

**ITEM NO.: G-6
CONSIDER APPROVAL OF FIVE-
YEAR AGREEMENT WITH USA
WASTE OF CALIFORNIA, INC. FOR
FRANCHISE WASTE HAULING
SERVICES**

December 22, 2020

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: KRISTINA MILLER, CITY CLERK
LISA M. LINNET, CITY CLERK

SUMMARY:

City staff negotiated a five-year agreement with USA Waste of California, Inc. dba Corning Disposal (Waste Management -WM). The rate increase proposed is 2.45%, based on the rate increase methodology described in Section 3.4 of the Agreement. The increase for residential customers with 96-gallon service will be \$0.58 per month to \$24.27 per month. Should residents have excess capacity, they may choose to downsize their current 96-gallon cart to a 64-gallon cart. Doing so, would reduce their monthly bill by \$1.92. The cost of commercial service is based on service level and detailed in Exhibit C of the Agreement.

Should the City Council approve the Agreement as proposed, the City will proceed with Proposition 218 noticing requirements. A Public Hearing to approve the rates will be scheduled for February 23, 2021 with the new rates taking effect March 1, 2021.

A summary of the Agreement is provided below (new changes to the agreement are in italics):

- *Increase of the franchise fee from \$3,000 to \$5,500 per month with an annual CPI escalator. Note, the franchise fee has not been increased since the 1980's*
- *Waste Management will assume billing for residential accounts quarterly in advance of services being provided. WM may discontinue service for accounts 60 days delinquent. This was negotiated to allow WM to charge contamination fees and prevent City staff from continuing to be WM's service representatives*
- *Base rate of garbage service for new residential accounts will be 64-gallons. Up to two 64-gallon recycling carts are included in service*
- *Contractor shall comply with all labeling requirements of SB 1383 by January 1, 2022.*
- *Commercial accounts will receive a base recycling service of up to two cubic yards per week at no additional charge*
- *Four curbside pickup events per year of three bulky goods or bagged items cumulatively not exceeding 4 cubic yards*
- *Sharps kiosk is permitted at Corning Disposal Facility*
- *Street sweeping services twice per month in residential areas and once per week in commercial areas*
- *Drop off location for City to drop off bulky items*
- *Five 30-yard debris boxes per year for illegal dumping cleanup events*
- *\$10,000 annual for public recycling and waste diversion education and outreach*
- *Annual Outreach, Public Education and Diversion Plan and implementation thereof as further detailed in Exhibit E of the agreement*
- *Requires WM to divert 20% of solid waste from disposal one year from the effective date of agreement; 25% in Year 3; 30% in years 4 and 5.*

- *Contamination fees in the amount of \$16 for residential accounts and \$55.24 for commercial accounts after 3 warnings. Contractor may utilize its SmartTruck technology with cameras to identify contamination/overages.*
- *New requirements for the maintenance of vehicles to ensure no materials leak or blow from vehicles as described in Section 2.2*
- *A local customer service line shall be advertised to the public with the opportunity to leave a voicemail when after normal business hours.*
- *Call center must have representatives available that speak English and Spanish.*
- *Quarterly and annual reports specifying tonnage data, AB 341 compliance data, customer service complaint log, and a vehicle report log.*
- *Increased insurance requirements*
- *Increased liquidated damages for failing to perform as detailed in Section 7.0*

BACKGROUND:

State Law authorizes local governments to issue "Franchises" to private service providers in order to deliver municipal services such as garbage service. The Franchise Agreement includes a provision for Waste Management to seek an extension of the Franchise but leaves final control with the City Council; thereby providing the City a simple way to reject a service extension if the Community was not satisfied with the quality of service or the rate.

Many changes to the Agreement were necessary due to the following:

- **Assembly Bill 939 of 1989**-requires jurisdictions to divert 50% of its waste stream by the year 2000.
- **Assembly Bill 341 of 2011**- requires businesses that generate 4 cubic yards of waste or more per week or multi-family dwellings of five or more units to recycle. The legislation also created a statewide policy goal to recycle, reduce, or compost 75% of the solid waste generated by the year 2020.
- **Green Building Code** -Requires the diversion of 65% of job-site debris for all new construction, residential additions where the building's conditioned area increases, and in non-residential additions of 1,000 square feet or greater.
- **Senate Bill 1383**- requires the State to reduce organic waste (food waste, green waste, paper products, etc.) disposal by 75% by 2025. Jurisdictions must provide organic waste collection, establish an edible food recovery program, conduct public education and outreach, capacity plan, procure organic waste (compost, mulch, etc.), inspect and enforce compliance, and maintain accurate and timely records. The City incorporated some of the implementation requirements of SB 1383 in this Agreement but will need to negotiate an amendment in the next few years from at least a collections standpoint, based on the final SB 1383 regulations that were just approved.
- **Green Sword or National Sword**- A policy in China that set strict contamination limits on recyclable materials. First announced in 2017 with the ban beginning in 2018, China no longer accepts shipments that are mixed with trash or low-quality recyclables like greasy paper goods.

The City of Corning has the lowest recycling rate in the County of Tehama. The Tehama County Solid Waste Management Agency (JPA) conducts AB 939 public education and outreach on behalf of the City. The California Department of Resources Recycling and Recovery (CalRecycle) is pressuring the City and the JPA to increase its waste diversion and recycling. If the City were to be placed on a compliance order, the City could receive fines up to \$10,000 per day.

FINANCIAL:

The proposed agreement would increase the franchise fee paid to the City by \$2,500 per month to \$5,500.00 per month and increases each year by a percentage equal to the percent

change in the average Consumer Price Index for All Urban Consumers, U.S. city average, All Items ("CPI"), as published by the Bureau of Labor Statistics, for the 12-month period ending the previous September 30.

RECOMMENDATION:

MAYOR AND CITY COUNCIL:

- **APPROVE THE PROPOSED SOLID WASTE FRANCHISE AGREEMENT WITH USA WASTE OF CALIFORNIA, INC. FOR FRANCHISE WASTE HAULING SERVICES; AND**
- **AUTHORIZE STAFF TO PROMPTLY BEGIN THE PROPOSITION 218 PUBLIC NOTICING PROCESS**

**AMENDED AND RESTATED
REFUSE COLLECTION AGREEMENT
BETWEEN THE
CITY OF CORNING AND USA WASTE OF CALIFORNIA, INC.,
DBA CORNING DISPOSAL**

THIS AMENDED AND RESTATED AGREEMENT (the "Agreement") is entered into as of the latest date executed as set forth on the signature page hereto, by and between THE CITY OF CORNING, a Municipal corporation ("CITY") and USA WASTE OF CALIFORNIA, INC. dba Corning Disposal (successor to Corning Disposal, Inc.) ("CONTRACTOR"). CITY and CONTRACTOR may be referred to herein collectively as the "Parties" or individually as a "Party."

WITNESSETH

WHEREAS the CITY and CONTRACTOR are parties to that certain Amended and Restated Refuse Collection Agreement executed May 13, 2008 (the "First Amended Agreement"), and the parties desire to supersede, amend and restate the First Amended Agreement on the terms and conditions provided herein,

WHEREAS the CITY desires to provide for garbage, recyclables and green waste collection services in accordance with the authority granted to the CITY by Public Resources Code Section 49300 and Chapter 8.06 of the Corning Municipal Code, and

WHEREAS the CONTRACTOR possesses the equipment, skill and expertise to provide the necessary services.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein, the parties mutually agree to the following terms and conditions.

Definitions.

"**AB 939**" means the California Integrated Waste Management Act of 1989. Public Resources Code, Section 40,000 et. seq. AB 939 mandates that, by the year 2000, California cities and counties must divert fifty percent (50%) of their solid waste stream from landfill disposal through source reduction, recycling, and composting activities. The California Department of Resources Recycling and Recovery may, with justification, grant exemptions or extensions to this mandate.

"**AB 1826**" means the Organic Waste Recycling Act of 2014 providing that businesses must recycle their organic waste on and after April 1, 2016, depending on the amount of waste they generate per week. This law also requires that on and after January 1, 2016, local jurisdictions across the state implement an organic waste recycling program to divert organic waste generated by businesses, including multifamily residential dwellings that

consist of five or more units. This law phases in the mandatory recycling of commercial organics over time, while also offering an exemption process for rural counties.

"Bulky Goods" means discarded large and small household appliances and discarded furniture, none of which individually weigh more than 60 pounds (unless handled by two people and can be safely lifted) or contain any Hazardous Waste (e.g., Freon).

"E-Waste" means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices. Some E-Waste or components thereof may be Hazardous Waste or include Hazardous Substances and thus require special handling, processing, or disposal.

"Excess Contamination" means Recyclables containers with more than 10% non-Recyclables or any amount of Excluded Materials, and Green Waste containers with more than 10% by volume non-Green Waste or any amount of Excluded Materials. The existence of Excess Contamination will be based on visual inspection. The 10% contamination limit for Green Waste is subject to change based on lower thresholds being imposed by the processing facility.

"Excluded Materials" means any waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized, or listed under applicable federal, state, or local laws or regulations, any materials containing information protected by federal, state or local privacy and security laws or regulations (unless tendered to CONTRACTOR pursuant to a separate agreement), or any material the acceptance or handling of which would cause a violation of any Applicable Law. Title to and liability for Excluded Materials shall remain with the generator at all times.

"Franchised Services" means areas defined and covered by Sections 1.1 – 1.4 of this Agreement.

"Force Majeure" means acts of God including landslides, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, accident to machinery, pipelines or materials, pandemics, governmental restraint or other causes, whether of the kind enumerated or otherwise, which are not reasonably within the control of CONTRACTOR.

"Good Faith Effort" means reasonable efforts (taking into consideration industry practices, cost, expense, and/or capital expenditure associated therewith and the agreed upon annual expense limitations within Section 4. 10.A) by CONTRACTOR to implement the programs and activities identified in the Outreach Public Education and Diversion Plan, which are intended to facilitate success in CONTRACTOR's achievement of the Minimum

Diversion Requirements, or alternative programs or activities that achieve the same or similar results. For purposes of clarity, Good Faith Effort is subject to CONTRACTOR's budget set forth in Section 1.11.

"Green Waste" means grass clippings, leaves, hedge trimmings, small branches and similar vegetative waste generated from residential property or landscaping activities but does not include stumps or similar bulky wood materials and has been separated from Refuse.

"Hazardous Waste" means (i) all waste defined or characterized as hazardous by the federal Solid Waste Disposal Act (42 U.S.C. §§ 3251 et. seq.), as amended, including the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.) and all future amendments thereto, or regulations promulgated thereunder and (ii) all waste defined or characterized as hazardous by the principal agencies of the State of California having jurisdiction (including without limitation the Department of Health Services, the Regional Water Quality Control Board and the Integrated Waste Management Board.

"Recyclable" or "Recyclable Material" means the materials described as such in Exhibit D.

"Refuse" means any and all putrescible and non-putrescible solid and semi- solid waste, including garbage, refuse or rubbish resulting from industrial, commercial, residential or community activities, any other waste that is "solid waste" as defined in 23 California Code of Regulations ("CCR"), Section 2523 and 14 CCR, Section 17225.69. The term "Refuse" as used herein does not include Excluded Materials. If the Parties agree, the term Refuse may include waste or other materials which may require special handling at a disposal facility, including but not be limited to, clean soil, non-hazardous contaminated soil, construction, demolition and land-clearing debris, and non-friable asbestos provided that CONTRACTOR, either itself or through a subcontractor, has the capability of handling such special waste or materials.

"Residual" means waste that remains after processing at a material recovery facility and is destined for disposal.

"SB 1383" means Chapter 395, Statutes of 2016 [Lara, SB 1383] titled "Short-Lived climate pollutants: methane emissions: dairy and livestock: organic waste: landfills" relating to short lived climate pollutants, commonly referred to as "SB 1383" as amended, supplemented, superseded, and replaced from time to time.

"Senior Citizen" shall mean an individual aged sixty-five (65) years or older.

"Sharps" means any needle, lancet or any device that is utilized to pierce the skin. Sharps include needles, syringes, scalpels, culture slides, culture dishes, broken capillary tubes, and exposed ends of dental wires.

"Used Oil" means motor oil that has been used in a vehicle and cannot be reused.

Section 1.A **Exclusive Right.** The CITY does hereby grant to CONTRACTOR and CONTRACTOR shall have the exclusive duty, right and privilege to collect and dispose or otherwise handle all Refuse, Recyclable Materials, Bulky Goods and Green Waste generated, deposited or otherwise coming to exist in the incorporated area of the CITY. All commercial and residential premises within the incorporated area of the CITY shall be required by CITY to utilize the collection services of CONTRACTOR provided hereunder. In return for the exclusive right set forth herein and other consideration provided for herein, CONTRACTOR shall provide services in accordance with the terms of this Agreement. Nothing in this Agreement shall prevent any owner, occupant or tenant of premises from handling, hauling, or transporting Refuse, Recyclables or Green Waste generated by or from his/her own residence or business operations for purposes of disposing of the same at an authorized disposal area or transfer station in accordance with Corning Municipal Code Section 8.06.130; provided, however, that such handling, hauling, or transporting shall be performed: (i) personally by the resident, (ii) as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, construction or similar service offered by a company performing such service rather than as a waste hauling service, or (iii) as otherwise expressly permitted by Code Section 8.06.130 as in effect on the date hereof or as such exception in the Code may be narrowed by amendment hereafter.

Section 1.B **Franchise Fee.** To reimburse the CITY for its cost of monitoring CONTRACTOR compliance and administering the solid waste collection system, CONTRACTOR shall pay to the CITY Five Thousand Five Hundred Dollars and No/100 (\$5,500) per month during the initial five-year term of this Agreement. Such fee shall be paid by CONTRACTOR to the CITY on or before the tenth (10th) day of each month during the term of this Agreement. The franchise fee amount shall be adjusted each year, on the same date that CONTRACTOR receives an Annual CPI Rate Adjustment under Section 3.6, by a percentage equal to the year over year change in average CPI-U (based on the 12-month period ending the previous September 30.) The CITY shall have the right to renegotiate such fee prior to approving any extension option under this Agreement.

Section 1.0 Contractor Services.

1.1 **Refuse Collection.** CONTRACTOR shall furnish all labor, materials and equipment required to collect and dispose of all Refuse and shall collect all Refuse within the present or future incorporated limits of the CITY and dispose of the same. CONTRACTOR shall dispose of all Refuse only at a place or sites where such disposal is lawful, and the CITY shall not be liable for the disposal of same or to provide sites or places for the disposal of same. CONTRACTOR shall dispose of all Refuse collected from within the City of Corning only at the Tehama County/ Red Bluff Landfill, unless another location is approved by the CITY COUNCIL. If the tipping fees or the fees charged CONTRACTOR at such landfill increase or decrease, CONTRACTOR may request a rate adjustment in accordance with the procedures set forth in section 3.6 of this Agreement.

1.2 **Recyclable Materials Collection.** CONTRACTOR shall furnish all labor, materials and equipment required to collect and process all Recyclable Materials from each Residential Premises, Commercial Premises, and Multi-Family Dwelling Premises, and

shall collect and process all Recyclable Materials within the present or future incorporated limits of the CITY. CONTRACTOR shall process Recyclable Materials only at a place or sites where such processing is lawful, and the CITY shall not be liable for the processing of same (or disposal of residue) or to provide sites or places for the processing of same. CONTRACTOR agrees to use reasonable efforts (taking into consideration the cost, expense, and/or capital expenditure associated therewith) to collect and deliver Recyclable Materials to a Material Recovery Facility to maximize the diversion of Solid Waste from landfilling. CONTRACTOR may assess a contamination fee to Customers who have Excess Contamination on more than two occasions in any 12-month period.

1.3 **Green Waste Collection.** CONTRACTOR shall furnish all labor, materials and equipment required to collect and process all Green Waste. CONTRACTOR shall process Green Waste only at a place or sites where such processing is lawful, and the CITY shall not be liable for the processing of same (or disposal of residue) or to provide sites or places for the processing of same. Contractor shall not landfill Green Waste, unless it has Excess Contamination and is unacceptable by processor. CONTRACTOR may assess a contamination fee to Customers who have had Excess Contamination on more than two occasions in any 12-month period. In order to impose this contamination fee, CONTRACTOR must provide the customer with written notice of the Excess Contamination following the first occasion and information to the Customer as to what constitutes Excess Contamination.

1.4 **Containers.** CONTRACTOR shall make best efforts to provide each existing residential customer at the execution date of this Agreement in the CITY with: one (1) 96-gallon roller cart or, for each Senior Citizen customer only and in lieu of a 96-gallon roller cart, one (1) 32-gallon roller cart, for placement of Refuse; up to two (2) 64-gallon containers (containing a sticker or molded-in instructions for acceptable Recyclable Materials) for placement of Recyclable Materials; and one (1) 96-gallon container for placement of Green Waste. Containers in use at the commencement of this Agreement will satisfy the requirements herein. Additional containers and service frequency will be available at the rates set forth in Exhibit C. Customers will be able to petition for one (1) additional 64-gallon container for acceptable Recyclable Materials only if there have been less than three prior excess contamination issues with customer within the last twelve months. Customers will be allowed to downsize to one (1) 64-gallon roller cart for Refuse at rates set forth in Exhibit C or will be able to keep their current service at the rates established in Exhibit C. Contractor shall provide outreach material to customer pursuant to Section 1.11. The standard service for new residential customers that sign up for service after the execution date of this Agreement shall be (1) 64 gallon roller cart for placement of Refuse and up to two (2) 64-gallon roller carts for Recyclable Materials and one (1) 96-gallon cart for placement of Green Waste. Contractor shall comply with all labeling requirements for all existing containers and dumpsters set forth in Senate Bill 1383 (draft regulations dated April 2020) by January 1, 2022. If there are changes to the April 2020 draft regulations that increase Contractor's costs with respect to containers, Contractor will be entitled to additional compensation as if it were a change in law. The increase in costs must be reasonable and directly related to the change in regulation. Further, the increase in rates shall only be for the time period necessary for the contractor to recoup the costs.

1.5 **Commercial and Multi-Family Recycling Services.** CONTRACTOR shall provide recycling services to commercial businesses and multi-family complexes with four or more units. The base bi-weekly service will include a container size of one 64-gallon roller cart and up to a maximum of two (2) cubic yards per week at no additional charge. Two cubic yard service will be provided utilizing a metal container. Additional recycling services, beyond the base service will be provided at a charge of 50% of the MSW rate in Exhibit C. Multi-family units will follow the same process for identification of Excess Contamination.

1.6 **Discontinuing Service Upon Vacancy.** The owner, tenant or occupant of any premises required to subscribe to CONTRACTOR's Refuse collection service under Corning Municipal Code Section 8.06.030 may discontinue service for one or more months when such premises are vacant, or the occupant is traveling out of town. The owner, tenant or occupant shall submit written notice of such vacancy to CONTRACTOR, with a carbon copy to CITY. The rates charged under Section 3.0 shall continue to accrue until such time as notice is received by CONTRACTOR. In the event of a dispute arising under this Section, such dispute shall be reviewed as set forth in Section 6.0 of this Agreement.

1.7 **Other Collection and Drop-Off Services.**

(a) **Bulky Goods:**

1.7.1.1 CONTRACTOR shall maintain a drop-off site for Bulky Goods at CONTRACTOR's business located at 3281 Highway 99W, Corning CA 96021 (the "Drop-Off Facility"). Each residential customer may drop-off Bulky Goods at the Drop-Off Facility, provided a residential customer's Bulky Goods load may not exceed 4 cubic yards and no residential household may, in combination with Bulky Goods curbside pickups, dispose of more than 3 large appliances (such as refrigerators, washers, dryers, dishwashers, water heaters) per year. Each residential household will be allowed to make one drop-off trip to the Drop-Off Facility each month on a day to be designated by CONTRACTOR (provided that no day will be scheduled for drop-offs in months in which CONTRACTOR provides curbside pickup) and will be requested to provide proof of residency such as a water bill, power bill or phone bill or otherwise be confirmed to be a resident by the City of Corning.

1.7.1.2 CONTRACTOR shall conduct four (4) curbside pickup events per year, on days scheduled by CONTRACTOR, of Bulky Goods for residential customers living in single family homes or multi-family residences consisting of four units or less, provided such customer notifies CONTRACTOR's call center at least one week in advance of the pickup. Contractor shall provide public education and outreach for the curbside pickup events through billing inserts and websites, For each curbside pickup event, customers may place the following at the curb: bagged items cumulatively not exceeding four (4) cubic yards; three (3) Bulky Goods (e.g., TV, couch, or water heater) will be the equivalent of four cubic yards. CONTRACTOR will provide additional on-call Bulky Goods pick-up at a residential customer's house for an additional charge as specified in Exhibit C, subject to adjustment as provided in Section 3.4.

1.8 **Sharps:** CITY may provide one container for Sharps that will be housed at the Drop-Off Facility. Residential households in the CITY may deliver Sharps to the Drop-Off Facility for placement into the CITY-provided containers, provided this may only be done during normal business hours. CONTRACTOR will not be responsible for screening materials placed in the Sharps containers. CITY will remove materials in the Sharps containers as necessary and will be solely responsible for their subsequent processing or disposal.

1.9 **Collection Schedule.** Refuse shall be collected at least once each week from residences. Recyclable Materials shall be collected every other week from residences. Green Waste shall be collected every other week (on alternating weeks with Recyclables collection) from residences. All Refuse, Recyclable Materials and Green Waste collections shall be on weekdays (i.e., Monday through Friday, inclusive) and shall be on the same day of the week (although Recyclable Materials and Green Waste will be collected every other week). All residential collection shall be between the hours of 6:00 a.m. and 5:00 p.m. No residential collection shall be made on Saturday or Sunday, except as may be necessary for holiday collection as provided herein. The schedule for residential collection may be changed by CONTRACTOR upon providing at least ten (10) days' notice to the CITY and seven (7) days' notice to the affected residential customers. Notwithstanding the foregoing, collections may be made at any time in response to complaints or emergency situations. The frequency of commercial and industrial collection will be in accordance with the agreement between the commercial or industrial customer and the CONTRACTOR based on volume needs and in compliance with the Corning Municipal Code. Commercial locations will be required to receive Recyclable Materials collection services from Contractor, subject to the exceptions set forth in Section 1.2. Commercial Recyclables container sizes and frequency of services will be determined by CONTRACTOR and the customer but shall have at least a 64-gallon recycling cart and every other week service. Commercial locations may subscribe for Green Waste collection services provided by CONTRACTOR; rates are set forth in Exhibit C. Commercial Green Waste container sizes and frequency of services will be determined by CONTRACTOR and the customer. When a normal collection day falls on January 1st, Memorial Day, 4th of July holiday, Labor Day, Thanksgiving Day or December 25, collection shall be provided as follows: (a) on the holiday, (b) one day prior to the holiday, or (c) one day after the holiday, in which case collection may be made one day later than the regularly scheduled day during the remainder of the week. CONTRACTOR shall notify the CITY two weeks in advance of any changes in collection schedules occasioned by holidays.

1.10 **Publication of Schedule.** CONTRACTOR shall print and distribute to all customers, at least once annually, a schedule of collection, curbside pickup event days, and street sweeping days for all service.

1.11 **Contractor Services to City.**

(a) **Street Sweeping.** At no additional cost to CITY, CONTRACTOR shall provide to the CITY street sweeping services to the CITY's reasonable satisfaction twice per month in residential areas and once per week in commercial areas. CONTRACTOR reserves the right in its discretion to perform such street sweeping services itself or through a subcontractor. Exhibit A sets forth the required street sweeping schedule for residential and commercial areas. Exhibit B sets forth the required street sweeping service standards and equipment standards. Additionally,

CONTRACTOR will provide one 30-yard debris box into which CITY may place Green Waste for collection by CONTRACTOR, and up to one haul per month. CITY will pay CONTRACTOR the fee assessed for disposal only if there is more than one haul per month.

(b) **Bulky Items.** At no additional cost to CITY, CONTRACTOR shall provide to the CITY:

1.11.2.1 at CONTRACTOR's facility, a drop box in which the CITY may discard Bulky Goods and other large items collected by CITY along CITY streets and

1.11.2.2 a location for the disposal of Green Waste,

(c) **CITY Refuse.** At no additional cost to CITY, CONTRACTOR shall pick up and remove from each CITY site all Refuse, and Recyclables generated at CITY premises, excluding schools within CITY limits.

1.10.3.1 In addition, CONTRACTOR will provide the CITY five (5) (total) 30 cubic yard debris boxes, including disposal, to be used at any time and location within the CITY for illegal dumping clean-ups; provided, however, the location must be accessible by a commercial truck. Debris boxes that are not used by the CITY during the calendar year will not be accumulated, and therefore, will be lost if not used during the calendar year.

1.12

Public Education and Outreach; Diversion.

(a) **Public Education and Outreach.** CONTRACTOR will develop, implement (at no additional cost to CITY or service recipients), and spend up to \$10,000 annually exclusive of CONTRACTOR personnel costs subject to an annual adjustment as described in Section 3.4 an Outreach, Public Education and Diversion Plan, which shall be submitted and updated annually to the CITY by October 15th for the following calendar year for review, comment and approval (which will not be unreasonably withheld or delayed), and shall include but not be limited to information with respect to AB 939 diversion goals, AB 341 covered generator compliance, Bulky Goods pick-ups, backyard composting, Yard Waste programs and the importance of the safe disposal of Household Hazardous Waste, as further detailed in Exhibit E. Such outreach program shall also include notifying all covered AB 341, AB 1826 and SB 1383 generators, as required by related regulations, of the requirements of the applicable law.

(b) **Minimum Diversion Requirements.** Beginning one year from the Effective Date of this Franchise Agreement, the CONTRACTOR shall divert a minimum of twenty (20%) of Solid Waste that it collects from disposal. The CONTRACTOR shall submit an annual compliance report certifying whether it has met the minimum diversion requirement or any higher goal for the amount and type of Solid Waste that the CONTRACTOR diverted from disposal in that prior year. The CITY and CONTRACTOR will meet two years from the Effective Date if diversion goals are not being met to determine whether rate modifications or further outreach needs to be conducted to increase recycling rates. The Minimum Diversion Requirement shall be based on the following calculation: Years 1 to 2 of the Franchise Agreement: Twenty percent (20%), Year 3 of the Franchise Agreement: Twenty-Five percent (25%) Years 4 to 5 of the Franchise Agreement: Thirty percent (30%). If CONTRACTOR and CITY mutually agree to extend this

Agreement beyond December 31, 2025 as provided for in Section 4.B, the Parties shall meet and confer in good faith to set the Minimum Diversion Requirements for the period of the extension.

1.11.3.1 For the first two Annual Reports the diversion percentage will be calculated by applying the following formula: $\text{Diversion \%} = \frac{\text{Total tons of materials Collected from all Franchised Services and sent to an authorized recyclables or green waste processing facility}}{\text{Total tons of materials Collected from all Contractor Franchised Services Area}}$. For Annual Report years three (3) through five (5), the diversion percentage will be calculated by applying the following formula: $\text{Diversion \%} = \frac{\text{Total tons of materials collected from all Franchised Services and sent to an authorized recyclables or green waste processing facility, less residual}}{\text{Total tons of materials collected by Contractor Franchised Service area}}$. "Residual" will be based on the applicable facility's overall residue rate (not specifically City's material). For example, if the City's overall tonnage represents 25% of the total incoming recycling stream, the residual attributed to the City of Corning shall be 25% of total facility residual. Use of organic waste as alternative daily cover while permissible, will not be counted as diversion. For purposes of calculating diversion in this section, the CONTRACTOR shall only be able to count recovered materials resulting from its own collection program within the Service Area. The CONTRACTOR's failure to meet the Minimum Diversion Requirements set forth above in Section 1.11.b may result in the imposition of liquidated damages pursuant to Section 7. In determining whether or not to assess liquidated damages, the CITY will consider the Good Faith Efforts put forth by the CONTRACTOR to meet the Minimum Diversion Requirements. This consideration will include documentation provided by the CONTRACTOR regarding its activities. If the annual Outreach, Public Education and Diversion Plan is implemented as agreed, CONTRACTOR shall not be unreasonably denied the Good Faith Effort determination. Further, Contractor will not be in default for failing to achieve the minimum diversion requirements.

Unacceptable Waste; Contamination; Overage.

(c) It is understood that the CONTRACTOR is not required to and is not authorized to collect and transport Hazardous Waste, restricted or other waste that is not acceptable or permitted for disposal at a transfer station or disposal site. CONTRACTOR shall not take title to any Hazardous Waste collected in the course of its performance of its obligations under this Agreement.

(d) CONTRACTOR is not obligated to collect Recyclables or Green Waste containers which are contaminated by customers (i.e., non-Recyclables or non-Green Waste, as the case may be). Recyclables containers will be deemed contaminated if it has more than 10% non-Recyclables based on visual inspection, and Green Waste containers will be deemed contaminated if it has more than 10% (or such lower amount required by the applicable processor) by volume non-Green Waste based on visual inspection. If CONTRACTOR elects to not collect a container based on contamination, it will leave a tag on the container or other form

of notification, as provided in Section 1.12 (e) below, indicating that the container has unacceptable materials and promoting contamination reduction. If CONTRACTOR elects to collect a contaminated container and has previously notified the customer with three warnings of an incident of contamination, CONTRACTOR may charge the customer a fee as set forth in Exhibit C for each instance of contamination thereafter. Where CONTRACTOR charges a Contamination fee, CONTRACTOR must send customer a photo of the Contamination or give the ability to view such image.

(e) At CONTRACTOR's option, it may utilize its WM SmartTruckSM technology, which includes the following: (i) cameras mounted on a collection truck take images or videos of containers before and/or during the collection process. Such images/videos will assist CONTRACTOR in identifying contamination and Overage. Images are sent daily to CONTRACTOR staff to review for contamination and Overage. Contractor staff that are responsible for identifying contamination shall be trained in Exhibit E, Excess Contamination, and overage language as set forth in this Agreement. If a violation is established, CONTRACTOR will send the Customer a written notice by mail or email. Written notices will include a photo or link so the violation may be viewed by the Customer. CONTRACTOR may also attempt to contact the Customer by telephone to address the issue.

(f) CONTRACTOR is not obligated to collect materials on the ground in the vicinity of a CONTRACTOR container (unless caused by CONTRACTOR), or where containers are overloaded such that the lid is lifted or would be lifted by more than twelve (12) inches ("Overage"). If CONTRACTOR elects to collect the Overage, it shall send written notice to the customer. If customer has subsequent incidents of Overage, and CONTRACTOR elects to collect the Overage, CONTRACTOR may charge the customer a fee of as set forth in the Exhibit C for each such instance. Where CONTRACTOR charges an Overage fee, CONTRACTOR must send customer a photo of the Overage.

(g) Where materials in a Refuse, Recyclables or Green Waste container are not collected by CONTRACTOR, CONTRACTOR shall provide written notification stating the reasons for CONTRACTOR's refusal to collect the same. Adequate records shall be maintained by CONTRACTOR and shall be available to the CITY for inspection upon reasonable notice during business hours. CONTRACTOR shall immediately notify the County Environmental Health Department and report suspected Hazardous Waste. CONTRACTOR shall notify the Corning Police Department Animal Control and report dead animals and the location of the container, if any.

1.13 **Failure to Collect.** Except in the event of Force Majeure, should CONTRACTOR fail to collect and dispose of Refuse as provided herein, and fail to correct the situation within three (3) business days after receiving written notice thereof from the CITY, the CITY may collect and dispose of the same and CONTRACTOR shall be liable for the expenses incurred by the CITY therefor. Such expenses will be invoiced by the CITY, and promptly paid by the CONTRACTOR, in no event later than thirty (30) days after the invoice is dated.

1.14 **Emergency Services.** CONTRACTOR shall provide emergency services (i.e., special collections, transport, processing) at CITY'S request in the event of a declared local, State or federal state of emergency, major accidents, disruptions or natural calamities. CONTRACTOR shall be capable of providing emergency services within twenty-four (24) hours of notification by CITY, or as soon thereafter as is reasonably practical in light of the circumstances. An emergency contact person designated by CONTRACTOR shall be accessible during the term of this Agreement twenty-four (24) hours per day for the CITY to contact. CONTRACTOR shall receive additional compensation, above the normal compensation contained in this Agreement, to cover the costs of rental equipment, additional personnel, overtime hours and other documented expenses, provided CONTRACTOR has first secured written authorization and approval from CITY. In the event of an emergency as set forth above, the CITY shall grant CONTRACTOR a reasonable variance from regular routes and schedules. As soon as practicable after such event, CONTRACTOR shall advise the CITY when it is anticipated that normal routes and schedules can be resumed. The CITY shall make an effort through the local news media to inform the public when regular services may be resumed.

1.15 **CONTRACTOR/Food Waste Collection Program.** CONTRACTOR and CITY will negotiate in good faith to implement any services required by applicable state law, including Assembly Bill 1826 and Senate Bill 1383, including appropriate CONTRACTOR compensation to collect, transport, process, dispose and otherwise handle such material.

Section 2.0 Standards for Collection and Operation.

2.1 **Compliance with Law.** CONTRACTOR shall comply with all laws and regulations applicable to CONTRACTOR's operations, including laws, ordinance, rules and regulations of the United States, the State of California, the County of Tehama, the City of Corning and the City and County of the location at which Refuse may be transported or disposed of hereunder.

CITY and CONTRACTOR 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 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 CONTRACTOR for time extensions in meeting diversion goals, or other exceptions from the terms of Applicable Laws, and agreeing to authorize such changes to CONTRACTOR'S recycling or Solid Waste programs as may be reasonably requested by CONTRACTOR in order to achieve the diversion requirements set forth herein. CONTRACTOR shall provide such assistance as may reasonably be requested by CITY in preparing such petitions and applications. In addition, CONTRACTOR shall provide such assistance as may reasonably be requested by CITY in preparing for or participating in any hearing conducted by CalRecycle or any other regulatory agency relating to CITY's failure to comply with the California Integrated Waste Management Act of 1989, as amended (including by AB 341, AB 1594 or AB 1826), and the rules and regulations thereunder, to the extent such failure results from CONTRACTOR's failure to perform its obligations under this Agreement.

2.2 **Equipment and Personnel.** Collection vehicles shall have signage in letters of contrasting color on each side and the rear of each vehicle that clearly states that the collection vehicle is servicing the City of Corning, provides CONTRACTOR'S name, CONTRACTOR'S customer service telephone number and other signage approved by CITY.

(a) CONTRACTOR shall maintain collection vehicles in a clean condition and in good repair at all times and ensure that no collected materials, oil, grease or other substances will blow, fall out, escape or leak out of the vehicle, with the exceptions of vehicle emission. All parts and systems of the collection vehicles shall operate properly and be maintained in a condition satisfactory to CITY. CONTRACTOR shall wash all Collection vehicles at least once every two (2) weeks, except during rainy periods. All washings shall be conducted in a manner that conforms to the BMP Guidelines for Non-Point Source Pollutants in the publication entitled Storm Water Best Management Practices Handbook for Industrial Commercial published by the California Storm Water Quality Association (CASQA).

(b) CONTRACTOR shall implement weekly preventative maintenance practices to ensure that all seals on collection vehicles are working properly to prevent leaks and spills. If a leak is identified, said vehicle will be immediately brought back to the CONTRACTOR's maintenance facility for repair. Leaked material will be cleaned in accordance to acceptable industry standards and as required by State and Federal laws. In terms of spills, CONTRACTOR will follow established Department of Transportation (DOT) and State of California Environmental regulations pertaining to spill clean-up and to the immediate reporting to the appropriate authorities.

(c) CONTRACTOR shall maintain a maintenance log for all Collection vehicles. The log shall at all times be accessible to CITY for physical inspection upon request, and shall show, at a minimum, each vehicles' CONTRACTOR 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. The maintenance log shall be provided to the CITY as part of its annual report for maintenance occurring in the prior calendar year.

(d) CONTRACTOR shall provide to CITY an inventory of collection vehicles and major equipment used by CONTRACTOR for Collection or transportation and performance of services under this Agreement as part of its annual report for all collection vehicles and major equipment utilized in the prior calendar year. The inventory shall indicate each Collection vehicle by CONTRACTOR-assigned identification number, DMV license number, the ages of the chassis and body, type of fuel used, the type and capacity of vehicle body, the date of acquisition, and the number of vehicles by type. CONTRACTOR shall submit to the CITY by web, cloud or e-mail, an updated inventory annually. Each vehicle inventory shall be accompanied by a certification signed by CONTRACTOR that all collection vehicles meet the requirements of this Agreement.

(e) If CONTRACTOR wishes to store and service its vehicles within the CITY, these vehicles shall be stored in accordance with laws and requirements of the CITY and the Fire Department.

(f) CONTRACTOR shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by federal, state or local weight restrictions on vehicles. A report of all vehicle weights and untarped load fees assessed on roll off trucks will be submitted to CITY as part of the quarterly report as documented by weight receipts received at the Tehama County/Red Bluff Landfill. CONTRACTOR shall provide the CITY with copies of all tickets and fines imposed on CONTRACTOR for overweight vehicles.

(g) CONTRACTOR represents that all employees, representatives, agents, subcontractors or other authorized personnel are licensed in accordance with California law to operate the necessary equipment. If any individual becomes unable to operate the equipment because of loss of license or otherwise, CONTRACTOR agrees to immediately remove that person from equipment operation.

2.3 **Collection Operations.** CONTRACTOR shall make all collections of Refuse, Recyclables and Green Waste from the curb along the street in front of each resident's premises. CONTRACTOR shall return emptied refuse containers to the sidewalk or, where no sidewalk exists, CONTRACTOR shall ensure that the container is so placed at the edge of the roadway as to not interfere with vehicular traffic. CONTRACTOR shall conduct its operation so as to minimize as practicable any obstruction and inconvenience to public traffic or disruption of the peace and quiet of the area within which collection occurs. CONTRACTOR shall repair or replace at its cost CONTRACTOR-owned containers damaged by the negligent acts or willful misconduct of its employees or through ordinary wear and tear of use. On an annual basis, Customers may request an exchange/cleaning (cleaning for carts/dumpsters only) of CONTRACTOR-owned containers. CONTRACTOR may charge customers for repair or replacement of containers which become damaged or unusable for reasons other than normal wear and tear or customer negligence or willful misconduct, including lost or stolen containers. 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, California Vehicle Code Section 27207, and other applicable State, County, and CITY noise control regulations. All loads not in covered body trucks shall be tarped or restrained to prevent spilling. All spills by Contractor must be immediately cleaned up. Contractor shall not begin collection operations in residential areas prior to 6:00 A.M.

2.4 **Customer Service.** CONTRACTOR shall maintain a business phone that can be called by customers without paying a toll charge and will also include a phone number in its outreach material for customers to utilize if they prefer to have a local representative within Tehama County answer questions and service needs. The phone shall be answered during normal working hours. After normal working hours CONTRACTOR shall provide either a telephone answering service or mechanical device to receive service recipient inquiries at the local call number. Calls received after normal business hours shall be addressed the next workday. CONTRACTOR will maintain multiple methods by which customers may access Customer Service, which may include email, chat, WM app and wm.com. CONTRACTOR shall also maintain a log of service complaints, including the time of complaint and manner of disposition. A copy of the log shall be available to the CITY upon reasonable advance notice. On average, CONTRACTOR shall answer Customer calls in less than 45 seconds. On average, CONTRACTOR shall address Customer needs in less than 5 minutes and 30 seconds.

CONTRACTOR'S call center shall at all times during normal business hours maintain the capability of responding to telephone calls in English and Spanish.

Section 3.0 Rates and Rate Adjustments.

3.1 **Rates.** CONTRACTOR shall bill customers the rates set forth on Exhibit C attached hereto, which shall be adjusted pursuant to Section 3.4.

3.2 **Billing for Services.** CONTRACTOR will be responsible for the billing of residential, multi-family and commercial customers. CONTRACTOR shall add or remove services within seven (7) business days of receipt of the request to change service. Subject to dispute resolution in accordance with Section 3.3, CONTRACTOR may discontinue service to customers that have delinquent accounts.

3.3 **Bill Content.** Residential customers with cart-based services will be billed quarterly, in advance of services. Commercial customers and multi-family customers with bin-based services will be billed monthly for services provided in the current month. Customers may be billed prior to receiving collection services, but the due date shall be no sooner than 30 days from the date of the invoice. CONTRACTOR may impose late fees of 2.5% or \$5 (whichever is greater) per month on delinquent invoices; this will be billed on the quarterly invoice. However, CONTRACTOR will waive late fees for the first six months of this Agreement. Bills to service recipients shall be for all classifications of services showing the aggregate amount, unless otherwise agreed by CONTRACTOR and CITY. CONTRACTOR agrees to include all applicable fees imposed by action of the CITY COUNCIL, including, but not limited to fees for planning and compliance with AB 939 and Household Hazardous Waste program fees in its bills submitted to residents, and shall remit to CITY such funds collected within thirty (30) days of receipt. CONTRACTOR'S bills to Solid Waste service recipients shall be itemized showing charges for services and extra charges, but shall not designate that portion of a service recipient's bill attributable to any CITY franchise fee as a separate item on service or any costs for collection and diversion of recyclable solid waste, yard waste or organic waste included in the base service on recipient's bills, and all other fees will be identified as a separate line item.

Delinquent Accounts. CONTRACTOR may discontinue service to customers who are at least 60 days delinquent, subject to the notice requirements below. Service recipients who have not remitted required payments within thirty (30) days after the date of billing shall be notified in writing (or by electronic mail if the service recipient agrees) by CONTRACTOR that service may be terminated for non-payment. The service termination notification shall contain a statement that services may be discontinued fifteen (15) days from the date of the service termination notice if payment is not made before that time. Upon receipt of the delinquent payment, CONTRACTOR shall resume collection on the next regularly scheduled collection day.

Delinquent Fees. Service that has been discontinued in accordance with Section 3.3 hereof will be assessed a late fee. If the account continues to be unpaid and containers are removed, customers will be assessed a redelivery fee as set forth in EXHIBIT "C".

Rate and Service Dispute Resolution. Because the rates are based upon volume collected and the level of service must be determined through agreement between the CONTRACTOR and the customer, disagreements may from time to time occur between these parties. Therefore, the customer or CONTRACTOR may present a dispute about level of service or payment of rates to the designated CITY Representative for resolution. The circumstances of the dispute shall be presented in letter form, clearly stating the issues disagreed upon and the solution sought. The designated CITY Representative shall review the disputed issue and make a determination within thirty (30) days of receipt of the letter, which shall be final. The authority of the designated CITY Representative to administratively resolve disputes in the foregoing manner does not include authority to approve adjustments in the rates themselves which are charged for differing service levels and types of service.

3.4 Annual CPI Rate Adjustment. Commencing on April 1, 2021 and on April 1 annually thereafter, the rates set forth on Exhibit C shall, subject to CITY Council review to confirm calculations, be adjusted by a percentage equal to the percent change in the average Consumer Price Index for All Urban Consumers, U.S. city average, All Items ("CPI"), as published by the Bureau of Labor Statistics, for the 12-month period ending the previous September 30. Not later than November 30 of each year, CONTRACTOR shall notify the CITY of its intent to increase the rate and provide the rate computations and a proposed new schedule. The CITY Manager shall promptly schedule the request for a rate adjustment on the next CITY Council agenda at which action could be taken in accordance with all applicable laws and regulations.

3.5 Fuel Cost Adjustment. In addition to the CPI and other rate adjustments provided by this Section, the rates in Schedule C may be further adjusted for changes in fuel costs associated with performance of the services hereunder in the manner provided below

(a) Not later than November 30 of each year, CONTRACTOR shall notify the CITY of any intent to seek a fuel cost adjustment. CITY may also by such date each year notify CONTRACTOR of its intent to seek a fuel cost adjustment. CONTRACTOR, on its own initiative or at the request of the CITY, shall then submit to CITY a written proposal for a fuel cost rate adjustment, including a report detailing the calculations in accordance with the formula agreed to below. Within thirty (30) days after CONTRACTOR provides the CITY with such proposal and report, the CITY shall notify the CONTRACTOR in writing as to whether the CITY accepts such information as complete or specifying any respect in which the CITY deems such information incomplete or deficient. CITY and CONTRACTOR shall attempt in good faith to review such information and complete all its deliberations in connection therewith within ninety (90) days from the date of submittal of the proposal and report to the CITY. The effective date for any such increase, if approved, shall be April 1.

(b) The fuel cost adjustment shall be calculated by the following formula:
$$(1 + ((\text{Fuel Cost Change} - \text{CPI Change}) \times \text{Fuel Percentage})) \times \text{Old Rate} = \text{New Rate}$$

The terms used in the preceding formula shall have the following meanings:

"Fuel Cost Change" means, for No. 2 diesel fuel, the average price for California No 2-diesel fuel for the twelve (12) month period immediately preceding the submission of a proposal and report by the CONTRACTOR divided by such average price for the immediately preceding 12-month period average price for the calendar year preceding the most recent calendar year. The price used to compute the Fuel Cost Change shall be the price reported by the United States Department of Energy, Energy Information Administration. In the event that price is no longer reported, the parties will designate a new methodology for determining the price based on comparable data. The parties will meet to determine this designation as soon as practically possible. For fuels other than No. 2 diesel, the CONTRACTOR shall calculate the change in fuel cost using the same time periods and a reasonably comparable fuel price index.

"CPI Change" means the average CPI (defined in Section 3.4) for the most recently completed calendar year divided by such average price for the calendar year preceding the most recent calendar year.

"Fuel Percentage" means the CONTRACTOR's total cost for diesel fuel (or such other fuel as is employed by CONTRACTOR) incurred during the most recent calendar year divided by CONTRACTOR's total operating revenue for such calendar year, in both cases calculated for CONTRACTOR's operations district that includes the CITY.

"Old Rate" means each of the rates on Exhibit C, as they may have been previously adjusted or amended.

"New Rate" means the new rate calculated pursuant to the preceding formula that will replace the Old Rate.

This rate adjustment for fuel costs shall be in addition to, and not in lieu of, any other rate increase to which CONTRACTOR may be entitled under this Agreement. Under no circumstances may an adjustment for fuel costs reduce a rate below the base rates as specified in Exhibit C, as increased for changes pursuant to this Section 3. Adjustments for fuel costs shall only be made to increase or reduce (but not below zero) prior adjustments for fuel costs. In addition to the preceding limitations on fuel cost adjustments, the percentage increase or decrease in the New Rate from the Old Rate in any single adjustment for fuel costs shall not exceed 2%.

3.6 **Uncontrollable Circumstances Adjustment.** In addition to the above, at any time during the term of this Agreement, CONTRACTOR may request in writing to the CITY Manager a rate increase in an amount sufficient to compensate CONTRACTOR for increases in costs that are beyond the control of CONTRACTOR for only the period of time for CONTRACTOR to recoup the costs. Such changes would include, but not be limited to, changes in federal, state or local laws regulating the work performed by

CONTRACTOR (including without limitation changes in law regarding air quality, waste handling and hazardous waste issues with respect to street sweeping), changes in the tipping fees, processing fees or handling fees charged to CONTRACTOR for the disposal of Refuse, or recycling or handling of Green Waste and Recyclable Materials and percentage increases in subcontractor charges for street sweeping that exceed the percentage increase from the annual rate adjustment. The CITY Manager shall promptly schedule any request for a rate increase on the next CITY Council agenda at which action can be taken in accordance with all applicable laws and regulations. Any proposed rate increase shall be conditioned upon CITY Council approval, which shall not be unreasonably withheld. Any such rate increase, if approved, would take effect within three (3) months after CONTRACTOR's written request for such increase. Notwithstanding the foregoing, if the request is based upon any new or increased third party fees, taxes, assessments or charges, the CITY shall approve the interim rate adjustment within such time period as necessary to ensure that such fees, taxes, assessments or charges are passed on to customers by the date the same are effective. CONTRACTOR shall only request a tipping fee increase when disposal fees increase above the % increase allowed under the Annual CPI Rate Adjustment. CONTRACTOR will provide, to the CITY, the annual revenue for services provided to the CITY of Corning and the total disposal costs in order for the CITY to verify the disposal percentage of revenue. The financial information provided to the CITY will allow City to verify disposal tons, tipping charge and revenue component. Attached in Exhibit F is the disposal calculation formula.

Section 4.0 Reports and Records.

4.1 **Records.** CONTRACTOR shall submit the reports described below to the CITY within the timeframes required. Additionally, the CITY shall have the right, during normal business hours and upon reasonable advance notice given to CONTRACTOR by the CITY, to inspect pertinent financial reports of CONTRACTOR, to the extent required pursuant to Section 3, for purposes of determining the number of customers and type of service provided by CONTRACTOR or for purposes of verifying increased costs or total operating revenue warranting a rate increase as provided in Sections 3.4 and 3.5.

4.2 **Reports.** Quarterly reports shall be submitted to the CITY no later than thirty (30) calendar days after the end of the reporting quarter, and annual reports shall be submitted to the CITY no later than thirty (30) days after the end of each preceding Agreement Year. Quarterly and annual reports shall be provided electronically via e-mail. Reports shall be submitted in a format mutually agreed upon between the CITY and CONTRACTOR.

4.3 **Quarterly Reports.** Quarterly reports to the CITY shall be provided by the 30th of the preceding month of the prior quarter (April 30th, July 30th, October 30th, and January 30th) and shall include:

(a) **Tonnage Data.** A listing of the Refuse, Recyclable Material, Green Waste, and Bulky Goods collected, diverted and disposed by the CONTRACTOR for the preceding quarter, arranged between SFD, MFD, Commercial and City service locations. Report shall also include residual tons from MRF processing attributable to the City of Corning.

(b) **AB 341 Compliance Data.** CONTRACTOR shall report the total number of

commercial and/or multi-family locations serviced, a summary of the number of accounts that qualify as covered generators under AB 341 and upon request by the CITY, the number of containers, container sizes and frequency of collection for Refuse, Recyclable Materials and Green Waste for each commercial and/or multi-family location. CONTRACTOR shall provide any data necessary to satisfy compliance with AB 939 and AB 341.

(c) Report shall include a customer service complaint log as described in Section 2.4.

(d) Vehicle weight report as described in Section 7.h.

4.4 **Annual Reports.** The annual report submitted to the CITY shall include all quarterly reports summarized by quarter and averaged for the Agreement year along with the maintenance log as described in Section 2.2.c, and the Annual Outreach, Public Education and Diversion Plan Report as described in Exhibit E. Annual reports shall be provided by February 15th for the previous calendar year.

4.5 **Cooperation with Other Program Reviews.** If CITY wants to collect program data, perform field work, conduct route audits to investigate service recipient participation levels and setout volumes and/or evaluate and monitor program results related to Refuse, Recyclable Materials and Green Waste collected in the CITY by CONTRACTOR, CONTRACTOR shall cooperate with CITY or its agent(s). CONTRACTOR shall also cooperate with any waste generation studies conducted by CITY or its agent(s).

4.6 **Waste Generation and Characterization Studies.** CONTRACTOR acknowledges that CITY must perform waste generation and characterization studies periodically to comply with AB 32, AB 341, SB 1383, AB 1826, and AB 939 requirements. Any costs incurred by CONTRACTOR with respect to SB 1383 regulations, once adopted, shall be reimbursed by CITY. CONTRACTOR agrees to participate and cooperate with CITY and its agents and to perform studies and data collection exercises, as needed, to determine weights, volumes and composition of materials generated, disposed, transformed, diverted or otherwise processed to comply with AB 32, AB 341, AB 939 or other changes in law.

4.7 **Public Records Act.** CONTRACTOR acknowledges that many of the documents referenced in this Agreement, including the Agreement itself, are subject to disclosure pursuant to the California Public Records Act ("PRA"), set forth in Government Code section 6250 et seq. CONTRACTOR waives any claim of privacy, confidentiality, or improper disclosure of proprietary information in this information or documents required to be produced, to allow CITY to ensure compliance with the PRA. Furthermore, because of the short timeframes requirements of the PRA, CITY may require document production sooner than set forth in this section in order to comply with those deadlines. However, CITY shall notify CONTRACTOR of any PRA requests so that CONTRACTOR may contest such requests, at CONTRACTOR's cost, under applicable law. The CITY will receive the contest from CONTRACTOR and consider it in good faith, but ultimately the decision as to whether production will occur is up to the discretion of the CITY.

Section 5.0 Term

5.1 **Term of Agreement.** This Amended and Restated Agreement shall commence on January

1, 2021. The initial term shall expire on midnight on December 31, 2025. Prior to the expiration of the initial term, CONTRACTOR shall have the right to request a renewal of this Agreement for an additional five (5) year term commencing on the expiration of the initial term, provided that CONTRACTOR'S eligibility for said term extension will be determined by whether or not CONTRACTOR has met or exceeded the diversion goals in Section 1.12.b. or the CITY has determined that CONTRACTOR has made a Good Faith Effort in its attempt to achieve the diversion goals, as determined in Section 1.12.b, on the same terms and condition herein. Thereafter, this CITY may grant additional extensions at five (5) year intervals. The decision whether to grant any extension in the term of this Agreement shall be in the sole discretion of the CITY Council then in office.

Section 6.0 Insurance

5.1 **Coverage.** CONTRACTOR shall secure and maintain continuously in full force and effect during the term of this Agreement, and any extensions hereof, insurance policies from companies and in forms acceptable to CITY which will protect CONTRACTOR, CITY and CITY's officers and employees from claims from bodily injury, death or property damage which may arise from CONTRACTOR's activities or operations under this Agreement. Said policies shall be for not less than the amounts listed below:

- (a) Workers' Compensation: Statutory
- (b) General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage and \$10,000,000 annual in the aggregate
- (c) Vehicle Liability: \$3,000,000 per accident for bodily injury and property damage.
- (d) Hazardous Waste and Environmental Impairment Liability: \$10,000,000 per occurrence and \$10,000,000 annual in the aggregate covering liability arising from the release of waste material and or irritants, contamination or pollutants. Such coverage, if commercially available without involvement of the CITY, automatically broaden in its form of coverage to include legislated changes in the definition of waste material and or irritants, contamination, or pollutants.
- (e) Claims Made Coverage. If General Liability or Hazardous Waste and Environmental Impairment Liability coverage is written on a claims-made form:
 - 1. The "Retro Date" must be shown and must be before the date of the contract or the beginning of contract work.
 - 2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work
 - 3. If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- (f) Acceptability of Insurers. Insurance is to be placed with insurers licensed to transact business in California with a current A.M. Best's rating of no less than A:VII. If pollution and/or Environmental Impairment and/or Umbrella/Excess 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

(g) **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions shall be for the account of the CONTRACTOR and paid entirely by CONTRACTOR without contribution from City.

(h) **Other Insurance Provisions:** The CITY, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of vehicles owned, leased, hired or borrowed by or on behalf of CONTRACTOR, and with respect to work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with any such work or operations.

(i) **Primary Coverage:** For any claims arising out of CONTRACTOR's activities hereunder, the CONTRACTOR's insurance shall be primary and not secondary to any coverage available through CITY.

(j) **Non-Cancellation:** Each insurance policy provided to CITY by CONTRACTOR shall be endorsed to state that coverage shall not be canceled except after a thirty (30) day prior written notice provided to the CITY, except that ten (10) days' notice shall be provided for cancellation due to non-payment of premium.

(k) **Waiver of Subrogation:** CONTRACTOR agrees to waive subrogation which any insurer may require of CONTRACTOR by virtue of payment of any loss. CONTRACTOR agrees to obtain any endorsement which may be needed by CITY to affect this waiver. The Worker's Compensation policy shall also be endorsed with a waiver of subrogation in favor of CITY for all work performed by the CONTRACTOR, its employees, agents and subcontractors.

(l) **Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII unless otherwise acceptable to CITY. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

(m) **Verification of Coverage:** CONTRACTOR shall provide verification of coverage as described herein prior to commencement of the extended term of this agreement.

(n) **Subcontractors:** CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all requirements set forth above. Proof thereof shall be provided to CITY prior to commencement of any work by subcontractors.

5.2 **Additional Insured; Certificate.** The liability insurance policies shall name the CITY and its officers and employees, and the authorized agents of any of them, as additional insureds. CONTRACTOR shall provide the CITY with a Certificate of insurance duly executed by CONTRACTOR's insurance carrier which shall serve as evidence of the continued existence of CONTRACTOR's insurance policies required hereunder and which shall contain a provision that the coverage thereunder will not be canceled without thirty (30) days prior written notice given CITY except ten (10) days' notice applies to cancellation for non-payment of premium.

5.3 **Subcontractor Insurance.** Before permitting any subcontractors to perform work under this Agreement, CONTRACTOR shall require subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained meeting all of the foregoing insurance requirements in respect to subcontractor's work.

5.4 **Workers' Compensation.** In all operations connected with the services herein specified, CONTRACTOR shall observe the provisions of the Workers' Compensation Laws of the State of California and shall use all of the accepted and best safety practices for the public and CONTRACTOR's employees.

5.5 **Performance Bond.** CONTRACTOR shall secure a surety bond in the penalty sum of \$1,000,000.00 conditioned upon the faithful performance of this Agreement, which bond in a form and with a company acceptable to CITY shall be delivered to the CITY and kept in full force at all times during the term of this Agreement. Beginning on the Service Commencement Date, and each July 1st thereafter, CONTRACTOR shall have the performance bond renewed annually and be executed by a surety company that is an admitted surety company licensed to do business in the State of California and has an "A:VII" or better rating by A.M. Best or Standard and Poors, or that is otherwise acceptable to CITY.

Section 6.0 Default, Termination.

6.1 **Default.** In the event of any material failure or refusal of CONTRACTOR to comply with any obligation or duty imposed on CONTRACTOR under this Agreement, the CITY and CONTRACTOR shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the Parties are unable to agree on the informal resolution or cure of the breach, the CITY shall have the right to terminate this Agreement if:

- (a) The CITY shall have given prior written notice to CONTRACTOR specifying that a particular default or defaults exist which will, unless corrected, constitute a material breach of this Agreement on the part of CONTRACTOR;
- (b) CONTRACTOR has not corrected such default or has not taken reasonable steps to commence to correct the same within thirty (30) days from the date of the notice given by CITY or thereafter does not diligently continue to take reasonable steps to correct such default; and
- (c) CONTRACTOR (without any 30-day correction period) has not immediately corrected any such default.

6.2 **Termination.** Upon the occurrence of a material breach, failure to cure and the declaration of termination of this Agreement by the CITY as provided above, CONTRACTOR shall have no further right to perform the services described in the Agreement, unless the CITY elects in writing to terminate only a portion of the services set forth herein and maintain the remainder of the Agreement.

6.3 **Force Majeure.** The performance of this Agreement may be discontinued or temporarily suspended, and CONTRACTOR shall not be deemed to be in default hereunder if performance under this Agreement is prevented or delayed by Force Majeure.

6.4 **Proposition 218.** If, at any time, a majority protest under Proposition 218 procedures precludes any rate adjustment determined to be necessary by both CITY (which determination shall not be unreasonably withheld) and CONTRACTOR to compensate

CONTRACTOR for increases in costs as described in Section 3.4, CONTRACTOR shall be entitled to terminate this Agreement upon three (3) months' advance written notice provided to CITY. Termination by CONTRACTOR as provided in the preceding sentence shall not be deemed a default by CONTRACTOR and the full value of the bond required under Section 5.5 of this Agreement shall be returned to CONTRACTOR.

6.5 Transition to Next Contractor. In the event CONTRACTOR is not awarded an Agreement to continue to provide Collection Services following the expiration or early termination of this Agreement, CONTRACTOR shall provide customer names, addresses and service information to assist with a smooth transition to the subsequent collector.

Section 7.0 Liquidated Damages. The parties recognize that if the CONTRACTOR fails to achieve the performance standards or fails to submit required documents in a timely manner, the CITY and its residents will suffer damages and that it will be impractical and extremely difficult to determine the exact amount of damages that the CITY will suffer. Therefore, without prejudice to the CITY's right to treat such non-performance as an event of default under Section 6.0, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the City that reasonably could be anticipated, and the anticipation that proof of actual damages would be costly or impractical. The CONTRACTOR may be subject to liquidated damages for the following acts or omissions if documented in an incident report presented by the CITY to the CONTRACTOR:

- (a) Failure to timely submit or make available to CITY documents and reports as required under the provisions of this Contract (Various Sections): \$100 per incident per day
- (b) Failure to remit the Franchise Fee and other payments to CITY as set forth in Section 1.B herein: \$500 per incident per day
- (c) Failure to provide timely transition documents or meet transition requirements Section 1.0: \$300 per item per day
- (d) Failure to commence clean-up of spills, leaks, or litter caused by CONTRACTOR by end of Workday, upon notification from CITY Section 2.0: \$500 per day.
- (e) Failure to return a Customer voice message or respond to a Customer e-mail by the close of the Workday following the day the voice message or e-mail is received Section 2.4 provided it is received by 6:00 p.m.: \$150 per incident per day
- (f) Failure to repair damage or compensate CITY for damage to CITY property, including all City structures, public roadways and sidewalks caused by CONTRACTOR or its personnel (excluding damage to driving surfaces that do not support Contractor's trucks within legal limit or damage constituting normal wear and tear): \$500 per incident, plus the cost of the repair
- (g) Failure to notify the CITY daily of all situations that prevent or hinder collection: \$300 per day.
- (h) Trucks overweight by at least 3%, where there are not extenuating circumstances, such as rain which increased the weight: \$300 per incident. Failure to respond timely to CITY requests for services or information Section 4.0: \$150 per incident
- (j) Failure to comply with the public outreach standards in the manner set out

in Section 1.11: \$150.00 per incident per day for time-related standards; \$2,500 per incident for other standards not time-related

(k) Failure to meet Minimum Diversion Requirements in the manner set out in Section 1.11.b: \$4000 per year if diversion requirement is not met. Liquidated damages will only apply for the Minimum Diversion Requirements if CONTRACTOR has not implemented the activities in its Outreach and Education plan as described in Exhibit E.

Claims for liquidated damages must be made within 60 days from when CITY knew or should have known of the CONTRACTOR performance failure.

7.1 Attorneys' Fees. In the event of any litigation or arbitration to interpret or enforce the terms of this Agreement, the prevailing Party shall be entitled to an award of reasonable attorney fees and costs, both at trial and on appeal.

7.2 Indemnification of the CITY. CONTRACTOR shall defend, with counsel reasonably acceptable to the CITY, indemnify and hold harmless, to the fullest extent allowed by law, CITY, its officers, officials, employees, volunteers, agents and assignees (collectively, "Indemnitees"), 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) (collectively, "Loss") arising or resulting from: (i) the negligent action or omission of the CONTRACTOR, its agents, employees, and/or subcontractors, in exercising the privileges granted to it by this Agreement; (ii) the failure of the CONTRACTOR, its agents, employees, 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 (iii) the acts of CONTRACTOR, its agents, employees, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law. The foregoing indemnity shall apply regardless of whether such Loss is also caused in part by any of the Indemnitees' negligence.

The indemnities set forth in this Section shall not be limited by the insurance requirements set forth in the Agreement. CONTRACTOR's indemnification of Indemnitees will not include indemnification for Losses which arise as the result of the active negligence of Indemnitees, or the sole negligence or willful misconduct of Indemnitees. Further, the indemnification of Indemnitees will not include indemnification for Losses relating to a failure to achieve the minimum diversion requirements described in Section 1.12.b.

7.3 Evaluation of Liability. The CONTRACTOR'S obligation to defend, hold harmless, and indemnify shall not be excused because of the CONTRACTOR'S inability to evaluate liability or because the CONTRACTOR evaluates liability and determines that the CONTRACTOR is not liable to the claimant. The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR by virtue of this Agreement as shall reasonably be considered necessary by the CITY, may be retained by the CITY until final disposition has been made or the claim or suit for damages, or until the CONTRACTOR accepts or rejects the tender of defense, whichever occurs first. With respect to third party claims against the CONTRACTOR indemnifiable under Section

23.01, the CONTRACTOR waives any and all rights of any type to express or implied indemnity against the Indemnitees.

7.4 Hazardous Substances Indemnification. The CONTRACTOR shall indemnify, defend with counsel reasonably acceptable to the CITY, and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, hazardous materials response, remediation and removal costs, losses, demands, 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 foregoing 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 successors (collectively, "Claims") arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste released, spilled or disposed of by CONTRACTOR under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section 25364, to defend, hold harmless and indemnify the CITY from liability. Notwithstanding the foregoing, CONTRACTOR is not required to indemnify, defend or hold harmless under this paragraph against Claims arising from CONTRACTOR'S delivery of materials collected under this Agreement to any processing, disposal, transfer or other facilities, or their handling at such facilities or subsequent delivery to other locations, unless such Claims are due to CONTRACTOR'S negligence or willful misconduct. For purposes of clarity, CONTRACTOR will not be responsible for Excluded Materials placed for collection by customers or other third parties.

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

7.7 Obligation. The execution of this Agreement by the CONTRACTOR shall obligate the CONTRACTOR to comply with the foregoing indemnification provisions; however, the collateral obligation of providing insurance must also be fully complied with as set forth in Section 5.0 above.

7.8 Damage by CONTRACTOR. If CONTRACTOR'S employees or subcontractors cause any damage or loss to CITY property, including but not limited to CITY streets or curbs, other than as a result of ordinary wear and tear or conditions not being suitable for CONTRACTOR'S normal activities, including the quality of any roadway, then CONTRACTOR shall repair such property to the reasonable satisfaction of CITY, at CONTRACTOR'S sole cost and expense. If CONTRACTOR fails to do so within a reasonable period after CITY notifies CONTRACTOR of the damage or loss, then CITY may affect the repair, and CONTRACTOR shall reimburse CITY

for CITY'S reasonable cost of repairing such damage or loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by CONTRACTOR for any such damage or loss.

7.9 Independent Contractor. CONTRACTOR is an independent contractor and shall not be deemed an employee of the CITY. CONTRACTOR shall have no power to incur any debt, obligation, or liability on behalf of CITY, or otherwise act on behalf of CITY as an agent. Neither

CITY or any of its agents shall have any control over the conduct of CONTRACTOR or any of its employees, except as set forth in this Agreement. CONTRACTOR shall secure at its sole expense and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for CONTRACTOR and its officers, agents and employees. The parties agree that (1) CONTRACTOR is completely free from the control and direction of CITY in the performance of work under this Agreement, (2) the work being performed is outside the usual course of CITY's business, and (3) CONTRACTOR is customarily engaged in the waste management trade which is the subject of this Agreement. CONTRACTOR shall indemnify and hold CITY harmless from any and all tax and employment related assessments, penalties, and interest asserted against CITY by reason of the independent contractor relationship created by this Agreement. CONTRACTOR further agrees to indemnify and hold CITY harmless from any failure of CONTRACTOR to comply with the applicable worker's compensation laws. CITY shall have the right to offset against the amount of any fees due to CONTRACTOR under this Agreement any amount due to CITY from CONTRACTOR as a result of its failure to promptly pay to CITY any reimbursement or indemnification arising under this paragraph.

7.10 Assignment. Neither this Agreement nor any portion thereof may be assigned or subcontracted without the written consent of the CITY Manager upon the express authority of the CITY Council Notwithstanding the foregoing, CONTRACTOR shall have the right, without seeking or obtaining approval or authority from the CITY, to subcontract for street sweeping services under this Agreement.

7.11 Taxes. CONTRACTOR shall pay all real and personal property taxes and possessory interest taxes as may be applicable to its performance of services under this Agreement.

7.12 Waiver. Failure of the CITY or CONTRACTOR to insist upon strict performance of any or all of the terms of this Agreement in any given instance, shall not be considered to be a waiver of the right to assert such term or condition of this Agreement at a later time in respect to future events.

7.13 Sale of Recyclable Material. This Agreement is not intended to and shall not affect or limit the right of any person to sell any Recyclable Material to any person lawfully engaged in business in the CITY or to donate Recyclable Material, provided that all such Recyclable Material is separated at the source by the generator.

7.14 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of California.

7.15 Conflict of Interest. CONTRACTOR and its officers, employees, associates, and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to its services under this Agreement, including, but not limited to, the Political Reform Act (Government Code section 81000, et seq.) and Government Code section 1090.

7.16. Mediation and Binding Arbitration

A. Continue Performance. Except for an Event of Default, in the event of any dispute arising under this Agreement, CITY and CONTRACTOR shall continue performance of their respective obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not limited to negotiating in good faith.

B. Mediation. Any unresolved dispute arising between the Parties under this Agreement shall first be submitted to non-binding mediation before a recognized mediator having experience with agreements of this nature and that is mutually acceptable to the Parties, provided that neither Party

shall unreasonably withhold its acceptance. If the parties are unable, after a period of thirty (30) days from commencement of the dispute resolution process, to agree on a mediator, either party shall be entitled to petition a court of competent jurisdiction to appoint such a mediator for the Parties. Each Party shall bear its own costs, including attorney's fees, incurred in connection with the mediation. If the mediation does not result in a resolution of the dispute that is acceptable to both parties, either party may institute arbitration.

C. Binding Arbitration. Any unresolved dispute or claim which arises out of or which relates to this Agreement, or to the interpretation or breach thereof, shall be resolved by binding arbitration pursuant to California Code of Civil Procedure, Section 1280 et seq., Arbitration shall be by a single, neutral arbitrator having experience with agreements of this nature. The Parties shall mutually agree upon said arbitrator, but if the parties cannot so agree, either party may apply to the Superior Court of Tehama County to appoint an arbitrator. The arbitrator shall follow applicable law in reaching a decision of any controversy submitted to arbitration. The arbitrator's fees and expenses and all arbitration costs shall be awarded to the prevailing party and against the losing party, unless otherwise required by this Agreement or unless the arbitrator, in his or her discretion, determines that a different apportionment of fees and costs is appropriate in the interests of justice. The arbitrator selected shall have experience with agreements of this nature. The rules for arbitration shall be the American Arbitration Association ("AAA") rules. Discovery may be undertaken by the Parties in accordance with the Code of Civil Procedure rather than the AAA rules.

D. Exception to Binding Arbitration. Notwithstanding any other provision to the contrary in this Article 12.6 or elsewhere in this Agreement the CONTRACTOR shall have no cause of action for damages against CITY in relation to any dispute or claim it may have relating to Compensation.

7.17 Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the parties, and constitutes the full understanding between the parties, superseding any previous agreements. Except as otherwise provided herein, no other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties thereto.

7.18 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. 7.18 Authority. Each party executing this Agreement in any representative capacity hereby fully and completely warrants to all other parties that he or she has full and complete authority to bind the person or entity on behalf the signing party is purposing to act.

7.19 Authority. Each party executing this Agreement in any representative capacity hereby fully and completely warrants to all other parties that he or she has full and complete authority to bind the person or entity on behalf the signing party is purposing to act.

7.19 Resolution of Ambiguities. If any ambiguity exists in this Agreement, or in any specific provision hereof, neither the Agreement nor the provision shall be construed against the party who drafted the Agreement.

Section 8.0 Privacy.

8.2 Mailing Lists. CONTRACTOR shall not market or distribute mailing lists with the names and addresses of service recipients.

8.3 **Privacy Rights Cumulative.** The rights accorded service recipients pursuant to this Section 22 shall be in addition to any other privacy rights accorded service recipients pursuant to federal or state law.

[Signatures on following page]

IN WITNESS WHEREOF, this Agreement is effective as of the latest date set forth below.

Date: 3/2/2021

THE CITY OF CORNING, CALIFORNIA

By: 

Name: KRISTINA MILLER

Title: CITY MANAGER

Date: 2-22-21

USA WASTE OF CALIFORNIA, INC.

By: 

Name: Barry Skolnick

Title: President

**EXHIBIT A
STREET SWEEPING SCHEDULE**

CONTRACTOR, or its subcontractor, shall provide Residential street sweeping twice per month, Monday through Friday, 6:00 a.m. to 5:00 p.m.

CONTRACTOR shall provide Commercial street sweeping once per week, Monday through Friday, 3 00 a.m. to 7 00 a.m.

Commercial areas defined are:

- 1.1 Solano Street from Eastern City limits, to west side of Barham Road, Edith Avenue intersection, and each block North and South of Solano Street from Third Street to Houghton Avenue, and Yolo and Marin Streets from Third Street to Houghton Avenue.
- 1.2 Third Street from North City limits, to Solano Street.
- 1.3 Edith Avenue from Solano Street to Colusa Street, and Short Drive cul-de- sac, West of Edith Avenue.
- 1.4 Highway 99-W from Solano Street to Southern City limits, and Sunrise Way Cul-de-sac west of Highway 99-W.
- 1.5 South Avenue from Eastern City limits, to west side of South Avenue and the Barham Ave. intersection.

Sweeping Contractor shall have free use of City water for sweeping operations, and all sweepers shall be equipped with the proper spanner wrench for the opening and closing of all Hydrants.

Sweeping debris shall be dumped in areas designated by the Public Works Department, and all debris will be picked up and disposed of by the City Public Works Department

Fall leaf Season times and dates, shall be coordinated between the City of Corning, and CONTRACTOR. It is estimated that sweeping for leaves will require 2 1/2 times more sweeping hours, over and above the normal sweeping schedule. During the Fall leaf season, the entire paved section of the street shall be swept, if needed, by direction of the Public Works Director, to insure complete removal of all fallen leaves, and debris.

When a normal collection day falls on January 1st, Memorial Day, 4th of July holiday, Labor Day, Thanksgiving Day or December 25, sweeping shall be provided as follows: (a) on the holiday, (b) one day prior to the holiday, or (c) one day after the holiday, in which case sweeping may be made one day later than the regularly scheduled day during the remainder of the week. Contractor shall notify the City two weeks in advance of any changes in sweeping schedules occasioned by holidays.

All City residents, and Commercial businesses shall receive a street sweeping schedule from CONTRACTOR that shows the dates and times their area will be swept, and also to request that vehicles be removed from the curb and gutter area, so that the frontage of their home or business may be properly cleaned. Schedules will be sent in January billing annually.

**EXHIBIT B
STREET SWEEPING SERVICE AND
EQUIPMENT REQUIREMENTS**

CONTRACTOR shall provide street sweeping services, including all necessary labor, materials and equipment, for all City streets with or without curb and gutter. All employees assigned to street sweeping operations shall be fully capable, experienced and trained in the work they are to perform. All street sweeping services shall be conducted in a workmanlike manner and in accordance with recognized industry standards, and to the reasonable satisfaction of the Public Works Director. Street sweeping of private streets is not included in this franchise. However, nothing in this franchise shall prevent CONTRACTOR from entering into contracts with the owners of private drives, and parking lots.

CONTRACTOR, or its subcontractor, shall perform all street sweeping services in accordance with the schedule set forth in Exhibit A.

All street sweeping equipment shall meet each of the following standards:

- 1.1 Equipment shall be heavy duty, vacuum, or broom type sweeping equipment, equipped with dual gutter brooms and designed to clean the streets of paper, dirt, rocks, leaves and other debris.
- 1.2 It shall be equipped with an efficient water spray system for dust control.
- 1.3 It shall be capable of sweeping a minimum one-pass width of eight feet.
- 1.4 It shall conform to all applicable safety standards.
- 1.5 It shall be properly registered in the State of California and insured in accordance with the laws of the State of California.
- 1.6 It shall have the name and local telephone number of CONTRACTOR displayed thereon in letters no smaller than two- and one-half inches in height. The name of the City or City logo shall not be displayed on the sweeping equipment.
- 1.7 The sweeping equipment shall be kept clean and well-maintained, and in proper adjustment to ensure proper sweeping operations and that the equipment is without oil leaks. CONTRACTOR shall make sure that the sweeping contractor maintains a sufficient supply of spare tires, brooms and other parts, to ensure the timely and continuous provision of services. The equipment shall be subject to inspection and approval of the CITY's Public Works Director, or his Assistant.
- 1.8 Before the effective date of the Franchise agreement, CONTRACTOR shall furnish the City with Liability, and Worker Compensation Insurance Certificates from the Sub-Contractor. under the Insurance requirements Section Sweeping Contractor shall immediately clean-up and/or report to the City any and all conditions related to street sweeping which may tend to create unsafe or hazardous conditions.

Sweeping Contractor shall submit such reports as may be requested by the City concerning street sweeping schedules, frequency of service and the collection and disposal of debris. And to notify the Public, and the City at least once a year or prior to any changes in the sweeping schedule.



EXHIBIT C
CITY OF CORNING
RATE SCHEDULE
Effective March 1, 2021

CPI	FUEL
2.32%	0.13%

RESIDENTIAL RATES	Current Rate	CPI Adjustment	Fuel Adjustment	New Rate Effective 3/1/2021
Cart Rates				
Roller Carts (64-Gallon)	\$21.81	\$0.51	\$0.03	\$22.35
Roller Carts (96-Gallon)	\$23.69	\$0.55	\$0.03	\$24.27
Senior Citizen Roller Cart (32-Gallon)	\$11.85	N/A	N/A	\$12.14
Up to 2 - 64 Gallon Recycling and 1 - 96 Gallon Green Waste Carts (included)	\$0.00	N/A	N/A	\$0.00
Additional Recycling or Green Waste Carts				\$5.71

Seniors receive a 50% discount from the base rate.

COMMERCIAL AND MULTI-FAMILY RATES	Current Rate	CPI Adjustment	Fuel Adjustment	New Rate Effective 3/1/2021
Cart Rates				
1 96-Gallon Roller Cart - 1X Week	\$23.60	\$0.55	\$0.03	\$24.18
Bin Rates				
1 Yard - 1X Week	\$75.44	\$1.75	\$0.10	\$77.29
1.5 Yard - 1X Week	\$105.48	\$2.45	\$0.14	\$108.07
1.5 Yard - 2X Week	\$192.99	\$4.48	\$0.26	\$197.73
2 Yard - 1X Week	\$135.61	\$3.15	\$0.18	\$138.94
2 Yard - 2X Week	\$266.92	\$6.19	\$0.36	\$273.47
2 Yard - 3X Week	\$340.61	\$7.90	\$0.46	\$348.97
3 Yard - 1X Week	\$192.99	\$4.48	\$0.26	\$197.73
3 Yard - 2X Week	\$345.34	\$8.01	\$0.46	\$353.82
3 Yard - 3X Week	\$447.22	\$10.38	\$0.60	\$458.20
4 Yard - 1X Week	\$253.21	\$5.87	\$0.34	\$259.43
4 Yard - 2X Week	\$432.37	\$10.03	\$0.58	\$442.98
4 Yard - 3X Week	\$584.72	\$13.57	\$0.79	\$599.07
4 Yard - 4X Week	\$792.23	\$18.38	\$1.07	\$811.68
6 Yard - 1X Week	\$345.34	\$8.01	\$0.46	\$353.82
6 Yard - 2X Week	\$584.74	\$13.57	\$0.79	\$599.09
6 Yard - 3X Week	\$824.01	\$19.12	\$1.11	\$844.24
6 Yard - 4X Week	\$1,038.26	\$24.09	\$1.40	\$1,063.75
6 Yard - 5X Week				\$1,283.26

Recycling				
Recycle service - up to 2 yards per week are included with service				\$0.00
Additional 64 Gallon Recycle Cart				\$21.73
Additional 1 yard recycle				\$43.61
Additional 2 yard recycle	\$61.52	\$1.43	\$0.08	\$63.03
Additional 3 yard recycle	\$87.91	\$2.04	\$0.12	\$90.07
Additional 4 yard recycle	\$106.87	\$2.48	\$0.14	\$109.49
Additional 6 yard recycle	\$145.57	\$3.38	\$0.20	\$149.14
Extra Pickup Rates				
1 Yard - Extra Pickup	\$16.50	\$0.38	\$0.02	\$16.91
1.5 Yard - Extra Pickup	\$23.08	\$0.54	\$0.03	\$23.65
2 Yard - Extra Pickup	\$29.70	\$0.69	\$0.04	\$30.43
3 Yard - Extra Pickup	\$42.23	\$0.98	\$0.06	\$43.27
4 Yard - Extra Pickup	\$55.44	\$1.29	\$0.07	\$56.80
6 Yard - Extra Pickup	\$75.61	\$1.75	\$0.10	\$77.47

Temporary Bin Rate				
4 Yard "BIN-A-DAY" 3 Day Rental	\$108.54	\$2.52	\$0.15	\$111.20

ROLL OFF BIN RATES	Current Rate	CPI Adjustment	Fuel Adjustment	New Rate Effective 3/1/2021
Temporary Drop Box Rates				
20 Yard Haul - includes 3 tons*	\$511.09	\$11.86	\$0.69	\$523.64
30 Yard Haul - includes 3 tons*	\$573.02	\$13.29	\$0.77	\$587.09
Compactor Rates				
Compactor Haul Rate - Any Size - does not include tonnage**				\$399.32

* Disposal over 3 tons are charged actual disposal charges from Tehama County/Red Bluff Landfill

** Customer owned. Actual tonnage is charged from Tehama County/Red Bluff Landfill

ANCILLARY RATES	Current Rate	CPI Adjustment	Fuel Adjustment	New Rate Effective 3/1/2021
Residential				
Extra Pickup on non-service day	Not Available	N/A	N/A	Not Available
Go back charge (same day)	\$48.23	\$1.12	\$0.06	\$49.41
Contamination charge - Recycle & Organics				\$16.00
Overfull Container - all material types				\$16.00
Replace lost or stolen cart	\$91.10	\$2.11	\$0.12	\$93.33
Replace or Exchange damaged container (not caused by WM)	\$91.10	\$2.11	\$0.12	\$93.33
Account reactivation charge (from bad pay) - no delivery	\$48.23	\$1.12	\$0.06	\$49.41
Account reactivation charge (from bad pay) - w/ delivery	\$85.74	\$1.99	\$0.12	\$87.84
Late Payment charge	2.5% of balance (\$5.00 min.)	N/A	N/A	2.5% of balance (\$5.00 min.)

Commercial				
Contamination charge - Recycle				\$55.24
Overfull Container - all material types				\$75.00
Long walk service - Up to 100 feet	\$10.56	\$0.24	\$0.01	\$10.82
Long walk service - 101 to 200 feet	\$21.11	\$0.49	\$0.03	\$21.63
Replace lost or stolen cart	\$91.10	\$2.11	\$0.12	\$93.33
Replace or Exchange damaged container (not caused by WM)	\$91.10	\$2.11	\$0.12	\$93.33
Account reactivation charge (from bad pay) - no delivery	\$48.23	\$1.12	\$0.06	\$49.41
Account reactivation charge (from bad pay) - w/ delivery	\$85.74	\$1.99	\$0.12	\$87.84
Late Payment charge	2.5% of balance (\$5.00 min.)	N/A	N/A	2.5% of balance (\$5.00 min.)
Roll Off				
Roll Off Trip Charge	\$160.76	\$3.73	\$0.22	\$164.71
Per Day rental charge after seven days	\$11.97	\$0.28	\$0.02	\$12.27
Per hour relocation charge	\$29.91	\$0.69	\$0.04	\$30.65
Late Payment charge	2.5% of balance (\$5.00 min.)	N/A	N/A	2.5% of balance (\$5.00 min.)

**EXHIBIT D
RECYCLABLE MATERIALS**

RECYCLABLES must be clean, dry, loose (not bagged) and include **ONLY** the following:

Aluminum cans – empty	Newspaper
PET bottles with the symbol #1 – with screw tops only – empty	Mail
HDPE plastic bottles with the symbol #2 (milk, water bottles detergent, and shampoo bottles, etc.) – empty	Magazines, glossy inserts and pamphlets
Uncoated paperboard (ex. cereal boxes; food and snack boxes)	
Steel and tin cans – empty	Uncoated printing, writing and office paper
Phone books	Old corrugated containers/cardboard (uncoated)
Plastic containers with symbols #3-#7 – empty (no expanded polystyrene), empty	Glass food and beverage containers – brown, clear, or green - empty

NON-RECYCLABLES include, but are not limited to the following:

Plastic bags, film, wrap, and bagged materials (even if containing Recyclables)	Microwavable trays
Mirrors	Window or auto glass
Light bulbs	Coated cardboard
Porcelain and ceramics	Plastics unnumbered
Expanded polystyrene	Coat hangers
Glass and metal cookware/bakeware	Household appliances and electronics,
Hoses, cords, wires	Yard waste, construction debris, and wood
Flexible plastic or film packaging and multi-laminated materials	Needles, syringes, IV bags or other medical supplies
Food waste and liquids, containers containing such items	Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.)
Excluded Materials or containers which contained Excluded Materials	Napkins, paper towels, tissue, paper plates, paper cups, and plastic utensils
Any Recyclable materials or pieces of Recyclables less than 4" in size in any dimension	Propane tanks, batteries
Aseptic containers	Cartons

Material may not contain Non-Recyclables or Excluded Materials. "Excluded Materials"

means radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous or toxic substance or material, or regulated medical or hazardous waste as defined by, characterized or listed under applicable federal, state, or local laws or regulations, materials containing information (in hard copy or electronic format, or otherwise) which information is protected or regulated under any local, state or federal privacy or data security laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, or other regulations or ordinances.

EXHIBIT E
Outreach, Public Education & Diversion Plan

Plan Summary

Through public education, Waste Management will work with the City to achieve increased diversion. We will work with residential (SFD), Multifamily (MFD), and commercial customers within the City to utilize these efforts in increasing diversion and reaching state goals. It will become a focus to expand current public education programs with customized strategies. A total of \$10,000 will be spent annually on the materials needed for all Public Education and Outreach material for SFD, MFD and Commercial customers. In November of each year, Waste Management will meet with the City to determine where these funds will be allocated in the upcoming year to best target outreach efforts to divert certain materials or address "Problem" areas where improvements can be maximized/. Annual SFD mailer including the collection bulky item and acceptable/non-acceptable recyclables will not be accounted towards the \$10,000 annual budget.

We will utilize sustainability support staff in-house or through partnering affiliates (e.g., Tehama County Solid Waste Management Agency - TCSWMA) in ten (10) hours of dedicated effort per week, to assist with rolling out the programs outlined below. CONTRACTOR shall provide an Annual Outreach, Public Education and Diversion Plan Report indicating its compliance with the tasks and schedule provided below.

Single Family Dwelling – SFD: Mixed Recycling & Organics Education

Implementation Task & Schedule:

Education material, as described in the outreach and education plan section below, will be provided to customers on an annual basis through social media, other electronic media, brochures, mailers, school recycling curriculums, postcards, flyers and/or posters.

Waste Management or partnering affiliate will collaborate with the City on school outreach activities, provide recycle assessments upon request and support school sustainability programs and student education. A minimum of 2 school events will be attended per year promoting recycling education and awareness to local youth. All attended events will be reported in the annual report due February 15th for the previous year.

Waste Management will attend public events and host booths to promote recycling education and awareness. A minimum of 4 events will be attended per year with a booth/table to promote recycling education and awareness to SFD, MFD, and/or Commercial customers. Collaboration with the City will be necessary to identify which special events are to be attended. All attended events will be reported in line with the annual report due February 15th for the previous year. Waste Management will work with City to identify which special events will be attended.

Outreach and Education Plan

As a part of the Public Outreach \$10,000 budget, WM will utilize the "Recycle Often. Recycle Right", "The Dirty Dozen" or other education programs to educate SFD on proper recycling. RORR

(Recycle Often Recycle Right) and The Dirty Dozen are campaigns designed to offer a number of educational tools assisting with proper recycling. Other approved campaigns and educational material provided by a third party may also be utilized in these efforts. In addition, WM will promote actions that support diversion such as the residential cost savings to reduce the size of a refuse cart to a 64-gallon and add one additional 64-gallon recycling cart.

Customers will have access to Waste Management's local website (northvalley.wm.com) to find information specific to the CITY. This content will include proper container set out, educational materials, newsletters and program descriptions. Customers will also have the ability to use WM's web-based service request system.

Local media may be utilized to ensure information is communicated to community (new programs, events, recycling information, etc.) Options such as; local Paper, Magazines, News and Websites can be used.

Standard Service offerings that are not included in the \$10,000 Public Outreach budget include educational materials mailed to residents in the first year and annually thereafter. Examples shall include informational annual service calendar, flyer with recycling tips, battery and bulb education, proper cart placement, resource information, and HHW education. Public Education and outreach will be provided to SFD customers regarding new service offerings, including Bulky Item Pick-Up and other added value services included in the franchise agreement. Education will include acceptable and unacceptable materials, allowable number of complimentary service days and proper placement of material for curbside pick-up. This information will be provided to residential customers minimally once per year and/or if any changes are made to the available service offerings.

Recycling & Organics Contamination

In order for Waste Management to successfully increase true diversion, Waste Management and our affiliates will educate the customer to promote a clean recycling and/or organics waste stream. Recycling contamination will be addressed by educating customer with proper recycling techniques. Updates on the current diversion rate will be provided to the City on a quarterly basis, in the Quarterly Reports due April 15th, July 15th, October 15th, and January 15th of each year. An annual analysis will also be provided in the Annual Report due February 15th for the previous calendar year.

Commercial & Multifamily Dwellings – MFD: Mixed Recycling & Organics

Implementation Task & Schedule:

Waste Management is dedicated to providing 'boots on the ground' focus on Public Education and Outreach efforts for commercial, multi family dwelling and permanent roll-off customers. Efforts may be completed in-house or via third party (e.g.- Tehama County Solid Waste Management Agency - TCSWMA)

On a quarterly basis, Waste Management will conduct a review of commercial customers and MFD's to identify customers that have not optimized their recycling service. Conduct site visits and provide recycling education program information.

Education material, as described in the outreach and education plan section below, will be provided to customers on an annual basis.

Outreach and Education Plan

In-person visits will be completed for each commercial and permanent roll-off and Multi-family customer regarding AB341 and AB1826 education and compliance within the first year from the effective date of the contract, totaling approximately 20 visits per month. Waste Management will visit customers that are not in compliance with AB341 to educate them on the law and encourage them to sign up for recycling service. Customers can call in and request an audit service. A list of the visited customers will be collected and reported on a quarterly basis, in the Quarterly Reports due April 15th, July 15th, October 15th, and January 15th of each year.

Waste Management may utilize "Recycle Often. Recycle Right." or other education program to educate commercial customers on proper recycling. RORR (Recycle Often Recycle Right) is a campaign designed to offer a number of educational tools assisting with proper recycling. Educational information may include but is not limited to brochures, mailers, posters and on-site visits.

Waste Management to distribute educational material to customers on an annual basis. Examples include recycling tips, battery and bulb education, resource information.

Customers will have access to Waste Management's local website (northvalley.wm.com) to find information specific to the City. This content will include how to set out containers properly, educational materials and program descriptions. Customers will also have the ability to use WM's web-based service request system.

Waste Management to work with businesses to identify cost-effective ways to reduce waste.

Waste Management will attend public events and host booths to promote recycling education and awareness. A minimum of 4 events will be attended per year with a booth/table to promote recycling education and awareness to SFD, MFD, and/or Commercial customers. Collaboration with the City will be necessary to identify which special events are to be attended. All attended events will be reported in line with the annual report due February 15th for the previous year. Waste Management will work with City to identify which special events will be attended.

Recycling & Organics Contamination

In order for Waste Management to successfully increase diversion, Waste Management will provide educational materials as provided herein to promote a clean recycling and/or organics waste stream. Recycling contamination will be addressed by educating customer with proper recycling techniques. Updates on the current diversion rate will be provided to the City on a quarterly basis, in line with the Quarterly Reports due April 15th, July 15th, October 15th, and January 15th of each year. An annual analysis will also be provided in line with the Annual Report due February 15th for the previous calendar year.

Exhibit F
Disposal Calculation Formula

Sample Data:

City of Corning - Calculation for Service Cost Changes if Disposal Cost Changes

Sample Data Calculation: Example of Change in Disposal Cost	
Disposal as Percent of Revenue	29%
Disposal Cost / Total Revenue = Disposal Pct.	
Prior Disposal Rate Per Ton	\$62.00
New Disposal Rate Per Ton	\$63.50
Change in Disposal Rate	\$1.50
Change in Disposal Rate	2.42%
	Rate per Month
Example Service: 1 4yd 1x Week	\$236.26
Disposal Component of Example Service	\$68.52
	29% of Revenue
Pct Change of Disposal Rate	2.42%
New Disposal Component of Rate	\$70.17
Change in Disposal Component	\$1.66
New Service Rate (example)	\$237.92