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**HEALTH
DEPARTMENT**

AGREEMENT

BY AND BETWEEN

CITY OF VERNON

AND

NASA SERVICES, INC.

FOR

**NONEXCLUSIVE FRANCHISE AGREEMENT FOR COMMERCIAL
SOLID WASTE COLLECTION**

EFFECTIVE January 1, 2015

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AGREEMENT

This Nonexclusive Franchise Agreement ("Agreement") is entered into to be effective as of the 1st day of January 2015, by and between the City of Vernon, a California charter City and California municipal corporation ("City") and NASA SERVICES, INC., ("Franchisee") (collectively, the "Parties") to provide for commercial solid waste handling services within the City.

RECITALS:

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is in the public interest to authorize and require local agencies to make adequate provision for the disposal of all solid waste within their jurisdictions.

B. Pursuant to California Public Resources Code Section 40059(a), the City Council of the City has determined that entering into a nonexclusive franchise for commercial Solid Waste Handlings Services within the City limits is in the best interest of City to comply with AB 939 while at the same time fostering competition.

C. City and Franchisee are mindful of the provisions of the laws governing the safe collection, transport, recycling, and disposal of Solid Waste, including AB 939, AB 341, the Resource Conservation and Recovery Act ("RCRA"), and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). City and Franchisee desire to leave no doubts as to their respective roles, and to memorialize that by entering into this Agreement, City is not thereby becoming an "arranger" or a "generator" as those terms are used in CERCLA, and that it is Franchisee, not City, who is "arranging for" the collection, transport for disposal, composting, and recycling of municipal Solid Waste in the City which may contain hazardous substances. City and Franchisee understand and agree that it is Franchisee, and not City, who will arrange to collect Solid Waste, that City has not, and, by this Agreement does not, instruct Franchisee on its collection methods, nor supervise the collection process, nor do the Parties intend to place title to such Solid Waste in City, but rather intend that whatever, if any, title in and to such Solid Waste that otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Franchisee, and further that if Franchisee gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. By entering this Agreement City and Franchisee further desire to confirm that Franchisee has agreed to indemnify the City in connection with any claims relating to the inadvertent or intentional collection, transportation and/or disposal of hazardous materials that may occur in connection with Franchisee's performance under this Agreement.

D. Franchisee has agreed, as part of this Agreement, to provide such services as are necessary or desirable to ensure City complies with the requirements of AB 939, AB 341 and Public Resources Code Section 40000, et seq.

COVENANTS:

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, City and Franchisee hereby agree as follows:

SECTION 1. RECITALS

The Parties acknowledge the above recitals are true and correct and incorporate them herein as if they were fully restated.

SECTION 2. DEFINITIONS

Whenever any term used in this Agreement has been defined by the California Public Resources Code or Chapter 12 of the City's Municipal Code, the definition of such term set forth therein shall apply unless the term is otherwise defined in this Agreement.

2.1 AB 341

"AB 341" shall mean Assembly Bill 341 from the 2011-2012 Regular Session of the California Legislature (Chapter 476, Statutes 2011).

2.2 AB 939

"AB 939" shall mean that state legislation commonly known as the California Integrated Waste Management Act (Chapter 1095, Statutes 1989, as amended), as codified in California Public Resources Code Section 40000 et seq.

2.3 Affiliate

"Affiliate" means a business in which Franchisee owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Franchisee and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Franchisee. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

2.4 Animal Waste

"Animal Waste" shall mean animal carcasses, dead animals, and/or parts or portions of dead animals. Animal Waste shall not include manure.

2.5 Applicable Laws

"Applicable Laws" shall mean all federal, state, county, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over an aspect of this Agreement that are in force on the effective date, and as may be enacted, issued or amended thereafter, including without limitation City's Municipal Code, AB 939 and AB 341.

2.6 Billings

"Billings" or "Billing" or "Bill" means the statements of charges provided to Customers for services rendered by Franchisee pursuant to the terms of this Agreement.

2.7 Bins

"Bins" shall mean a Container, commonly referred to as dumpsters, including compactors and any similar such devices, with a capacity of under ten (10) cubic yards.

2.8 Cart

"Cart" means a plastic container provided by Franchisee for collection, with a hinged lid and wheels serviced by an automated process, as opposed to a manual process of lifting and dumping, having a capacity of under one hundred fifty (150) gallons.

2.9 City Administrator

"City Administrator" shall mean the City Administrator of the City of Vernon or his/her duly authorized representative or designee. Unless otherwise directed by the City Administrator, the Director of Health and Environmental Control shall be the City Administrator's designee.

2.10 City Limits

"City Limits" shall mean the territorial boundaries of the City together with all amendments and changes thereto, which boundaries are depicted on maps, incorporated herein by reference.

2.11 Collect/Collection

"Collect" or "Collection" shall mean to take physical possession of, transport, and remove Solid Waste from a Premises.

2.12 Commercial Premises

"Commercial Premises" means Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property.

2.13 Construction and Demolition Debris

"Construction and Demolition Debris" means Solid Waste generated, produced, or discarded in connection with construction, demolition, landscaping, land clearing, or general clean-up activities within the City, including, but not limited to, concrete, plaster, drywall, green waste, wood, wood scraps, metals, dirt, rock and rubble, without regard to whether such materials are recycled.

2.14 Container

"Container" means any and all types of Solid Waste receptacles, including Carts and Bins, and Rolloff Boxes.

2.15 Customer

"Customer" or "Customers" shall mean any person receiving Solid Waste Collection services from Franchisee within the Franchise Area.

2.16 Environmental Laws

"Environmental Laws" means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; and the Federal Clean Water Act, 33 USC §1251 et seq..

2.17 Franchise Area

"Franchise Area" shall mean all Premises within the City Limits, including Premises which may be annexed and thereby added to the City limits following the effective date.

2.18 Franchise Fee

"Franchise Fee" shall mean the franchise fee set forth and more fully defined in Section 10 hereof.

2.19 Franchisee

"Franchisee" shall mean **NASA SERVICES, INC.**, the entity granted the nonexclusive franchise pursuant to this Agreement, or any party permitted pursuant to the terms hereof permitted to become the successor or assignee thereof.

2.20 Gross Receipts

"Gross Receipts" shall mean and include all monies, fees, charges, consideration, and revenue received by or imputed to Franchisee and any Affiliate, in connection with, arising from, or in any way attributable to the Solid Waste Handling Services carried out by or on behalf of Franchisee pursuant to this Agreement. Gross Receipts includes, without limitation, monthly or quarterly Customer charges that are received by Franchisee for Collection of Solid Waste, without subtracting Franchise Fees, fees imposed and collected pursuant to this Agreement, sums collected in connection with Temporary Services, charges imposed and collected related to disposal and processing of Solid Waste, and transportation charges. Gross Receipts does not include revenue from the collection or sale of Recyclable Material, Green Waste, food waste, and other material which is diverted from disposal. Gross receipts includes any compensation for Solid Waste Collection in which the material is delivered for Transformation.

2.21 Hazardous Substance

"Hazardous Substance" shall mean any of the following: (a) any substances defined, regulated or listed as "Hazardous Substances," "hazardous materials," "Hazardous Wastes," "toxic waste," "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7401 et seq.; and (vii) California Water Code §13050; and (b) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local laws or regulations, including any of the Environmental Laws, currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

2.22 Hazardous Waste

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

2.23 Large Residential Premises

"Large Residential Premises" means residential premises with five or more dwelling units.

2.24 Person

"Person" shall mean any individual, firm, association, organization, partnership, corporation, group or other entity.

2.25 Premises

"Premises" shall mean any land, building, and/or structure within the City limits where Solid Waste is generated or accumulated.

2.26 Recyclable Material

"Recyclable Material" or "Recyclables" shall mean that Solid Waste capable of being recycled, including but not limited to Green Waste, glass, newsprint, newspaper, aluminum, cardboard, certain plastics or metal.

2.27 Residential Premises

"Residential Premises" shall mean all premises upon which Dwelling Units exist.

2.28 Rolloff Box

"Rolloff Box" means Solid Waste Collection Containers of ten (10) cubic yards or larger, including compactors.

2.29 Solid Waste

"Solid Waste" shall mean and include all solid waste as defined in Public Resources Code section 40191, as it may be amended from time to time. Solid Waste does not include hazardous waste (Class I), low-level radioactive waste, untreated medical waste, or special wastes as defined herein.

2.30 Solid Waste Handling Services

"Solid Waste Handling Services" means the Collection, transfer, transport, recycling, processing, and disposal of Solid Waste for Premises within the City.

2.31 Special Wastes

"Special Wastes" shall mean wastes other than Solid Waste including sewage, sludge, industrial sludge, asbestos, auto bodies, tires, used motor oil, Hazardous Waste, Animal Waste, explosive substances, radioactive materials, acids, solvents and other materials which may not be disposed of at a Class III landfill or which require special handling.

2.32 Temporary Service

"Temporary Service" shall mean Solid Waste Handling Services provided by Franchisee on an as-needed and temporary basis to any Premises within the City in conjunction with construction, demolition, cleanup or other projects, and by use of temporarily placed Bins or Rolloff Boxes.

2.33 Transformation

"Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting.

SECTION 3. GRANT OF NONEXCLUSIVE FRANCHISE FOR SOLID WASTE HANDLING SERVICES FROM COMMERCIAL PREMISES AND FOR PROVIDING TEMPORARY SOLID WASTE HANDLING SERVICE

3.1 Scope of Franchise

3.1.1 General Grant.

City hereby grants to Franchisee and Franchisee hereby accepts from City, for the Term, the nonexclusive contract, right, and privilege to Collect, transport, and dispose of Solid Waste generated or accumulated within the Franchise Area. The rights granted pertain to: (1) Solid Waste Handling Services occurring on a regular schedule (such as weekly service) at Commercial Premises and Large Residential Premises, and (2) Temporary Services, including the collection of Construction and Demolition Debris, at any Premises in the City. The nonexclusive franchise, right and privilege to provide Solid Waste Handling Services within City granted to Franchisee by this Agreement shall be interpreted to be consistent with all applicable state and federal laws. In the event that future interpretations of current law or future enactments limit the ability of City to lawfully grant Franchisee the scope of services as specifically set forth, Franchisee agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Franchisee as a result thereof.

3.1.2 Limitations on Scope of Franchise.

This Franchise Agreement shall be nonexclusive, and no provision hereof shall be deemed to require City to grant similar franchises to one or to any particular number of franchisees, nor to restrict or prohibit City from doing so.

3.1.3 Matters Excluded from Scope of Franchise

Notwithstanding any other contrary provisions set forth in this Agreement, the nonexclusive franchise granted herein shall exclude the Collection, transportation, recycling, and disposal of:

(A) any Solid Waste otherwise within the scope of this Agreement which is transported by a Self Hauler as that term is used in the City's Municipal Code, or any other City ordinance, resolution, regulation or policy;

(B) the sale or donation of Recyclable Material by the person or entity that generated such Recyclable Material (the "Generator") to any person or entity other than Franchisee; provided, however, to the extent permitted by law, if the Generator is required to pay monetary or non-monetary consideration for the Collection, transportation, transfer, or processing of Recyclable Material to any person or entity other than Franchisee, the fact that the Generator receives a reduction or discount in price (or in other terms of the consideration the Generator is required to pay) shall not be considered a sale or donation;

(C) any Solid Waste otherwise within the scope of this Agreement which is Collected or transported to a disposal or recycling facility by City employees in the course and scope of their employment with City;

(D) the Collection, transportation, or disposal of Hazardous Waste; Universal Waste; E-Waste; biohazardous waste; untreated medical waste; infectious waste; Animal Waste; used cooking fats, oils, grease and similar waste; or other materials which do not constitute Solid Waste;

(E) the Collection, transportation, and disposal of Construction and Demolition Debris by a contractor, handyman, repairman, or other similar service provider, using its own equipment, as an incidental part of the services provided to its Customers, rather than as a hauling service, provided that such waste is not Collected or transported by a third party hired for the primary purpose of Collecting and transporting said materials;

(F) the Collection, transportation, and disposal of green waste and related Solid Waste by a gardener, or landscaper, as an incidental part of the gardening or landscaping services provided to its customers, rather than as a hauling service provided that such Solid Waste is not collected or transported by a third party hired for the primary purpose of Collecting and transporting said materials; and

(G) Solid Waste Handling Services provided by any Person having a legal right to continue doing so, as long as and to the extent such legal right continues to exist; except that to the degree any territory in which Franchisee has a franchise granted by another governmental entity is annexed into City during the Term, Franchisee agrees the provisions of this Agreement shall apply to such territory and further acknowledges that this Agreement constitutes any notice required by the Public Resources Code in connection therewith.

(H) By products of sewage treatment, including sludge, sludge ash, grit and screenings.

(I) Residue or non-processible waste from a facility with a solid waste facility permit granted by CalRecycle, including waste transfer material recovery, composting, and Transformation facilities.

3.1.4 City's Right to Designate Solid Waste Facility

The City reserves the right to direct or prohibit the Franchisee to deliver solid waste to any waste processing facility, waste transfer station, or disposal facility designated by the City. Franchisee agrees to comply with any written directions by the City to use, or refrain from using, any particular waste processing facility, waste transfer station, or disposal facility.

**SECTION 4.
ACCEPTANCE; WAIVER**

Franchisee agrees to be bound by and comply with all the requirements of this Agreement. Franchisee waives Franchisee's right to challenge the terms of this Agreement under federal, state, or local law, or administrative regulation. Franchisee waives any right or claim to serve the City or any part of the City under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code.

**SECTION 5.
TERM**

The term of this Agreement (the "Term") shall be for five (5) years. The Term shall end at midnight on December 31, 2019, unless this Agreement is terminated sooner pursuant to Section 17, or otherwise. The Term shall be automatically extended on January 1, 2020, and on January 1 of each subsequent year for a total of five (5) one (1) year extensions, unless the City has provided written notice to Franchisee to terminate the automatic extensions on or by December 31st date immediately preceding the automatic renewal date (i.e. at least one year before). While it is the present intent of the City Council to permit the Agreement to automatically renew so that the Term is extended, the decision to terminate the automatic extensions shall be subject to the City Council's sole, absolute and unfettered discretion.

**SECTION 6.
CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

The satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by City in writing, is a condition precedent to the effectiveness of this Agreement, and a condition of Franchisee's continued right to the benefits conveyed herein:

6.1 Accuracy of Representation

All representations and warranties made by Franchisee and set forth in this Agreement shall be accurate, true, and correct on and as of the Effective Date of this Agreement.

6.2 Furnishing of Insurance and Bond or Letter of Credit

Franchisee shall have furnished evidence of the insurance and Surety required by Sections 13 and 14 hereof, and shall comply with all ongoing requirements relating thereto.

6.3 Effectiveness of City Council Action

The City Council's Ordinance approving this Agreement shall have become effective pursuant to California law.

6.4 Payment of Fees and Costs

Franchisee shall have made payment to City of all fees, costs and other payments due as more fully set forth in Section 10.

SECTION 7.

SOLID WASTE HANDLING SERVICES PROVIDED BY FRANCHISEE

7.1 General

7.1.1 Equipment

Franchisee shall furnish all labor, supervision, materials, supplies, and equipment necessary to provide for all services required by the terms of this Agreement.

7.1.2 Performance Standards

Franchisee shall perform Solid Waste Handling Services as required hereunder in a workmanlike manner consistent with good housekeeping standards and all relevant provisions of Applicable Laws.

7.1.3 Noise and Disruption

Franchisee shall perform Solid Waste Handling Services in such a manner as to minimize noise and other disruptive impacts including, without limitation, those upon traffic. Franchisee shall use its best efforts to coordinate its Collection schedules such that street sweeping on any given street shall occur the business day following Collection of Solid Waste by Franchisee.

7.1.4 Replacement of Containers

Franchisee shall replace all Containers in the location upon the property of each Customer designated for storage thereof, and shall secure gates, doors, and/or enclosures when applicable.

7.1.5 Franchisee's Containers

(A) Franchisee shall maintain Containers in good repair, and any question as to the meaning of this standard shall be resolved by the City Administrator. By way of

example, and not limitation, seams in the container interior shall be ground to a finish which will prevent the accumulation of organic matter. Wheels, forklift slots, and other appurtenances which were designed for the movement, loading or unloading of the container shall be maintained in good repair.

(B) Franchisee shall deliver replacement Containers to each Customer at no additional charge.

(C) All Containers Carts shall be maintained reasonably watertight condition so as to ensure all NPDES permit requirements are met.

(D) Within twenty-four (24) hours after becoming aware of it (Sundays and holidays excepted), Franchisee shall repair and maintain, remove graffiti from, and replace lost, stolen or damaged Containers at no charge to Customers. Franchisee shall be entitled to charge Customers for the replacement of any Container that has been damaged by a Customer's willful neglect or abuse, ordinary wear and tear excepted.

(E) Franchisee shall at Customer's request annually refurbish, replace, and steam clean as necessary all Bins and Rolloff Boxes at no charge to Customers. City may require the steam cleaning or replacement of Bins utilized at restaurants, bars and grocery stores/markets more frequently if it determines such action is needed to protect public health and safety. When requested or required, Franchisee shall provide a replacement Bin/Rolloff Box to Customers at no charge.

(F) All Bins and Rolloff Boxes shall be kept painted in a uniform fashion and shall be identified with Franchisee's name and phone number in letters not less than three inches high with a 3/8 inch stroke on its exterior so as to be visible when the Container is placed for use.

(G) At a Customer's request, Franchisee shall provide Bins with locking lids and locks.

7.1.6 Missed Pick-ups

In case of a missed pick-up called in by a Customer, Franchisee shall Collect Solid Waste and Recyclable Material from such Customer no later than the next day of the pick-up week following the date of the call. Franchisee shall maintain records of the addresses of all missed pick-ups. The Customer service phone system required by Section 9.2.2 hereof is intended, among other things, to serve as a "hotline" for Customers to call in the event Solid Waste placed for Collection is not Collected by Franchisee and to facilitate having such Solid Waste Collected as soon as reasonably possible.

7.1.7 Record of Non-collection

As more fully set forth herein, Franchisee shall Collect all Solid Waste placed for Collection by Customers in Containers, excepting materials that do not meet the definition of Solid Waste (such as hazardous materials) or which are commingled with such materials. Whenever Franchisee determines not to Collect any Solid Waste deposited for Collection,

Franchisee shall leave a tag at least 2" by 6" in size, indicating the reason for Franchisee's refusal to do so. This information may be either handwritten or left by means of a check system (i.e., checking off boxes on a preprinted form). The tag shall provide Franchisee's business name and local telephone number and shall be securely fastened to the Container or the article refused. Franchisee shall maintain a record of all such taggings at its place of business. Such record shall contain the date of such notice, street address, reason for non-collection, and a summary of any communications between Franchisee and the Customer involved. Such notice may be inspected by representatives of City upon request.

7.1.8 Health Permit

Franchisee agrees to obtain annually a City of Vernon Health Permit and affix a City-issued permit verification plate, decal, or gummed sticker to each of its Collection Vehicles operating in the City.

7.2 Solid Waste Handling Services

7.2.1 Bins and Rolloff Boxes

Franchisee shall provide all of its Customers with at least one Bin and/or Rolloff Box for Collection of mixed Solid Waste, and shall Collect all Solid Waste placed therein for Collection not less than once per week. Franchisee shall provide additional Containers and Collections to Customers upon request, or as may be required by City's Municipal Code, health and safety requirements, or by the City Administrator. Bins and Rolloff Boxes shall be Collected by Franchisee from the location upon each Customer's property designated for their storage, and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by the Customer and Franchisee.

7.2.2 Carts

As an alternative to the requirements of Section 7.2.1 and upon written approval of the City Administrator, Franchisee shall offer Collection in refuse Carts to Customers that do not have space for, or do not generate enough waste to require the use of Bins for Collection. If Franchisee and Customer have a disagreement as to whether a refuse Cart is appropriate, or if City determines the Collection in a Refuse Cart causes health and safety or other concerns, the City Administrator shall make the final determination as to whether Collection in a refuse Cart may occur.

7.2.3 Recycling Services

Franchisee shall offer and provide a recycling program (the "Recycling Program") that meets the standards required under AB 341 and enables the City to achieve the required diversion rates specified by Applicable Laws. Franchisee shall promptly notify the City if it has reason to suspect that the City will not be able to achieve the required diversion rates. Franchisee shall produce, keep current, and provide public information specifically outlining its Recycling Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in City. The City Administrator may require Franchisee to modify its Recycling Program as deemed appropriate to ensure City is

in compliance with all Applicable Laws. In such event the City Administrator may require the Franchisee to achieve state specified diversion rates, and failure to achieve such rates shall constitute a material breach of the franchise. In addition to any other minimum requirements of the Recycling Program, Franchisee shall, prior to landfilling, process all mixed waste from Bins or Rolloff Boxes to recover Recyclable Materials. Franchisee shall be required to achieve any minimum recovery rate for processing mixed waste which is required by CalRecycle or any Applicable Laws.

7.3 Temporary Services

Franchisee shall provide Temporary Services on an on call basis to any Customer requesting such service pursuant to the following conditions:

(A) Temporarily placed three (3) cubic yard Bins may be used for small cleanup type projects; provided, however, Bins used for such purposes shall not remain at the same address for a period that exceeds four consecutive weeks. Bins used for Temporary Service shall not remain in any public rights-of-way for a period exceeding two consecutive weeks. Bins may not be placed in any public rights-of-way so as to create a safety hazard or so as to block any right-of-way to a degree that it is not reasonably usable. Bins placed in City's rights-of-way shall be subject to such requirements as may be imposed by City, and at a minimum shall be equipped with reflectors, reflective tape, reflective paint, or other reflective devices which, to the satisfaction of the City Administrator, make such Bins reasonably visible to vehicle traffic at night.

(B) Franchisee shall work with Customers requesting Construction and Demolition Debris Collection services to ensure compliance with the City's ordinance regulating the recycling and disposal of construction and demolition waste.

(C) Franchisee shall also make all reasonable efforts to recycle all construction and demolition waste it Collects, especially to the degree such loads contain clean inert materials. If applicable, Franchisee shall make available to Customers involved in construction separate containers within which to Collect different types of marketable materials, such as dirt, steel, concrete and wood.

7.4 Recycling Obligations and Public Education Program

7.4.1 Minimum Requirements for Recyclable Materials and Rolloff Boxes

All Rolloff Boxes, whether for regular weekly service or Temporary Service shall be delivered to a properly permitted facility for recycling and reuse purposes.

7.4.2 Extent of Applicable Franchise Rights

Nothing in this Agreement shall be construed as giving Franchisee the right to Collect Recyclable Material which has not been discarded and placed for Collection by Franchisee in the location designated for that purpose.

7.4.3 AB 939 Obligations, Guarantee, and Indemnification

7.4.3.1 Warranties and Representations

Franchisee warrants and represents that it is aware of and familiar with City's Source Reduction and Recycling Element (the "SRRE") and City's waste stream, and that it has the ability to and will provide sufficient programs and services to ensure City will meet or exceed the diversion goals set forth in AB 939 and AB 341. Stated otherwise, Franchisee acknowledges that it is responsible for ensuring that its various programs achieve the diversion requirements. Franchisee specifically acknowledges that the City's current mandated diversion goal as set forth pursuant to the Applicable Laws is 50%, and that this is subject to possible modification pursuant to the provisions of AB 341.

7.4.3.2 Mutual Cooperation.

City and Franchisee shall reasonably cooperate in good faith with all efforts by each other to meet City's diversion and other compliance requirements imposed by AB 939, AB 341 and other Applicable Laws. In this regard, City's obligations shall include, without limitation, making such petitions and applications as may be reasonably requested by Franchisee for time extensions in meeting diversion goals, or other exceptions from the terms of AB 939, AB 341 and Applicable Laws.

7.4.3.3 Waste Reduction and Program Implementation

Franchisee shall implement the programs identified in the SRRE of the City's General Plan immediately upon the Effective Date. Franchisee shall provide City with monthly, quarterly and annual written reports in a form adequate to meet City's AB 939 and AB 341 related filing and reporting requirements to CalRecycle and to the County of Los Angeles. .

7.4.3.4 Guarantee and Indemnification

Franchisee warrants and guaranties that it will carry out its obligations under this Agreement such that, with respect to the Customers it services under this Agreement: (i) both it and City will at all times be in compliance with the requirements of all Applicable Laws including specifically AB 939 and AB 341, and (ii) City will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in AB 939, AB 341. In this regard, Franchisee agrees that it will, in addition to any other requirement contained herein, at its sole cost and expense:

(A) to the extent legally permitted, defend, with counsel approved by City, indemnify, and hold harmless City against all fines and/or penalties and liabilities imposed by CalRecycle or any other regulatory agency if: (1) Franchisee fails or refuses to timely provide information relating to its operations pursuant to this Agreement or any Applicable Laws and such failure or refusal prevents City from submitting timely reports as required by Applicable Laws; or (2) the source reduction and recycling goals, diversion goals, program implementation requirements, or any other requirements of

Applicable Laws are not met with respect to the waste stream Collected under this Agreement;

(B) assist City in responding to inquiries from CalRecycle;

(C) assist City in preparing for, and participating in, any review of City's SRRE pursuant to Applicable Laws;

(D) assist City in applying for any extension, including under Public Resources Code Section 41820;

(E) assist City in any hearing conducted by CalRecycle relating to City's compliance with Applicable Laws;

(F) assist City with the development of and implement a public awareness and education program that is consistent with the City's SRRE and requirements of Applicable Laws;

(G) provide City with recycling, source reduction, and other technical assistance related to compliance with Applicable Laws;

(H) defend, with counsel acceptable to City, City and City's officials, employees, and agents against the imposition of fines and/or penalties, or liabilities, issued by CalRecycle pursuant to AB 939; and

(I) be responsible for and pay, any fees, penalties or other costs imposed against the City by CalRecycle, and indemnify and hold harmless City from and against any fines, penalties, or other liabilities, levied against it for violation of AB 939's diversion requirements, or any Applicable Laws, arising from or related to Franchisee's performance of its obligations under this Agreement.

7.4.4 Waste Generation/Characterization Studies

City must perform Solid Waste generation and disposal characterization studies periodically to comply with the requirements of AB 939. Franchisee agrees to participate and cooperate with City and its agents to accomplish studies and data collection and prepare reports, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed to satisfy the requirements of AB 939.

7.4.5 Implementation of Additional Diversion Services

In the event City does not meet the current diversion goal of 50% imposed by AB 939, or other Applicable Laws, City may direct Franchisee to perform additional services (including the implementation of new diversion programs) or modify the manner in which it performs existing services. Pilot programs and innovative services which may entail new Collection methods, and use of new or alternative waste processing and disposal technologies are included among the kinds of changes which City may direct.

7.5 Additional Services

Franchisee shall provide the following additional services at no charge, unless otherwise specified below. Franchisee shall not adjust its rates to Customers to offset costs incurred in providing any of the following services:

7.5.1 Monitoring and Cleaning of Bin Enclosures

Franchisee shall work with the City Administrator in identifying and resolving continual problems with overflowing Bins or Bin enclosures, and/or other unsanitary conditions caused by Customers. Franchisee shall clean out any overflowing Bins or Bin enclosures within City within twenty-four (24) hours of notification by City. Franchisee may reasonably bill Customers for any such services when they are required by City.

7.5.2 Handling of Electronic Waste

Franchisee shall Collect electronic waste, or "e-waste," and/or universal waste, from any Customer in the manner set forth herein, but shall handle and dispose of such materials in accordance with all Applicable Laws.

7.6 Special Services

Franchisee may provide special pickup procedures or services in addition to the services described herein for Customers who request or require such services at reasonable rates established by Franchisee. Franchisee shall notify the City Administrator of any such services prior to such time as they are provided in order to allow the City an opportunity to conduct necessary inspections and impose appropriate regulations.

SECTION 8. MINIMUM STANDARDS FOR FRANCHISEE'S SOLID WASTE HANDLING SERVICE COLLECTION VEHICLES

8.1 General

Franchisee shall provide vehicles for the Collection of Solid Waste ("Collection Vehicles") that are sufficient in number and capacity to perform the work required by this Agreement. Franchisee shall have available on Collection days sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies. Upon or prior to the Effective Date of this Agreement and prior to the start of any extension period of this Agreement pursuant to Section 5, Franchisee shall provide City with a report containing the information required under South Coast Air Quality Management District's Rule 1193(d)(7).

8.2 Air Quality/Fuel Requirements

Franchisee's Collection Vehicles shall comply with all rules and regulations of the South Coast Air Quality Management District, the Air Resource Board, and any other federal, state and local laws and regulations that may be enacted during the Term.

8.3 Specific Requirements

Each Collection Vehicle shall meet the following minimum standards:

(A) Each Collection Vehicle shall be registered with the California Department of Motor Vehicles.

(B) Franchisee shall inspect regularly each Collection Vehicle to ensure compliance with the California Vehicle Code and the California Highway Patrol. Franchisee shall provide copies of its Biannual Inspection of Terminal ("BIT") inspection reports to City within 30 days of its receipt of such reports and shall make all records related to its vehicles available to City upon request.

(C) Each Collection Vehicle shall be continuously maintained to: (1) meet the highest industry standards to prevent liquid from leaking and to ensure each Collection Vehicle is "watertight" and "leak-proof" and, (2) at all times complies with the provisions of all Applicable Laws. All bodies and tanks shall be constructed of metal. All joints and seams shall be welded and the tank shall be leakproof. Franchisee shall be responsible to promptly clean any spillage or Solid Waste that leaks or otherwise escapes the vehicle.

(D) Each Collection Vehicle shall be cleaned and painted regularly if so that such vehicles do not become unsightly, as determined by the City Administrator.

(E) Franchisee's name, local or toll free telephone number, street address, and a vehicle number shall be visibly printed or painted in letters not less than three (3) inches in height with a 3/8 inch stroke on both sides of each Collection Vehicle. Any other information or signage printed, painted, or displayed on Franchisee's Collection Vehicles, when such Vehicles are providing Collection services within City Limits, shall be subject to approval by City.

(F) Each Collection Vehicle shall be maintained in a clean and sanitary condition both inside and out.

(G) Each Collection Vehicle shall carry a broom, shovel, and operable fire extinguisher, and shall be equipped with a communication device to allow the driver to communicate directly with Franchisee's dispatcher and/or main office.

(H) Each Collection Vehicle shall be kept in good repair and working order, and shall be equipped with appropriate safety equipment, including any new safety related technologies that become standard in the waste industry

(I) Franchisee shall inspect each Collection Vehicle to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Franchisee shall keep accurate records of all Collection Vehicle maintenance and repair, and shall make such records available to City upon request.

(J) No Collection Vehicle shall be utilized if it is leaking brake, hydraulic, or other fluids, and Franchisee shall clean up any leaks or spills from their vehicles per the NPDES permit in effect at the time. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such cleanup efforts.

(K) Upon request, Franchisee shall furnish City a written inventory of all equipment, including Collection Vehicles, used in providing service pursuant to this Agreement. This inventory shall list all equipment by manufacturer, ID number, date of acquisition, type and capacity.

(L) Franchisee shall utilize Collection Vehicles of a size, weight, nature, and type so as to not be unreasonably intrusive on the community with respect to noise, emissions, maneuverability, safety, and other factors to avoid or minimize pavement damage and wear and tear of the street or adjacent properties, as approved by the City Administrator.

(M) Franchisee shall not load Collection Vehicles in excess of the manufacturer's recommendations or limitations imposed by Applicable Laws.

8.4 Costs of Operation and Damages

Franchisee shall be responsible for any costs incurred in connection with ensuring all Collection Vehicles comply with all Applicable Laws, including without limitation any such laws that may be adopted relating to noise, fuels, emission standards, or weight limits.

8.5 City Inspection

City may cause or require any Collection Vehicle used in performance of this Agreement to be inspected and tested at any time and in such manner to determine that the vehicle is being maintained in compliance with the provisions of this Agreement.

SECTION 9. FRANCHISEE'S SOLID WASTE HANDLING SERVICE PERSONNEL

9.1 Training and Legal Compliance

Franchisee shall provide operating and safety training that meets minimum OSHA standards for all personnel, and shall comply with all Applicable Laws.

9.2 Customer Service

9.2.1 Office Hours

Franchisee shall maintain a local office that at a minimum will be open from 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 p.m. Saturday, holidays excepted ("Office Hours") with at least one qualified representative to communicate with the public

regarding Billings, complaints, customer service inquiries, etc. A similarly qualified person shall be available by phone during any times other than Office Hours when Collection is occurring.

9.2.2 Telephone Customer Service Requirements

Franchisee shall maintain a local or toll free telephone number at all times during Office Hours. Franchisee shall provide City with a 24-hour emergency number to a live person, not voice-mail.

9.2.3 Complaint Documentation

All service complaints shall be directed to Franchisee. Franchisee shall log all complaints received with date and time the complaint was received, the name, address and telephone number of the complaining party, a description of the complaint, the name of the employee recording the complaint and the action taken by Franchisee to respond to and remedy the complaint. All complaints shall be initially responded to within one (1) business day (Monday through Friday) of receipt. Logs of complaints shall be retained for a minimum of twenty-four (24) months and must be made available to City upon request. Franchisee shall provide to City on a monthly, quarterly, and annual basis, a complaint log.

9.2.4 Government Liaison

Franchisee shall designate in writing a "Government Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer complaints.

9.3 Education and Public Awareness

9.3.1 General

Franchisee acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of AB 939 and AB 341. Accordingly, Franchisee agrees to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse and recycle Solid Waste and to cooperate fully with City in this regard.

9.3.2 Written Program Materials

Franchisee shall make available information to reduce, reuse and recycle Solid Waste. .

9.3.3 Public Outreach

Franchisee shall promote recycling through presentations and educational materials to the Chamber of Commerce, construction contractors and other similar groups.

9.3.4 On-going Education Requirement – Corrective Action Notice

Franchisee shall have available a corrective action notification form for use in instances where a Customer sets out inappropriate materials for Collection that explains the appropriate manner for disposal of such items.

SECTION 10. FRANCHISEE'S CONSIDERATION

10.1 Franchise Fee

Franchisee shall pay to City, a franchise fee equal to 10 percent (10%) of Franchisee's Gross Receipts, or portion thereof, during the entire Term (the "Franchise Fee"). Said Franchise Fee shall be paid to City in four (4) quarterly payments, due on or before the last day of the month following after the end of each calendar quarter (i.e., on or before April 30, July 31, October 31, and January 31). Should any such due date fall on a day the City's business offices are closed, payment shall be due on the first day thereafter in which the City's business offices are open. The amount of each payment shall be equal to ten percent (10%) of Franchisee's Gross Receipts in the preceding calendar quarter. Franchise Fees shall be accompanied by a statement certified by an officer of Franchisee attesting to the accuracy of the amounts paid, and setting forth the basis for their calculation in a manner acceptable to City.

10.2 Franchise Fee Review

The Franchise Fee rate will be reviewed by City on an ongoing basis, but not more often than annually, and if deemed necessary by City may be reduced or increased by approval of a resolution of the City Council. City shall provide Franchisee with ninety (90) days advance written notice of any fee adjustment before taking effect.

SECTION 11. CHARGE FOR LATE PAYMENTS

If any Franchise Fee payment or other payment provided for in this Agreement (whether reimbursements, payments of funds collected in connection with billing services, or otherwise) is not received by the City, as set forth in Section 10 of this Agreement, Franchisee shall pay to the City a late payment fee in an amount equal to ten percent (10%) of the amount owing for that quarter. Franchisee shall pay an additional ten percent (10%) owing on any unpaid balance for each month following the initial thirty (30) day period the franchise fee remains unpaid. In no event shall the total late payment requirements exceed 60%. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment. If a court of competent jurisdiction determines the late fees or other charges provided for herein exceed the limits permitted by Applicable Law, then: any such fees or charges shall be reduced by the amount necessary to reduce the fee or charge to the permitted limit.

SECTION 12.
FRANCHISEE'S BILLING SERVICES AND SYSTEMS

12.1 Billing

Franchisee shall provide services at rates it sets, charges to, and collects from Customers. Franchisee shall provide all Customers with itemized Bills. Franchisee's Bills shall not include separate itemization of a "Franchise Fee" or other similar designation relating to fees which Franchisee is required to pay to City. Franchisee shall reproduce and include in any Billing, at no additional cost, one page informational "inserts" provided by City.

12.2 Payment, Accounting Systems

All payments received by Franchisee shall be appropriately credited to Customer accounts and segregated from Gross Receipts from other jurisdictions, deposited in a bank account and accounted for utilizing generally accepted accounting principles.

SECTION 13.
FAITHFUL PERFORMANCE

13.1 Surety

As security for Franchisee's faithful performance of all obligations of this Agreement, Franchisee shall provide a surety mechanism (the "Surety") in the greater of the two following amounts: (a) Ten Thousand Dollars (\$10,000); (b) two and a half times the required average quarterly franchise payment from the prior numbered calendar year. The Surety may be comprised of either a performance bond and/or an irrevocable letter of credit, in a form approved by the City Attorney. The cost of the Surety shall be the sole responsibility of Franchisee. The Surety shall be released within thirty (30) days after both (i) the expiration of the Term; and (ii) Franchisee's satisfactory performance of all obligations hereunder.

13.1.1 Forfeiture of Surety

In the event Franchisee shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the Surety, as may be necessary to recompense and make whole the City, forfeited to the City. Upon partial or full forfeiture of the Surety, Franchisee shall restore the Surety to its original amount within thirty (30) days of the City's notice to do so. Failure to restore the Surety to its full amount within thirty (30) days shall be a material breach of this Agreement.

13.1.2 Use of Surety by City

Notwithstanding any provision hereof to the contrary, thirty (30) days following City providing Franchisee with written notice of its failure to pay City any amount owing under this Agreement, either the letter of credit or performance bond comprising the Surety may be utilized by City for purposes including, but not limited to: (1) Payment of sums due under the terms of this Agreement, including specifically liquidated damages; and (2) Reimbursement of City's costs to correct violations of this Agreement.

13.2 Replacement Letter of Credit

City may draw upon the entire letter of credit (if any) utilized to meet Franchisee's obligations pertaining to the Surety, and convert it to a cash deposit, if Franchisee fails to cause the letter of credit to be extended or replaced with another satisfactory letter of credit no later than sixty (60) days prior to its expiration.

SECTION 14. INSURANCE COVERAGE

Franchisee shall procure and maintain the following types of insurance, and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Franchisee's performance hereunder. The insurance requirements hereunder in no way limit Franchisee's various defense and indemnification obligations, or any other obligations as set forth herein.

14.1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 00 01).
2. The most recent editions of Insurance Services Office form number CA 00 01 1001 covering Automobile Liability, code 1 "any auto".
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

14.2 Minimum Limits of Insurance

Franchisee shall maintain in force for the Term limits no less than:

14.2.1 Comprehensive General Liability

Five Million Dollars (\$5,000,000.00) limit aggregate and Five Million Dollars (\$5,000,000.00) limit per occurrence for bodily injury, personal injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

14.2.2 Automobile Liability

Five Million Dollars (\$5,000,000.00) limit aggregate and Five Million Dollars (\$5,000,000.00) limit per accident for bodily injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

14.2.3 Workers' Compensation and Employers Liability

Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000.00) per accident.

14.2.4 Environmental Pollution Control Insurance

Franchisee shall maintain either an endorsement to its general liability policy, or a separate policy of insurance covering environmental pollution and contamination that names the City as an additional insured. Said coverage shall be in the amount of not less than Five Million Dollars (\$5,000,000) per occurrence, and Five Million Dollars (\$5,000,000) in the aggregate.

14.3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. If, Franchisee does not have sufficient financial resources to protect the City from exposure with respect to any deductibles or self-insured retentions Franchisee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

14.4 Other Insurance Provisions

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

14.4.1 General Liability and Automobile Liability Coverage

City shall be named as additional insureds in connection with liability arising out of activities performed by or on behalf of Franchisee; Premises owned, leased or used by Franchisee; and vehicles owned, leased, hired or borrowed by Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to City. Franchisee's insurance coverage shall be the primary insurance for the City in connection with the above enumerated categories. Any insurance or self-insurance maintained by City shall be in excess of Franchisee's insurance and shall not contribute with it. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to City. Coverage shall state that Franchisee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

14.4.2 Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against City for losses arising from work performed by Franchisee for City.

14.4.3 All Coverages

Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

14.5 Acceptability of Insurers

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

14.6 Verification of Coverage

Franchisee shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Article. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements must be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

14.7 Loss or Reduction in Insurance

In the event that Franchisee fails to retain or maintain insurance with the scope and amounts of coverage required hereunder, City shall have the right to either terminate this Agreement, or utilize funds from the Surety to obtain insurance coverage on behalf of Franchisee.

SECTION 15. ASSIGNMENT, SUBLETTING, AND TRANSFER; REQUIREMENTS AND LIMITATIONS

15.1 Assignment

Franchisee shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement (collectively referred to as an "Assignment") to any other Person without the prior approval by the City Council. The City Council has unfettered discretion to approve or deny such an Assignment. Should the City consent to any Assignment request, such Assignment shall not take effect until all conditions relating to the City's approval have been met.

SECTION 16. REVIEW OF SERVICES AND PERFORMANCE

16.1 Performance Hearing

(A) Commencing in or about July 2017, and on a biennial basis thereafter, City may hold a hearing to review Franchisee's Solid Waste Collection efforts, source reduction, processing and other diversion services and overall performance under this Agreement (the "Solid Waste Services and Performance Review Hearing"). The purpose of the Solid Waste Services and Performance Review Hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, recycling, processing and disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and recycling and disposal system; and to ensure services are being provided by Franchisee with adequate quality, effectiveness and economy. If the number of Customer complaints regarding Franchisee's Solid Waste Collection are deemed by City to be excessive, City may also, at any time, with at least ninety (90) days advance notice, hold a Solid Waste Services and Performance Review Hearing.

SECTION 17.
CITY'S REMEDIES; DEFAULT AND TERMINATION

17.1 Notice of Default

If the City Administrator determines that Franchisee has defaulted in the performance of any obligation hereunder, or that Franchisee's performance has not been in conformity with reasonable industry standards obtained in similar cities in Southern California, the requirements of the City's Municipal Code, the requirements of CalRecycle, or any other Applicable Laws, the City Administrator may provide written notice to Franchisee of such default. The City Administrator may, in such written notice, set a reasonable time within which correction of such default shall be made. Unless otherwise specified, a reasonable time for correction shall be thirty (30) days from the date such written notice is given.

17.2 Failure to Cure

If Franchisee fails to cure default, to the satisfaction of the City Administrator, all deficiencies contained in the written notice thereof within the specified time, or if it is not reasonably possible to correct such deficiencies within the specified time, and Franchisee fails to commence to correct or remedy such deficiencies within the specified time, then the City Administrator may refer the matter to the City Council for review, or review the matter himself.

17.3 Review by City Administrator

If the City Administrator reviews the matter and determines that Franchisee has failed to properly or adequately cure any default set forth above, the City Administrator, in the exercise of his discretion, may terminate this Agreement, or take such other action as he deems appropriate to pursue any remedy available to City. A decision or order of the City Administrator shall be final and binding on Franchisee unless Franchisee files a "Notice of Appeal" with the City Clerk within five (5) business days of the date the notice of the City Administrator's decision is given. The City Administrator shall schedule any appeal for consideration by the City Council at the earliest feasible City Council Meeting following the date a Notice of Appeal is given to City.

17.4 City Council Review

In the event an appeal of a decision of the City Administrator is filed, or if the City Administrator refers the matter to the City Council without rendering a decision, the City Council shall set the matter for consideration before the City Council as a regular agenda item. In reviewing the matter the City Council may consider any information reported by the City Administrator regarding the deficiencies, and shall give Franchisee, a reasonable opportunity to be heard. Upon review, the City Council may terminate the Agreement, or to pursue any other remedy available to City.

17.5 Termination without Right to Cure

The above right of termination as a result of Franchisee's failure to timely cure any deficiency is in addition to City's right to terminate this Agreement without affording Franchisee an opportunity to cure in circumstances where Franchisee is determined by City to have

materially breached this Agreement. City shall thus be afforded the right to terminate this Agreement in the event of any material breach hereof by Franchisee without affording Franchisee the right to cure as a result of any action, inaction or circumstance which is a legally defined material breach, or is defined herein as a material breach, and/or under any of the following circumstances which are hereby specifically defined as material breaches:

- (A) If Franchisee practices, or attempts to practice, any fraud upon City.
- (B) If Franchisee becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Franchisee in a bankruptcy proceeding.
- (C) If Franchisee willfully violates any orders or rulings of any regulatory body having jurisdiction over Franchisee relative to this Agreement. So long as City's rights are not prejudiced during the pendency of any challenge to such orders or rulings by Franchisee, Franchisee may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no material breach of this Agreement shall be deemed to have occurred until a final ruling has been rendered.
- (D) If Franchisee ceases to provide Solid Waste Handling Services, including Collection of Solid Waste and/or Recyclable Material, as required under this Agreement with respect to all or any of the Customers it services under this Agreement for a period of seven (7) days or more, for any reason not specified as a force majeure event hereunder.
- (E) If Franchisee fails to materially comply with any insurance or indemnification requirement set forth in this Agreement.
- (F) If City is required to pay any fine or penalty, which is not paid on its behalf by Franchisee or which Franchisee fails, refuses, neglects or is unable to pay or indemnify City against, relating to any diversion or other requirement of AB 939 and/or AB 341.
- (G) If Franchisee, or any management level employee of Franchisee is convicted of a Criminal Matter (as defined herein). For purposes of this Section the term Criminal Matter refers to any felony or misdemeanor offense having any relationship to either Solid Waste Handling Services or public corruption (including, without limitation, bribery, conflict of interest related allegations, vote selling, or any similar type charges).
- (H) If Franchisee submits quarterly payments to City, which are returned by the bank due to insufficient funds, on two (2) or more occasions in any consecutive 12 month period.

SECTION 18.
FRANCHISEE'S REMEDIES; ADMINISTRATIVE HEARING

18.1 Administrative Hearing

Should Franchisee contend that City is in breach of any aspect of this Agreement, it shall give notice to the City Administrator requesting an administrative hearing. The hearing shall occur as soon as reasonably possible, or on such date as mutually agreed by the parties, and shall be held before an impartial hearing officer to be determined by the City Administrator. The hearing officer shall make an advisory ruling on Franchisee's allegations, and suggest a remedy if a breach by City is determined to exist. The hearing officer's ruling and recommendations shall become final and binding if the parties so agree in writing within thirty (30) days of the date notice of the decision is given to both parties. Otherwise, the hearing officer's ruling shall have no further force or effect.

18.2 Other Remedies; Claims

Franchisee shall be entitled to all available remedies in law or equity for City's breach of this Agreement; provided, however, Franchisee shall not file or otherwise commence any action against City, in law or equity, in any court, until after an administrative hearing as set forth above has been completed, and the above noted thirty (30) day period to accept the hearing officer's decision has passed, or either City or Franchisee has given timely written notice to the other that it will not accept the hearing officer's decision.

18.3 Actions for Damages

As a prerequisite to the filing and maintenance of any action for damages by Franchisee against City arising out of this Agreement, Franchisee shall present a claim to City, as required by Government Code Section 910 et seq., within 30 days of the date of the occurrence giving rise to the claim for damages.

SECTION 19.
CITY'S ADDITIONAL REMEDIES

In addition to any other remedies set forth herein, City shall be entitled to any or all of the following rights and remedies in the event of a breach of this Agreement by Franchisee:

(A) The right to use Franchisee's equipment for the purpose of Collecting, transporting, and/or disposing of Solid Waste, including Recyclable Material, for a period not to exceed six (6) months. In the case of equipment not owned by Franchisee, Franchisee shall assign to City, to the extent Franchisee is permitted to do so under the instruments pursuant to which Franchisee possesses such equipment, the right to use and possess the equipment. If City exercises its rights under this Section, City shall pay to Franchisee the reasonable rental value of the equipment for the period of City's possession thereof (although payment may, if appropriate, occur in the form of a set off against damages otherwise owed by Franchisee pursuant to the terms hereof);

(B) The right to license others to perform the services otherwise to be performed by Franchisee hereunder, or to perform such services itself; and

(C) The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach of this Agreement by Franchisee, City will suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to specifically enforce the provisions of this Agreement, and to enjoin the breach hereof.

SECTION 20. RIGHTS OF CITY TO PERFORM DURING EMERGENCY

20.1 Provision of Service

Should Franchisee, for any reason whatsoever, refuse or be unable to provide Solid Waste Handling Services for a period of more than seventy-two (72) hours, and if as a result thereof, Solid Waste should accumulate in City to such an extent or in such a manner that the City Administrator finds that such accumulation endangers or menaces the public health, safety, or welfare, City shall have the right, upon twenty-four (24) hours prior written notice to Franchisee, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of Franchisee previously used in providing Collection, transportation, and disposal of Solid Waste and provide, through its own forces or otherwise, Solid Waste Handling Services which Franchisee otherwise would be obligated to provide pursuant to this Agreement. Franchisee agrees that in such event it shall fully cooperate with City to affect such a transfer of possession for City's use.

20.2 Possession of Equipment

Franchisee agrees, that in the event of circumstances described in Section 20.1 above, City may take temporary possession of and use all of said equipment and facilities without paying Franchisee any rental or other charge. Upon Franchisee giving City notice that it is able to resume its normal responsibilities under this Agreement City shall either relinquish possession of all of the above mentioned property to Franchisee.

20.3 Exclusions from Right to Possession of Equipment without Compensation

Specifically excluded from the circumstances in which City may possess and utilize Franchisee's equipment without compensation are circumstances in which Franchisee fails or refuses to provide Solid Waste Handling Services hereunder for any reason which is not a force majeure event as defined herein. In such circumstances City's right to utilize and possess Franchisee's equipment shall be subject to the provisions of the above Section 19.

SECTION 21. REPORTS AND ADVERSE INFORMATION

City will require reporting at various intervals by which information important to City can be compiled and analyzed. The frequency and content of the reports called out below may be changed by agreement of the parties; provided any such change is approved by the City

Administrator in writing. Quarterly reports shall be submitted within thirty (30) calendar days after the end of the calendar quarter.

21.1 Quarterly Reports

Franchisee shall report the following to City on a quarterly basis:

(A) Solid Waste Collected by Franchisee within City Limits for each month, sorted by type of Solid Waste in tons broken down at a level acceptable to City segregated from tons collected from other jurisdictions (which at a minimum may include: refuse, e-waste and universal waste item counts, types of recyclables including PET, HDPE, mixed plastics, aluminum, cardboard, mixed paper, sand, wood, metal, and concrete), as well as by customer type (i.e., commercial, roll-off, etc.); the source of the waste, whether residential commercial, industrial, governmental or other; the facilities where all Solid Waste Collected was processed or disposed and in what tonnages and what categories.

(B) Gross Receipts broken down by customer type (i.e., commercial, roll-off, etc.); and such other information or reports that the City may reasonably request.

Franchisee shall promptly, upon demand by City, provide true and accurate copies of landfill tipping receipts, records showing delivery at processing or reuse facilities, and similar such documents in order to enable City to verify Franchisee's quarterly reports.

21.2 Annual Reports

Upon the City's request, within 30 days of the end of each calendar year during the Term and within thirty (30) days after the end of the Term, Franchisee shall submit a written annual report in a form approved by City, which may include, but is not limited to, the following information:

(A) A summary of the previous year's activities including, but not limited to, services begun or discontinued during the reporting year, and the number of Customers broken down on a monthly basis;

(B) A summary of the total tons of Solid Waste Collected in City in the preceding year as well as a summary of the total tonnage diverted from the State's landfill systems during that time frame;

(C) Information and reports required by City to meet its reporting obligations imposed by AB 939 and the regulations implementing AB 939, in a form and content approved by the City Administrator;

(D) A revenue statement, certified by the chief financial officer of Franchisee, setting forth Franchise Fees paid and the basis for the calculation thereof, including specifically a breakdown of sources of revenue included in Gross Receipts and the amount of revenue derived from each such source comprising Gross Receipts; and

(E) A list of the number of Customers that received routine commercial service, the number of Customers that received Temporary Service, all categorized and listed by business type (if applicable), and type of Customer (i.e., commercial or Temporary Service).

(F) All reports and records required under this or any other Section hereof

SECTION 22. INDEMNIFICATION

22.1 General

(A) Franchisee hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively the "Indemnities") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description arising out of, resulting from, and/or in any way connected with this Agreement including: (1) the negligence or willful misconduct of Franchisee in performing services under this Agreement; (2) the failure of Franchisee to comply with the provisions of this Agreement, all Applicable Laws, and/or ordinances and regulations; (3) the acts of Franchisee in performing services under this Agreement for which strict liability is imposed by law; and (4) any challenge to the award of, or any provisions of this Agreement (including any claim that the application of any provision hereof violates any provision of the California Constitution). The foregoing indemnity and hold harmless provisions shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of Indemnities' negligence, but shall not extend to matters resulting from Indemnities' sole negligence, or willful misconduct. Franchisee further agrees to and shall, upon demand of City, at Franchisee's sole cost and expense, defend (with attorneys acceptable to City) City against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse City for any and all costs and expenses City incurs in providing any such defense.

22.2 Hazardous Substances Indemnification

(A) Without regard to any insurance coverage or requirements, and any general indemnification obligation, Franchisee specifically agrees to defend (with counsel acceptable to City) reimburse, indemnify, and hold City and its past and present officers, council members, employees, consultants and agents (hereinafter "Indemnified Parties") harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Franchisee that:

(1) results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnified Party is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or

(2) relates to material Collected, transported, recycled, processed, treated or disposed of by Franchisee.

(B) Franchisee's obligations pursuant to this Section shall apply, without limitation, to:

(1) any Claims brought pursuant to or based on the provisions of applicable Environmental Laws;

(2) any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation by Franchisee of any facility;

(3) any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, disposal, processing or use of any materials recovered by Franchisee; and

(4) any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

(C) The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Franchisee.

(D) The term "Hazardous Contaminant" shall mean any "hazardous material," as that term is defined under California Health & Safety Code Section 25501(o); any Hazardous Substance; any Hazardous Waste; any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; any crude oil or refined or unrefined petroleum product; and any asbestos or asbestos containing material.

SECTION 23.

FRANCHISEE'S BOOKS AND RECORDS; AUDITS

23.1 Maintenance and Inspection of Records

Franchisee shall maintain all records relating to the services provided hereunder (the "Records"), for the full Term, and an additional period thereafter of not less than three (3) years, or any longer period required by law. City shall have the right, upon five (5) business days advance notice, to inspect the Records. Such Records shall be made available to City at Franchisee's regular place of business, but in no event outside the County of Los Angeles.

23.2 CERCLA Defense Records

Franchisee shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) for not less than five (5) years following the termination of this Agreement, and agrees to notify City Administrator before destroying such records thereafter. At any time, including after the expiration of the Term, upon request by the City Administrator, Franchisee shall provide copies of such records to City. The requirements of this Section shall survive the expiration of the Term of this Agreement.

23.3 Ongoing Compliance Review

City intends review Franchisee's performance on an ongoing basis to ensure compliance with the terms and provisions of this Agreement. Franchisee shall provide any and all information reasonably requested by the City Administrator in connection with its efforts to ensure compliance with the terms hereof, regardless of whether such information is specifically otherwise called out herein as an item that Franchisee is required to maintain and provide to City.

23.4 Discretionary Audit

From time to time the City Administrator may request Franchisee to make available any or all of its records related to performance hereunder available to an independent auditor or examiner, to be selected by the City, for auditing and examination purposes (a "Discretionary Audit"). City shall bear the cost of any Discretionary Audit except as otherwise provided herein. Should any Discretionary Audit reveal an underpayment of any Franchise Fee required pursuant to this Agreement, the amount of such underpayment shall become due and payable to City not later than fifteen (15) days after written notice of such underpayment is sent to Franchisee by City, complete with any additional late charges as set forth herein. If a Discretionary Audit reveals inaccuracies or inconsistencies in more than five percent (5%) of all Customer accounts, either with Franchisee's operations or billing systems, or an underpayment of Franchise Fees of more than three percent (3%), Franchisee shall bear the entire cost of such Discretionary Audit.

SECTION 24.

RULES AND REGULATIONS OF CITY ADMINISTRATOR

The City Administrator shall have the power to establish rules and regulations respecting Solid Waste Handling Services, provided they augment and are not inconsistent with the provisions of this Agreement.

SECTION 25.

GENERAL PROVISIONS

25.1 Force Majeure

Franchisee shall not be in default under this Agreement in the event that its ability to provide Solid Waste Handling Services or Temporary Services, in compliance with its obligation to do so hereunder, is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, strikes or other labor disturbances lasting

five (5) days or less, explosion, natural disasters such as floods, earthquakes, landslides, and fires, or "other catastrophic events" which are beyond the reasonable control of Franchisee. The term "other catastrophic events" does not include: (i) the financial inability of Franchisee to perform; (ii) failure of Franchisee to obtain any necessary permits or licenses from other governmental agencies; (iii) the failure to obtain the right, or the loss of the right, to use the facilities of any public utility where such failure is due in substantial part to the acts or omissions of Franchisee; or (iv) strikes or other labor disturbances lasting longer than five (5) days.

25.2 Independent Contractor

Franchisee is an independent contractor and not an officer, agent, servant, or employee of City. Franchisee is solely responsible for the acts and omissions of its officers, agents, employees, and subcontractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Franchisee.

25.3 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees, agents, or subcontractors of Franchisee to private or public property shall be promptly repaired or replaced at Franchisee's expense.

25.4 Right of Entry

Franchisee shall not have the right, until Franchisee receives permission from the property owner, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Temporary Services and/or Solid Waste Handling Services pursuant to this Agreement.

25.5 Law to Govern; Venue

The laws of the State of California shall govern this Agreement. In the event that any provision of this Agreement conflicts with the City's Municipal Code, the City's Municipal Code shall prevail. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles.

25.6 Amendment

This Agreement is intended to carry out City's obligations to comply with the provisions of AB 939 and AB 341, as implemented by regulations of CalRecycle. In the event that, after the effective date of this Agreement, AB 939 or AB 341 is amended, or other state or federal laws or regulations are enacted and prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Except as otherwise expressly stated herein, no other amendment of this Agreement shall be valid unless it is in writing and duly executed by the parties.

25.7 Notices

All notices required or permitted to be given under this franchise shall be in writing and shall be personally delivered or sent by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City: City of Vernon
 Attn: City Administrator
 4305 Santa Fe Avenue
 Vernon, CA 90058

To Franchisee: **NASA SERVICES, INC.**

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed given on the date served if served personally between the hours of 7:00 a.m. to 5:30 p.m. on any regular business day for City's business offices. If mailed, notice shall be deemed given three (3) business days from the date such notice is deposited in the United States mail in the manner proscribed above.

25.8 Savings Clause

If any non-material provision of this Agreement is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

25.9 Attorneys' Fees and Litigation Costs

In the event either party brings any action or proceeding to enforce or interpret the terms of this Agreement, the prevailing party in any such action or related proceeding shall be entitled to recover its reasonable attorneys' fees and other litigation costs and expenses.

25.10 City's Authorized Agent

Notwithstanding anything contained herein to the contrary, and excepting amendments hereto and such actions set forth herein specifically calling for City Council action or approval, the City Administrator is designated as the City's authorized agent to take any action with regard to any matter, or enforce any right, set forth herein requiring action by the City.

25.11 Franchisee's Authorized Agent

Franchisee shall, by the Effective Date of this Agreement, designate in writing a authorized agent who shall serve as the representative of Franchisee in all matters relating to this Agreement.

25.12 Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

The subsequent acceptance by either party of any monies that become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Agreement.

25.13 Entire Agreement

This Agreement represents the full and entire agreement between the parties with respect to the matters covered herein. Parties, whether written or oral.

25.14 Headings

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

25.15 Reference to Laws

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

25.16 Compliance with Law

In providing the services required under this Agreement, Franchisee shall at all times, at its sole cost, comply with all Applicable Laws, including the laws and regulations of the United States, the State of California, the provisions of the City's Municipal Code, and any federal, state, regional or local administrative and regulatory agencies.

[Signatures Begin on Next Page].

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date stated in the introductory clause.

"City"

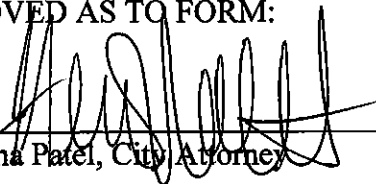
CITY OF VERNON

By: 
W. Michael McCormick, Mayor

ATTEST:

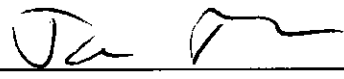
By: 
Ana Barcia, Deputy City Clerk


APPROVED AS TO FORM:

By: 
Hema Patel, City Attorney

"Franchisee"

NASA SERVICES, INC.

By: 
Its: General Manager

By: 
Its: President