

# **AMENDED AND RESTATED SOLID WASTE COLLECTION, TRANSPORTATION AND DISPOSAL SERVICES FRANCHISE**

## **CITY OF COALINGA AND MID VALLEY DISPOSAL**

THIS FRANCHISE AGREEMENT (“Franchise” or “Agreement”) is granted this 18th day of December 2014 (“Effective Date”), by the City of Coalinga, a municipal corporation within the State of California (“City”), to Mid Valley Disposal, LLC., a California limited liability corporation (“Franchisee”)

### **RECITALS**

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (“Assembly Bill 939”), established solid waste management regulations that require cities and other local jurisdictions to implement source reduction, reuse and recycling as integrated waste management practices; and

**WHEREAS**, Assembly Bill 939 authorizes and requires local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

**WHEREAS**, Section 6-2.13 of the Coalinga Municipal Code authorizes the City Council to issue contracts, permits, franchises and licenses for the accumulation, removal, collection, transportation and disposal of solid waste within the corporate limits of the City of Coalinga; and

**WHEREAS**, the City is obligated to protect the public health, safety and welfare of the residents of the City, and has determined that arrangements by private waste haulers for the collection of solid waste should be in a manner consistent with the protection of health, safety and welfare; and

**WHEREAS**, Franchisee has represented and warranted to the City that it has the personnel, operating assets, experience, and qualifications to provide the solid waste services detailed herein for the collection, transportation and disposal of the City’s recycling materials, green waste and other solid waste as described herein; and

**WHEREAS**, the City Council has determined and finds that the public interest, health, safety and welfare would be served if Franchisee performs the solid waste collection, transportation and disposal services described herein for single-family dwelling units, multi-family dwelling units, commercial units, industrial units, institutional units and governmental units within the corporate limits of the City of Coalinga; and

**WHEREAS**, Franchisee has held a franchise with the City for solid waste services since 2006, and faithfully performed under the terms and conditions of that franchise; and

**WHEREAS**, Franchisee has a franchise with the County of Fresno to provide solid waste services to the unincorporated areas surrounding the City; and

**WHEREAS**, the existing franchise with Franchisee is set to expire on June 30, 2016; and

**WHEREAS**, Franchisee has requested an extension of the existing franchise for a period of 10 years in order for Franchisee to properly plan for an expansion of Franchisee facilities and equipment and to comply with new State mandates, all to better serve the City and its customers.

## **WITNESSETH**

For and in consideration of the payments to be made by the Franchisee to the City, and in further consideration of the full and faithful performance by Franchisee of all the terms, covenants, and conditions of this Franchise Agreement, as well as complete compliance with all present and future laws, ordinances, regulations and resolutions of the United States, State of California, Fresno County and the City of Coalinga, **THE CITY OF COALINGA THEREFORE GRANTS FRANCHISEE THE FRANCHISE DESCRIBED HEREIN ON THE TERMS AND CONDITIONS ESTABLISHED HEREBY:**

## **ARTICLE I** **DEFINITIONS**

### **SECTION 1.1 DEFINITIONS:**

The following names and terms shall have the meanings set forth below:

(A) “Appendix” shall mean an appendix to this Franchise, as the same may be amended or modified from time to time in accordance with the terms thereof.

(B) “Applicable Law” shall mean any law, rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the Franchise services; the operating assets; the siting, design, acquisition, permitting, construction, equipping, financing, ownership, possession, shakedown, testing, operation or maintenance of any of the operating assets, or any other transaction or matter contemplated hereby, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and payment of minimum wages.

(C) “Bulky Items and White Goods” shall mean small and large household appliances such as stoves, refrigerators and washers as well as furniture, tires, carpets, mattresses and similar items of solid waste.

(D) “Change in Law” shall mean any of the following events or conditions which has a material and adverse effect on the performance by the parties of their respective obligations under this Franchise (except for payment of obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management, operation or maintenance of operating assets or other matters to which applicable law applies:

(1) the enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Franchise date of any applicable law; or

(2) the order or judgment of any Governmental Body, on or after the Franchisee date, to the extent such order of judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the City or Franchisee, whichever is asserting the occurrence of a change in law; provided, however, that the contesting in good faith or the failure in good faith contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

(E) “City” shall mean the City of Coalinga.

(F) “City Facility” shall mean any building, park, right-of-way or other site owned, leased or used regularly and significantly by employees or contractors of the City.

(G) “City Manager” shall mean the City of Coalinga City Manager, his or her designee as well as the employees working under his or her supervision.

(H) “Collection” shall mean the operation of gathering together and transporting solid waste to the point of disposal.

(I) “Commercial Units” shall mean (1) any commercial business establishment including, but not limited to, hotels, motels, offices and professional buildings, and retail establishments of all kinds including supermarkets, filling stations, restaurants, eateries, department stores, variety stores, places of entertainment, manufacturing plants, schools, hospitals or prisons; or (2) any building or site in the Franchise area, other than single-family dwelling units or multi-family dwelling units, from which any business, service, non-profit, governmental, institutional, commercial or industrial activity is conducted.

(J) “Construction Rubbish” shall include brick, stone, cement, mortar, drywall, concrete, asphalt, asphalt/concrete paving materials, demolished or discarded building materials, rubble, or other debris incident to the construction or demolition of buildings and/or public highways, streets, bridges, parking lots, roadways, alleys, water lines, sewer lines, natural gas lines, electrical power lines, other utilities or other public infrastructure.

(K) “Construction or Demolition Waste” shall mean (1) solid waste material resulting from building construction, alteration, repair, demolition, including brick, stone, cement, lumber, plaster, and drywall; (2) packaging or rubble resulting from construction, remodeling, repair and demolition operations on pavements or residential, commercial, industrial, institutional and governmental buildings and structures.

(K-1) “Construction and Demolition Materials” shall mean lumber, drywall, metals, masonry (brick, concrete, etc), carpet, pipe, rocks, dirt, paper, cardboard, or green waste related to land development and any other materials used in any type of construction.

(L) “Container” shall mean residential, commercial, industrial, institutional, government cans, bins, or dumpsters approved and provided by Franchisee for the accumulation and collection of solid waste.

(M) “County” means the County of Fresno.

(N) "Customer" shall mean each owner and/or occupant of each building, lot or parcel in the City from which solid waste including refuse, recycling materials or green waste are generated or which solid waste is required to be collected pursuant to this Franchise.

(O) "Customer Rates" shall mean those rates or charges paid by customers for collection, processing, transportation, disposal of solid waste and other related services received.

Customer Rates will be established by Franchisee and set forth in this Franchise. (See **Exhibit A.**)

Franchisee may at its sole discretion adjust such customer rates not more than once each year, commencing on the beginning of a Franchise Year starting on July 1, 2017. No discretionary rate increase shall exceed the Consumer Price Index (CPI) for All Urban Consumers for US Cities Average Item: Garbage and Trash, as published by the US Department of Labor, Bureau of Labor Statistics, or any successor index, or five percent (5%), whichever is less.

Franchisee may request an additional rate increase at other times based upon extraordinary circumstances, which for the purposes herein shall mean unanticipated regulatory requirements of the Solid Waste Management Board or other agencies of the State of California, the County of Fresno, or other operators of landfills, municipal recycling facilities, green-waste facilities, or other recycling operations utilized to dispose of waste materials originating in the City of Coalinga. To obtain a rate increase based upon extraordinary circumstances, Franchisee has the burden of demonstrating to the satisfaction of the City Council the need for the rate increase based upon the allowable circumstances. The City Council shall act upon any extraordinary rate increase request within sixty (60) days and approve the request if the Franchisee has met its burden.

(P) "Disabled Customer" shall mean anyone who has applied at the City and has been designated as a "Disabled Customer" by the City, because he or she has provided adequate documentation and has been determined by the City as meeting one or more of the following criteria:

(1) has been found to be permanently handicapped by the California Department of Motor Vehicles; or

(2) has been found to be totally and permanently disabled by the Social Security Administration under any of their programs including, but not limited to, the Social Security Disability Insurance Program under Title II of the Social Security Act and including, but not limited to the Supplemental Security Income Program under Title XVI of the Social Security Act; or

(3) has been determined to be permanently disabled by any branch of the military, or Veterans' Administration; or

(4) the City Manager or employee designated by the City Manager has determined to his or her satisfaction, based on a written statement from a licensed physician or qualified public agency, that the customer is either permanently or temporarily disabled.

No customer shall be designated as a "disabled customer" if there is an able-bodied person residing at the customer's house.

(Q) “Development” shall mean any new or existing project, facility or building, the users of which generate waste within and/or on the property.

(R) “Disposal” shall mean the complete operation of treating and disposing of accumulations of solid waste and of the product or residue arising from such treatment.

(S) “Designated Disposal Site” shall mean any facility or facilities properly licensed by the State of California and/or a California County for the disposal of solid waste collected by the Franchisee.

(T) “Dwelling Unit” shall mean a residential, single-family dwelling and each separate apartment dwelling of a duplex, triplex or four-plex up to and including four apartments, including upstairs, basement, garage or detached garage or housing units. The term does not apply to commercial units, industrial units or institutional users.

(U) “Excluded Materials” shall mean (1) hazardous waste, (2) household hazardous waste, (3) infectious or medical waste, and (4) self-haul waste.

(V) “Facility” shall mean something that is installed or established to serve a particular purpose.

(W) “Fees and Costs” shall mean reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses of any legal proceeding.

(X) “Franchise” shall mean this recycling materials, green waste and other solid waste franchise between the City of Coalinga and the Franchisee.

(Y) “Franchise Area” shall mean that geographic area comprising the City limits of the City of Coalinga on the Franchise date, which may be periodically changed to reflect property annexations into the City.

(Z) “Franchise Date” shall mean the date that this agreement was approved by the Coalinga City Council.

(AA) “Franchise Services” shall mean all of the duties and obligations of the Franchisee hereunder.

(BB) “Franchise Year” shall mean the fiscal year beginning on July 1 and ending on the following June 30.

(CC) “Franchisee” shall mean Mid Valley Disposal, LLC, a California limited liability corporation, and its successors and assigns as permitted by this Franchise.

(DD) “Government Body” shall mean any federal, state, county, city, local or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

(EE) “Green Waste and Organic Waste” shall mean those discarded materials that will decompose and/or putrefy and that the City’s Municipal Code permits, directs, and/or requires Generators to separate from Solid Waste and Recyclable Materials for Collection in specially designated Containers for Organic Materials Collection. Organic Materials include Green Waste and Food Scraps such as, but are not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with Food Scraps, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No Discarded Material shall be considered Organic Materials, however, unless such material is separated from Solid Waste and Recyclable Material.

(FF) “Green Waste and Organic Waste Collection Program” shall mean the program by which the Franchisee collects Green Waste and Organic Waste from residential, commercial, industrial, institutional and governmental customers in accordance with the terms of this Franchise Agreement and the laws of the State of California.

(GG) “Hazardous Waste” shall mean:

(1) Any substance which has been determined to be a hazardous substance such that it cannot be disposed of in the county’s landfill and is required by county ordinance, state law, federal law or by county, state or federal regulations to be transported to a specialized disposal facility set aside for hazardous waste. Hazardous waste includes, but is not limited to household hazardous waste.

(2) A waste, or combination of wastes, which because of its quality, concentration, or physical, chemical, or infectious characteristics may do either of the following:

(a) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or

(b) Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(3) All waste defined or characterized as hazardous waste by the federal law in 42 USC 3251 et. seq. as amended, and all future amendments thereto, or regulations promulgated hereunder; or

(4) All waste defined by agencies of the State of California (including without limitation the Department of Health Services and the California Waste Management Board) having jurisdiction over hazardous waste generated by facilities within the state, provided the term “hazardous waste”:

(a) is intended to mean and include those substances that are not normally expected to be disposed of by generally accepted sanitary landfill disposal methods.

(b) shall include radioactive wastes.

(c) shall be construed to have the broader, more encompassing definition where there exists a conflict in the definitions employed by two (2) or more

government agencies having concurrent or overlapping jurisdictions over hazardous waste.

(HH) “Household Hazardous Waste” shall mean any waste produced by a household that contains an ingredient listed in the Code of Federal Regulations Chapter 40 part 261.33(e) or 261.33(f), or that exhibits characteristics of ignitability, corrodibility, reactivity (e.g. oxidizer) toxicity or infectiousness. Empty containers retaining residues of household hazardous waste are not considered “household hazardous waste.” These containers containing residues of household hazardous waste include, but are not limited to each of the following: household cleaners, pesticides, batteries, wood preservatives, automotive polish, furniture polish, fertilizers, automotive products, adhesives, sealants, paints and coatings, photographic chemicals, swimming pool chemicals and used oils.

(II) “Infectious or Medical Waste” shall mean solid waste capable of producing an infection or pertaining to or characterized by the presence of pathogens or medical waste regulated by the California Health and Safety Code Section 117600 et. seq. It includes but is not limited to certain wastes generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals, medical testing labs, and any waste that includes animal wastes or parts from slaughter houses or rendering plants.

(JJ) Intentionally Deleted.

(KK) Intentionally Deleted

(LL) “Insurance Requirement” shall mean any rule, regulation, code, or requirement issued by any fire insurance rating bureau or any body having similar functions or by an insurance company that has issued a policy with respect to the Franchisee’s operating assets or franchise services.

(MM) “Legal Entitlement” shall mean all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under applicable law to be obtained or maintained by any person with respect to the Franchisee’s operating assets or the performance of any obligation under this Franchise or the matters covered hereby.

(NN) “Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Franchise.

(OO) “Loss-and-Expense” shall mean any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, claim, demand, charge, tax, or expense including all fees and costs.

(PP) “Multi-Family Residential Dwelling” shall mean a permanent building containing two (2) or more dwelling units including, but not limited to, apartments, condominiums and mobile home parks.

(QQ) “Operating Assets” shall mean all real and personal property of any kind, which is owned, leased, managed or operated by or under contract to the Franchisee for providing the Franchise services, including without limitation, containers, vehicles, transfer stations, processing facilities, maintenance facilities, storage facilities, administrative facilities, and other equipment, machinery, parts, supplies and tools.

(RR) “Premises” shall mean any single-family residential, multi-family residential, industrial, commercial, institutional or governmental properties of any kind, or any other dwelling building or vacant property where solid waste is generated or accumulated for disposal.

(SS) “Public Highway” shall mean any public street, alley, road, walkway, public place or road open to and used by the traveling public and not used as a private right-of-way.

(TT) “Recycling” shall mean the process of collecting, sorting, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream as defined in the California Public Resources Code Section 40180.

(UU) “Recyclable Materials” shall mean solid waste materials such as newspapers, printed matter, paper products, aluminum cans, other cans, glass, beverage containers, bottles, plastic containers, paste board, corrugated cardboard and other items that through a process of collecting sorting, cleansing, treating and reconstituting is returned to the economic mainstream in the form of raw material for new, reused, remanufactured, reprocess or reconstituted products which meet the quality standards necessary to be used in the market place.

(VV) “Recycling Program” shall mean the program by which the Franchisee collects recyclable materials from residential, commercial, industrial, institutional and governmental customers in accordance with the terms of this Franchise.

(WW) “Residue” shall mean materials which remain after processing recyclable materials or green waste which cannot be recycled, marketed or otherwise used, including but not limited to materials such as rocks, contaminated paper, putrescibles and other debris.

(XX) “Self-Hauled Waste” means solid waste collected and hauled by self-haulers.

(YY) “Self-Hauler” shall mean any person not engaged commercially in waste haulage who collects and hauls, with their own equipment, solid waste generated from residential, commercial or industrial activities owned, leased or occupied solely by such person.

(ZZ) “Service Fee” shall mean the Customer Rates and Miscellaneous Charges for Special Collection Services as authorized by Section 4.1 and set forth in this Franchise (see **Exhibit A**). The Service Fee constitutes the entire compensation of Franchisee for the Franchise services. Said fee shall include all costs of collecting, disposing, and/or the recycling of any item(s) covered by this agreement including any and all land fill charges, disposal and/or recycling fees, franchise or other fees required by federal, state, or local governmental entities.

The Miscellaneous Charges for Special Collection Services may be adjusted in the same manner as Customer Rates.

(AAA) “Collection Rate Schedule” shall mean the posted schedule of collection charges established by Franchisee in accordance with the terms of this Franchise.

(BBB) “Solid Waste” shall mean all garbage, refuse, rubbish and other materials and substances discarded or rejected as being spent, useless, worthless or in excess to the generator thereof at the time of such discard or rejection and which are normally disposed of by or collected from single-family residential units, multi-family residential units, commercial units, industrial units, institutional units and governmental units, which are acceptable at Class III landfills under applicable law.



(CCC) “Source Reduction” shall mean efforts taken to minimize the quantity of waste generated and entering the waste stream.

(DDD) “State” shall mean the State of California.

(EEE) “Ton” shall mean a “short ton” of 2,000 pounds.

(FFF) “Uncontrollable Circumstance” means only the following acts, events or conditions, whether affecting the Franchisee’s operating assets, the City or the Franchisee, to the extent that it materially and adversely affects the ability of either party to perform any obligations under the Franchise (except for payment obligations), if such act, event or condition is beyond the reasonable control and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as justification for not performing an obligation or complying with any provision required by each party under this Franchise:

(1) An act of God (but not including reasonably anticipated weather conditions for the geographic area of the Franchise area), hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance.

(2) A change in law as defined in this section.

(3) Failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the Franchisee’s operating assets are located to provide and maintain the designated disposal site, utilities, services, water, sewer lines and power transmissions lines to the Franchisee’s operating assets, which are required for the performance of the Franchise services and which directly results in a delay or curtailment of the performance of the Franchise services.

(4) Preemption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Franchisee’s operating assets.

It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances:

(1) General economic conditions, interest or inflation rates or currency fluctuation or changes in the cost or availability of fuel, commodities, supplies or equipment.

(2) Consequences of errors, neglect or omissions by the Franchisee, any of its affiliates or any subcontractor of any tier in the performance of the Franchise services.

(3) The failure of the Franchisee to secure patents or licenses in connection with the technology necessary to perform its obligations hereunder.

(4) Union work rules, requirements or demands which have the effect of increasing the number of employees employed in connection with the Franchisee’s

operating assets or otherwise increase the cost to the Franchisee's operating and maintaining the operating assets or providing the Franchise services.

(5) Strikes, work stoppages or other labor disputes or disturbances occurring with respect to any activity performed or to be performed by the Franchisee or any of the Franchisee's subcontractors or suppliers in connection with the Franchisee's operating assets or the Franchise Services.

(6) Any failure of any subcontractor or supplier to furnish labor, materials, service or equipment for any reason.

(7) Equipment failure.

(8) Any impact of prevailing wage laws, customs or practices on the Franchisee's construction or operating costs.

(9) Changes in market prices for, or the unavailability of markets for, the sale or purchase of recyclable materials or green waste, except that this circumstance may form the basis for an extraordinary circumstance justifying a Customer Rate increase.

(FFF-1) "Universal Waste" shall mean computers, terminals, televisions, similar electronic devices as may be defined now or in the future by state law.

(GGG) "Waste" shall mean the unwanted by-product of residential use or of commercial, industrial, institutional or governmental operations.

## **SECTION 1.2 INTERPRETATION:**

In this Franchise the following interpretations will apply, unless the context otherwise requires:

(A) References Hereto. The terms "hereby," "hereof," "herein," "hereunder," and any similar terms refer to this Franchise, and the "hereafter" means after, and the term "heretofore" means before the date of execution of this Franchise.

(B) Gender and Plurality. Words in the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations, non-profit corporations and other legal entities, including Governmental Bodies, as well as individuals.

(D) Headings. Any headings preceding the text of the Articles, Sections and Subsections of this Franchise shall be solely for convenience of reference and shall not constitute part of this Franchise, nor shall they affect its meaning, construction or effect.

(E) Entire Franchise. This Franchise contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Franchise and nothing in this Franchise is intended to confer on any person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Franchise.

(F) Reference to Days. All references to days herein are to calendar days, including Saturdays, Sundays, holidays, except as otherwise specifically provided.

(G) Counterparts. This Franchise may be executed in any number of original counterparts. All such counterparts shall constitute but one of the same Franchise.

(H) Applicable Law. This Franchise shall be governed by and construed in accordance with the applicable laws of the State of California.

(I) Severability. If any clause, provision, subsection, Section or Article of this Franchise shall be determined to be invalid by any court of competent jurisdiction, the invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions thereof, and this Franchise shall be construed and enforced as if such invalid portion did not exist.

(J) Defined Terms. The definitions set forth in Section 1.1 hereof shall control in the event of any conflict with the definitions used in this Franchise. Should there appear to be any uncertainty, ambiguity or discrepancy in terms or provisions hereof, or should any misunderstanding arise as to the interpretation to be placed upon any portion hereof, or the performance required hereunder, the City Manager shall be consulted and his or her decision shall be final and conclusive.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES OF FRANCHISEE**

#### **SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF FRANCHISEE:**

Franchisee, by acceptance of this Franchise, represents and warrants that:

(A) Existence and Powers. Franchisee is duly organized and validly exists as a corporation under the laws of the State of California, with full legal right, power and authority to enter into and perform its obligations.

(B) Due Authorization and Binding Obligation. Franchisee has duly authorized the execution and delivery of this Franchise. This Franchise has been duly executed and delivered by Franchisee and constitutes the legal, valid and binding obligation of Franchisee, enforceable against the Franchisee in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(C) No Conflict. Neither the execution nor the delivery by Franchisee of this Franchise nor the performance by Franchisee of its obligations hereunder (1) conflicts with, violates or results in a breach of any law or governmental regulations applicable to Franchisee; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement including (without limitation) the certificate of incorporation of Franchisee or instrument to which Franchisee is a party or by which Franchisee or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever on any of the properties or assets of Franchisee.

(D) No Litigation. There is no action, suit or other proceeding as of Franchise date, at law or in equity, before or by any court or governmental authority, pending or, to Franchisee's best knowledge, threatened against Franchisee which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Franchise or any such agreement or instrument entered into by Franchisee in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by Franchisee of its obligations hereunder or by Franchisee under any such other agreement or instrument.

(E) No Legal Prohibition. Franchisee has no knowledge of any applicable law in effect on the Franchise date which would prohibit the performance by Franchisee of this Franchise and the transactions contemplated hereby.

(F) Information Supplied by the Franchisee. The information supplied by Franchisee in all submittals made in connection with negotiation and execution of this Franchise is correct and complete in all material aspects.

(G) Waiver of Certain Rights. Franchisee hereby:

(1) Waives any right it may possess to contest the legal right, power or authority of the City to enter into this Franchise, and agrees to fully cooperate with and assist the City in supporting the legal validity of this Franchise and authority to award this Franchise in the event of any legal challenge thereto brought or made in any manner by a third party; and

(2) Agrees to observe and comply with the operating rules and regulations established by the City, county, or the state with respect to the designated disposal sites, including without limitation those governing delivery procedures, receiving hours, vehicle and waste inspection, hazardous waste screening, litter control and safety measures.

(H) Free Market Decision. Franchisee, without constraint and as a free market business decision in accepting this Franchise, agrees to use only legally designated disposal sites for disposal of the City's solid waste and such decision in no way constitutes a restraint of trade notwithstanding any change in law regarding flow control limitations or any definition thereof.

(I) Franchisee Investigation. Franchisee has made an independent investigation to its satisfaction of matters, conditions, and circumstances relating to its execution and delivery of this Franchise and its obligations hereunder, including the nature and amount of solid waste materials generated within the City and the source reduction and recycling programs now in effect in the City. Franchisee acknowledges that the City makes no warranties except as may be expressly set forth in this Franchise Agreement.

### **ARTICLE III** **FRANCHISE**

#### **SECTION 3.1 GRANT AND ACCEPTANCE OF FRANCHISE:**

(A) Franchise Service. Pursuant to Section 40059 of the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) and Section 6-2.13 of the Coalinga Municipal Code, the City hereby grants an exclusive franchise, license and privilege, on the terms and conditions set forth herein, to Franchisee for the service in the Franchise area of collecting, transporting, handling, processing and/or disposing of solid waste materials. By its execution acceptance hereof Franchisee accepts the Franchise, license and privilege so granted by the City on and subject to the terms and conditions contained herein and agrees to perform all of the duties and obligations of a Franchisee thereunder. Specifically, Franchisee agrees to provide Franchise services to any person within the Franchise area requesting such service, subject to payment of the Customer Rates and Miscellaneous Charges for Special Collection Services, established by Franchisee as set forth in this Franchise.

(B) Exclusive Franchise. This Franchise is intended by the parties, to extent permitted by law, to designate Franchisee as the exclusive franchisee for the purpose of providing, on an exclusive basis, the services described herein to the owners and or occupants of all real property located within the City limits of the City of Coalinga. Franchisee shall have the sole and exclusive right and privilege to provide solid waste handling services within the designated Franchise area. As used in this section “solid waste handling” shall have the same meaning as set forth in California Public Resources Code Section 40195, and includes without limitation recycling services rendered in exchange for a fee or other consideration in any form or amount, roll-off or drop box services, construction rubbish services and construction and demolition services.

(C) Term. The term of this Franchise shall commence on the Effective Date and terminate on June 30, 2026.

(D) Extension of Term. Upon expiration of the term of this Franchise, the Franchise may be extended upon terms and conditions mutually agreeable to the parties.

(E) Franchise Area. The Franchise area is that geographic area comprising the City limits of the City of Coalinga on the Franchise date and those geographic areas that may from time to time be added to the City as a result of property annexations into the City.

(F) Exceptions to Franchise. The franchise, license and privilege granted in subsection 3.1 hereof shall not give Franchisee any right or responsibility with respect to the following materials:

- (1) Excluded materials as defined in Section 1.1(U) including hazardous waste, household hazardous waste, infectious or medical waste, and self-haul waste.
- (2) Animal waste and remains from slaughter houses or butcher shops.
- (3) Liquid wastes or by-products of sewage treatment, including sludge, grit and screening.
- (4) Any other materials which may be deemed not acceptable for collection by the State of California, the County of Fresno, and/or the City of Coalinga.

Further, the provisions of this Franchise shall not preclude or prohibit the owner or occupant of any premises from acting as a self-hauler as defined in Section 1.1(Y) of this Franchise in

collecting, transporting and disposing of recyclable materials, green waste or other solid waste generated on such premises.

**SECTION 3.2 ASSIGNMENT AND TRANSFER OF FRANCHISE:**

(A) Consent of City Required. This Franchise shall not be transferred, sold, pledged, hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be transferred, sold, pledged, hypothecated, leased or assigned, either in whole or in part, nor shall title hereto or thereto, either legal or equitable, or any right, interest, or property herein or therein, pass to or vest in any person, except Franchisee, either by action or inaction of Franchisee or by operation of law, without the prior written consent of the City, which may be withheld or delayed in its sole and absolute discretion with or without cause. Any attempt by Franchisee to effectuate any of the foregoing without the consent of the City shall be null and void.

(B) Imposition of Conditions. The City may impose conditions and restrictions on any approval it may elect to give of any transaction described in Section 3.2(A) and 3.3 hereof, including without limitation conditions relating to payment of all costs relating to such transfer.

**SECTION 3.3 CHANGE IN FRANCHISE OWNERSHIP OR CONTROL:**

(A) Current Ownership and Control. Franchisee represents that, as of the Franchise date, Mid Valley Disposal, LLC, is a limited liability corporation composed of the following: Jay Kalpakoff (Managing Member), Joseph Kalpakoff (Member), Jonathan Kalpakoff (Member) Roy Mendrin (Member).

(B) Maintenance of Existence. Franchisee covenants that during the term of this Franchise it will maintain its current existence and current membership, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not take any other action which would materially impair the ability of Franchisee to perform the Franchise service.

(C) Consolidate, Merger, Sale, Transfer and Change in Control. Franchisee shall not, without prior written consent of the City which may be withheld or delayed at its sole and absolute discretion, acquire any entity, consolidate with or merge with another entity, or permit one or more other entities to consolidate with or merge into it, which results in loss by Franchisee of operational or voting control of Franchisee.

(D) Transfer of Control. The City's prior written consent, which may be withheld or delayed in its sole and absolute discretion, shall be required for the sale or transfer by any means, whether by agreement or by operation of law (including transfers resulting from death, bankruptcy or divorce) of any of the ownership interests of Franchisee, which results in loss by Franchisee of operational or voting control of Franchisee. This section shall not apply to transfers or sales to "immediate family members." "Immediate family members" shall mean father, mother, spouse, children or the spouses of children.

(E) Payment of Certain Costs by Franchisee. If Franchisee requests the consent of the City for any transaction described in Section 3.2 or Section 3.3 hereof, Franchisee shall reimburse the City for all costs and expenses incurred by the City in reviewing, examining, analyzing and acting on the request, including all direct and indirect administrative expenses of the City and consultants and attorneys' fees and expenses. Bills shall be supported with evidence of expense or cost incurred. Franchisee shall pay such bills within thirty (30) days of receipt.

## **ARTICLE IV**

### **FRANCHISE SERVICES**

#### **SECTION 4.1 COLLECTION AND DISPOSAL SERVICES:**

(A) Scope of Work. The work to be performed under this Franchise consists of furnishing all labor, tools, equipment, materials, supplies and services and payment of all landfill, recycling and all other costs necessary to (1) satisfactorily collect all solid waste including recyclable materials, green waste and organic waste, as herein defined, (2) transport said collected solid waste to legally designated disposal sites and (3) perform all other work or services incidental to the collection and transportation of the above items in strict compliance with applicable City, county, state and federal laws and regulations.

(B) Collection Frequency. Recyclable materials, green waste and other solid wastes will be picked up from all single-family dwelling residents not less than once per week. Collection of solid wastes including recyclable materials and green waste materials shall be scheduled as needed for multi-family residential dwellings and commercial, industrial, institutional and governmental customers.

(C) Collection System. Franchisee shall use the following collection systems:

(1) Single-Family Residential Collection. Franchisee shall use an automated three-can collection system and provide each customer at least one 90-gallon automated can for green waste and organic waste materials, one 90-gallon automated can for recyclable materials and one 60-gallon automated can for other solid waste materials as designated by the City and Franchisee.

(2) Multi-Family Residential, Commercial, Industrial, Institutional, and Governmental Collection. Franchisee shall use either automated cans or two or three-cubic-yard bins as deemed appropriate for the solid waste collection needs of the organization.

(D) City Facilities Collection. Franchisee shall, without charge or compensation, collect solid wastes including recycling materials and green waste materials located at City-owned or leased facilities and locations. City also has the option, without charge or compensation, of bringing Green Waste to the Franchisee Solid Waste Transfer Station located at 1255 W. Elm Avenue, Coalinga, CA, for collection by Franchisee, or any similar transfer station owned by Franchisee.

(E) Christmas Tree Collection. Franchisee shall, without additional compensation, collect at curbside or in alleys Christmas trees discarded by any residential, commercial, industrial, institutional or governmental customer on a designated day or days as determined by Franchisee and the City.

(F) Used Automotive Battery Collection. Franchisee shall, without additional compensation, collect at curbside used automotive batteries once every two (2) months. Customers desiring this service will be asked to call in advance to schedule pickup.

(G) City Sponsored Events Collection. Franchisee shall, without charge, provide solid waste collection and recycling services to up to six (6) annual City sponsored events as

determined solely by the City, Franchisee will coordinate collection services with appropriate City staff and any involved community sponsors.

(H) Annual City Clean Up Collection. Franchisee shall sponsor, without additional compensation, up to two (2) annual community cleanup days for City of Coalinga residents. The City Manager and Franchisee will collaborate on the date, time, and methodology of the event.

(I) Bulky Items and White Goods Collection. Franchisee shall provide separate collection of bulky items and white goods as defined in Section 1.1(C) on a call-in basis. Franchisee shall be paid an additional fee for each bulky item collected as established by Franchisee (see **Exhibit A**). Franchisee will collect the bulky item or white good within five (5) working days of notification. Bulky items and white goods shall be collected from private property. These items shall not be placed for collection on the curb or in the alley or on any street right-of-way or public place. Customers desiring this service will be asked to call in advance to schedule pickup.

(J) Universal Waste - Computers, Terminals, Televisions and Similar Electronic Devices Collection. Franchisee shall provide separate collection of computers, terminals, televisions and similar electronic devices, as well as other items designated as “universal waste” by the State of California, such as flashlight batteries, neon lights, electrical cords, etc. All such items shall be collected on a call-in basis. Franchisee shall be entitled to collect an additional fee for each item collected pursuant to the collection rate schedule (see **Exhibit A**). Said fee shall include any and all disposal charges established by the State of California and/or the County of Fresno. Franchisee will collect the computers, terminals, televisions and similar electronic devices within five (5) working days of notification. These items shall be collected from private property. These items shall not be placed for collection on the curb or in the alley or on any street right-of-way or public place. Customers desiring this service will be asked to call in advance to schedule pickup. However, nothing shall prohibit Franchisee from establishing a local drop off site in the City of Coalinga, in addition to the private property collection, for customers wishing to utilize such a service.

(K) Household Hazardous Waste. While not part of this Franchise, Franchisee agrees to maintain a list for customers of local places for customers to drop off Household Hazardous Waste, pharmaceuticals, medical sharps, and similar waste. Franchisee also agrees to work with the County in establishing local drop off points for the County wide household hazardous waste facility located in Kerman, CA.

(L) Street Sweeping Waste. Franchisee shall collect, transport, and dispose of waste from City’s street sweeping operations without charge or compensation. Franchisee may charge for disposal/landfill costs if the street sweeping waste cannot be taken to a Class III landfill.

(M) Illegal Dumping Abatement Collection. Upon request of the City, Franchisee shall within two (2) days collect and remove from City public highways, streets, alleys, parks and other public areas or private property (as directed by the City), bulky items and white goods as defined in Section 1.1(C) and any other solid waste covered by this Franchise in any volume that have been unlawfully abandoned or discarded. For any such collection Franchisee shall receive compensation from the City on the basis of time and materials at rates approved in writing by the City. Franchisee shall create a specific work order and invoice for payment in response to each



call received by the City that includes, but is not limited to, the date, time, hours spent, and type of unlawful discarded solid waste collected.

(N) Code Enforcement Abatement Collection. Upon request of the City, Franchisee shall at a date and time mutually agreed upon by the City and Franchisee, collect and remove from private property pursuant to City ordinance within the boundaries of the City, bulky items and white goods as defined in Section 1.1(C) and any other solid waste covered by this Franchise in any volume which has been unlawfully allowed to accumulate, be abandoned or discarded on private property. For any such collection Franchisee shall receive compensation from the City on the basis of time and materials at rates approved in writing by the City. Franchisee shall create a specific work order and invoice for payment in response to each call received by the City that includes, but is not limited to, the date, time, hours spent, and type of unlawful discarded solid waste collected. The City will pay Franchisee for the services rendered and be responsible to pursue collection from the appropriate property owners or tenants.

(O) Disabled Customer Collection. In accordance with Section 6-2.20(e) of the Coalinga Municipal Code and Section 1.1(P) of this Franchise, Franchisee shall, upon request, transport solid waste materials from the front of the dwelling unit to the curb or alley site for individuals that qualify as being disabled customers. Disability will be based on an application made to the City, and not by Franchisee. The City will provide Franchisee with an updated list of people who have been determined by the City to be disabled customers. In accordance with Section 6-2.20(e) no customer shall be designated as a “disabled customer” if there is an able-bodied person as determined by the City residing at the customer’s house.

(P) Assembly Bill 939 Reporting. Franchisee will report to the City all tonnages picked up for recycling materials, green waste materials and other solid wastes as required by Assembly Bill 939, applicable law or regulations. All trucks will be weighed separately with only materials from Coalinga. Franchisee will be responsible (at no cost to the City) to collect all solid waste information and prepare and submit all required reports to the California Integrated Waste Management Board or other appropriate state regulatory agency.

(Q) California Integrated Waste Management Board and Other Federal, State and County Regulatory Meetings. Franchisee will attend (at no cost to the City) appropriate California Integrated Waste Management Board meetings or any other appropriate federal, state and county regulatory meetings on behalf of the City and will act as the City’s liaison to these regulatory bodies.

(R) Recycling and Solid Waste Diversion and Source Reduction Education Services. Franchisee will implement recycling, solid waste diversion and other source reduction education services program at no additional cost to the City. A Franchisee employee will be assigned to work with school officials, college officials and representatives from commercial, industrial, institutional and governmental organizations operating within the corporate limits of the City of Coalinga to improve solid waste diversion and source reduction. Franchisee will carry out its education program using the following methods and advertising mediums:

- (1) Advertise in the local newspaper the recycling materials, green waste materials and other solid waste that should be put in each of the three containers.
- (2) Mail informative recycling program brochures in English and Spanish to all customers receiving a City utility bill.

(3) Local television advertisements placed on the local public-access cable television channel.

(4) Provide the City Finance Division with recycling program brochures and other solid waste diversion and source reduction education materials for community mailers and general distribution.

(5) Implement recycling programs, solid waste diversion and source reduction programs in all schools targeting administrators, teachers, classified staff and students.

(6) Assist school administrators and teachers with classroom and assembly presentations and environmental education curriculum development.

(7) Provide the City with any other appropriate education materials as needed to meet the source reduction and solid waste diversion goals of Assembly Bill 939.

(S) Additional Services. Franchisee may provide additional special collection services requested by the City or by any customer that are directly related and ancillary to any of the other Franchise services authorized under this Franchise Agreement including Construction and Demolition (C&D) disposal services. Rates for Construction and Demolition Services shall be posted along with rates for all other services provided by Franchisee. C&D containers shall be placed on private property whenever possible. If C&D containers must be placed in the public right of way, it shall be placed so as to not interfere with traffic or unnecessarily obstruct the driver or pedestrian views.

(T) Transfer Station. Franchisee leases land from the City for a Solid Waste Transfer Station located at 1255 W. Elm Avenue, Coalinga, CA. The Solid Waste Transfer Station allows Franchisee to transfer waste materials collected in and around the City of Coalinga to facilitate the economical transport of waste materials to landfills and municipal recycling facilities (MRF). The Solid Waste Transfer Station is required to comply with all development rules, regulations, and standards required of any development within the City as well as those established by the State of California.

#### **SECTION 4.2 COLLECTION SERVICE OPERATING REQUIREMENTS:**

(A) Collection Routes. Franchisee shall establish and maintain collection routes in such manner to provide for the uniform and efficient collection of solid waste materials including recycling materials and green waste materials on a Monday-through-Friday basis and commercial, industrial, institutional and governmental customers on a Monday-through-Saturday basis. Franchisee shall not schedule collection on Sundays, except as authorized by the City Manager. For all residential, commercial, industrial, institutional and governmental customers who require more than one (1) collection per week, Franchisee shall schedule collections at appropriately spaced intervals throughout the work week, or as requested by the customer or the City. Any collection routes in place on Franchise date may be reorganized from their current schedule in order to provide the highest level of service at the least cost. Changes to the collection routes and collection days must be reviewed, coordinated and approved by the City as provided in this Section and other applicable sections of this Franchise.

(B) Collection Route and Schedule Revisions. Franchisee may request the City approve any revision to the collection routes or collection schedule that Franchisee may propose. The

City's approval of any such request may be withheld or delayed at the City's sole and absolute discretion. Upon such approval by the City, Franchisee shall notify all affected customers at least seven (7) days prior to implementing the revision.

(C) Route Books and Maps. Franchisee shall prepare route books and maps for each route, which outline specific routing information regarding the daily collection of solid waste materials including recycling materials and green waste materials. Route books and maps shall be kept current and made available to the City Manager for inspection and copying. Copies of the route books and maps shall be provided to the City Manager a minimum of two (2) weeks prior to implementation of each new route and revised copies shall be provided whenever the routes are revised.

(D) Workmanship. Franchisee shall handle containers in a workmanlike manner with due regard for avoiding damage to containers, private property and public property. Franchisee's employees shall travel to and from the streets, alleys or buildings on walkways, driveways, or roadways and shall take every precaution not to damage container enclosures, buildings, structures, shrubs, hedges, flower beds or grassed areas. All gates shall be properly latched when leaving the area serviced.

(E) Damage to Property. Franchisee shall be responsible for any damage to private or public property caused by the company's officers, employees, agents or vehicles. Prompt response to damage claims is important to maintain City and customer support and confidence. Franchisee shall respond to any claim of damage to private or public property caused by their officers, employees, agents or vehicles, within three (3) working days of receipt of oral or written notification to Franchisee of alleged Franchisee liability.

(F) Hours of Service. Except for Pleasant Valley State Prison (PVSP) and/or other governmental facilities with special pickup requirements, special pickups, collecting missed pickups, or due to emergencies, Franchisee shall schedule no collection from any customer earlier than 6:00 a.m. or later than 6:00 p.m.

(G) Holidays. Franchisee shall not be required to collect solid wastes needed to be taken to the landfill or other disposal facility on days that the landfill or other disposal facility is closed, except as may be required by contract with Pleasant Valley State Prison or other governmental agency with special requirements. Franchisee may observe New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day holidays during which collection services will not be provided and Franchisee offices will be closed. Whenever a regular collection falls on such a holiday, the collection shall be made on the following working day, and collections shall become current within one (1) week thereafter.

(H) Non-Collection of Contaminated Recyclable Materials. Franchisee shall use reasonable efforts to not collect recyclable materials or green waste materials from containers which also contain significant, visible amounts of other solid waste materials. In the event that Franchisee determines that a particular container contains more than a significant, visible amount of such materials, Franchisee shall place a tag (the contents of which shall be subject to the approval of the City Manager) on such container informing the customer of the reason for non-collection. In the event that Franchisee determines that excessive amounts of contamination are being deposited in recyclable materials containers or green waste containers, Franchisee shall take steps to identify customers who are the source of such excessive contamination and curtail such contamination. Such steps may include heightened examination of containers by drivers or other employees of Franchisee, increased educational efforts, or other appropriate steps as

determined by Franchisee and the City, up to and including fines, penalties, discontinuation of service and/or legal remedies.

#### **SECTION 4.3 CONTAINERS:**

(A) Container Ownership and Provision of New Containers. Franchisee shall purchase, own, maintain, provide, and distribute all containers required to properly provide the services required by this franchise at its own expense.

(B) New Container Specifications. The type, size and other specific physical requirements for containers shall be as specified in this Franchise or otherwise determined by Franchisee in consultation with the City, taking into consideration, the needs of the customer, access and the need to provide service in the most economical and efficient manner possible.

(C) Container Labels. All containers shall be appropriately labeled as approved in consultation with the City Manager to show what materials go into which containers, and other information to prevent commingling of recyclable materials and green waste with other solid waste and promotes full customer participation in the collection, solid waste diversion and recycling programs of the City.

(D) Container Replacement. Franchisee will provide additional automated cans and bins or replacements as requested by the City or as requested by the customer for containers that are damaged, lost or stolen and/or when the customer requests a change in level of service. Franchisee shall replace the container, within two (2) working days from the date such request has been received or Franchisee otherwise becomes aware of the need to replace any damaged or dilapidated container.

(E) Container Maintenance and Repair. Franchisee shall be responsible for the general maintenance and repair of all containers including the steam cleaning, painting and repair of all bins for commercial, industrial, institutional and governmental customers. When and if requested, Franchisee shall clean all commercial, industrial, institutional and governmental containers at Franchisee's own expense. Franchisee shall repair or replace, at its own expense, any container that is (1) damaged by Franchisee, (2) damaged by the customer through normal wear and tear, or (3) damaged by others. In addition to the foregoing, Franchisee shall replace or swap residential containers up to once per year upon request of the customer.

(F) General Requirements. After emptying any container, Franchisee shall replace the container in an upright position at the place where such container was placed for collection. Franchisee shall handle containers in a manner so as to prevent damage or spillage, and shall not throw containers after emptying them.

#### **SECTION 4.4 COLLECTION LOCATIONS:**

(A) General. Franchisee is responsible for the collection of all solid wastes provided for in this Franchise, in accordance with applicable law, at the locations designated in Title 6, Chapter 2 of the Coalinga Municipal Code or at some other location as designated by the City. In the event that physical conditions, safety hazards or accessibility problems prohibit street collection, alley collection or other collection location designated by the City, Franchisee shall immediately notify the City. In such circumstances, upon authorization by the City, Franchisee shall make arrangements with the customer for a temporary collection location until the physical conditions, safety hazards or accessibility problems are corrected.

(B) Private Roads. Franchisee shall, where necessary, traverse private roads in order to collect containers deposited by customers for collection. However, Franchisee shall not be required to use private roads if the owner of such roads prohibits the use of them by Franchisee.

(C) Container Enclosures. Where the collection location is within an enclosure constructed pursuant to the requirements of the City, Franchisee shall use sufficient care in handling of such containers so as to prevent any damage to the enclosure, the enclosure doors, and adjacent buildings, facilities or public and private improvements. Franchisee shall repair, (at its own expense) within ten (10) working days after notification from the City or customer, any such enclosure, adjacent buildings, facilities and public or private improvements damaged by it.

#### **SECTION 4.5 GENERAL REQUIREMENTS RELATING TO COLLECTION:**

(A) Franchisee's Employees. The following regulations shall govern the employees of Franchisee:

(1) Franchisee shall assign a qualified person or persons to be in charge of its operations in the City and shall inform the City of said person(s) identity and provide a description of his or her experience.

(2) To the extent permitted by applicable law, Franchisee shall, prior to hiring a driver and for all presently hired drivers for whom such reports have not been previously obtained, request a report or reports from that State of California indicating whether the individual is listed by the State as a sexual predator and/or has a felony record of violence with the State. Franchisee will not employ an individual as a driver if those reports show that the individual is so listed or has such a record unless the reports are demonstrated to be erroneous. Once each calendar year Franchisee shall request from the California Department of Motor Vehicles a report of violations committed by drivers employed by Franchisee and shall take such action, if any, as Franchisee deems appropriate based on such reports. Franchisee may satisfy these requirements with a background check performed by a third party in the business of providing such background checks. Franchisee shall be entitled to rely, without further inquiry, on the reports obtained from the State of California or such a third party.

(3) Franchisee shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection or who are otherwise directly involved in such services. Franchisee shall train its employees involved in collection to identify and not to collect excluded waste.

(4) Franchisee shall not permit its employees to demand, solicit or accept, directly or indirectly, any additional compensation or gratuity from members of the public for the collection services provided under this Franchise. Franchisee may permit its employees to accept small holiday gifts of nominal value.

(5) Franchisee shall take all steps necessary to ensure that its employees performing collection services conduct themselves in a workmanlike manner, and as quietly as possible. All employees shall at all times of employment be dressed in clean uniforms with suitable identification. No employee may remove any portion of his or her uniform while working.

(6) The City has the right to request the reassignment of any employee of Franchisee who is negligent, discourteous in the performance of their duties or violates any provision of this Franchise or any federal, state, county or City law, ordinance, policy or regulation.

(7) Franchisee shall provide suitable operating and safety training for all of his or her personnel.

(8) Each employee shall, at all times, carry a valid operator's license for the type of vehicle he or she is driving.

(B) Improper Loading of Containers. Franchisee may decline to collect any solid waste including recyclable materials and green waste that (1) have not been properly loaded into containers; (2) have been compacted or otherwise placed, kept or accumulated in a manner such that the solid waste will not, of its own weight fall out of the container when such container is turned upside down. Franchisee shall tag any containers not collected pursuant to this Section, identifying the reason for such non-collection.

(C) Clean Up. Franchisee shall cause all spills of solid waste materials occurring during the collection process (including waste spills due to tipping by animals or vandals of containers legally placed for collection) to be cleaned up immediately upon the occurrence of the spill. Franchisee shall close all gates after making collections and shall avoid crossing private or public planting areas and grounds or jumping over hedges or fences.

(D) Authorized Non-Collection of Certain Solid Waste. Franchisee shall not be required to collect materials outline in Section 3.1(F) of this Franchise or excluded materials as defined in Section 1.1(U) of this Franchise including (1) hazardous waste, (2) household hazardous waste, (3) infectious or medical waste or (4) self-haul waste.

(E) Record of Non-Collection. When any solid waste deposited for collection is not collected by Franchisee, Franchisee shall leave a notification tag indicating the reasons for such non-collection and the local, toll-free phone number of Franchisee at which the customer can inquire as to the circumstances relating to the non-collection. This information shall either be in writing or by means of a checkmark on a form notification tag. Franchisee shall maintain, at its place of business, a log listing all such circumstances at which collection is denied. The log shall contain the names of the premises involved, the date of such tagging, the reason for non-collection, and the date and manner of disposition of each case. The log shall be kept so that it may be conveniently inspected by the City upon request. The log shall be retained for the life of the Franchise thereto, and shall be turned over to the City upon the Franchise expiration or termination.

(F) Title to Recyclable Materials, Green Waste and Other Solid Waste. Title to recyclable materials, green waste and other solid waste shall be vested with Franchisee until sold or otherwise disposed of in accordance with the terms of the Franchise.

(G) Fees and Gratuities. Franchisee shall not, nor shall it permit any agent, employee or subcontractor employed by it, to request, solicit, demand or accept, either directly or indirectly, any such compensation or gratuity for the collection of solid waste or for providing other services under this Franchise, except as such compensation is specially provided in this Franchise.

(H) Business License. Franchisee and any of its subcontractors will be required to maintain a City business license during the term of this Franchise.

**SECTION 4.6 OTHER SOLID WASTES:**

The City acknowledges that this Franchise is granted only with respect to those services described in Section 3.1 of this Franchise, and does not include the collection, transportation and disposal of materials outline in Section 3.1(F) of this Franchise or excluded materials as defined in Section 1.1(U) of this Franchise including (1) hazardous waste, (2) household hazardous waste, (3) infectious or medical waste or (4) self-haul waste.

**SECTION 4.7 DISPOSAL:**

(A) Disposal Location. The designated disposal site for solid waste, recyclable materials and green waste materials shall be determined by Franchisee in consultation with the City Manager. The designated disposal sites shall be the most cost effective and serve to maintain reasonable Customer Rates. Franchisee shall transport and dispose of all solid wastes in accordance with applicable law, and shall comply with the requirements, rules and regulations of the owners or operators of the designated disposal sites. Franchisee agrees that it shall not dispose of recyclable materials, green waste materials or other solid waste at other than designated disposal sites, or through any other type of disposal including incineration, except as may be required in emergencies resulting from uncontrollable circumstances as defined in Section 1.1(DDD) with the prior written approval of the City Manager.

(B) Disposal Records. Franchisee shall keep and maintain such logs, records, manifests, bills of lading or other documents as the City Manager may deem to be necessary or appropriate to confirm compliance by Franchisee with this Franchise and shall retain all weight slips or other call information provided to Franchisee's drivers by the owner or operator of the designated disposal site.

(C) Solid Waste Origin and Weight Tracking. Franchisee shall submit monthly tonnage reports that track both disposal and solid waste generator type, source reduction and diversion. Franchisee shall work cooperatively with the owner or operator of the designated disposal site to assure all incoming solid waste from Coalinga is recorded and assigned to the City of Coalinga. Franchisee shall keep, maintain, and provide the City Manager with a list of all collection vehicles operating within the Franchise area including each vehicle's license number, designated disposal site tare number, and general geographic areas of operation and collection. Franchisee shall immediately notify the City and owner or operator of the designated disposal site in writing when new collection vehicles are added to the Franchise area, collection vehicles are used in a different geographic location within the Franchise area, tare weights are altered due to equipment modifications, or collection vehicles are removed from the Franchise area.

**SECTION 4.8 CUSTOMER BILLING:**

Franchisee shall be responsible for billing all customers on a monthly basis. Franchisee shall develop a billing procedure satisfactory to the City, to insure proper accountability for all funds so collected.

Franchisee may contract with the City to perform the billing by having the City include Franchisee's regular monthly refuse billing as part of the City's regular utility billing process.

Franchisee may also contract with the City to bill for Special Collection Services, as outlined in Section 4.1 of this Franchise.

The terms for City collecting on behalf of Franchisee shall be set forth in a separate written agreement.

## **ARTICLE V**

### **OPERATING ASSETS**

#### **SECTION 5.1 FRANCHISEE OPERATING ASSETS:**

(A) Obligation to Provide. Franchisee shall acquire and maintain at its own cost and expense Franchisee operating assets as defined in Section 1.1(QQ) of this Franchise. The number and capacity of Franchisee's operating assets shall be sufficient to enable Franchisee to provide the Franchise services in accordance with the terms and conditions of this Franchise.

(B) Vehicle and Equipment Identification. Franchisee's name, local, toll-free phone number and vehicle or equipment number shall be visibly placed on both sides of its vehicles or other collection equipment used by Franchisee. No other signs or markings shall be placed on Franchisee's vehicles or other collection equipment without the prior approval of the City Manager except signs or markings relative to use of such equipment including traffic safety signs or markings or instructions regarding the filling or placement of collection bins.

(C) Vehicle Specifications, Maintenance and Appearance. All vehicles used by Franchisee in providing the Franchise services shall (1) be registered with the California Department of Motor Vehicles (2) be kept clean and in good repair, and (3) be uniformly painted. Vehicles used to collect or transport solid waste materials shall be kept covered at all times except when such materials are actually being loaded or unloaded or when the vehicles are moving along a collection route in the course of collection. Any cover or screen shall be so constructed and used that solid waste shall not blow, fall or leak out of the vehicle onto the street. Collection vehicles shall be washed at least once every seven (7) days and cleaned and painted as required to maintain a like-new appearance. No advertisement or other display shall be carried on any collection vehicle without the written approval of the City Manger. All Franchise vehicles used in connection with this Franchise may be required to be inspected and approved by the City on a yearly basis. Franchisee may have such inspection conducted by the California Highway Patrol, or other designated agency, and shall provide the results of such inspection to the City Manager within ten (10) working days of receipt.

(D) Replacement Vehicles. The City Manager may instruct Franchisee to cease using any motor vehicle in the performance of services hereunder which the City Manager reasonably believes is unsafe or which does not comply with the provisions of this Franchise or any applicable law.

(E) Inventory of Operating Assets. Franchisee shall furnish the City Manger with an inventory of operating assets used by Franchisee to provide Franchise services under this Franchise, and shall update the inventory at least annually. Such inventory shall indicate the type, capacity and location of each vehicle and of each piece of equipment, and the date of acquisition and disposition.



**SECTION 5.2 OPERATION AND MAINTENANCE OF THE OPERATING ASSETS:**

Franchisee, at its sole cost and expense, shall at all times (1) operate the operating assets in a sound and economical manner; (2) maintain, preserve, and keep the operating assets in good repair, working order and condition; (3) staff the operating assets with the appropriate number of hourly and salaried employees consistent with good management practices; and (4) make all necessary and proper repairs, replacement and renewals so that at all times the operation of the operating assets may be properly and advantageously conducted. Franchisee shall maintain the safety of the operating assets at a level consistent with applicable law, the insurance requirements, and prudent solid waste management practices.

**SECTION 5.3 COMPLIANCE WITH APPLICABLE LAW:**

Franchisee shall comply with the rules and regulations governing the operation, use and services of the designated disposal sites as defined in Section 1.1(S) of this Franchise; and shall observe and adhere to all provisions, terms and conditions contained in the Coalinga Municipal Code and in the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) as amended, supplemented, superseded and replaced from time to time. Franchisee shall maintain all licenses, authorizations, approvals, consents and legal entitlements required as defined in Section 1.1(KK) for its Franchise services and for its operating assets as defined in Section 1.1(OO). Franchisee shall also comply with all valid acts, rules, regulations, orders and directions of any Governmental Body as defined in Section 1.1(DD) applicable to the operating assets and the Franchise services provided under this Franchise.

**SECTION 5.4 TAXES, FEES AND UTILITY CHARGES:**

Franchisee shall pay all taxes and fees lawfully levied or assessed upon or in respect of the operating assets or the Franchise services, or upon any part thereof or upon any revenues of the Franchise, and provide and pay the cost of all utilities necessary for the operation of the operating assets and the provision of the Franchise services, when the same come due.

**SECTION 5.5 INSURANCE:**

Franchisee shall at all times during the Franchise term and at its own cost and expense, obtain and maintain insurance on all the operating assets meeting the requirements as set forth below. If any useful part of the operating assets shall be damaged or destroyed, Franchisee shall, as expeditiously as may be possible, commence and diligently prosecute the repair or replacement of the damaged property so as to restore the same to use to the extent required to perform the Franchise services in accordance with this Franchise. The minimum amount and terms for the insurance shall be as set forth below, or as otherwise required by the City's risk manager and City Attorney.

(A) Commercial General Liability. \$5,000,000 combined single limit per occurrence for premises/operations, products, public display, bodily injury, personal injury and property damage. \$10,000,000 aggregate Broad Form Commercial General Liability is required (ISO 1993 or better) "Limits apply to this project individually."

(B) Automobile. \$5,000,000 per occurrence, \$10,000,000 aggregate. "Any Auto" coverage required.

(C) Employer's Liability. \$1,000,000 per accident for bodily injury.

(D) Workers' Compensation. As required for the State of California.

(E) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions, exceeding the five (5) percent limit of the policy must be declared to and approved by the City of Coalinga.

(F) Policy Endorsements. The General Liability and Automobile Liability policies must contain, or be endorsed to contain, the following provisions:

(1) The City, its elected officials, officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Franchisee; or vehicles owned, leased, hired, or borrowed by Franchisee.

(2) For any claims related to this Franchise, Franchisee's insurance coverage shall be the primary insurance with respect to the City, its elected officials, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its elected officials, officers, officials, employees or volunteers shall be in excess of Franchisee's insurance and shall not contribute to it.

(3) The insurer shall agree to waive all rights of subrogation against the City of Coalinga, its elected officials, officers, officials, employees or volunteers arising from work performed by Franchisee for the City of Coalinga.

(4) Each insurance policy required shall be endorsed to state that coverage shall not be cancelled by either party except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

(G) Policy Endorsement Forms. Franchisee shall furnish the City with original certificates and amendatory endorsements affecting the required coverage. The endorsements should be on forms that conform to the City's requirements and approved by the City Attorney. All certificates and endorsements are to be received and approved by the City before work commences in accordance with this Franchise. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the required coverage at any time. Franchisee shall provide evidence of insurance each year on the anniversary date of the Franchise.

(H) Incident Reporting. Franchisee agrees to disclose and report to the City, all incidents or occurrences of accident, injury, and/or property damage covered by the insurance policy or policies.

## **ARTICLE VI**

### **GENERAL REQUIREMENTS**

#### **SECTION 6.1 PUBLIC ACCESS TO THE FRANCHISEE:**

(A) Office Hours. Franchisee's office hours shall be, at a minimum, from 7:00 a.m. to 5:00 p.m. Monday through Friday and on Saturday from 8:00 a.m. to 12:00 Noon.

(B) Toll-Free and Emergency Telephone Customer Service Numbers. Franchisee shall establish a local toll-free customer service number that shall be identified on all publications, bills and correspondence. Franchisee shall maintain an emergency telephone number for use during other than normal business hours. Franchisee shall have a representative, or an answering service to contact such representative, available at the emergency telephone number during all hours other than normal office hours. Franchisee shall also provide the City with night and weekend telephone numbers for senior officials of Franchisee for use by the City Manager, public safety and other authorized personnel.

(C) Local Office. Franchisee shall maintain a local office in the City of Coalinga, readily accessible to the public during the hours set forth in (A) above. Said office may be either a stand alone office, part of a general operation yard, Franchisee's transfer station, or such other facility established by Franchisee in the City of Coalinga. Franchisee's current local office is at 1255 W. Elm Avenue, Coalinga, CA.

## **SECTION 6.2 SERVICE COMPLAINTS AND DEFFICENCIES:**

(A) Complaints to Franchisee. Franchisee shall maintain during office hours a complaint service and telephone answering system having an answering capacity satisfactory to the City Manager. All service complaints will be directed to Franchisee. Franchisee shall provide a bilingual, Spanish speaking, customer service representative to assist City residents that do not speak English. Copies of all complaints shall be given to the City Manager upon request. Franchisee shall record all complaints, including the date and time, complainant name and address, and nature and date and time of resolution of complaint in a computer-based log. This log shall be available to the City as described in Section 6.3 (E) below.

(B) Required Response to Complaints. Franchisee, within twenty-four (24) hours of its receipt from a customer or the City of a failure to provide Franchise service as required by the terms of this Franchise, shall collect such solid waste materials, provided such solid waste materials are in containers, and have been placed in City-approved collection locations. Missed pick-ups that are called in by 12:00 p.m. shall be picked up on the same day; missed pick-ups called in after 12:00 p.m. shall be picked up no later than the following day. For service complaints, Franchisee shall have forty-eight (48) hours to resolve or attend to the complaint. Franchisee customer-service representatives shall call customers after complaint resolution to confirm that the results are satisfactory. Where a particular complaint cannot be amicably resolved, the matter may be referred by Franchisee or customer to the City Manager. The City Manager or his or her designee, shall take such steps as may be necessary to conduct an adequate investigation of the circumstances surrounding such complaint, and based thereon resolve the dispute. The City Manager's decision with reference thereto shall be binding upon the parties to the dispute and shall be final and conclusive.

(C) Performance Review and Quality of Service. At the City's sole option, with thirty (30) days written notification to Franchisee, the City Council may conduct a public hearing at which Franchisee will be present and will participate, to review Franchisee's performance, quality of service and provide for evaluation of technological and regulatory changes. The reports required by this Franchise Agreement may be used as a basis for review. Performance and service quality review hearings may be scheduled by the City at its discretion throughout the term of the Franchise. If any non-compliance with Franchise is found, the City may direct Franchisee to correct the inadequacies in accordance with the terms of this Franchise.

## **SECTION 6.3 ACCOUNTING AND RECORDS:**

(A) Maintenance and Audit of Records. Franchisee shall maintain in its principal office full and complete financial and accounting records prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit and inspection by the City and its authorized officers, agents or employees, at any reasonable time at Franchisee's principal office. The gross receipts derived from Franchise services under this Franchise, whether such services are performed by Franchisee or by a subcontractor or subcontractors, shall be recorded as revenues in the accounts of Franchisee. Franchisee shall maintain the preserve all financial and disposal records for a period of not less than five (5) years following the expiration or termination of the Franchise.

(B) Inspection of Franchisee's Accounts and Records. Franchisee's service levels and disposal records shall be available at Franchisee's local office at any time during regular business hours for inspection and audit by the City during the term of this Franchise and for a period of five (5) years following the expiration or termination of Franchise.

(C) Delivery of Financial Reports to City. Franchisee shall furnish at its sole cost and expense complete annual financial statements of the Franchisee to the City Manager necessary to reconcile any financial determinations related to this Franchise, including customer revenues and service fees. Such statements should include those records applicable to the services defined in this Franchise.

(D) Recycling Materials and Green Waste Information. Franchisee shall maintain in its principal office full and complete financial and accounting records pertaining to cash, billing, purchase, processing, shipping and sale of all recycling materials and green waste collected, processed and sold under the provisions of this Franchise. Records shall be kept for recyclable materials and green waste collected by Franchisee. Said records shall be subject to the inspection provisions described in Section 6.3(B) of this Franchise.

(E) Computer System. Franchisee shall maintain a computer data base that includes the (1) complaint log required to be maintained by the Franchisee, (2) records of missed pickups, (3) records of daily container delivery, (4) route information, (5) container servicing and (6) notification tagging for container contamination, container placement or other reasons. Franchisee shall provide the City with access to this information at all reasonable times.

**SECTION 6.4 RULES AND REGULATIONS ESTABLISHED BY THE CITY COUNCIL OR CITY MANAGER:**

The City Council and/or the City Manager retain the power to establish reasonable rules and regulations relating to the accumulation, collection, transportation, recycling and disposal of recycling materials, green waste materials and other solid waste not inconsistent with the provisions of this Franchise or applicable state and county regulations, provided that such rules and regulations are found to be reasonably necessary by the City Council and/or the City Manger for enforcement of the provisions of this Franchise, or any applicable laws and for the preservation of the public health, safety and welfare.

**SECTION 6.5 PERFORMANCE BOND:**

Franchisee shall furnish, maintain and file with the City a corporate surety bond, or other acceptable surety, approved by the City Attorney and City Manager executed by the Franchisee and by a corporate surety, in the sum of one hundred fifty-thousand dollars (\$150,000). Such

surety bond shall permit the City to draw upon it in the event Franchisee fails to perform its obligations hereunder. The surety bond shall serve to secure the performance of the Franchise services, and the amount thereof shall in no way limit the damages which may be payable hereunder upon any breach hereof by Franchisee.

#### **SECTION 6.6 SUBCONTRACTORS:**

Franchisee shall not use any subcontractors for the performance of Franchise services unless the consent of the City is first obtained. Any such consent may be withheld, conditioned or delayed at the sole and absolute discretion of the City Council and/or the City Manager.

#### **SECTION 6.7 MONITORING AND REPORTING:**

(A) Records. Franchisee shall maintain, in its principal and local office records of the (1) quantities of solid waste collected and disposed of under the terms of this Franchise, (2) recyclable materials by type collected, purchased, processed, sold, donated or given for no compensation, and residue disposed, and (3) green waste collected, received, purchased, processed, sold, donated, and given for no compensation and residue disposed. Quantities by type of recyclable materials collected by Franchisee may be determined by estimates based on load sampling to characterize the contents of each commingled material load, using an industry sample protocol or by a sample protocol established by mutual agreement of the City and the Franchisee. Said records shall be subject to inspection provisions described in Section 6.3(B).

(B) Solid Waste Disposal and Characterization Studies. Franchisee shall, at no additional compensation, prepare or otherwise cooperate with and assist the City in the performance of periodic waste disposal and characterization studies to be defined by the City.

(C) Collection Monitoring. Franchisee shall monitor its collection of recyclable materials, green waste and other solid waste materials as provided in Section 4.2(H) of this Franchise to (1) ensure compliance with City waste diversion and recycling programs and (2) prevent commingling of recyclable materials with other solid wastes, in particular plastics and other inorganics in the green waste stream. Franchisee shall allow a person designated by the City Manager to ride with Franchisee collection vehicles on any route or routes.

(D) Reporting.

(1) Monthly Solid Waste Collection Report. Report shall indicate the number of tons of recycling material, green waste and other solid waste collected, transported, processed and disposed of during the month. If applicable, the report should also indicate, by material type (and grade where appropriate), monthly totals of quantities sold and should specify the purchaser name, price received per ton, and total payment. If applicable the report should indicate any quantities by material type, donated or otherwise disbursed without compensation. The report format shall be determined by Franchisee and the City Manager.

(2) Monthly Praises, Complaints, Missed Pickups, Problems and Resolutions Report. The report should summarize any praises, complaints, missed pickups, responses and resolutions to such service calls. In addition, the report should also indicate the type and number of notification tags left on customer premises, collection problems, significant changes in recycling market factors and instances of property damage or

injury, poaching or scavenging. The report format shall be determined by Franchisee and the City Manager.

(3) Annual Report. The Annual Report should be a compilation of the monthly reports described in this Section along with other appropriate data and trends relating to the collection of solid waste in the community. The Annual Report should also provide a summary of public education and information activities undertaken during the year, including the distribution of individual customer literature, collection notification tags, community information, community events, facility tours and other activities. The Annual Report should also provide an analysis of the collection, processing and marketing problems and conditions and possible solutions. The report should also describe any perceived needs for public education. The report format shall be determined by Franchisee and the City Manager and the report shall be presented to the City Council for its consideration.

(4) Other Reports. Franchisee shall furnish the City with any additional reports requested by the City Council, City Manager or as may be required by Assembly Bill 939 or any Government Body having regulatory authority over the collection, transportation and disposing of solid waste in the City. Franchisee may provide other information and reports as Franchisee deems beneficial to the City in analyzing and reviewing the results of service provided under this Franchise. Said reports shall be in a format determined by Franchisee and the City Manager.

## **ARTICLE VII** **COMPENSATION**

The revenues collected by Franchisee from customers for any of the collection services provided pursuant to this Franchise, including the sale of recyclable materials, construction and demolition materials, special service charges, etc., shall be Franchisee's sole compensation for all services provided and all obligations of Franchisee required by this Franchise Agreement.

## **ARTICLE VIII** **FRANCHISE FEE AND CITY SURCHARGES**

### **SECTION 8.1 FRANCHISE FEE:**

During the term of this Franchise, the City shall be entitled to receive from Franchisee a Franchise Fee in the amount of fifteen percent (15%) of the total gross receipts earned within the corporate limits of the city. Total gross receipts shall mean all revenue derived directly from Customer Rates for solid waste services within the City limits for commercial, residential, construction, and demolition collections, as well as any revenue derived from Special Collection Services. The Franchise Fee shall be paid monthly to the City in a method approved by the City Manager. Documentation shall be provided as evidence of the gross receipts collected. Said Franchise Fee is intended to compensate the general fund of the City for the cost of administration of the Franchise Agreement, maintenance of public right of way, code enforcement, and other activities related to the collection of solid waste, and for the right to be the exclusive provider of solid waste collection services within the City of Coalinga.

**ARTICLE IX**  
**DEFAULT, TERMINATION FOR CAUSE**  
**AND DISPUTE RESOLUTION**

**SECTION 9.1 RIGHT OF CITY TO PERFORM SERVICES IN CERTAIN CIRCUMSTANCES:**

(A) Franchisee Failure to Collect Solid Wastes for Any Reason. Should Franchisee, for any reason whatsoever, fail, refuse or be unable to collect, transport and dispose of any or all solid wastes which it is herein obligated to collect, transport and dispose of in the time and manner and as herein this Franchise provided, for a period of more than seventy-two (72) hours after the designated collection time, or if in any lesser time period solid wastes should accumulated in the City to such an extent, in such manner, or for such time that the City Manager or City Council should find that such accumulation endangers or menaces the public health, safety, welfare, then, in any of those events, the City shall have the right, upon notice to Franchisee, during such period, to take possession of any or all of the operating assets necessary in the collection, transportation, processing and disposal of the solid wastes, kept or accumulated in the City, and use such property to collect, transport and dispose of any or all solid wastes which Franchisee would otherwise be obligated to collect, transport and dispose of pursuant to this Franchise. Franchisee agrees that in such event it will fully cooperate with the City to effect such a transfer of possession of the operating assets for the City's use of the same for the collection, transportation and disposal of solid waste materials. Franchisee agrees that, in such event, the City may take possession of and use all of the operating assets for the above-mentioned purposes without paying Franchisee or any other person any rental or any other charges or compensation whatsoever for such possession and use. The City may in such circumstances operate the operating assets with its employees, or cause the operating assets to be operated by subcontractors to the City.

(B) Franchisee Repair. Franchisee further agrees that, in the circumstances described in subsection (A) above, the Franchisee shall, if the City so requests, keep in good repair and condition all of the operating assets, service all motor vehicles necessary for continued operations with fuel, oil and other necessary service, provide such other service as may be necessary to render the operating assets operational and ready for use in collecting, transporting and disposing of solid wastes, all free of any and all costs or expenses to the City.

(C) City Use of Franchisee Personnel. Franchisee further agrees that, in such an event, the City, if it so desires may immediately engage any or all personnel necessary for the collection, transportation and disposal of solid wastes produced, kept or accumulated in the City, and that such employees or personnel may include, if the City so desires, employees or personnel theretofore or then employed by Franchisee. Franchisee further agrees that, if the City should so request, Franchisee shall furnish to the City, free of cost, services of any or all management or office personnel then in the employ of Franchisee whose services are necessary for such operations.

(D) Franchisee Reimbursement. Franchisee further agrees that, in such an event, it shall reimburse the City for any and all costs and expenses incurred by the City in taking over possession of the operating assets and in the collection, transportation and disposal of solid wastes in such manner, and to such an extent as would otherwise be required of Franchisee under

the terms of this Franchise, which costs and expenses are in excess of the amount the City would have been required to pay Franchisee for providing services. In such event, the City shall submit a reimbursement statement to Franchisee. Each statement shall list such costs and expenses, and the reimbursement by Franchisee shall be no later than fifteen (15) days from and after each such submission. In the event the reimbursement is not made, the City may draw upon the security required to be maintained.

(E) Franchisee Resumption of Service. It is further agreed that the City, upon seven (7) days written notice, may at any time, at their discretion, relinquish possession of any or all of the operating assets to Franchisee and thereupon demand that Franchisee resume the collection, transportation and disposal of solid wastes as provided in this Franchise, whereupon Franchisee shall be bound to resume the same.

(F) City Performance Not a Taking. It is specifically understood and agreed that the City's exercise of its rights under this Section: (1) does not constitute a taking of private property for which payment must be made; (2) shall not create any liability on the part of the City to Franchisee; and (3) that the indemnity provisions of Section 9.1 of this Franchise are meant to include circumstances arising under this Section.

(G) Duration of City's Rights. The City's right under this Section to retain temporary possession of the operating assets, and to render collection, transportation and disposal services, shall terminate at the earlier of: (1) the time when such services can, in the reasonable judgment of the City, be resumed by Franchisee, or (if earlier), (2) at the time when the City no longer requires the operating assets, as determined by the City, or (3) the expiration of twelve (12) months from the date the City took possession, or (4) Franchisee can be re-let to bid if Franchisee is no longer able to perform.

(H) Security for City's Rights. Franchisee is required to provide a performance bond, in accordance with the provisions of Section 6.5 of this Franchise, in order to secure the City's rights under this Section. The City may (but shall not be required to) cure any default of Franchisee in the manner described in this Section above, and may then look to Franchisee or Franchisee's bond for repayment.

## **SECTION 9.2 EVENTS OF DEFAULT OF FRANCHISEE:**

(A) Event of Default Defined. Each of the following shall constitute an event of default on the part of Franchisee:

(1) Certain Events of Non-Compliance. Any transaction, without any requirement of notice or cure opportunity, not complying with the requirements of Section 3.2 or Section 3.3 of this Franchise.

(2) Failure to Deliver to Designated Disposal Sites. Except for uncontrollable circumstances as defined in Section 1.1(DDD) of this Franchise, the failure by the Franchisee for any reason, to deliver required solid wastes to the designated disposal sites, on a consecutive basis throughout the term of this Franchise.

(3) Missed Collections. The failure of Franchisee, except as may be excused by uncontrollable circumstances as defined in Section 1.1(DDD) of this Franchise, to make at least 99.95% of the gross number of scheduled collections in any Franchise year.



(4) Improper Disposal. Disposal by Franchisee of recyclable materials or green waste in any landfill.

(5) Refusal to Timely Provide or Falsification of Report. Refusal to timely provide any report or falsification by Franchisee of any report or document required to be provided by Franchisee under this Franchise.

(6) Voluntary Bankruptcy. The written admission by Franchisee that it is bankrupt, or the filing by Franchisee of a voluntary petition under the Federal Bankruptcy Code, or the consent by Franchisee to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by Franchisee of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of Franchisee's property or business.

(7) Involuntary Bankruptcy. The final adjudication of Franchisee as a bankrupt after filing of an involuntary petition under the Bankruptcy Act, but no such adjudication shall be regarded as final unless and until the same is no longer being contested by Franchisee nor until the order of the adjudication is no longer appealable.

(8) Failure to Provide Performance Bond. The failure of Franchisee to provide or maintain the performance bond required pursuant to Section 6.5 of this Franchise, without any requirement of notice or cure opportunity.

(9) Other Failure to Perform. Failure or refusal of Franchisee to perform any term, covenant, obligation or condition contained in this Franchise.

(B) Procedures. Other than failure or refusal described in items (1) or (8) above, the City shall not have the right to terminate this Franchise under this Section unless:

(1) The City has given prior written notice to Franchisee, stating that a specific failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Franchise on the part of Franchisee and which will, in its opinion, give the City a right to terminate this Franchise for cause under this Section unless such default is corrected within fifteen (15) days; and

(2) Franchisee has neither challenged in an appropriate forum the City's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Franchise nor corrected or diligently taken steps to correct such default within such fifteen (15) day period from the receipt of notice given pursuant to the clause (a) of this subsection (but if Franchisee shall have diligently taken steps to correct such default within the 15 day time period, the same shall not constitute an event of default for as long as Franchisee is continuing to take such steps to correct such default, but in no event shall the cure period extend for more than thirty (30) days from notice).

(C) Waiver of Defenses. Franchisee acknowledges that it is solely responsible for providing Franchise services described herein, and hereby irrevocably and unconditionally waives the following defenses to the performance of its obligations under this Franchise: any defense based upon failure of consideration, contract of adhesion, impossibility or impracticality of performance, commercial frustration of purpose, or the existence, non-existence, occurrence or

non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of Franchisee with regard to any provision of this Franchise.

(D) Enforcement Costs. Franchisee agrees to pay to the City all fees and expenses incurred by or on behalf of the City in enforcement payment or performance of Franchisee's obligations hereunder if such non-performance results in a judicially determined event of default by Franchisee.

**SECTION 9.3 NO WAIVERS:**

No action of the City or Franchisee pursuant to this Franchise (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Franchise. No course of dealing or delay by the City or Franchisee in exercising any right, power or remedy under this Franchise shall operate as a waiver thereof or otherwise prejudice such party's rights, power and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the City of Franchisee under this Franchise shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

**SECTION 9.4 NO CONSEQUENTIAL OR PUNITIVE DAMAGES:**

In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Franchise, or the material inaccuracy of any representation made in this Franchise, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

**SECTION 9.5 FORUM FOR DISPUTE RESOLUTION:**

It is the express intention of the parties that all legal actions and proceedings related to this Franchise or to the Franchise services or to any rights or any relationship between the parties arising from Franchise shall be solely and exclusively initiated and maintained in courts of the State and California or the United States of America having appropriate jurisdiction, with venue in Fresno County.

**SECTION 9.6 ADMINISTRATIVE REVIEW OF DISPUTES:**

Either party hereto may give the other party written notice of any dispute with respect to the Franchise. Such notice shall specify a date and location for a meeting of the parties at which such parties shall attempt to resolve such dispute. The City Manager shall keep a record of the proceedings conducted and information presented during such meeting. In the event that such dispute cannot be resolved by the parties within thirty (30) days or seven (7) days if it involves a dispute under Section 8.1 above, the matter may be referred by either party to legal proceedings.

**SECTION 9.7 CRIMINAL ACTIVITY OF THE FRANCHISE:**

Should Franchisee or any of its officers, directors, members, or employees be "found guilty" of felonious conduct relating to the Franchise services, or other felonious conduct involving (1) a

price fixing conspiracy (2) illegal transport or disposal of hazardous or toxic materials, or (3) bribery of public officials, the City reserves the right to:

(A) Unilaterally terminate this Franchise.

(B) Exercise all other remedies available to the City as if Franchisee default had occurred.

(C) Impose such other sanctions (which may include financial sanctions or any other conditions deemed appropriate short of termination) as the City and Franchisee shall mutually agree. Such action shall be taken after the Franchise has been given notice and an opportunity to present evidence of mitigation. The term “found guilty” shall be deemed to include any judicial determination that the Franchisee or any of its officers, directors, members or employees is guilty and any admission of guilt by the Franchisee, or any of its officers, directors, members or employees including, but not limited to, the pleas of “guilty,” “nolo contendere,” “no contest,” or “guilty of a lesser felony,” entered as part of any plea bargain.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

#### **SECTION 10.1 INDEMNIFICATION:**

Franchisee agrees that it will protect, indemnify and hold harmless the City and its elected officials, officers, employees, representatives, agents, volunteers, subcontractors (the “City Indemnified Parties”) from and against (and pay the full amount of) all liabilities, actions, damages, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorney’s fees (collectively, “Loss-and Expenses” as defined in Section 1.1(OO)), and will defend the City’s indemnified parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of (1) negligence of the Franchisee or any of its officers, members, employees, agents, representatives or subcontractors in connection with its obligations or rights under this Franchise, (2) the collection, transportation, handling, storage, processing, marketing or disposal of solid wastes, (3) a Franchise breach, (4) any claim for any finder’s fee or brokerage fee or other commission resulting from any services alleged to have been rendered to or performed on behalf of Franchisee with respect to this Franchise or any of the transactions contemplated hereby, (5) the performance or non-performance of the Franchisee’s obligations under this Franchise, (6) failure of the City to comply with Assembly Bill 939, or (7) any alleged violation of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sections 9601 et. seq. Franchisee shall not, however, be required to reimburse or indemnify any of the City’s indemnified parties for any loss-and-expense to the extent any such loss-and-expense is due to (1) any City breach, or (2) the sole negligence or willful misconduct of any City indemnified party. These indemnification provisions are for the protection of the City indemnified parties only and shall not establish, of themselves, any liability to third parties. The provisions of this subsection shall survive termination of this Franchise.

#### **SECTION 10.2 UNCONTROLLABLE CIRCUMSTANCES GENERALLY:**

(A) Performance Excused. Except as otherwise specifically provided in this Franchise, neither Franchisee nor the City shall be liable to the other party for any failure or delay in the performance of any obligation under this Franchise (other than any payment at the time due and

owing) to the extent such failure or delay is due to the occurrence of an uncontrollable circumstance as defined in Section 1.1(DDD) of this Franchise.

(B) Notice, Mitigation. The party experiencing an uncontrollable circumstance shall notify the other party by electronic communications with verification of receipt, or telephone and in writing, within twenty-four (24) hours after the party experiencing such uncontrollable circumstance first knew of the commencement thereof, followed within two (2) days by a written description of (1) the uncontrollable circumstance and the cause thereof (to the extent known), (2) the date the uncontrollable circumstance began and the cause thereof, its estimated duration, and the estimated time during which the performance of the party's obligations hereunder will be delayed, and (3) potential mitigating actions which might be taken by Franchisee or City. Each party shall provide written notice of the cessation of such uncontrollable circumstance within twenty-four (24) hours thereof. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefore and resume performance under this Franchise. While the delay continues, Franchisee or City shall give daily notice to the other party updating the information previously submitted.

### **SECTION 10.3 RELATIONSHIP OF THE PARTIES:**

Neither party to this Franchise shall have any responsibility whatsoever with respect to services provided or contractual obligations or liabilities assumed by the other party hereto, whether accrued, absolute, contingent or otherwise, or whether due or to become due. Franchisee is an independent contractor and Franchise holder and nothing in this Franchise shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

### **SECTION 10.4 NON-DISCRIMINATORY SERVICE:**

Franchisee shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of a protected class under State or federal law. Franchisee shall provide the same good quality service throughout the City without regard to racial, ethnic, or cultural characteristics or relative standard of living of the neighborhood.

### **SECTION 10.5 ACTIONS OF CITY IN ITS GOVERNMENTAL CAPACITY:**

Nothing in this Franchise shall be interpreted as limiting the rights and obligations of the City in its governmental and regulatory capacity. No official, officer or employee of the City shall be liable in their individual capacity for a breach of this Agreement.

### **SECTION 10.6 BINDING EFFECT:**

This Franchise shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions hereof.

### **SECTION 10.7 AMENDMENTS:**

Neither this Franchise nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by both parties.

**SECTION 10.8 NOTICES:**

Notice given pursuant to this Franchise shall be in writing and shall be given by personal service upon the party to be ratified, or by United States Postal Service or its lawful successor, postage prepaid, addressed as follows:

TO CITY:

City Manager  
City of Coalinga  
155 West Durian  
Coalinga, California 93210.

TO FRANCHISEE:

Mid Valley Disposal, LLC  
P.O. Box 12385  
Fresno, California 93777

Notice shall be deemed to have been given hereunder as of the date of personal service, or four (4) consecutive calendar days following the date of deposit of the same in the custody of the United States Postage Service.

**SECTION 10.9 SURVIVABILITY:**

Notwithstanding the termination of the Franchise, the right of the parties hereto to prosecute legal claims against each other and against third parties shall survive such termination and shall not be affected by such termination.

**SECTION 10.10 FURTHER ASSURANCES:**

Each party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Franchise.

**THE PARTIES HERETO CAUSE THIS FRANCHISE TO BE EXECUTED BY THE RESPECTIVE REPRESENTATIVES:**

*Signatures on Next Page*

**CITY OF COALINGA**

**MID VALLEY DISPOSAL LLC.**

By: \_\_\_\_\_  
Rene A. Ramirez, City Manager

By : \_\_\_\_\_  
Jay Kalpakoff, Managing Member

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
City Clerk/Deputy City Clerk

By: \_\_\_\_\_  
Roy Mendrin, Member

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Joseph Kalpakoff, Member

By: \_\_\_\_\_  
Jonathan Kalpakoff, Member

By: \_\_\_\_\_  
City Attorney

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