY and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

16.01.4 The FRANCHISEE has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

16.01.5 In the event that the monies due the CITY under Article 4 above or an unpaid Liquidated Damages under Article 11 above is the subject of a judicial proceeding, the CITY may, at its option call the Performance Bond, or hold the FRANCHISEE in default of this Agreement. All bonds shall be in the form acceptable to the City Attorney; or

16.01.6 The FRANCHISEE has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement, including satisfactory conformance with the requirements of Article 3 or Article 11, the service levels prescribed herein, or any of the rules and regulations promulgated by the CITY pursuant thereto or has wrongfully failed or refused to comply with the instructions of the City Representative relative thereto; provided that said default is not cured within thirty (30) calendar days of receipt of written notice by the CITY to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) calendar days following receipt by the FRANCHISEE of written demand from the CITY to do so, the FRANCHISEE fails to commence the remedy of such default within said thirty (30) calendar days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof. In any dispute concerning failure to remedy or diligence in pursuing a cure, the FRANCHISEE shall have the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time. However, notwithstanding anything contained herein to the contrary, for the failure of the FRANCHISEE to provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services for a period of three (3) consecutive Work Days, on the fourth (4th) Work Day the CITY may secure the FRANCHISEE's equipment, records and other property used or useful in providing Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services under this Agreement in order to provide interim Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services until such time as the matter is resolved and the FRANCHISEE is again able to perform pursuant to this Agreement; provided, however, if the FRANCHISEE is unable for any reason or cause to resume performance at the end of thirty (30) calendar days all liability of the CITY under this Agreement to the FRANCHISEE shall cease and this Agreement may be deemed terminated by the CITY, and the CITY shall retain equipment, records and other property used in providing Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services on an interim basis until the CITY has made other suitable arrangements for the provision of Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services, which may include award of the Agreement to another FRANCHISEE.

16.01.7 In the event that the Agreement is terminated, FRANCHISEE shall furnish the CITY with immediate access to all of its business records related to its customer and billing accounts for collection services.

16.02 Violations. Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this Article, in the event that the FRANCHISEE's record of performance show that the FRANCHISEE has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by the FRANCHISEE, in the opinion of the CITY and regardless of whether the FRANCHISEE has corrected each individual condition of default, the FRANCHISEE shall be deemed a "habitual violator", shall be deemed to have waived the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively shall constitute a condition of irredeemable default. The CITY shall thereupon issue the FRANCHISEE a final warning citing the circumstances therefore, and any single default by the FRANCHISEE of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of the Agreement. A history of Administrative Fee's imposed pursuant to Article 11 may be used as a basis for deeming the FRANCHISEE to be a habitual violator; however, any failure to have imposed Liquidated Damages where applicable shall not prevent use of the FRANCHISEE's underlying failures from consideration for determining a habitual violator. In the event of any such subsequent default, the CITY may terminate this Agreement upon giving of written final notice to the FRANCHISEE, such cancellation to be effective upon the date specified in the CITY'S written notice to the FRANCHISEE, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and the FRANCHISEE shall have no further rights hereunder. Immediately upon the specified date in such final notice, the FRANCHISEE shall proceed to cease any further performance under this Agreement.

16.03 Effective Date. In the event of the aforesaid events specified above, and except as otherwise provided in said subsections, termination shall be effective upon the date specified in the CITY'S written notice to the FRANCHISEE and upon said date this Agreement shall be deemed immediately terminated and upon such termination all liability of the CITY under this Agreement to the FRANCHISEE shall cease, and the CITY shall have the right to call the performance bond and shall be free to negotiate with other licensees for the operation of the herein specified services. The FRANCHISEE for failure to perform shall reimburse the CITY all direct and indirect costs of providing interim Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services.

16.04 Immediate Termination. CITY may terminate this Agreement immediately upon written notice to FRANCHISEE in the event FRANCHISEE fails to provide and maintain the performance bond as required by this Agreement, FRANCHISEE fails to obtain or maintain insurance policies endorsements as required by this Agreement, FRANCHISEE fails to provide the proof of insurance as required by this Agreement, FRANCHISEE offers or gives any gift prohibited by CITY administrative policy, or FRANCHISEE fails to meet the Minimum Diversion Standard as required by Article 5.01 of this Agreement.

16.05 Termination – Delivery of material to a facility that is not properly permitted to accept material. The CITY may terminate this Agreement with 30 day written notice in the event the FRANCHISEE delivers material collected under this agreement to a facility that is not properly permitted to accept the material collected under this Collection Service Agreement.

16.06 Termination Cumulative. CITY'S right to terminate this Agreement is cumulative to any other rights and remedies provided by law or by this Agreement.

16.07 Reinstatement after Termination. Should this Agreement be terminated by the CITY, the FRANCHISEE or any company acquired by, or sold to the FRANCHISEE shall not be eligible to re-apply for reinstatement for a minimum of five years from the date of termination.

16.08 Transition to Next Hauler. Upon termination or prospective termination of the Agreement, FRANCHISEE shall cooperate fully with CITY and all prospective subsequent solid waste enterprise(s), franchisee(s), licensee(s), permittee(s) or other persons seeking to provide services similar to the services so as to assure an efficient, orderly, timely and effective transition. In that regard, FRANCHISEE agrees to make available to CITY and to prospective proposers, in any competitive process used by the City to select a successor, route maps, customer lists, and all other records requested by City.

ARTICLE 17. Modifications to the Agreement

17.01 Agreement Modifications and Changes in Law. The CITY and the FRANCHISEE understand and agree that the California Legislature has the authority to make comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. The FRANCHISEE agrees that the terms and provisions of the Municipal Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Agreement and the Service Recipients of the FRANCHISEE located within the Service Area. In the event any future change in law, modifications to the CITY Municipal Code, or directed changes by the CITY materially alters the obligations of the FRANCHISEE, then the affected compensation as established under this Agreement shall be adjusted. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. The CITY and FRANCHISEE agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Agreement, the CITY and the FRANCHISEE shall negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the FRANCHISEE due to any modification in the Agreement under this Article. The CITY and the FRANCHISEE shall not unreasonably withhold agreement to such compensation adjustment.

17.01.1 FRANCHISEE acknowledges and agrees that CITY may permit other contractors or companies besides FRANCHISEE to provide additional Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services.

ARTICLE 18. Legal Representation

18.01 Acknowledgement. It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that a contract or Agreement shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

ARTICLE 19. Financial Interest

19.01 Representation. FRANCHISEE warrants and represents that no elected official, officer, agent or employee of the CITY has a financial interest, directly or indirectly, in this

Agreement the compensation to be paid under it and, further, that no CITY employee who acts in the CITY as a "purchasing agent" as defined in the appropriate Section of California Statutes, nor any elected or appointed officer of the CITY, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the FRANCHISEE and, further, that no such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the FRANCHISEE. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the FRANCHISEE.

ARTICLE 20. FRANCHISEE's Personnel

20.01 Personnel Requirements. The FRANCHISEE shall employ and assign qualified personnel to perform all services set forth herein. The FRANCHISEE shall be responsible for ensuring that its employees comply with all applicable laws and regulations and meet all federal, state, and local requirements related to their employment and position.

20.01.1 The CITY may request the transfer of any employee of the FRANCHISEE who materially violates any provision hereof, or who is wanton, negligent, or discourteous in the performance of his duties.

20.01.2 FRANCHISEE's field operations personnel shall be required to wear a clean uniform shirt bearing the FRANCHISEE's name. FRANCHISEE's employees, who normally come into direct contact with the public, including drivers, shall bear some means of individual photographic identification such as a name tag or identification card.

20.01.3 Each driver of a Collection vehicle shall at all times carry a valid California driver's license and all other required licenses for the type of vehicle that is being operated.

20.01.4 Each driver of a Collection vehicle shall at all times comply with all applicable state and federal laws, regulations, and requirements.

20.01.5 FRANCHISEE's employees, officers, and agents shall at no time be allowed to identify themselves or in any way represent themselves as being employees of the CITY.

20.01.6 The FRANCHISEE's name and the Customer Service telephone number shall be properly displayed on all Collection vehicles.

ARTICLE 21. Exempt Waste

21.01 The FRANCHISEE shall not be required to Collect or dispose of Exempt Waste, but may offer such services. All such Collection and disposal of Exempt Waste is not regulated under this Agreement, but if provided by the FRANCHISEE shall be in strict compliance with all federal, state, and local laws and regulations.

ARTICLE 22. Independent FRANCHISEE

22.01 In the performance of services pursuant to this Agreement, FRANCHISEE shall be an independent FRANCHISEE and not an officer, agent, servant or employee of CITY. FRANCHISEE shall have exclusive control of the details of the services and work performed and over all persons performing such services and work. FRANCHISEE shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and

subcontractors, if any. Neither FRANCHISEE nor its officers, employees, agents, contractors, or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits, or any other benefits which accrued to CITY employees and FRANCHISEE expressly waives any claim it may have or acquire to such benefits.

ARTICLE 23. Laws to Govern

23.01 The law of the State of California shall govern the rights, obligations, duties, and liabilities of CITY and FRANCHISEE under this Agreement and shall govern the interpretation of this Agreement.

ARTICLE 24. Consent to Jurisdiction

24.01 The parties agree that any litigation between CITY and FRANCHISEE concerning or arising out of this Agreement shall be filed and maintained exclusively in the Municipal or Superior Courts of Sonoma County, State of California, or in the United States District Court for the Northern District of California to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by California law.

ARTICLE 25. Assignment

25.01 No assignment of this Agreement or any right occurring under this Agreement shall be made in whole or in part by the FRANCHISEE without the express written consent of the CITY. The CITY shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the FRANCHISEE. Any assignment of this Agreement made by the v without the express written consent of the CITY shall be null and void and shall be grounds for the CITY to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to the FRANCHISEE, and upon the date of such notice this Agreement shall be deemed immediately terminated, and upon such termination all liability of the CITY under this Agreement to the FRANCHISEE shall cease, and the CITY shall have the right to call the performance bond and shall be free to negotiate with other contractors, the FRANCHISEE, or any other person or company for the service which is the subject of this Agreement. In the event of any assignment, the assignee shall fully assume all the liabilities of the FRANCHISEE.

25.02 The use of a subcontractor to perform services under this Agreement shall not constitute delegation of FRANCHISEE's duties provided that FRANCHISEE has received prior written authorization from the City Representative to subcontract such services and the City Representative has approved a subcontractor who will perform such services. FRANCHISEE shall be responsible for directing the work of FRANCHISEE's subcontractors and any compensation due or payable to FRANCHISEE's subcontractor shall be the sole responsibility of FRANCHISEE. The City Representative shall have the right to require the removal of any approved subcontractor for reasonable cause.

25.03 For purposes of this Article when used in reference to FRANCHISEE, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of at least fifty-one percent (51%) of FRANCHISEE's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of FRANCHISEE to a third party provided said sale, exchange or transfer results in a change of control of FRANCHISEE (with control being defined as ownership of more than fifty percent (50%) of FRANCHISEE's voting securities); (iii) any dissolution, reorganization, consolidation,

merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, subcontracting or lease-back payments, or other transaction which results in a change of control of FRANCHISEE; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of FRANCHISEE's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of control of FRANCHISEE.

25.04 FRANCHISEE acknowledges that this Agreement involves rendering a vital service to CITY'S residents and businesses, and that CITY has selected FRANCHISEE to perform the services specified herein based on (i) FRANCHISEE's experience, skill and reputation for conducting its Solid Waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable environmental laws, regulations and best Solid Waste management practices, and (ii) FRANCHISEE's financial resources to maintain the required equipment and to support its indemnity obligations to CITY under this Agreement. CITY has relied on each of these factors, among others, in choosing FRANCHISEE to perform the services to be rendered by FRANCHISEE under this Agreement.

ARTICLE 26. Compliance with Laws

26.01 In the performance of this Agreement, FRANCHISEE shall comply with all applicable laws, regulations, ordinances, and codes of the federal, state, and local governments, including without limitation the Municipal Code of the City of Rohnert Park.

26.02 CITY shall provide written notice to FRANCHISEE of any planned amendment to Division B6 of the CITY Municipal Code that would substantially affect the performance of FRANCHISEE'S services pursuant to this Agreement. Such notice shall be provided at least thirty (30) calendar days prior to the City Council's approval of such an amendment.

ARTICLE 27. Permits and Licenses

27.01 FRANCHISEE shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Agreement. FRANCHISEE shall provide proof of such permits, licenses, or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the City Representative.

27.02 FRANCHISEE shall ensure that all facilities selected by the FRANCHISEE obtain, at their own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Agreement. FRANCHISEE shall ensure that facilities used by the FRANCHISEE provide proof of such permits, licenses, or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses, and approvals upon the request of the City Representative.

27.03 FRANCHISEE shall obtain and maintain, at its own expense, a business registration with the CITY throughout the term of this Agreement. FRANCHISEE shall provide proof of such business registration upon the request of the City Representative.

27.04 FRANCHISEE shall obtain and maintain, at its own expense, a membership in the Rohnert Park Chamber of Commerce throughout the term of this Agreement. FRANCHISEE shall provide proof membership upon the request of the City Representative.

ARTICLE 28. Ownership of Written Materials

28.01 All reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by CITY or FRANCHISEE in connection with the services to be performed under this Agreement, whether developed directly or indirectly by CITY or FRANCHISEE shall be and shall remain the property of CITY without limitation or restrictions on the use of such materials by CITY. FRANCHISEE shall not use such materials in connection with any project not connected with this Agreement without the prior written consent of the City Representative. This Article 28 does not apply to ideas or concepts described in such materials and does not apply to the format of such materials.

ARTICLE 29. Waiver

29.01 Waiver by CITY or FRANCHISEE of any breach for violation of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant, or condition. The subsequent acceptance by CITY of any fee, tax, or any other monies which may become due from FRANCHISEE to CITY shall not be deemed to be a waiver by CITY of any breach for violation of any term, covenant, or condition of this Agreement.

ARTICLE 30. Prohibition Against Gifts

30.01 FRANCHISEE represents that FRANCHISEE is familiar with CITY'S prohibition against the acceptance of any gift by a CITY officer or designated employee. FRANCHISEE shall not offer any CITY officer or designated employee any gifts prohibited by the CITY.

ARTICLE 31. Point of Contact

31.01 The day-to-day dealings between the FRANCHISEE and the CITY shall be between the FRANCHISEE and the City Representative.

ARTICLE 32. Conflict of Interest

32.01 FRANCHISEE shall comply with CITY requirements for conflict of interest and will file all required disclosure statements.

ARTICLE 33. Notices

33.01 Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the CITY:

Director of Administrative Services
130 Avram Avenue
Rohnert Park, CA 94928

As to the FRANCHISEE:

Name	<u>Steve McCaffrey</u>
Title	<u>Director</u>
Company	<u>The Ratto Group of Companies, Inc</u>
Address	<u>PO Box 1916</u>
City, State, Zip Code	<u>Santa Rosa CA 95402</u>
Phone	<u>(707) 586-7753</u>
Fax:	<u>(707) 586-5543</u>
E-Mail:	<u>Steve.McCaffrey@unicycles.com</u>

33.02 Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice. Facsimile transmission is acceptable notice, effective when received, however, facsimile transmissions received (i.e. printed) after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of items that are transmitted by facsimile equipment must also be mailed as required herein.

33.03 Notice by CITY to FRANCHISEE of a Collection or other Service Recipient problem or complaint may be given to FRANCHISEE orally by telephone at FRANCHISEE's local office with confirmation sent as required above by the end of the Work Day.

ARTICLE 34. FRANCHISEE's Records

34.01 FRANCHISEE shall maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Service Recipients for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to FRANCHISEE pursuant to this Agreement.

34.02 FRANCHISEE shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

34.03 Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Representative, the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at the CITY offices when it is practical to do so. Otherwise, unless an alternative site is mutually agreed upon, the records shall be available at FRANCHISEE's address indicated for receipt of notices in this Agreement.

34.04 Where CITY has reason to believe that such records or documents may be lost or discarded due to the dissolution, disbandment or termination of FRANCHISEE's business, CITY may, by written request or demand of any of the above named officers, require that custody of the records be given to CITY and that the records and documents be maintained in

City Hall. Access to such records and documents shall be granted to any party authorized by FRANCHISEE, FRANCHISEE's representatives, or FRANCHISEE's successor-in-interest.

ARTICLE 35. Entire Agreement

35.01 Incorporation by Reference. FRANCHISEE's Application, dated XXXX, 2011, and the Exhibits are incorporated into this Agreement by this reference. Where FRANCHISEE's Application conflicts with this Agreement, this Agreement shall prevail.

35.02 Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire Agreement and understanding between the parties hereto, and it shall not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the parties hereto.

ARTICLE 36. Severability

36.01 If any provision of this Agreement or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

ARTICLE 37. Right to Require Performance

37.01 The failure of the CITY at any time to require performance by the FRANCHISEE of any provision hereof shall in no way affect the right of the CITY thereafter to enforce same. Nor shall waiver by the CITY of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

ARTICLE 38. All Prior Agreements Superseded

38.01 This document incorporates and includes all prior negotiations, correspondence, conversations, Agreements, contracts and understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, Agreements, contracts or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations, Agreements, or contracts, whether oral or written.

ARTICLE 39. Headings

39.01 Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

ARTICLE 40. Representations and Warranties of the FRANCHISEE

The FRANCHISEE, by acceptance of this Agreement, represents and warrants the conditions presented in the Article.

40.01 Corporate Status. The FRANCHISEE is a {corporation} duly organized, validly existing and in good standing under the laws of the State of California ("State"). It is qualified to transact business in the State and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

40.02 Corporate Authorization. FRANCHISEE has the authority to enter this Agreement and perform its obligations under this Agreement. The Board of Directors of FRANCHISEE (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of FRANCHISEE represents and warrants that they have the authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the FRANCHISEE.

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

40.04 No Litigation. To the best of FRANCHISEE's knowledge after responsible investigation, there is no action, suite, 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:

40.04.1 Materially adversely affect the performance by FRANCHISEE of its obligations hereunder;

40.04.2 Adversely affect the validity or enforceability of this Agreement; or

40.04.3 Have a material adverse effect on the financial conditions of FRANCHISEE, or any surety or entity guaranteeing FRANCHISEE's performance under this Agreement.

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

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

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

40.08 FRANCHISEE'S Investigation. FRANCHISEE has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. FRANCHISEE has taken such matters into consideration in entering this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.

40.09 Ability to Perform. FRANCHISEE possesses the business, professional, and technical expertise to Collect, Transport, and Process the Multiple Provider Exclusive Temporary Debris Box and Roll-off material generated in the CITY. FRANCHISEE possesses the ability to secure equipment, facility(ies), and employee resources required to perform its obligations under this Agreement.

40.10 Voluntary Use of Disposal Location. The FRANCHISEE, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Disposal Facility for the purposes of Disposing of all residue from Construction and Demolition Debris Collected in the CITY. Such decision by FRANCHISEE in no way constitutes a restraint of trade notwithstanding any change in law regarding flow control limitations or any definition thereof.

40.11 Recognizing Labor Rights. FRANCHISEE recognizes, and agrees to continue to recognize, the right of its employees to peacefully organize and to file a valid petition seeking a lawful election conducted by the National Labor Relations Board. Such secret ballot election would determine if a majority of the subject employees want a labor organization to be their exclusive representative in collective bargaining with the FRANCHISEE. FRANCHISEE agrees to engage in good faith negotiations with any current and duly elected labor organization of the subject employees, and to meet at reasonable times to discuss wages, hours and other terms and conditions of employment. FRANCHISEE also represents that during negotiations with such duly elected labor organization, if necessary, it would support the use of a federal mediator and a reasonable cooling off period, if requested in writing by either party.

ARTICLE 41. Effective Date

This Agreement shall become effective at such time as it is properly executed by the CITY and the FRANCHISEE and the FRANCHISEE shall begin Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services, as covered herein, as of January 1, 2012.

City of Rohnert Park

Dated: November 17, 2011

IN WITNESS WHEREOF, the CITY and the FRANCHISEE have executed this Agreement on the day and year first written above.

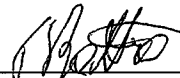
CITY OF ROHNERT PARK

Company Name

Theratto Group of Companies, Inc

City Manager

Date


Company Representative/Title

11/21/11
Date

The foregoing Agreement has been reviewed and approval is recommended:

Resolution No. 2011 - _____
Approved by City Council

Approved as to Form:

City Attorney

Date

Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service Agreement

Executed Between the
City of Rohnert Park
And

Industrial Carting

This ____ day of ____ 2011



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CITY OF ROHNERT PARK

This Agreement made and entered into this ____ day of _____, 2011, by and between the City of Rohnert Park, State of California, hereinafter referred to as "CITY" and _____, a California corporation, hereinafter referred to as "FRANCHISEE."

RECITALS

WHEREAS, Article XI, § 7 of the California Constitution authorizes cities to protect public health and safety by taking measures in furtherance of their authority over police and sanitary matters; and

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, ("**AB 939**") (codified at Public Resources Code §§ 4000 et seq.) established a solid waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse and recycling as integrated waste management practices for solid waste attributed to sources within their respective jurisdictions; and

WHEREAS, AB 939 provides that aspects of solid waste handling of local concern include but are not limited to frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste services; and

WHEREAS, AB 939 confers discretion on cities to provide for the delivery of refuse services to its residents by the city itself providing the services or by the city conferring the authority to do so on private profit-making entities; and

WHEREAS, when cities confer the authority to provide refuse services on private profit-making entities; cities are authorized to do so by means which include the award of a nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise; and

WHEREAS, when a city exercises its legislative discretion to provide refuse services to its residents itself, it assesses and collects a fee from residents to recover its costs for providing those services; and

WHEREAS, when a city exercises its legislative discretion to award a franchise to private profit-making entities to provide refuse services to residents, the private profit-making entities charges residents for those services from which it derives a profit, and

WHEREAS, the Rohnert Park Municipal Code implements Article XI, § 7 of the California Constitution and AB 939 in the City of Rohnert Park and protects public health and safety by authorizing the City Council to provide refuse service itself or to award one or more franchises, permits or licenses to provide that service; and

WHEREAS the City Council has concluded, in the exercise of its legislative discretion, that it is in the best interests of the City and its residents for the City to franchise temporary debris box and roll-off collection service to a private enterprise with the special skills, knowledge, facilities and other capabilities to ensure a high level of service and compliance with the existing statutory and regulatory requirements; and

WHEREAS, under AB 939 the City of Rohnert Park has the authority to award a nonexclusive, partially exclusive, or wholly exclusive franchise, contract, license, or permit for solid waste collection services pursuant to Public Resources Code section 40059;

WHEREAS; Rohnert Park Municipal Code sections 8.12.200 and 8.12.210 require that waste collection services be provided by contract and exclude any other haulers from providing waste hauling services within city limits during the contract period, thereby requiring all waste collection be provided pursuant to an exclusive right;

WHEREAS, the multiple-provider exclusive agreements with the City for Temporary Debris Box and Roll-Off Collection Services expired on October 31, 2011 and the City Council authorized the adoption of new, short-term multiple-provider exclusive franchise agreements for Temporary Debris Box and Roll-Off Collection Services with the then current providers, Rohnert Park Disposal, Inc. and Industrial Carting, which agreements will expire on December 31, 2011.

WHEREAS, on June 28, 2011 the City Council directed the City Manager to solicit requests for proposal for single-provider and multiple-provider temporary debris box services. On September 13, 2011 the City Council found certain proposals responsive and others to be non-responsive pursuant to Resolution 2011-88. Ultimately, on October 25, 2011, the City Council rejected all proposals pursuant to Resolution No. 2011-104 and directed the City Manager to negotiate agreements for temporary debris box and roll off collection services on the open market;

WHEREAS; the City Council has determined through an open market negotiation process for Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services that FRANCHISEE, and [INSERT OTHER HAULER'S NAME] by demonstrated experience, reputation and capacity, are qualified to provide for the Temporary Debris Box and Roll-off Collection Services within the corporate limits of the CITY, the transportation of such material to appropriate places for processing, recycling, composting and/or disposal; and City Council desires that FRANCHISEE be engaged to perform such services on the basis set forth in this Agreement; and

WHEREAS; the FRANCHISEE, through its negotiations with the CITY, has proposed and represented that it has the ability and capacity to provide for the Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services within the corporate limits of the CITY; the transportation of such material to appropriate places for processing, recycling, composting and/or disposal; and the processing of materials; and

WHEREAS, when a private profit-making entity is awarded a city franchise authorizing it to derive profit in providing refuse services to city residents for a fee, the award of this valuable franchise right provides for compensation to the city and its taxpayers through the imposition of a franchising fee on the private profit-making entity payable to the city; and

WHEREAS, the amount of the franchise fees provided for in this Agreement were freely negotiated between the franchisee and the City and the amount of such fees is not limited by AB 939 or any other provisions of law; and

WHEREAS, the California Constitution Articles XIIIC and XIID, commonly known as "Proposition 218", regulates a public agency's imposition of certain property related fees when the agency assess the resident for a fee for the provisions of services provided by the public agency; and

WHEREAS, the California Constitution does not restrict or regulate what a private profit-making entity may charge residents when those same services are provided by a private entity; and

WHEREAS, upon thorough analysis, the City and FRANCHISEE have determined that the rates and fees established by the Franchise Agreement are not subject to California Constitution Articles XIIIC and XIID because, among other reasons, the temporary debris box and roll-off

services are provided by a private corporation and not by City; FRANCHISEE independently establishes, charges and collects the customer rates for said services; the receipt of said services is voluntary and not required of any property within City; and any owner or occupant of property within City has the opportunity to avoid the services provided under the Agreement either through self-hauling or use of property in such a manner that refuse is not generated;

WHEREAS, this Agreement has been developed by and is satisfactory to the CITY and the FRANCHISEE,

Now, therefore, in consideration of the mutual covenants, conditions, and consideration contained herein, the CITY and FRANCHISEE hereby agree as hereinafter set forth:

ARTICLE 1. Definitions

For the purpose of this Collection Service Agreement, hereinafter referred to as "Agreement," the definitions contained in this Article shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Article, the definition of such word or phrase as contained in Division B6 of the CITY Municipal Code shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender.

1.01 AB 939. The California Integrated Waste Management Act (California Public Resources Code Sections 40000 et al.), as amended from time to time.

1.02 Agreement. The written document and all amendments thereto, between the CITY and the FRANCHISEE, governing the provision of Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services as provided herein.

1.03 Agreement Year. The first Agreement Year will be the six (6) month period from January 1st to June 30th, beginning January 1, 2012. Each subsequent Agreement Year will be the twelve (12) month period from July 1st to June 30th, beginning July 1, 2012.

1.04 Application. The Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Franchise Application submitted by FRANCHISEE to CITY to provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service.

1.05 Biohazardous or Biomedical Waste. Any waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are waste resulting from the operation of medical clinics, hospitals, and other facilities processing wastes which may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves.

1.06 Brown Goods. Electronic equipment such as stereos, televisions, VCR's, Personal Data Assistants (PDAs), telephones, and other similar items not containing cathode ray tubes (CRTs).

1.07 Business Service Unit. All retail, professional, wholesale and industrial facilities, and other commercial enterprises offering goods or services to the public.

1.08 CITY. The City of Rohnert Park, California.

1.09 City Representative. That person, or their designee, designated by the CITY to administer and monitor the provisions of this Agreement.

1.10 Collection. The process whereby Multiple Provider Exclusive Temporary Debris Box and Roll-offs materials are removed and transported to a processing facility that has appropriate State and local permits.

1.11 Commercial Service Unit. Business Service Units, and Mixed Use Dwellings that utilize a Garbage Cart or Bin for the accumulation and set-out of Solid Waste.

1.12 Composting. The controlled biological decomposition of Green Waste into a specific mixture of decayed organic matter used for fertilizing or soil conditioning.

1.13 Construction and Demolition Debris. Commonly used or discarded materials removed from construction, remodeling, repair, demolition, or renovation operations on any pavement, house, commercial building, or other structure, or from landscaping. Such materials include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastic pipe, roofing material, carpeting, concrete, wood, masonry, rocks, trees, remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, packaging and rubble resulting from Construction, remodeling, renovation, repair and demolition operations on pavements, houses, commercial buildings and other structures. With the exception of soil, dirt, concrete, and asphalt, Construction and Demolition Debris does not include Garbage and Exempt Waste.

1.14 County. Sonoma County, California.

1.15 Customer Rates. FRANCHISEE's charges to customers for the provision of temporary debris box and roll-off collection services.

1.16 Disposal Facility. The licensed and permitted facility designated by the FRANCHISEE for the disposal of Solid Waste and other materials as appropriate.

1.17 Diversion. Means activities that reduce or eliminate the amount of solid waste, garbage, green waste, and construction and demolition debris that is disposed of in a solid waste or other permitted landfill.

1.18 Dwelling Unit. Any individual living unit in a single family dwelling (SFD) or multi-family dwelling (MFD) structure or building intended for, or capable of being utilized for, residential living other than a Hotel or Motel.

1.19 E-Waste. Discarded electronics equipment such as cell phones, computers, monitors, televisions, and other items containing cathode ray tubes (CRTs).

1.20 Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste, Household Hazardous Waste, Sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, and those wastes under the control of the Nuclear Regulatory Commission.

1.21 Franchise. The exclusive right and privilege granted by this Agreement.

1.22 Franchise Fee. The voluntarily negotiated payment agreed upon by the City and FRANCHISEE in consideration of City's grant of the Franchise to FRANCHISEE and which, *inter alia*, is intended to compensate the City for the City's agreement to give up its right to provide temporary debris box and roll-off collection services and to award FRANCHISEE a franchise right to exclude other haulers and to act as an exclusive provider in the City for the term of the Agreement by occupying the City streets and rights of way in a manner that other entities may not.

1.23 FRANCHISEE. _____

1.24 Garbage. All putrescible waste which generally includes, but is not limited to, kitchen and table food waste, animal, vegetative, food or any other waste that is attendant with, or results from the storage, preparation, cooking or handling of food materials attributed to normal activities of a Service Unit. Garbage must be generated by and at the Service Unit wherein the Garbage is collected. Garbage does not include those items defined herein as Green Waste or Exempt Waste.

-
- 1.25 Green Waste. Any vegetative matter resulting from normal yard and landscaping maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in diameter and fits in the Green Waste Cart utilized by the Service Recipient. Green Waste includes plant debris, such as Palm, Yucca and Cactus, grass clippings, leaves, pruning, weeds, branches, brush, Holiday Trees, and other forms of vegetative waste and must be generated by and at the Service Unit wherein the Green Waste is collected. Green Waste does not include items herein defined as Exempt Waste.
- 1.26 Green Waste Processing Facility. Any facility selected by the FRANCHISEE that is designed, operated and legally permitted for the purpose of receiving and processing Green Waste, Vegetative Food Waste and Large Green Waste.
- 1.27 Hazardous Waste. Any material which is defined as a hazardous waste under California or United States law or any regulations promulgated pursuant to such law, as such, law or regulations may be amended from time to time.
- 1.28 Household Hazardous Waste. Any Hazardous Waste generated at an SFD or MFD Service Unit.
- 1.29 Large Green Waste. Oversized Green Waste such as tree trunks and branches with a diameter of not less than six (6) inches and not more than two (2) feet and a length of not more than five (5) feet in its longest dimension, which are attributed to the normal activities of a SFD, MFD, or City Service Unit. Large Green Waste must be generated by and at the Service Unit wherein the Large Green Waste is collected.
- 1.30 Materials Recovery Facility (MRF). Any facility, selected by the FRANCHISEE and approved by the CITY, or specifically designated by the CITY, designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Materials for sale and/or recycling.
- 1.31 MFD Service Unit. Any combination of Dwelling Units in the Service Area utilizing a common Garbage Bin for the accumulation and set-out of Solid Waste.
- 1.32 Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service. *Collection utilizing 1 – 8 cubic yard bins serviced by scout trucks (not front-end or rear loaders), or 10 - 40 cubic yard containers serviced by roll-off vehicles that are provided to Service Units for collection of non-putrescible waste and Construction and Debris Materials by a person or company that holds a valid Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Franchise from the CITY and the delivery of that material to an appropriate facility. Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service does not include Collection of Garbage generated from the on-going activities of a Service Unit, or collection from any Service Unit that receives Permanent Debris Box and Roll-off Service from Rohnert Park Disposal, Inc.*
- 1.33 Permanent Debris Box and Roll-off Service. Permanent Debris Box and Roll-off Service refers to those Service Units receiving collection service by Rohnert Park Disposal, Inc. (the CITY'S exclusive franchised waste hauler) that receive regularly scheduled cart, bin, debris boxes, roll-off, or compactor collection service. Permanent Debris Box and Roll-off Service also include Service Units serviced by bins, debris boxes or roll-offs that have been placed and are pulled by Rohnert Park Disposal, Inc. on scheduled or on-call basis as part of the daily, normal activities of the Service Unit receiving the service.
- 1.34 Processing Facility. The licensed and permitted facility that meets local zoning and land use requirements that has been designated by the FRANCHISEE for the processing of
-

recyclable materials, green waste, solid waste material, Construction and Demolition Debris, and other materials as appropriate.

1.35 Recyclable Materials. Those materials which are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste. Recyclable Materials include those materials defined by the CITY, including newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; scrap and cast aluminum (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); steel including "tin" cans, aerosol cans (empty, non-toxic products) and small scrap (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; plastic bottles (#1-7); aluminum foil and pans; dry cell household batteries when contained in a sealed heavy-duty plastic bag; and those materials added by the FRANCHISEE from time to time.

1.36 Roll-off Container. A metal container that is normally loaded onto a motor vehicle and transported to an appropriate facility.

1.37 Rubbish. All refuse, accumulation of paper, excelsior, rags, wooden boxes and containers, sweep-ups and all other accumulations of a nature other than Garbage and Green Waste, resulting from the normal activities of a Service Unit. Rubbish must be generated by and at the Service Unit wherein the Rubbish is collected. Rubbish does not include items herein defined as Exempt Waste.

1.38 Service Area. That area within the corporate limits of the City of Rohnert Park, California.

1.39 Service Recipient. An individual or company receiving Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service.

1.40 Service Unit. SFD Service Units, MFD Service Units, and Commercial Service Units.

1.41 SFD Service Unit. Any Dwelling Unit in the Service Area utilizing a Garbage Cart, or any combination of Dwelling Units sharing Garbage Carts, for the accumulation and set out of Solid Waste.

1.42 Sludge. The accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects.

1.43 Solid Waste. Garbage and Rubbish resulting from the normal activities of a Service Unit. Solid Waste must be generated by and at the Service Unit wherein the Solid Waste is collected and does not include items defined herein as Exempt Waste.

1.44 Source Separated Recyclable Materials. Recyclable Materials that are separated from all other Solid Waste, Rubbish, or Green Waste at the Service Unit prior to collection by the FRANCHISEE.

1.45 "SCWMA" means the Sonoma County Waste Management Agency.

1.46 Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Franchise. The Franchise granted by the CITY to the FRANCHISEE to provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service.

1.47 Transfer Facility. The licensed and permitted facility designated by the FRANCHISEE for transfer of Construction and Demolition Debris, and other materials as appropriate prior to deliver to a Processing Facility.

1.48 White Goods. Discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.

1.49 Work Day. Any day, Monday through Saturday that is not a holiday as set forth in Article 3.09 of this Agreement.

ARTICLE 2. Term of Agreement

2.01 Term. The term of this Agreement shall be for a four (4) year and six (6) month period beginning January 1, 2012 and terminating on June 30, 2016.

2.02 Extensions. At the sole discretion of the CITY, the CITY may extend the term of this Agreement in up to twelve (12) month increments for a maximum of four (4) years.

2.02.1 Beginning on or about January 15, 2015, and each January 15th thereafter, provided the City Manager determines that the FRANCHISEE has met all the Diversion Standards set forth in Article 5 and the Record Keeping and Reporting Requirements set forth in Article 8, the CITY may offer the FRANCHISEE in writing a twelve (12) month extension of this Agreement. FRANCHISEE shall provide written notice to the CITY as to whether FRANCHISEE accepts or rejects the CITY'S offer within twenty (20) Work Days of the date of the offer. If FRANCHISEE fails to provide such notice to the CITY within twenty (20) Work Days, the CITY's offer of an extension shall be deemed withdrawn.

2.03 Maximum Term. The maximum term of the Agreement, including all extensions, shall not extend beyond June 30, 2020.

ARTICLE 3. Services Provided by the FRANCHISEE

3.01 Grant of Multiple Provider Exclusive Agreement. Except as otherwise provided in this Agreement, the FRANCHISEE is herein granted an agreement to provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service within the Service Area. No other solid waste or recycling service shall be provided by the FRANCHISEE.

3.02 Limitations to Scope of Multiple Provider Exclusive Agreement.

3.02.1 No Collection of Garbage, Green Waste or Recycling carts or bins from any Service Unit covered under the Franchise Agreement between the City of Rohnert Park and Rohnert Park Disposal, Inc.

3.02.2 Large Items removed from a premises by a property cleanup or maintenance company as an incidental part of the total cleanup or maintenance service offered by the company rather than as a hauling service;

3.02.3 Animal waste and remains from slaughterhouse or butcher shops for use as tallow;

3.02.4 By-products of sewage treatment, including Sludge, ash, grit and screenings;

3.02.5 Hazardous Waste regardless of its source; and

3.02.6 Residential Waste, Commercial Waste, City Waste, or Recyclable Materials that are removed from a premise by a company through the performance of a service that the FRANCHISEE has elected not to provide.

3.03 FRANCHISEE acknowledges and agrees that the CITY may permit other persons besides the FRANCHISEE to collect any and all types of materials excluded from the scope of this Agreement, as set forth above, without seeking or obtaining approval of FRANCHISEE. If FRANCHISEE can produce evidence that other persons are servicing Collection containers or are Collecting Solid Waste, Recyclable Materials, Large Items and/or Green Waste in a manner that is not consistent with the CITY'S Municipal Code or this Agreement, it shall report the location, the name and phone number of the person or company to the CITY along with FRANCHISEE's evidence of the violation of the exclusiveness of this Agreement and CITY shall take appropriate action to enforce the Code and this Agreement.

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

3.04 Service Standards. FRANCHISEE shall perform all Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services under this Agreement in a thorough and professional manner. Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services described in this Agreement shall be performed regardless of weather conditions or difficulty of Collection.

3.05 Hours and Days of Collection.

3.05.1 Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service shall be provided at SFD and MFD Service Units, commencing no earlier than 6:30 a.m. and terminating no later than 6:00 p.m. and in commercial areas, commencing between the hours of 4:00 a.m. and terminating no later than 6:00 p.m. (except for holiday service as set forth in Article 3.09 of this Agreement in which case normal Collection hours may be utilized). The hours, days, or both of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the City Representative.

3.05.2 The CITY may direct FRANCHISEE to reduce the collection hours in areas around schools to 3:00 p.m. and in high traffic areas during peak commute hours. The CITY may direct FRANCHISEE to reduce the collection hours in areas around schools to 3:00 p.m. and in high traffic areas during peak commute hours. When the CITY is conducting road overlay or slurry projects, the CITY reserves the right to temporarily redirect or restrict FRANCHISEE from collection in the affected areas or temporarily change the collection hours if needed. The hours of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the City Representative. In the event that

Commercial Service Units are within 100 feet of SFD Service Units, or the CITY or the FRANCHISEE receives repeated noise complaints from residents, the Hours of collection for Commercial Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services shall be the same as SFD Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services as specified in Section 3.05.2 herein.

3.06 Manner of Collection. The FRANCHISEE shall provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services with as little disturbance as possible and shall leave any debris box in an upright position at the same point it was collected without obstructing alleys, roadways, driveways, sidewalks, or mail boxes.

3.07 Containers.

3.07.1 Ownership of Roll-off Containers. Ownership of Roll-off Containers distributed by the FRANCHISEE shall rest with the FRANCHISEE except in the case of the termination of the Agreement prior to the expiration of the initial term or optional extension term due to the default of the FRANCHISEE. Under such circumstances, the CITY shall have the right to take possession of the containers and shall retain such possession until satisfactory arrangements can be made to provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services using other equipment. Such time of possession shall not be limited and regardless of the time of possession, there shall be no monies owing to the FRANCHISEE from the CITY for the use of the equipment. Upon the receipt of written notice from the CITY, FRANCHISEE shall submit to the City Representative an inventory of containers, including their locations.

3.07.2 Inspection and Cleaning. FRANCHISEE shall inspect all debris boxes and containers prior to delivery. Debris boxes shall be in safe, sanitary, and operable condition with working doors, hinges, locking devices, safety devices, floors and side walls without holes, free of material or material build up, and without broken wheels, welds, or ladders that could cause street damage or harm to users. All containers will have the name of the FRANCHISEE and a local toll free phone number visible as reviewed and approved by the City.

3.07.3 FRANCHISEE shall remove any and all graffiti within 24 hours of being identified by the FRANCHISEE or City Representative. FRANCHISEE shall not deliver a container without FRANCHISEE information or with any graffiti visible on the container.

3.08 Labor and Equipment. FRANCHISEE shall provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of FRANCHISEE's obligations under this Agreement. FRANCHISEE shall at all times have sufficient backup equipment and labor to fulfill FRANCHISEE's obligations under this Agreement. No compensation for FRANCHISEE's services or for FRANCHISEE's supply of labor, equipment, tools, facilities or supervision shall be provided or paid to FRANCHISEE by CITY or by any Service Recipient except as expressly provided by this Agreement.

3.09 Holiday Service. The CITY observes January 1st, Independence Day, Labor Day, Thanksgiving Day, and December 25th as legal holidays. FRANCHISEE shall not provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services on the designated holidays. In any week in which one of these holidays falls on a Work Day, SFD Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services for the holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week with normally scheduled Friday Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services being performed on Saturday.

3.10 Transfer, Recycling, Processing and Disposal.

3.10.1 Transfer, Recycling, Processing and Disposal Facilities. FRANCHISEE shall select the transfer, recycling, processing and disposal facilities. Material collected under this Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Service Agreement shall be delivered to facilities that comply with the California Department of Resources Recycling and Recovery (CalRecycle) regulations under Title 14, Chapter 3, Minimum Standards for Solid Waste Handling and Disposal (Article 5.9 – Sections 17380-17386). Except as set forth below, all material collected as a result of performing Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services must be transported to, and delivered on the same day as collection, to a properly permitted recycling or processing facility. All material collected will be weighed and documented through a weight ticket using certified scales located at the receiving facility. In the event the recycling or processing or disposal facility is closed on a Work Day, the FRANCHISEE shall transport the material at such other legally permitted facility. FRANCHISEE must assure that all recycling and processing facilities are properly permitted to receive material collected under the Multiple Provider Exclusive Temporary Debris Box and Roll-Off Services Agreement. Failure to comply with this provision shall result in the levy of Liquidated Damages as specified in Article 11 of this Agreement and may result in the FRANCHISEE being in default under this Agreement. FRANCHISEE may deliver Source Separated Recyclables to a recycling facility that is exempt from Title 14, Chapter 3, Minimum Standards for Solid Waste Handling and Disposal (Article 5.9 – Sections 17380-17386), provided that such an exempt recycling facility is approved to accept Source Separated Recyclables, and is fully licensed and permitted and meets local land use and zoning requirements.

3.10.2 FRANCHISEE must assure that all transfer, recycling, processing or disposal facilities selected by FRANCHISEE shall possess all existing permits and approvals by local enforcement agencies, planning and land use departments for the transfer, recycling, processing or disposal site to be in full compliance with all regulatory agencies to conduct all operations at the approved location. FRANCHISEE shall, upon written request from the CITY, shall arrange for the facilities selected by the FRANCHISEE, provide copies of facility permits, notices of violations, inspection areas or concerns, or administrative action to correct deficiencies related to the operation. Failure to provide facility information shall result in the levy of Liquidated Damages as specified in Article 11 of this Agreement and may result in the FRANCHISEE being in default under this Agreement.

3.10.3 Processing and Disposal. FRANCHISEE shall process and dispose of all material collected from Service Units pursuant to this Agreement in accordance with the following hierarchy:

- Reuse
- Disassemble for reuse or recycling
- Recycle
- Transformation for biomass energy
- Disposal

3.10.4 FRANCHISEE shall not landfill such collected material unless the material cannot be reused or recycled.

3.11 Inspections. The CITY shall have the right to inspect the FRANCHISEE's facilities or collection vehicles and their contents at any time while operating inside or outside the CITY.

3.12 Spillage and Litter. The FRANCHISEE shall not litter premises in the process of providing Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services or while its vehicles are on the road. The FRANCHISEE shall transport all materials Collected under the terms of this Agreement in such a manner as to prevent the spilling or blowing of such materials from the FRANCHISEE's vehicle. The FRANCHISEE shall exercise all reasonable care and diligence in providing Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services so as to prevent spilling or dropping of and material and shall immediately, at the time of occurrence, clean up such spilled or dropped materials. All temporary containers and debris boxes will be tarped or covered transporting on CITY streets.

3.12.1 The FRANCHISEE shall not be responsible for cleaning up sanitary conditions caused by the carelessness of the Service Recipient; however, the FRANCHISEE shall clean up any material or residue that are spilled or scattered by the FRANCHISEE or its employees.

3.12.2 Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the FRANCHISEE's operations or equipment repair shall be covered immediately with an absorptive material and removed from the street surface. When necessary, FRANCHISEE shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. To facilitate such cleanup, FRANCHISEE's vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

3.12.3 The above paragraphs notwithstanding, FRANCHISEE shall clean up any spillage or litter caused by FRANCHISEE within two (2) hours upon notice from the CITY.

3.12.4 In the event where damage to CITY streets is caused by a hydraulic oil spill, FRANCHISEE shall be responsible for all repairs to return the street to the same condition prior to the spill. FRANCHISEE shall also be responsible for all clean-up activities related to the spill. Repairs and clean-up shall be performed in a manner satisfactory to the City Representative and at no cost to the CITY.

3.12.5 Ownership of Materials.

3.12.6 Title to Multiple Provider Exclusive Temporary Debris Box and Roll-off material shall pass to FRANCHISEE at such time as said materials are placed in the FRANCHISEE's Collection vehicle.

3.12.7 Title to material Collected as part of the City Requested Clean-up Service or Special Collection Service shall pass to FRANCHISEE at the time the material is placed in the Roll-off Container or other Collection vehicle or container approved for use at the event.

3.13 Hazardous Waste.

3.13.1 Under no circumstances shall FRANCHISEE's employees knowingly collect Hazardous Waste, or remove unsafe or poorly containerized Hazardous Waste, from a Collection container. If FRANCHISEE determines that material placed in any container for Collection is Hazardous Waste, or other material that may not legally be accepted at the Disposal Facility or one of the processing facilities, or presents a hazard to FRANCHISEE's employees, the FRANCHISEE shall have the right to refuse to accept such material. The

generator shall be contacted by the FRANCHISEE and requested to arrange for proper disposal service. If the generator cannot be reached immediately, the FRANCHISEE shall, before leaving the premises, leave a Non-Collection Notice, which indicates the reason for refusing to collect the material.

3.13.2 If Hazardous Waste is found in a Collection container that poses an imminent danger to people or property, the FRANCHISEE shall immediately notify the Rohnert Park Police Department. The FRANCHISEE shall immediately notify the CITY of any Hazardous Waste that has been identified.

3.13.3 If Hazardous Waste is identified at the time of delivery to the one of the transfer, recycling, processing or disposal facilities and the generator cannot be identified, FRANCHISEE shall be solely responsible for handling and arranging transport and disposition of the Hazardous Waste.

3.14 Regulations and Record Keeping. FRANCHISEE shall comply with emergency notification procedures required by applicable laws and regulatory requirements. All records required by regulations shall be maintained at the FRANCHISEE's facility. These records shall include waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

ARTICLE 4. Charges and Rates

4.01 Charges and Rates for Temporary Debris Box and Roll-off Collection Services. In consideration of and as compensation for the performance of temporary debris box and roll-off collection services, FRANCHISEE shall, in its sole discretion, establish, charge and collect Customer Rates. The Customer Rates shall be the full, entire and complete compensation due to FRANCHISEE under this Agreement.

4.02 Billing and Collection. The FRANCHISEE shall be responsible for the billing and collection of payments for all Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services. City shall not be liable for and FRANCHISEE shall release City from paying for or collecting any Customer's bills or charges. City shall not set or approve Contractor's Customer Rates.

4.02.1 Production of Invoices. The FRANCHISEE shall produce an invoice, in a form and format that is approved by the City Representative, for services received under this Agreement. The FRANCHISEE's invoice shall be remitted to the Service Recipient and will include at a minimum; date of service, material collected, weight collected, and total amount charged.

4.02.2 Methods of Payment. FRANCHISEE shall provide the means for customers to pay bills through the following methods: cash, checks, credit cards, internet payment service or automatic withdrawal from bank account.

4.03 FRANCHISEE's Payments to CITY. FRANCHISEE shall make payment to the CITY of such fees as may be specified in this Article 4.07.

4.03.1 Franchise Fee. To reimburse City for costs associated with administration of the Agreement, and in consideration of the franchise granted to FRANCHISEE by the Agreement, FRANCHISEE shall make the following Franchise Fee payments to the City;

4.03.1.1 Initial Franchise Fee Payments. Within thirty (30) days after award of a franchise under this Agreement, FRANCHISEE shall make a payment ("Initial

Franchise Fee Payment") to CITY of Fifty Thousand Dollars (\$50,000). The Initial Franchise Fee Payment is in addition to, and shall not be treated as a prepayment of, the Monthly Franchise Payments described below.

4.03.1.2 Monthly Franchise Fee Payments. In addition to the Initial Franchise Fee Payment described in subsection 4.03.1.1 above, FRANCHISEE shall pay CITY a monthly Franchise Fee payment ("Monthly Franchise Fee Payment") equal to fifteen percent (15%) of all gross revenue collected under the terms of the Agreement. Payment to CITY shall be due, on the fifteenth (15th) day of the month following the month the revenues are collected. Each such payment shall be accompanied by an accounting, which sets forth FRANCHISEE's gross revenues collected during the preceding month. Gross revenue shall specifically include revenue received by the FRANCHISEE from any entity, including Federal, State, County, or other local facilities within the Service Area for the provision of Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services by the FRANCHISEE.

4.03.2 Out of County Disposal Fee. If the FRANCHISEE elects not to use Sonoma County's solid waste facilities for transfer, processing or disposal of Construction and Demolition Debris Collected by the FRANCHISEE in accordance with this Agreement, FRANCHISEE shall pay any and all fees imposed by Sonoma County or the Sonoma County Waste Management Agency levied against the CITY for such non-use of the Sonoma County solid waste facilities. Any and all payments due by FRANCHISEE under this subsection shall be paid within thirty (30) days notice by the CITY.

4.03.3 Proposal Development Fee. The City requires the FRANCHISEE to reimburse the City a total of **Twenty-Five Thousand Dollars (\$25,000)** for the cost of this procurement. The reimbursement is a one-time payment due within 30 days after execution of the Multiple Provider Exclusive Agreement award. In addition, City requires the FRANCHISEE to reimburse the City for the costs of conducting environmental review pursuant to the California Environmental Quality Act ("CEQA"), which cost shall include consultants and attorneys fees, provided that such reimbursement shall be shared on a pro-rata basis between City, FRANCHISEE and [INSERT NAME OF OTHER HAULER].

4.04 No acceptance by CITY of any payment shall be construed as an accord that the amount is in-fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim CITY may have against FRANCHISEE for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recompilation by CITY. If, after the audit, such recompilation indicates an underpayment FRANCHISEE shall pay to CITY the amount of the underpayment and shall reimburse CITY for all reasonable costs and expenses incurred in connection with the audit and recompilation within ten (10) Work Days of receipt of written notice from CITY that such is the case. If, after audit, such recompilation indicates an overpayment, CITY shall notify the FRANCHISEE in writing of the amount of the overpayment, less costs and expenses incurred in connection with

the audit and recompilation. FRANCHISEE may offset the amounts next due following receipt of such notice by the amount specified therein.

ARTICLE 5. Diversion Standards

5.01 Tonnage Data. On or before April 15, 2012 and quarterly thereafter during the term of this Agreement, FRANCHISEE shall deliver to CITY a quarterly report as specified in Section 8.02.1 listing the actual tonnage delivered by the FRANCHISEE to the Recycling, Processing, or Transformation Facility (for biomass energy only), the tonnage of material discarded or landfilled including residue, and the tonnage of material recycled, composted, or transformed by material type (metal, wood, concrete, green waste, etc.) for the preceding quarter.

5.02 Minimum Diversion Standard. The CITY requires the FRANCHISEE to achieve the guaranteed diversion rate with a minimum annual diversion rate of seventy percent (70%) for Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services. The annual diversion rate will be calculated as "the tons of materials Collected by FRANCHISEE from the provision of Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services that are sold or delivered to a processing, transformation facility (for biomass energy only), recycler or re-user, net of all residue, as required by this Agreement, divided by the total tons of materials Collected under this Agreement by FRANCHISEE in each Calendar Year."

5.02.1 Failure to Meet Minimum Diversion Standard. FRANCHISEE's failure to meet the Minimum Diversion Standard set forth above in Article 5.02 will result in immediate termination of this Agreement.

5.03 Guaranteed Diversion Standard. The Guaranteed Diversion Standard will be the percentage that the FRANCHISEE proposed in the response to the RFP on the Franchise Application. The annual Guaranteed Diversion Standard will be calculated as "the tons of materials Collected by FRANCHISEE from the provision of Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services that are sold or delivered to a processing facility transformation facility (for biomass energy only), recycler or re-user, net of all residue, as required by this Agreement, divided by the total tons of materials Collected under this Agreement by FRANCHISEE in each Calendar Year."

Guaranteed Diversion Standard _____ %

FRANCHISEE Initial Here _____

5.03.1 Failure to Meet Guaranteed Diversion Standard. FRANCHISEE's failure to meet the Guaranteed Diversion Standard set forth above in Article 5.02 will result in the FRANCHISEE being required to pay a Franchise Fee of 35 percent of gross revenue for all Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services that are provided beginning on January 1st of the year following the year that the FRANCHISEE failed to meet the Guaranteed Diversion Standard. The Franchise Fee of 35 percent of gross revenue will remain in effect until the FRANCHISEE provides two consecutive quarterly reports that demonstrate compliance with the Guaranteed Diversion Standard. In addition, for failure to meet the Guaranteed Diversion Standard, FRANCHISEE will also have to pay the CITY the Administrative Fee's as specified in Article 11, and FRANCHISEE will not be eligible to receive term extensions as specified in Article 2.

ARTICLE 6. Collection Equipment

6.01 Equipment Specifications.

6.01.1 General Provisions. All equipment used by FRANCHISEE in the performance of services under this Agreement shall be of a high quality. The vehicles shall be designed and operated so as to prevent collected materials from escaping from the vehicles. All collection boxes or containers while driving on city streets shall be tarped, covered, or enclosed with screening material to prevent collected materials from leaking, blowing, or falling from the vehicles. All trucks and containers shall be watertight and shall be operated so that liquids do not spill during Collection or in transit.

6.01.2 Clean Air Vehicles. During the term of this Agreement, to the extent required by law, FRANCHISEE shall provide its Collection vehicles to be in full compliance with local, State and federal clean air requirements that were adopted or proposed to be adopted, including, but not limited to, the California Air Resources Board Heavy Duty Engine Standards as currently proposed to be contained in CCR Title 13, Section 2020 et seq; the Federal EPA's Highway Diesel Fuel Sulfur regulations and any other applicable air pollution control laws.

6.01.3 Safety Markings. All Collection equipment used by FRANCHISEE shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and warning flags. All such safety markings shall be subject to the approval of the CITY and shall be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time.

6.01.4 Vehicle Signage and Painting. Collection vehicles, except reserve equipment used on a temporary basis, shall be painted and numbered consecutively without repetition and shall have the FRANCHISEE's name, FRANCHISEE's customer service telephone number, and the number of the vehicle painted in letters of contrasting color as reviewed and approved by the City. No advertising shall be permitted other than the name of the FRANCHISEE. FRANCHISEE shall repaint or discontinue the use of a vehicle at the request of the City Representative to maintain a positive public image as reasonably determined by the City Representative.

6.01.5 Container Signage, Painting, and Cleaning. Temporary Boxes and Containers, shall be painted and numbered consecutively without repetition and shall have the FRANCHISEE's name, FRANCHISEE's customer service telephone number, and the number of the vehicle painted in letters of contrasting color, as reviewed and approved by the City. No advertising shall be permitted other than the name of the FRANCHISEE. Such containers as are provided by the FRANCHISEE shall be steam cleaned by the FRANCHISEE as frequently as necessary so as to maintain them in a sanitary condition. FRANCHISEE shall repaint or discontinue the use of a container at the request of the City Representative to maintain a positive public image as reasonably determined by the City Representative.

6.01.6 Vehicle Noise Level. All Collection operations shall be conducted as quietly as possible and must comply with U.S. EPA noise emission regulations currently codified at 40 CFR Part 205, and other applicable State, County and CITY noise control regulations.

6.01.7 Collection Vehicle Size Limitations. Debris Box collection trucks must not exceed a maximum GVWR of 53,000 lbs.

6.02 Vehicle Registration, Licensing and Inspection. On or before January 1, 2012, or as soon as practical, and on or before January 1st annually thereafter during the term of this

Agreement, FRANCHISEE shall submit documentation to the City Representative to verify that each of the FRANCHISEE's Collection vehicles are in compliance with all registration, licensing and inspection requirements of the California Highway Patrol, the California Department of Motor Vehicles, and any other applicable laws or regulations. FRANCHISEE shall not use any vehicle to perform Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services that is not in compliance with applicable registration, licensing, and inspection requirements.

6.03 Equipment Maintenance. FRANCHISEE shall maintain Collection equipment in a clean condition and in good repair at all times. All parts and systems of the Collection equipment shall operate properly and be maintained in a condition satisfactory to CITY. FRANCHISEE shall wash all Collection vehicles at least once a week.

6.04 Maintenance Log. FRANCHISEE shall maintain a maintenance log for all Collection vehicles. The log shall at all times be accessible to CITY by physical inspection upon request of City Representative, and shall show, at a minimum, each vehicles' FRANCHISEE assigned identification number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance of any additional maintenance, and description of additional maintenance performed.

6.04.1 Equipment Inventory. On or before January 1, 2012, or as soon as practical, and on or before January 1st annually thereafter during the term of this Agreement, FRANCHISEE shall provide to CITY an inventory of Collection vehicles and major equipment used by FRANCHISEE for Collection or transportation and performance of services under this Agreement. The inventory shall indicate each Collection vehicle by FRANCHISEE assigned identification number, DMV license number, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition, the decibel rating and the maintenance status. FRANCHISEE shall submit to the City Representative, either by Fax or e-mail, an updated inventory annually to the CITY or more often at the request of the City Representative.

6.04.2 Reserve Equipment. The FRANCHISEE shall have available to it, at all times, reserve Collection equipment which can be put into service and operation within one (1) hour of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the FRANCHISEE to perform the contractual duties.

ARTICLE 7. FRACHISEE'S Office

7.01 FRANCHISEE'S Office. The FRANCHISEE shall maintain an office that provides toll-free telephone access to residents and businesses of the CITY and is staffed by trained and experienced Customer Service Representatives (CSR's). Such office shall be equipped with sufficient telephones that all Collection Service related calls received during normal business hours are answered by an employee within five (5) rings, and shall have responsible persons in charge during Collection hours and shall be open during such normal business hours, 8:00 a.m. to 6:00 p.m. on all Work Days. The FRANCHISEE shall provide either a telephone answering service or mechanical device to receive Service Recipient inquiries during those times when the office is closed. Calls received after normal business hours shall be addressed the next Work Day morning.

7.01.1 Emergency Contact. The FRANCHISEE shall provide the City Representative with an emergency phone number where the FRANCHISEE can be reached outside of the required office hours.

7.01.2 Multilingual/TDD Service. FRANCHISEE shall at all times maintain the capability of responding to telephone calls in English and one (1) other language (Spanish) as the CITY may direct. FRANCHISEE shall at all times maintain the capability or responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

7.01.3 Service Recipient Calls. During office hours, FRANCHISEE shall maintain a telephone answering system capable of accepting at least five (5) incoming calls at one (1) time. FRANCHISEE shall record all calls including any inquiries, service requests, and complaints into a customer service log.

7.01.4 In Coming Calls. All incoming calls will be answered within five (5) rings. Any call "on-hold" in excess of one and one-half (1.5) minutes shall have the option to remain "on-hold" or to be switched to a message center where Service Recipient can leave a message. FRANCHISEE's customer service representative shall return Service Recipient calls.

ARTICLE 8. Record Keeping & Reporting Requirements

8.01 Record Keeping.

8.01.1 Accounting Records. FRANCHISEE shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services provided under this Agreement, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit, copy, and inspection. FRANCHISEE shall report gross revenues received from provision of the Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services. FRANCHISEE shall maintain and preserve all cash, billing and disposal records for a period of not less than five (5) years following the close of each of the FRANCHISEE's fiscal years.

8.01.2 Agreement Materials Records. FRANCHISEE shall maintain records of the quantities of City Waste Collected and disposed under the terms of this Agreement, and (ii) Recyclable Materials, by type, Collected, processed, sold, donated or given for no compensation, and residue disposed.

8.01.3 Other Records. FRANCHISEE shall maintain all other records reasonably related to provision of Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services, whether or not specified in this Article 8 or elsewhere in the Agreement.

8.02 Reporting Requirements. Quarterly reports shall be submitted no later than thirty (30) calendar days after the end of the reporting quarter and annual reports shall be submitted no later than thirty (30) calendar days after the end of each Agreement Year. Quarterly and annual reports shall be submitted in hard copy, and shall be provided electronically via e-mail, or a compact disc using software acceptable to the CITY.

8.02.1 Quarterly Reports. Quarterly reports to the CITY shall include:

8.02.1.1 Material Collected Data. A listing of the tonnage collected from all Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services, diverted and disposed by the FRANCHISEE at the Processing, Recycling, Transformation (for biomass energy only), and Disposal Facility for the preceding quarter.

8.02.1.2 Recycling Data. The number of gross tons Collected, processed, and sold or delivered to a recycler (other than processing facility) by material type for the preceding quarter. Indicate, by material type (and grade where appropriate), quarterly

total of Recyclable materials processed and sold including facility name and location. Indicate any quantities, by material type, donated or otherwise disbursed without compensation. Indicate quarterly totals and location for Residue disposed.

8.02.1.3 Operational Problems and Actions Taken. Indicate instances of property damage or injuries, and any loads rejected, reason for rejection and disposition of load after rejection.

8.02.2 Annual Reports. The annual report to the CITY shall include all quarterly reports in Articles 8.2.1 through 8.2.1.3 summarized by quarter and totaled for the year. The FRANCHISEE shall include a historical comparison of the last Agreement Year and prior years with a brief explanation on any increases or decreases in tonnage and diversion figures of all Agreement Years. Annual reports shall be submitted to CITY each Agreement Year by March 15th, beginning on March 15, 2013.

8.02.2.1 A summary of the prior year's gross revenue received and Franchise Fees paid.

8.02.2.2 Updated complete inventory of collection and major processing equipment including stationary, rolling stock and collection containers by type and size.

8.03 Additional Reporting. The FRANCHISEE shall furnish the CITY with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period.

ARTICLE 9. Nondiscrimination

9.01 Nondiscrimination. In the performance of all work and services under this Agreement, FRANCHISEE shall not discriminate against any person on the basis of such person's race, sex, color, national origin, religion, marital status, age, disability, or sexual orientation. FRANCHISEE shall comply with all applicable local, state, and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

ARTICLE 10. Service Inquiries and Complaints

10.01 FRANCHISEE'S Customer Service. All service inquiries and complaints shall be directed to the FRANCHISEE. A representative of the FRANCHISEE shall be available to receive the complaints during normal business hours. All service complaints will be handled by the FRANCHISEE in a prompt and efficient manner. In the case of a dispute between the FRANCHISEE and a Service Recipient, the matter will be reviewed and a decision made by the City Representative.

10.01.1 The FRANCHISEE will utilize the Customer Service Log to maintain a record of all inquiries and complaints in a manner prescribed by the CITY.

ARTICLE 11. Quality of Performance of FRANCHISEE

11.01 Intent. FRANCHISEE acknowledges and agrees that one of CITY'S primary goals in entering into this Agreement is to ensure that the Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services are of the highest caliber, that Service

Recipient satisfaction remains at the highest level, that maximum diversion levels are achieved, and that materials Collected are put to the highest and best use to the extent feasible.

11.02 Service Supervisor. By January 1, 2012, and by each successive January 1 during the term of this Agreement, FRANCHISEE shall provide the CITY with the name and contact information of the supervisor to be in charge of the Collection Service within the Service Area. At least thirty (30) calendar days prior to replacing the designated supervisor, FRANCHISEE shall notify CITY in writing of the name and qualifications of the new service supervisor. FRANCHISEE shall insure that such replacement is an individual with like qualifications and experience. The supervisor shall be available to the City Representative through the use of telecommunication equipment at all times that, FRANCHISEE is providing Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services. In the event the supervisor is unavailable due to illness or vacation, FRANCHISEE shall designate an acceptable substitute who shall be available and who has the authority to act in the same capacity as the supervisor. The service supervisor shall provide the CITY with an emergency phone number where the supervisor can be reached outside of normal business hours.

11.03 Administrative Fee's. The parties further acknowledge that consistent and reliable Collection Service is of utmost importance to CITY and that CITY has considered and relied on FRANCHISEE's representations as to its quality of service commitment in awarding the Agreement to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if FRANCHISEE fails to achieve the performance standards, or fails to submit required documents in a timely manner, CITY, and CITY'S residents and businesses will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages. Therefore, without prejudice to CITY'S right to treat such non-performance as an event of default under Article 16, the parties agree that the Liquidated Damages amount defined in this Article represent reasonable estimates of the amount of such damages considering all of the circumstances existing on the effective date of this Agreement, including the relationship of the sums to the range of harm to CITY, customers and the community as a whole that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal council and obtain an explanation of the Liquidated Damages provisions at the time that the Agreement was made.

FRANCHISEE Initial Here _____

FRANCHISEE agrees to pay (as Liquidated Damages and not as penalty) the following amounts:

Liquidated Damages		
Item		Amount
a.	Failure or neglect to resolve each complaint within the time set forth in this Agreement.	\$100.00 per incident per Service Recipient.
b.	Failure to clean up spillage or litter caused by FRANCHISEE.	\$300.00 per incident per location.

Liquidated Damages		
Item		Amount
c.	Failure to repair damage to customer property caused by FRANCHISEE or its personnel.	\$500.00 per incident per location.
d.	Failure to repair damage to CITY property caused by FRANCHISEE or its personnel.	\$1,500.00 per incident.
e.	Damage to CITY streets caused by FRANCHISEE or equipment of FRANCHISEE.	\$3,000.00 per incident and the actual cost of repair to CITY'S satisfaction—no cost to CITY.
f.	Failure to maintain equipment in a clean, safe, and sanitary manner.	\$500.00 per incident per day.
g.	Failure to have a vehicle operator properly licensed.	\$2,500.00 per incident per day.
h.	Failure to maintain office hours as required by this Agreement.	\$500.00 per incident per day.
i.	Failure to maintain or timely submit to CITY all documents and reports required under the provisions of this Agreement.	\$250.00 per incident per day.
j.	Failure to properly cover materials in Collection vehicles.	\$500.00 per incident.
k.	Failure to display FRANCHISEE's name and customer service phone number on Collection vehicles and Debris boxes or containers.	\$500.00 per incident per day.
l.	Failure to comply with the hours of operation as required by this Agreement.	\$1,000.00 per incident per day.
m.	Failure to remove graffiti within 24 hours or delivering a debris box with graffiti on it to a customer.	\$500.00 per incident.
n.	Failure to have FRANCHISEE personnel in proper uniform.	\$250.00 per incident per day.
o.	Operating a vehicle over 53,000 GVW, or hauling a box or container over 22,000 net weight.	\$500.00 per incident
p.	Failure to deliver any Collected materials to a properly permitted Disposal Facility, Transfer, Recycling, or Processing Facility, as appropriate, except as otherwise expressly provided in this Agreement.	\$2,500.00 first failure \$5,000.00 second failure. 30 day notice of Termination for third failure.

Liquidated Damages		
Item		Amount
q.	Failure to meet vehicle noise requirements.	\$250.00 per incident per day.
r.	Failure to provide facility information requested by the CITY within five days	\$250.00 per incident per day
s.	Failure to meet Guaranteed Diversion Standard rate.	\$2,500.00 first failure \$5,000.00 each subsequent failure
t.	Failure to deliver all Collected materials to a Recycling or Processing Facility prior to Disposal or Transfer Facility for disposal.	\$15,000 first failure Immediate termination of Agreement second failure

11.04 Procedure for Review of Liquidated Damages. The City Representative may assess Liquidated Damages pursuant to this Article 11 on a monthly basis. At the end of each month during the term of this Agreement, the City Representative shall issue a written notice to FRANCHISEE ("Notice of Assessment") of the Liquidated Damages assessed and the basis for each assessment.

11.04.1 The assessment shall become final unless, within ten (10) calendar days of the date of the notice of assessment, FRANCHISEE provides a written request for a meeting with the City Manager to present evidence that the assessment should not be made.

11.04.2 The City Representative shall schedule a meeting between FRANCHISEE and the City Manager or the Manager's designee as soon as reasonably possible after timely receipt of FRANCHISEE'S request.

11.04.3 The City Manager or the Manager's designee shall review FRANCHISEE'S evidence and render a decision sustaining or reversing the Liquidated Damages as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to FRANCHISEE.

11.04.4 In the event FRANCHISEE does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Assessment, the City Representative's determination shall be final and FRANCHISEE shall submit payment to CITY no later than that tenth (10th) day. Or if monies are owed to FRANCHISEE and not paid within 10 days of a second notice, CITY may terminate the Franchise without any additional notice.

11.04.5 CITY'S assessment or collection of Liquidated Damages shall not prevent CITY from exercising any other right or remedy, including the right to terminate this Agreement, for FRANCHISEE's failure to perform the work and services in the manner set forth in this Agreement.

ARTICLE 12. Billing Audit and Performance Review

12.01 Selection and Cost. The CITY may conduct billing audit and performance reviews ("review") of the FRANCHISEE's performance during the term of this Agreement, including extensions. At the discretion of the CITY, reviews may occur every two years. The review(s) will be performed by a qualified firm under contract to the CITY. The CITY shall have the final responsibility for the selection of the firm but shall seek and accept comments and recommendations from the FRANCHISEE. The FRANCHISEE shall be responsible for the cost of the review up to a maximum of **Ten Thousand Dollars (\$10,000.00)** per review.

12.02 Purpose. The review shall be designed to meet the following objectives:

12.02.1 Verify that Franchise Fees, and other fees required under this Agreement have been properly calculated and paid to the CITY.

12.02.2 Verify FRANCHISEE's compliance with the reporting requirements and performance standards of the Collection Service Agreement.

12.02.3 Verify the diversion percentages reported by the FRANCHISEE.

12.03 FRANCHISEE's Cooperation. FRANCHISEE shall cooperate fully with the review and provide all requested data, including operational data, financial data, and other data requested by the CITY within thirty (30) Work Days. Failure of the FRANCHISEE to cooperate or provide the requested documents in the required time shall be considered an event of default.

ARTICLE 13. Performance Bond

13.01 Performance Bond. The Agreement must be executed and bond furnished by the FRANCHISEE within ten (10) calendar days from the date the City Council approves the Agreement; otherwise, the bid bond shall be forfeited to the CITY. The FRANCHISEE shall furnish to the CITY, and keep current, a performance bond in a form that is acceptable to the CITY, for the faithful performance of this Agreement and all obligations arising hereunder in an amount of **Ten Thousand Dollars (\$10,000.00)**.

13.01.1 The performance bond shall be executed by a surety company that is acceptable to the CITY; an admitted surety company licensed to do business in the State of California; has an "A: VII" or better rating by A. M. Best or Standard and Poor's; and is included on the list of surety companies approved by the Treasurer of the United States.

13.02 Letter of Credit. As an alternative to the performance bond required by Article 22.01, at CITY'S option, FRANCHISEE may deposit with CITY an irrevocable letter of credit in an amount as set forth in Article 22.01. If allowed, the letter of credit in a form and with terms acceptable to the CITY issued by an FDIC insured banking institution chartered to business in the state of California, in the CITY'S name, and be callable at the discretion of the CITY. Nothing in this Article shall, in any way, obligate the CITY to accept a letter of credit in lieu of the performance bond.

ARTICLE 14. Insurance

14.01 Insurance Policies. FRANCHISEE shall secure and maintain throughout the term of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with FRANCHISEE's performance of work or services

under this Agreement. FRANCHISEE's performance of work or services shall include performance by FRANCHISEE's employees, agents, representatives and subcontractors.

14.01.1 Minimum Scope of Insurance. Insurance coverage shall be at least this broad:

14.01.1.1 Insurance Services Office Form No. GO 0002 or, if approved by CITY, its equivalent, covering Comprehensive General Liability and Insurance Services Office Form No. GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

14.01.1.2 Insurance Services Office Form No. CA 0001 covering Automobile Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage shall also include code 8, "hired autos" and code 9 "non-owned autos."

14.01.2 Workers' Compensation Insurance as required by the California Labor Code and Employers Liability Insurance and/or Errors and Omissions.

14.01.3 Hazardous Waste and Environmental Impairment Liability Insurance.

14.01.4 Employee Blanket Fidelity Bond.

14.02 Minimum Limits of Insurance. FRANCHISEE shall maintain insurance limits no less than:

14.02.1 Comprehensive General Liability: **Ten Million Dollars (\$10,000,000.00)** combined single limit per occurrence for bodily injury, personal injury, and property damage.

14.02.2 Automobile Liability: **Ten Million Dollars (\$10,000,000.00)** combined single limit per accident for bodily injury and property damage.

14.02.3 Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of **Three Million Dollars (\$3,000,000.00)** per accident.

14.02.4 Hazardous Waste and Environmental Impairment Liability: **Three Million Dollars (\$3,000,000.00) each occurrence/Ten Million Dollars (\$10,000,000.00)** policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available without involvement of CITY, automatically broaden in its form of coverage to include legislated changes in the definition of waste material and/or irritants, contaminants or pollutants. This policy shall stipulate this insurance is primary and no other insurance carried by CITY will be called upon to contribute to the loss suffered by the FRANCHISEE hereunder and waive subrogation against the CITY and other additional insured's.

14.03 Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to, and approved by, CITY.

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

14.04.1 The CITY, its officers, employees, agents and volunteers are to be covered as additional insured's with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of FRANCHISEE; products and completed operations of FRANCHISEE; and with respect to liability arising from work or operations performed by or on

behalf of the FRANCHISEE including material parts or equipment furnished in connection with such work or operations; Pollution and/or Asbestos Pollution.

14.04.2 FRANCHISEE's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the FRANCHISEE's insurance and shall not contribute with it.

14.04.3 Each insurance policy required by this clause shall be occurrence-based, or an alternative form as approved by the CITY and shall be endorsed to state that coverage shall not be cancelled by the Insurer except after thirty (30) days prior written notice has been given to the CITY.

14.04.4 The FRANCHISEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

14.04.5 The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier act endorsement (MCS-90) TL 1005, TL 1007 and /or other endorsements required by federal or state authorities.

14.04.6 Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the CITY, its officers, officials, employees, and volunteers for losses arising from work performed by the Grantee for the CITY.

14.04.7 All Coverage's. Each insurance policy required by this clause shall be occurrence-based or an alternate form as approved by the CITY and endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

14.04.7.1 Any failure to comply with reporting provisions of the policies shall not affect FRANCHISEE's obligations to CITY, its officers, officials, employees, agents, or volunteers.

14.04.7.2 The CITY, its officers, officials, agents, employees and volunteers shall be named as additional insured's on all policies.

14.05 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted. If pollution and or Environmental Impairment and/or errors and omission coverage are not available from an "Admitted" insurer, the coverage may be written with the CITY'S permission, by a NON-admitted insurance company. A Non-admitted company should have an A.M. Best's rating of A: X or higher.

14.06 Verification of Coverage. FRANCHISEE shall furnish CITY with original certificates and with amendatory endorsements effecting coverage required by this clause. The endorsements are to be signed by a persons authorized by the Insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY, unless the insurer will not use the CITY'S forms. All endorsements are to be received and approved by the CITY before work commences. As an alternative to the CITY'S forms, the FRANCHISEE's insurer may provide complete copies of all required insurance policies, including endorsements effecting coverage required by these specifications.

14.07 Subcontractors. FRANCHISEE shall include all subcontractors as insured's under its policies or shall obtain separate certificates and endorsements for each subcontractor.

14.07.1 Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the CITY.

**Director of Administrative Services
Rohnert Park City Clerk
130 Avram Avenue
Rohnert Park, CA 94928**

14.08 Modification of Insurance Requirements. The insurance requirements provided in this Agreement may be modified or waived by the CITY, in writing, upon the request of FRANCHISEE if the CITY determines such modification or waiver is in the best interest of CITY considering all relevant factors, including exposure to CITY.

14.09 Rights of Subrogation. All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above-described insurance. FRANCHISEE shall ensure that any companies issuing insurance to cover the requirements contained in this Agreement agree that they shall have no recourse against CITY for payment or assessments in any form on any policy of insurance. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event of an Occurrence, Claim or Suit' as it appears in any policy of insurance in which CITY is named as an additional insured shall not apply to CITY.

ARTICLE 15. Indemnification and Release

15.01 Indemnification of the CITY. FRANCHISEE shall defend, indemnify and hold harmless, to the fullest extent allowed by law, CITY, its officers, officials, employees, volunteers agents and assignees (collectively "Indemnities"), from and against any and all loss, liability, penalties, forfeitures, claims, demands, actions, proceedings or suits, in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) (hereinafter "Claims") arising or resulting from or in any way connected with the following:

- (i) the operation of the FRANCHISEE, it agents, employees, FRANCHISEE's, and/or subcontractors, in excising the privileges granted to it by this Agreement;
- (ii) any actions taken by the FRANCHISEE in performing acts under this agreement;
- (iii) the failure of the FRANCHISEE, it agents, employees, FRANCHISEE' FRANCHISEE s, and/or subcontractors to comply in all respects with the provisions and requirements of this Agreement, applicable laws, ordinances and regulations, and/or applicable permits and licenses; and
- (iv) the acts of FRANCHISEE, its agents, employees, FRANCHISEE, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law.
- (v) the award of the Agreement and the privileges granted therein to the FRANCHISEE, it agents, employees, FRANCHISEEs, and/or subcontractors; and
- (vi) the failure of the CITY and/or it Indemnities to comply in any respect with the provisions and requirements of this Agreement, applicable laws, ordinances and regulations, and/or applicable permits and licenses in the award of this Agreement.

The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, action, suite injury, death, or damage is also caused in part by any of the indemnities' negligence.

15.02 The FRANCHISEE's obligation to defend, hold harmless, and indemnify shall not be excused because of the FRANCHISEE's inability to evaluate Liability or because the FRANCHISEE evaluates Liability and determines that the FRANCHISEE is not liable the claimant. The FRANCHISEE must respond within thirty (30) days to the tender of a claim for defense and indemnity by the CITY, unless this time has been extended by the CITY. If the FRANCHISEE fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due the FRANCHISEE under the by virtue of this Agreement as shall reasonably be considered necessary by the CITY, may be retained by the CITY until disposition has been made or the claim or suit for damages, or until the FRANCHISEE accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the FRANCHISEE, the FRANCHISEE waives any and all rights of any type to express or implied indemnity against the Indemnities.

15.03 Hazardous Substances Indemnification. City and FRANCHISEE are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of residential and commercial Solid Waste, including AB 939, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*; the Electronic Waste Recycling Act of 2003 (SB 20, Sher, Chapter 526, Statutes of 2003; SB 50, Sher, Chapter 863, Statutes of 2004; AB 575, Wolke, Chapter 59, Statutes of 2011), laws governing Universal Waste, including, but not limited to, Universal Waste Electronics Devices ("UWED"), non-empty aerosol cans, fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and any other lamp exhibiting a characteristic of a hazardous waste, batteries (rechargeable nickel-cadmium batteries, silver button batteries, mercury batteries, small sealed lead acid batteries [burglar alarm and emergency light batteries] alkaline batteries, carbon-zinc batteries and any other batteries which exhibit the characteristic of a hazardous waste), mercury thermometers, mercury-containing switches. The CITY and FRANCHISEE agree that CITY is not a "generator" or an "arranger" as those terms are used in the context of CERCLA § 107(a)(3). It is FRANCHISEE, an independent entity, not CITY, which will arrange to collect, transport for recycling and disposal and dispose of construction and demolition materials and related refuse under this Agreement.

15.04 The FRANCHISEE shall indemnify, hold harmless, defend with counsel acceptable to the CITY, protect and hold harmless the CITY, its officers, officials, employees, agents, assigns and any successor or successors to the CITY'S interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, response mediation and removal costs, losses, demands, depts., liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the forgoing or enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against CITY or its officers, officials, employees, agents, assigns, or contractors arising from or attributable to acts or omissions including but not limited to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertake due to governmental action) concerning any hazardous substance or hazardous wastes at any place where FRANCHISEE transports,

stores, or disposes of Solid Waste pursuant to this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. sections 9607(c) and California Health and Safety Code Section 25364, to defend insure, protect, hold harmless and indemnify the CITY from liability.

15.05 FRANCHISEE agrees to protect, indemnify, hold harmless, and defend CITY with counsel selected by FRANCHISEE and approved by CITY, to pay all attorneys' fees, and to indemnify and hold CITY harmless from and against all fines or penalties imposed by the California Integrated Waste Management Board if the diversion goals specified in California Public Resources Code Section 41780 as of the date hereof and hereafter throughout are not met by the CITY with respect to the materials Collected by FRANCHISEE and if the lack in meeting such goals are attributable to the failure of the FRANCHISEE to implement and operate the recycling or diversion programs or undertake the related activities required by this Agreement.

15.06 As provided in the Recitals hereto, the parties have determined and agree that the rates and fees provided under this Agreement are not subject to California Constitution Articles XIIC and XIID. Nevertheless, this is a legal determination which is subject to changes in the law and further interpretations of the law. Accordingly, FRANCHISEE shall defend, hold harmless, and indemnify CITY, its officers, officials, employees, volunteers, agents and assignees (indemnities) from and against any loss, liability, penalties, forfeiture, claims, damages, demands, actions, proceedings or suits, in law or equity, of every kind and description, arising from the CITY'S award of this Agreement and/or in connection with the application of Article XIIC and Article XIID of the California Constitution to the imposition, payment, or collection of Customer Rates and fees for services provided by FRANCHISEE under this Agreement, and/or in connection with the establishment or payment of Franchise Fees under this Agreement.

15.07 Consideration. It is specifically understood and agreed that the consideration inuring to the FRANCHISEE for the execution of this Agreement consists of the promises, payments, covenants, rights, and responsibilities contained in this Agreement.

15.08 Obligation. The execution of this Agreement by the FRANCHISEE shall obligate the FRANCHISEE to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must also be complied with as set forth in Article 14 above.

15.09 Subcontractors. The FRANCHISEE shall require all subcontractors to enter into an Agreement containing the provisions set forth in the preceding subsection in which Agreement the subcontractor fully indemnifies the CITY in accordance with this Agreement.

15.10 Exception. Notwithstanding Articles 14.01, 14.02 and 14.03, FRANCHISEE's obligation to indemnify, hold harmless and defend CITY, its officers and employees shall not extend to any loss, liability, penalty, plain, damage, action or suit arising or resulting from acts or omissions constituting willful misconduct or sole negligence on the part of the CITY its officers or employees.

15.11 Damage by FRANCHISEE. If FRANCHISEE's employees or subcontractors cause any injury, damage, or loss to CITY property, including but not limited to CITY streets or curbs, FRANCHISEE shall reimburse CITY for CITY'S cost of repairing such injury, damage, or loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by FRANCHISEE for any such injury, damage, or loss. With the prior written approval of CITY, FRANCHISEE may repair the damage at FRANCHISEE's sole cost and expense. Disputes

between FRANCHISEE and its service recipients as to damage to private pavement are civil matters and complaints of damage will be referred to FRANCHISEE as matters within its sole responsibility.

15.12 Release and Waiver. FRANCHISEE hereby agrees to release and forever discharge CITY and its Indemnitees from any and all Claims, whether known or unknown, based upon, related to, arising out of, or in connection with this Agreement. FRANCHISEE fully understands and agrees that FRANCHISEE: (a) has carefully read and fully understands all of the provisions in this Agreement and in particular this Release and Waiver paragraph; (b) by and through this Release and Waiver, is releasing the City and its Indemnitees from any and all Claims based upon, related to, arising out of, or in connection with this Agreement that it may have against the City and its Indemnitees; (c) knowingly and voluntarily agrees to all of the terms set forth in this Release and Waiver; and (d) knowingly and voluntarily intends to be legally bound by this Release and Waiver.

FRANCHISEE hereby acknowledges that it is aware of the provisions of Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Having been so informed, FRANCHISEE hereby gives up and waives the provisions and benefits of Civil Code section 1542, effective upon the execution of this Release and Waiver. As a result, FRANCHISEE expressly agrees and acknowledges that by accepting the Agreement, FRANCHISEE is freely and voluntarily abandoning any and all rights to bring a Claim related to the Agreement, including Claims which INDEMNITY may not presently know or suspect exist.

ARTICLE 16. Default of Contract

16.01 Termination. The CITY may terminate this Agreement, except as otherwise provided below in this Article, by giving the FRANCHISEE thirty (30) calendar days advance written notice, to be served as provided in Article 33, upon the happening of any one of the following events:

16.01.1 The FRANCHISEE shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

16.01.1.1 By order or decree of a Court, the FRANCHISEE shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the FRANCHISEE, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) calendar days after the entry thereof, any notice of default shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated in which case, said default shall be deemed immediate; or

16.01.2 By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of the FRANCHISEE, and such possession or control shall continue in effect for a period of sixty (60) calendar days; or

16.01.3 The FRANCHISEE has defaulted, by failing or refusing to pay in a timely manner the Liquidated Damages or other monies due the CITY and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

16.01.4 The FRANCHISEE has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

16.01.5 In the event that the monies due the CITY under Article 4 above or an unpaid Liquidated Damages under Article 11 above is the subject of a judicial proceeding, the CITY may, at its option call the Performance Bond, or hold the FRANCHISEE in default of this Agreement. All bonds shall be in the form acceptable to the City Attorney; or

16.01.6 The FRANCHISEE has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement, including satisfactory conformance with the requirements of Article 3 or Article 11, the service levels prescribed herein, or any of the rules and regulations promulgated by the CITY pursuant thereto or has wrongfully failed or refused to comply with the instructions of the City Representative relative thereto; provided that said default is not cured within thirty (30) calendar days of receipt of written notice by the CITY to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) calendar days following receipt by the FRANCHISEE of written demand from the CITY to do so, the FRANCHISEE fails to commence the remedy of such default within said thirty (30) calendar days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof. In any dispute concerning failure to remedy or diligence in pursuing a cure, the FRANCHISEE shall have the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time. However, notwithstanding anything contained herein to the contrary, for the failure of the FRANCHISEE to provide Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services for a period of three (3) consecutive Work Days, on the fourth (4th) Work Day the CITY may secure the FRANCHISEE's equipment, records and other property used or useful in providing Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services under this Agreement in order to provide interim Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services until such time as the matter is resolved and the FRANCHISEE is again able to perform pursuant to this Agreement; provided, however, if the FRANCHISEE is unable for any reason or cause to resume performance at the end of thirty (30) calendar days all liability of the CITY under this Agreement to the FRANCHISEE shall cease and this Agreement may be deemed terminated by the CITY, and the CITY shall retain equipment, records and other property used in providing Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services on an interim basis until the CITY has made other suitable arrangements for the provision of Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services, which may include award of the Agreement to another FRANCHISEE.

16.01.7 In the event that the Agreement is terminated, FRANCHISEE shall furnish the CITY with immediate access to all of its business records related to its customer and billing accounts for collection services.

16.02 Violations. Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this Article, in the event that the FRANCHISEE's record of performance show that the FRANCHISEE has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by the FRANCHISEE, in the opinion of the CITY and regardless of whether the FRANCHISEE has corrected each individual condition of default, the FRANCHISEE shall be deemed a "habitual violator", shall be deemed to have waived the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively shall constitute a condition of irredeemable default. The CITY shall thereupon issue the FRANCHISEE a final warning citing the circumstances therefore, and any single default by the FRANCHISEE of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of the Agreement. A history of Administrative Fee's imposed pursuant to Article 11 may be used as a basis for deeming the FRANCHISEE to be a habitual violator; however, any failure to have imposed Liquidated Damages where applicable shall not prevent use of the FRANCHISEE's underlying failures from consideration for determining a habitual violator. In the event of any such subsequent default, the CITY may terminate this Agreement upon giving of written final notice to the FRANCHISEE, such cancellation to be effective upon the date specified in the CITY'S written notice to the FRANCHISEE, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and the FRANCHISEE shall have no further rights hereunder. Immediately upon the specified date in such final notice, the FRANCHISEE shall proceed to cease any further performance under this Agreement.

16.03 Effective Date. In the event of the aforesaid events specified above, and except as otherwise provided in said subsections, termination shall be effective upon the date specified in the CITY'S written notice to the FRANCHISEE and upon said date this Agreement shall be deemed immediately terminated and upon such termination all liability of the CITY under this Agreement to the FRANCHISEE shall cease, and the CITY shall have the right to call the performance bond and shall be free to negotiate with other licensees for the operation of the herein specified services. The FRANCHISEE for failure to perform shall reimburse the CITY all direct and indirect costs of providing interim Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services.

16.04 Immediate Termination. CITY may terminate this Agreement immediately upon written notice to FRANCHISEE in the event FRANCHISEE fails to provide and maintain the performance bond as required by this Agreement, FRANCHISEE fails to obtain or maintain insurance policies endorsements as required by this Agreement, FRANCHISEE fails to provide the proof of insurance as required by this Agreement, FRANCHISEE offers or gives any gift prohibited by CITY administrative policy, or FRANCHISEE fails to meet the Minimum Diversion Standard as required by Article 5.01 of this Agreement.

16.05 Termination – Delivery of material to a facility that is not properly permitted to accept material. The CITY may terminate this Agreement with 30 day written notice in the event the FRANCHISEE delivers material collected under this agreement to a facility that is not properly permitted to accept the material collected under this Collection Service Agreement.

16.06 Termination Cumulative. CITY'S right to terminate this Agreement is cumulative to any other rights and remedies provided by law or by this Agreement.

16.07 Reinstatement after Termination. Should this Agreement be terminated by the CITY, the FRANCHISEE or any company acquired by, or sold to the FRANCHISEE shall not be eligible to re-apply for reinstatement for a minimum of five years from the date of termination.

16.08 Transition to Next Hauler. Upon termination or prospective termination of the Agreement, FRANCHISEE shall cooperate fully with CITY and all prospective subsequent solid waste enterprise(s), franchisee(s), licensee(s), permittee(s) or other persons seeking to provide services similar to the services so as to assure an efficient, orderly, timely and effective transition. In that regard, FRANCHISEE agrees to make available to CITY and to prospective proposers, in any competitive process used by the City to select a successor, route maps, customer lists, and all other records requested by City.

ARTICLE 17. Modifications to the Agreement

17.01 Agreement Modifications and Changes in Law. The CITY and the FRANCHISEE understand and agree that the California Legislature has the authority to make comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. The FRANCHISEE agrees that the terms and provisions of the Municipal Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Agreement and the Service Recipients of the FRANCHISEE located within the Service Area. In the event any future change in law, modifications to the CITY Municipal Code, or directed changes by the CITY materially alters the obligations of the FRANCHISEE, then the affected compensation as established under this Agreement shall be adjusted. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. The CITY and FRANCHISEE agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Agreement, the CITY and the FRANCHISEE shall negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the FRANCHISEE due to any modification in the Agreement under this Article. The CITY and the FRANCHISEE shall not unreasonably withhold agreement to such compensation adjustment.

17.01.1 FRANCHISEE acknowledges and agrees that CITY may permit other contractors or companies besides FRANCHISEE to provide additional Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services.

ARTICLE 18. Legal Representation

18.01 Acknowledgement. It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that a contract or Agreement shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

ARTICLE 19. Financial Interest

19.01 Representation. FRANCHISEE warrants and represents that no elected official, officer, agent or employee of the CITY has a financial interest, directly or indirectly, in this

Agreement the compensation to be paid under it and, further, that no CITY employee who acts in the CITY as a "purchasing agent" as defined in the appropriate Section of California Statutes, nor any elected or appointed officer of the CITY, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the FRANCHISEE and, further, that no such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the FRANCHISEE. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the FRANCHISEE.

ARTICLE 20. FRANCHISEE's Personnel

20.01 Personnel Requirements. The FRANCHISEE shall employ and assign qualified personnel to perform all services set forth herein. The FRANCHISEE shall be responsible for ensuring that its employees comply with all applicable laws and regulations and meet all federal, state, and local requirements related to their employment and position.

20.01.1 The CITY may request the transfer of any employee of the FRANCHISEE who materially violates any provision hereof, or who is wanton, negligent, or discourteous in the performance of his duties.

20.01.2 FRANCHISEE's field operations personnel shall be required to wear a clean uniform shirt bearing the FRANCHISEE's name. FRANCHISEE's employees, who normally come into direct contact with the public, including drivers, shall bear some means of individual photographic identification such as a name tag or identification card.

20.01.3 Each driver of a Collection vehicle shall at all times carry a valid California driver's license and all other required licenses for the type of vehicle that is being operated.

20.01.4 Each driver of a Collection vehicle shall at all times comply with all applicable state and federal laws, regulations, and requirements.

20.01.5 FRANCHISEE's employees, officers, and agents shall at no time be allowed to identify themselves or in any way represent themselves as being employees of the CITY.

20.01.6 The FRANCHISEE's name and the Customer Service telephone number shall be properly displayed on all Collection vehicles.

ARTICLE 21. Exempt Waste

21.01 The FRANCHISEE shall not be required to Collect or dispose of Exempt Waste, but may offer such services. All such Collection and disposal of Exempt Waste is not regulated under this Agreement, but if provided by the FRANCHISEE shall be in strict compliance with all federal, state, and local laws and regulations.

ARTICLE 22. Independent FRANCHISEE

22.01 In the performance of services pursuant to this Agreement, FRANCHISEE shall be an independent FRANCHISEE and not an officer, agent, servant or employee of CITY. FRANCHISEE shall have exclusive control of the details of the services and work performed and over all persons performing such services and work. FRANCHISEE shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and

subcontractors, if any. Neither FRANCHISEE nor its officers, employees, agents, contractors, or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits, or any other benefits which accrued to CITY employees and FRANCHISEE expressly waives any claim it may have or acquire to such benefits.

ARTICLE 23. Laws to Govern

23.01 The law of the State of California shall govern the rights, obligations, duties, and liabilities of CITY and FRANCHISEE under this Agreement and shall govern the interpretation of this Agreement.

ARTICLE 24. Consent to Jurisdiction

24.01 The parties agree that any litigation between CITY and FRANCHISEE concerning or arising out of this Agreement shall be filed and maintained exclusively in the Municipal or Superior Courts of Sonoma County, State of California, or in the United States District Court for the Northern District of California to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by California law.

ARTICLE 25. Assignment

25.01 No assignment of this Agreement or any right occurring under this Agreement shall be made in whole or in part by the FRANCHISEE without the express written consent of the CITY. The CITY shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the FRANCHISEE. Any assignment of this Agreement made by the v without the express written consent of the CITY shall be null and void and shall be grounds for the CITY to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to the FRANCHISEE, and upon the date of such notice this Agreement shall be deemed immediately terminated, and upon such termination all liability of the CITY under this Agreement to the FRANCHISEE shall cease, and the CITY shall have the right to call the performance bond and shall be free to negotiate with other contractors, the FRANCHISEE, or any other person or company for the service which is the subject of this Agreement. In the event of any assignment, the assignee shall fully assume all the liabilities of the FRANCHISEE.

25.02 The use of a subcontractor to perform services under this Agreement shall not constitute delegation of FRANCHISEE's duties provided that FRANCHISEE has received prior written authorization from the City Representative to subcontract such services and the City Representative has approved a subcontractor who will perform such services. FRANCHISEE shall be responsible for directing the work of FRANCHISEE's subcontractors and any compensation due or payable to FRANCHISEE's subcontractor shall be the sole responsibility of FRANCHISEE. The City Representative shall have the right to require the removal of any approved subcontractor for reasonable cause.

25.03 For purposes of this Article when used in reference to FRANCHISEE, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of at least fifty-one percent (51%) of FRANCHISEE's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of FRANCHISEE to a third party provided said sale, exchange or transfer results in a change of control of FRANCHISEE (with control being defined as ownership of more than fifty percent (50%) of FRANCHISEE's voting securities); (iii) any dissolution, reorganization, consolidation,

merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, subcontracting or lease-back payments, or other transaction which results in a change of control of FRANCHISEE; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of FRANCHISEE's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of control of FRANCHISEE.

25.04 FRANCHISEE acknowledges that this Agreement involves rendering a vital service to CITY'S residents and businesses, and that CITY has selected FRANCHISEE to perform the services specified herein based on (i) FRANCHISEE's experience, skill and reputation for conducting its Solid Waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable environmental laws, regulations and best Solid Waste management practices, and (ii) FRANCHISEE's financial resources to maintain the required equipment and to support its indemnity obligations to CITY under this Agreement. CITY has relied on each of these factors, among others, in choosing FRANCHISEE to perform the services to be rendered by FRANCHISEE under this Agreement.

ARTICLE 26. Compliance with Laws

26.01 In the performance of this Agreement, FRANCHISEE shall comply with all applicable laws, regulations, ordinances, and codes of the federal, state, and local governments, including without limitation the Municipal Code of the City of Rohnert Park.

26.02 CITY shall provide written notice to FRANCHISEE of any planned amendment to Division B6 of the CITY Municipal Code that would substantially affect the performance of FRANCHISEE'S services pursuant to this Agreement. Such notice shall be provided at least thirty (30) calendar days prior to the City Council's approval of such an amendment.

ARTICLE 27. Permits and Licenses

27.01 FRANCHISEE shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Agreement. FRANCHISEE shall provide proof of such permits, licenses, or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the City Representative.

27.02 FRANCHISEE shall ensure that all facilities selected by the FRANCHISEE obtain, at their own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Agreement. FRANCHISEE shall ensure that facilities used by the FRANCHISEE provide proof of such permits, licenses, or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses, and approvals upon the request of the City Representative.

27.03 FRANCHISEE shall obtain and maintain, at its own expense, a business registration with the CITY throughout the term of this Agreement. FRANCHISEE shall provide proof of such business registration upon the request of the City Representative.

27.04 FRANCHISEE shall obtain and maintain, at its own expense, a membership in the Rohnert Park Chamber of Commerce throughout the term of this Agreement. FRANCHISEE shall provide proof membership upon the request of the City Representative.

ARTICLE 28. Ownership of Written Materials

28.01 All reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by CITY or FRANCHISEE in connection with the services to be performed under this Agreement, whether developed directly or indirectly by CITY or FRANCHISEE shall be and shall remain the property of CITY without limitation or restrictions on the use of such materials by CITY. FRANCHISEE shall not use such materials in connection with any project not connected with this Agreement without the prior written consent of the City Representative. This Article 28 does not apply to ideas or concepts described in such materials and does not apply to the format of such materials.

ARTICLE 29. Waiver

29.01 Waiver by CITY or FRANCHISEE of any breach for violation of any term covenant or condition of this Agreement shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant, or condition. The subsequent acceptance by CITY of any fee, tax, or any other monies which may become due from FRANCHISEE to CITY shall not be deemed to be a waiver by CITY of any breach for violation of any term, covenant, or condition of this Agreement.

ARTICLE 30. Prohibition Against Gifts

30.01 FRANCHISEE represents that FRANCHISEE is familiar with CITY'S prohibition against the acceptance of any gift by a CITY officer or designated employee. FRANCHISEE shall not offer any CITY officer or designated employee any gifts prohibited by the CITY.

ARTICLE 31. Point of Contact

31.01 The day-to-day dealings between the FRANCHISEE and the CITY shall be between the FRANCHISEE and the City Representative.

ARTICLE 32. Conflict of Interest

32.01 FRANCHISEE shall comply with CITY requirements for conflict of interest and will file all required disclosure statements.

ARTICLE 33. Notices

33.01 Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the CITY:

Director of Administrative Services
130 Avram Avenue
Rohnert Park, CA 94928

As to the FRANCHISEE:

Name	<u>Curtis Michelini, Sr.</u>
Title	<u>President</u>
Company	<u>Industrial Carting</u>
Address	<u>P. O. Box 2638</u>
City, State, Zip Code	<u>Rohnert Park, CA 94927</u>
Phone	<u>(707) 585-0511</u>
Fax:	<u>(707) 585-8868</u>
E-Mail:	<u>Lisa.Hardin@GlobalMaterialsRecovery.com</u>

33.02 Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice. Facsimile transmission is acceptable notice, effective when received, however, facsimile transmissions received (i.e. printed) after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of items that are transmitted by facsimile equipment must also be mailed as required herein.

33.03 Notice by CITY to FRANCHISEE of a Collection or other Service Recipient problem or complaint may be given to FRANCHISEE orally by telephone at FRANCHISEE's local office with confirmation sent as required above by the end of the Work Day.

ARTICLE 34. FRANCHISEE's Records

34.01 FRANCHISEE shall maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Service Recipients for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to FRANCHISEE pursuant to this Agreement.

34.02 FRANCHISEE shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

34.03 Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Representative, the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at the CITY offices when it is practical to do so. Otherwise, unless an alternative site is mutually agreed upon, the records shall be available at FRANCHISEE's address indicated for receipt of notices in this Agreement.

34.04 Where CITY has reason to believe that such records or documents may be lost or discarded due to the dissolution, disbandment or termination of FRANCHISEE's business, CITY may, by written request or demand of any of the above named officers, require that custody of the records be given to CITY and that the records and documents be maintained in

City Hall. Access to such records and documents shall be granted to any party authorized by FRANCHISEE, FRANCHISEE's representatives, or FRANCHISEE's successor-in-interest.

ARTICLE 35. Entire Agreement

35.01 Incorporation by Reference. FRANCHISEE's Application, dated XXXX, 2011, and the Exhibits are incorporated into this Agreement by this reference. Where FRANCHISEE's Application conflicts with this Agreement, this Agreement shall prevail.

35.02 Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire Agreement and understanding between the parties hereto, and it shall not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the parties hereto.

ARTICLE 36. Severability

36.01 If any provision of this Agreement or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

ARTICLE 37. Right to Require Performance

37.01 The failure of the CITY at any time to require performance by the FRANCHISEE of any provision hereof shall in no way affect the right of the CITY thereafter to enforce same. Nor shall waiver by the CITY of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

ARTICLE 38. All Prior Agreements Superseded

38.01 This document incorporates and includes all prior negotiations, correspondence, conversations, Agreements, contracts and understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, Agreements, contracts or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations, Agreements, or contracts, whether oral or written.

ARTICLE 39. Headings

39.01 Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

ARTICLE 40. Representations and Warranties of the FRANCHISEE

The FRANCHISEE, by acceptance of this Agreement, represents and warrants the conditions presented in the Article.

40.01 Corporate Status. The FRANCHISEE is a {corporation} duly organized, validly existing and in good standing under the laws of the State of California ("State"). It is qualified to transact business in the State and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

40.02 Corporate Authorization. FRANCHISEE has the authority to enter this Agreement and perform its obligations under this Agreement. The Board of Directors of FRANCHISEE (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of FRANCHISEE represents and warrants that they have the authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the FRANCHISEE.

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

40.04 No Litigation. To the best of FRANCHISEE's knowledge after responsible investigation, there is no action, suite, 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:

40.04.1 Materially adversely affect the performance by FRANCHISEE of its obligations hereunder;

40.04.2 Adversely affect the validity or enforceability of this Agreement; or

40.04.3 Have a material adverse effect on the financial conditions of FRANCHISEE, or any surety or entity guaranteeing FRANCHISEE's performance under this Agreement.

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

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

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

40.08 FRANCHISEE'S Investigation. FRANCHISEE has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. FRANCHISEE has taken such matters into consideration in entering this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.

40.09 Ability to Perform. FRANCHISEE possesses the business, professional, and technical expertise to Collect, Transport, and Process the Multiple Provider Exclusive Temporary Debris Box and Roll-off material generated in the CITY. FRANCHISEE possesses the ability to secure equipment, facility(ies), and employee resources required to perform its obligations under this Agreement.

40.10 Voluntary Use of Disposal Location. The FRANCHISEE, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Disposal Facility for the purposes of Disposing of all residue from Construction and Demolition Debris Collected in the CITY. Such decision by FRANCHISEE in no way constitutes a restraint of trade notwithstanding any change in law regarding flow control limitations or any definition thereof.

40.11 Recognizing Labor Rights. FRANCHISEE recognizes, and agrees to continue to recognize, the right of its employees to peacefully organize and to file a valid petition seeking a lawful election conducted by the National Labor Relations Board. Such secret ballot election would determine if a majority of the subject employees want a labor organization to be their exclusive representative in collective bargaining with the FRANCHISEE. FRANCHISEE agrees to engage in good faith negotiations with any current and duly elected labor organization of the subject employees, and to meet at reasonable times to discuss wages, hours and other terms and conditions of employment. FRANCHISEE also represents that during negotiations with such duly elected labor organization, if necessary, it would support the use of a federal mediator and a reasonable cooling off period, if requested in writing by either party.

ARTICLE 41. Effective Date

This Agreement shall become effective at such time as it is properly executed by the CITY and the FRANCHISEE and the FRANCHISEE shall begin Multiple Provider Exclusive Temporary Debris Box and Roll-off Collection Services, as covered herein, as of January 1, 2012.

IN WITNESS WHEREOF, the CITY and the FRANCHISEE have executed this Agreement on the day and year first written above.

CITY OF ROHNERT PARK

Company Name

Industrial Carting

City Manager

Date



Company Representative/Title
Curtis Michelini, Sr.
President

11/20/11

Date

The foregoing Agreement has been reviewed and approval is recommended:

Resolution No. 2011 -
Approved by City Council

Approved as to Form:

City Attorney

Date