

**AMENDMENT TO**  
**EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION, TRANSPORTATION,**  
**RECYCLING AND DISPOSAL OF SOLID WASTE**  
**BETWEEN CARMEL MARINA CORPORATION AND THE COUNTY OF MONTEREY**

**THIS AMENDMENT** is made to an AGREEMENT for the collection, transportation, recycling, and disposal of solid waste from residential and commercial customers in a portion of unincorporated Monterey County dated December 12, 1995, by and between the County of Monterey (the "County") and Carmel Marina Corporation ("Contractor").

**WHEREAS**, the County and Contractor wish to amend the AGREEMENT to provide for an Environmental Health Program Fee.

**NOW THEREFORE**, the County and Contractor hereby agree to amend the AGREEMENT in the following manner:

1. Add Section 7.05 to Article 7 as follows:

7.05 Environmental Health Franchise Administration and Diversion Activity Fee.  
Contractor shall pay the Monterey County Environmental Health Division a Franchise Administration and Diversion Activity Fee, hereafter called the Activity Fee, to further fund solid waste management services not provided by Contractor under this Agreement as necessary to protect public health and welfare and comply with Applicable Law, including solid waste diversion programs. The Activity fee shall be \$7.00 per residential customer and \$14.00 per commercial account. The Activity fee is due and payable annually on or before July 1 of each year, for the fiscal year commencing each July.

2. Except as provided herein, all remaining terms, conditions and provisions of the Agreement are unchanged and unaffected by this Amendment and shall continue in full force and effect as set forth in the Agreement.

March 11, 2003 Amendment

Exclusive Franchise Agreement for the Collection, Transportation, Recycling and Disposal of Solid Waste  
between Carmel Marina Corporation and the County of Monterey

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the day and year written below:

COUNTY OF MONTEREY

CONTRACTOR

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

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

Approved as to Form (County Counsel)

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

March 11, 2003 Amendment

Exclusive Franchise Agreement for the Collection, Transportation, Recycling and Disposal of Solid Waste  
between Carmel Marina Corporation and the County of Monterey

**Acknowledgment and Acceptance of  
Franchise Agreement**

Carmel Marina Corporation, the Franchisee pursuant to a franchise agreement dated December 12, 1995, between the County of Monterey and Carmel Marina Corporation, and United Waste Systems, Inc., the transferee of rights and obligations of Carmel Marina Corporation under such franchise agreement, agree and acknowledge the following:

- a) United Waste Systems, Inc. will continue to do business in Monterey County as Carmel Marina Corporation;
- b) The approval of the County of Monterey of the transfer of the rights and obligations of Carmel Marina Corporation under the franchise agreement to United Waste Systems, Inc. is not a new franchise agreement, the granting of a franchise, or any renewal of an existing franchise, but rather is exclusively and agreement to transfer and assign the franchise and neither affects or prejudices in any way the County of Monterey's rights thereunder;
- c) United Waste Systems, Inc., as United Waste Systems, Inc. and as Carmel Marina Corporation, will comply with all the provisions of the franchise and Chapter 10.41 of the Monterey County Code, as may be amended from time to time;
- d) United Waste Systems, Inc., either as United Waste Systems, Inc. or as Carmel Marina Corporation, will maintain a full-service office within Monterey County in order to provide an acceptable level of customer service and support for all customers;
- e) Compliance with the franchise, as of the date of the closing of the merger of Carmel Marina Corporation with United Waste Systems, Inc., is neither commercially impracticable nor economically infeasible upon the closing of such merger based upon any and all debt service incurred, or to be incurred, to directly or indirectly finance the merger, or any return on equity made, or to be made, based upon the equity portion of the financing relating to the merger.

Carmel Marina Corporation

United Waste Systems, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXCLUSIVE FRANCHISE  
AGREEMENT FOR THE COLLECTION,  
TRANSPORTATION, RECYCLING AND  
DISPOSAL OF SOLID WASTE**

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**EXCLUSIVE FRANCHISE  
AGREEMENT FOR THE COLLECTION,  
TRANSPORTATION, RECYCLING, AND  
DISPOSAL OF SOLID WASTE**

THIS FRANCHISE AGREEMENT (hereinafter referred to as the "Franchise Agreement") is made and entered in on January 11, 1996, by and between CARMEL MARINA CORPORATION, a California corporation (the "Contractor"), doing business within a portion of the unincorporated area of the County of Monterey as CARMEL VALLEY DISPOSAL SERVICE ("CVDS") and DEL MONTE DISPOSAL SERVICE ("DMDS"), and the COUNTY OF MONTEREY, a political subdivision of the State of California (the "County"), for the collection, transportation, recycling and disposal of solid waste, as follows:

**Recitals**

This Franchise Agreement is entered into with reference to the following facts and circumstances, which are hereby found and determined by the County's Board of Supervisors:

1. **Authority for Exclusive Franchise.** The California Public Resources Code, including #40059, provides that aspects of solid waste handling of local concern include but are not limited to frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste services, and whether the services are to be provided by means of nonexclusive, partially exclusive or wholly exclusive franchise, contract,

license, or otherwise, which may be granted by a local government under terms and conditions prescribed by the governing body of the local agency.

2. Existing Permit. The County has issued to the Contractor permits pursuant to Chapter 10.41 of the Monterey County Code for the operation of solid waste collection services in a portion of the unincorporated County. These permits will expire on July 1, 2000.

3. A.B. 939. The Legislature of the State of California, by its enactment of the California Integrated Waste Management Act of 1989 ("A. B. 939"), has declared that it is within the public interest to authorize local agencies to make adequate provisions for solid waste handling within their jurisdictions, and has established a solid waste management process which requires cities and other local agencies to implement plans for source reduction, reuse and recycling as part of their integrated waste management practices.

4. Conversion of Permits to Franchise Agreement. The Contractor has requested that the County extend the term of the current permits or enter into a franchise agreement for a period of fifteen (15) years from the date hereof, for the principal purpose of assisting the Contractor to obtain the necessary financing to enable it to construct a materials recovery facility ("MRF"). By its ownership and operation of said MRF, the contractor will become a major factor or instrument for the County to meet its mandated responsibilities for solid waste diversion under A. B. 939 and to comply with other and new applicable environmental laws.

Furthermore, Contractor represents and warrants to County that it has the experience, responsibility, and qualifications to conduct recycling programs and to formulate measures to meet the requirements of A.B. 939 and has the ability to indemnify the County against liability as set forth in its agreement.

5. Purpose and Intent. It is the purpose and intent of this Franchise Agreement, therefore, to convert the legal basis under which the Contractor exercises its right to territorial exclusivity from a permit to a franchise agreement and to extend the term of the exclusive franchise as requested by Contractor, to put in place certain procedures, programs and facilities to enable the County to comply with the waste diversion goals of A. B. 939 to ensure flow control to publicly-owned landfill facilities, and to further update the long-term relationship between the parties to better reflect the current status of integrated waste management practices and the laws applicable thereto.

In consideration of the mutual promises and covenants contained herein, the parties hereby agree to the following terms and conditions:

### **Terms and Conditions**



## **ARTICLE 1. GRANT OF FRANCHISE, ACCEPTANCE, TERM**

1.01 Grant of Franchise. County hereby grants to Contractor the exclusive franchise, right and privilege to engage in the business of collecting, transporting, processing, recycling, and disposing, on a regularly scheduled basis, solid waste generated within that portion of the unincorporated County designated and specified in Exhibit A to this Agreement, and to use the County streets for such purposes, for the term and within the scope set forth in this Franchise Agreement.

1.02 Exclusions. This Franchise Agreement shall not apply to and shall not prohibit:

- a) gardeners and landscapers from collecting and composting or transporting green waste, as long as they transport such green waste to a green compost facility or other site permitted (or exempt from permitting) by the California Integrated Waste Management Board in accordance with all governing laws and regulations, and they submit timely proof of disposition reports to both County and Contractor; or
- b) any person from selling recyclable materials or giving recyclable materials away to persons or entities other than Contractor; provided, however, in either instance: (1) the recyclable material must be segregated from and not mixed with other solid waste; and (2) the seller/donor may not pay the buyer/donee any consideration for collecting, processing or transporting such recyclable materials. A discount or reduction in price for collection, disposal and/or recycling services for any form of unsegregated or segregated solid waste is not a sale or donation of recyclable materials and such solid waste does not qualify for this exception.

Nothing in this section is intended to or shall be construed to excuse any person or entity from obtaining any authorization or permit from the County which is otherwise required by law.

1.03 Term of Extended Franchise. The term of this First Amended Exclusive Franchise Agreement shall be fifteen (15) years, commencing on November 1, 1995, and ending at 12:00 midnight on October 31, 2010.

1.04 Option to Extend. The County, at its sole option, may notify the Contractor of its intent and request to extend this Franchise Agreement for an additional period of not to exceed five (5) years. Any such notification by the County shall occur by November 31, 2009, and shall specify the extended term selected by the County. The

contractor must accept or reject this request in writing by no later than February 1, 2010, or the request shall be deemed withdrawn.

- 1.05 Acceptance: Waiver. Contractor hereby accepts the franchise and agrees to collect, transport, recycle, and dispose of all solid waste in accordance with the terms and conditions set forth in this Franchise Agreement and all applicable federal, state, and local laws, rules, and regulations, including the ordinances and regulations of the County now in effect and as they may hereinafter be amended or enacted, and Contractor waives any right it may have to challenge any of the terms of this Franchise Agreement under federal, state, or local law or administrative regulation. Contractor further waives any rights it may have to operate under any current or prior permit issued by the County relating to the waste stream covered by this Franchise Agreement and this waiver specifically includes any rights Contractor may have pursuant to the Public Resources Code or prior law.

## ARTICLE 2. DEFINITIONS

Whenever any term used in this Franchise Agreement has been defined by the County's Code or Division 10, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or Public Resources Code shall apply unless the term is otherwise defined in this Franchise Agreement. For the purposes of this Franchise Agreement, unless a different meaning is clearly required, the following terms shall have the following meanings:

2.01 "A.B.939" means the California Integrated Waste Management Act of 1989, codified in part at Public Resources Code ~~##~~40000 et seq., as it may be amended from time to time and as implemented by the regulations of the California Integrated Waste Management Board, or its successor.

2.02 "Bulky Goods" means large and small household appliances, furniture, carpets, mattresses, white goods, oversized yard waste such as tree trunks and large branches if no larger than two feet (2') in diameter and four feet (4') in length and similar large items discarded from Contractor's service recipients.

2.03 County means the County of Monterey, a political subdivision of the State of California, and the unincorporated area of the County described in Exhibit "A" to this Franchise Agreement.

2.031 "Contractor" means the Carmel-Marina Corporation, a California corporation, or any assignee or successor of Carmel-Marina Corporation approved by the County's Board of Supervisors pursuant to Sections 10.01 and 10.02 of this Franchise Agreement.

2.035 "County Administrative Officer" means the County Administrative Officer of the County or the designee of the County Administrative Officer.

2.036 "County Auditor" means the Auditor-Controller of the County or the designee of the Auditor-Controller.

2.037 "County Counsel" means the County Counsel of the County or the designee of the County Counsel.

2.038 "County Facilities" means any building, structure, yard, park, or any other facility owned or operated by the County, or any subsidiary public entity of the County, including, but not limited to, the Water Resources Agency, the Monterey County Redevelopment Agency, and a Community Services District, for a governmental or public purpose and identified in Exhibit "B" to this Agreement. Exhibit "B" may be unilaterally amended by the County Administrative Officer on behalf of the County at the County Administrative Officer's discretion and from time to time after giving the Contractor at least ninety (90) days written notice.

2.039 "County Treasurer" means the County Treasurer of the county or the designee of the County Treasurer.

2.04 "Construction and Demolition Waste" means discarded building materials, recyclable construction and demolition materials, wood, packaging, plaster, rock or brick, drywall, cement and rubble resulting from construction, remodeling, repair and demolition operations. "Construction and Demolition Waste" does not include asbestos-containing materials or asbestos waste.

2.05 "Garbage" means putrescible animal, fish, food, fowl, fruit or vegetable matter, or any part thereof, resulting from the preparation, storage, handling or consumption of such substances.

2.06 "Green Waste or Yard Waste" means leaves, grass clippings, brush and branches generated from landscapes or gardens at residential premises, and incidental pieces of scrap lumber no longer than twenty-four inches (24"), separated from other residential solid waste. "Green Waste" includes holiday trees but does not include stumps or branches exceeding four inches (4") in diameter or four feet (4') in length.

2.07 "Gross Revenues" means any and all revenue or compensation in any form of Contractor or any subsidiaries, parent companies or other affiliates of Contractor, for or from the collection, transportation or recycling of solid waste within or for the County pursuant to this Franchise Agreement, in accordance with generally accepted accounting principles, including, but not limited to, customer fees for collection of solid waste, fees or charges for any other

services or products, provided by Contractor within the County, as of and after January 1, 1996, and the sale of any recyclable solid waste generated within the County, without subtracting franchise fees or any other cost of doing business.

2.08 "MRF" or Material Recovery Facility means a) a facility licensed or permitted in accordance with A.B. 939 which separates secondary materials such as paper or mixed glass and metal containers and processes them for sale to end users; or b) a firm that purchases and markets source-separated solid wastes and recyclable materials

2.09 "Recyclable Material" means a commodity which is sold for compensation, or given away, but which is not discarded into the residential or commercial waste stream. A recyclable material which is discarded into The residential waste stream loses its character as a recyclable material and becomes solid wastes and recyclable materials.

2.10 "Recyclable Solid Waste" means recyclable items, which have been source-separated before having been discarded into the residential or commercial solid waste stream. "Recyclable Solid Waste" is a part of the solid waste stream which can be reused or processed into a form suitable for reuse through reprocessing or remanufacture, consistent with the requirements of A.B. 939. As of the date of execution of this Franchise Agreement, recyclable solid waste includes all of the items set forth on the list, which is attached as Exhibit C to this Franchise Agreement, which list may be amended from time to time as the County and the Contractor may agree, in writing.

2.11 "Recycled" means the act of having processed recyclable solid waste into a form suitable for reuse and having marketed those processed materials for a use consistent with the requirements of A.B. 939. The act of marketing does not require that revenue is generated from the processed materials.

2.12 "Recycling Container" means any container for the temporary accumulating and collection of source-separated recyclable solid waste delivered by Contractor to residential or commercial premises covered by this Franchise Agreement. Title to recycling containers shall be and remain in Contractor.

2.13 "Rubbish" means all waste wood, wood products, printed materials, paper, pasteboard, rages, straw, used and discarded closing, packing materials, ashes, floor sweepings, glass, and other waste materials not included in the definition of garbage, hazardous waste, or green waste or yard waste.

2.14 "Solid Waste" means all types of putrescible and non-putrescible solid, semi-solid and liquid waste accumulated or delivered for collection and disposal or recycling within the County, and includes garbage, rubbish and green waste or yard waste. Solid waste does not include hazardous waste or household hazardous waste, infectious waste, sewage, or abandoned automobiles.

2.15 "Scavenging" means the unauthorized removal of recyclable solid waste. Scavenging is prohibited by Public Resources Code #41950.

2.16 "Source Separation" means the segregation into separate containers by the waste generator prior to delivery of individual components of solid waste, such as glass bottles, metal cans, newspapers, plastic containers, etc., for the sole purpose of recycling.

2.17 "Waste Generator" means the owner or occupant of residential or business premises within the County which initially produce solid waste.

### **ARTICLE 3. SERVICES PROVIDED BY CONTRACTOR**

3.01 General. The services to be provided under this Franchise Agreement by the Contractor shall consist of furnishing all required personnel, labor, supervision, equipment, materials, supplies and all other items necessary for the collection, transportation, recycling and disposal of all solid waste generated or accumulated within the County, in accordance with the terms and provisions of this Franchise Agreement and all applicable laws, rules, and regulations. The enumeration of, and the specification of requirements for, particular items of personnel, labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated or not. The work to be done by Contractor pursuant to this Franchise Agreement shall be accomplished in a thorough and workmanlike manner so that the residents and businesses within the County are provided reliable, courteous and high-quality integrated solid waste collection and recycling services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects of integrated waste management services in the manner provided in this Article, whether such other aspects are enumerated elsewhere in the Franchise Agreement or not.

3.02 Collection Services: Days and Hours. Contractor shall pick up and collect all solid waste generated or accumulated at residential and commercial premises within the County and delivered for collection, with collection at least once each week for residential service and as often as required for commercial accounts. No collections shall be made before 6:00 A.M. or after 6:00 P.M. The days of collection shall be determined by the Contractor and, at Contractor's option, may include Saturdays and holidays.

3.03 Location of Containers. Non-recyclable solid waste in residential zones shall be collected from that location reasonably selected by the occupant, either placed at the curb or adjacent to the premises, in which case it shall be convenient for both storage and collection. Containers for source separated recyclable materials shall be placed at the curb. Solid waste in commercial zones shall be screened and placed in a location convenient for both storage and collection. In case of any disagreement between the Contractor and the occupant as to the location of containers in any zone, the County Administrative Office shall determine the location.

3.04 Collection of County Refuse. At least two times each week, or as frequently as the County Administrative Officer deems necessary or appropriate, the Contractor shall furnish free collection of solid waste to all County Facilities, and in addition shall pick up litter and rubbish on all public streets where containers are provided by the County, but not to include normal street sweeping. Contractor shall furnish any additional collections from County facilities necessitated by increased use of such facilities by the public on or special occasions. All of the foregoing shall be furnished to the County without charge, including necessary containers. Points of collection shall be by mutual agreement.

3.05 Spring Clean-Up. Once a year, during the months of March, April, and May, Contractor shall collect without additional charge, approximately one (1) cubic yard of solid waste from each residential customer of the Contractor in the County, provided that such items are placed at curbside in suitable containers, if necessary. Contractor shall also provide roll-off debris boxes for deposit of bulky materials that cannot be collected at curbside. The dates and the geographic areas of each Spring Clean-Up shall be established by the Contractor and approved by the County Administrative Officer. The Contractor shall provide all customers annually a general notice of the availability of the Spring Clean-Up service, and such notice shall include a description of the service and the dates such service will be available. In addition, Contractor shall distribute a written reminder of the Spring Clean-Up service to each residential customer of the Contractor within the County not less than two (2) weeks in advance of the date of the Spring Clean-Up collection service. The form and timing of the notices shall be approved by the County Administrative Officer. Contractor shall also accommodate and provide to homeowner associations additional services and/or dates of such services as the Contractor and homeowner associations may agree.

3.06 Disposal of Solid Waste. All solid waste collected by the Contractor within the County which will not be recycled or processed at a MRF, and all waste materials resulting from the processing of recyclable materials at a MRF owned or operated by the Contractor, shall be disposed of by the Contractor at a landfill disposal site designated by the County's Board of Supervisors or a public entity which has been designated by the County's Board of Supervisors. All recyclable materials collected by Contractor within the County shall be disposed of as follows: a) all source-separated recyclables shall be delivered for processing to a MRF owned or operated

by the Contractor, and b) all construction and demolition material, inerts, wood and yard waste, appliances, scrap metal, furniture and other bulky materials shall be delivered for processing to a MRF designated by the County's Board of Supervisors. The Contractor shall pay all fees and charges for such disposal, and shall comply with all rules and regulations imposed by the MRWMD or any successor entity thereto.

3.07 Cleanliness. Contractor shall maintain all equipment operated by it within the County in safe and operable repair. Contractor shall not litter the premises of residential or commercial customers or municipal property in the process of making collections nor allow any liquids, garbage, ashes, refuse, or rubbish to blow or fall from any vehicle used for collections. County shall charge Contractor for any and all actual expenses incurred by it for clean-up services of spills caused by Contractor.

#### **ARTICLE 4. RECYCLING SERVICES AND PROGRAMS AND MATERIAL RECOVERY FACILITY (MRF) OPERATIONS**

4.01 Purpose and Intent. As noted above, the principal purpose of the Contractor in seeking a 15-year franchise term in which the Contractor would exercise exclusive rights to collect garbage within the County was to assist it in obtaining the necessary financing to enable it to construct a materials recovery facility ("MRF"). By the ownership and operation of said MRF, the Contractor becomes a major factor or instrument for the County to meet its mandated responsibilities for waste diversion under the California Integrated Waste Management Act of 1989 (A.B. 939). It is the intent of the parties, therefore, to put in place by this Franchise Agreement procedures, programs and facilities to enable the County to comply with the twenty-five percent (25%) and, subsequently, the fifty percent (50%), or other waste diversion goals of A.B. 939, as said Act now exists or may be amended from time to time.

4.02 Five Year Integrated Waste Management Plans. To carry out the above-stated intent of the parties, the Contractor shall, with the approval of the County, develop and prepare, within one hundred twenty (120) days following the execution of this Franchise Agreement, a five-year master plan setting forth in detail the required and recommended recycling and related integrated waste management actions, programs, and facilities, along with the recommended time frames and the estimated costs and benefits of implementation, that will need to be taken or developed in order to comply with A.B. 939 and the County's Source Reduction and Recycling Element ("SREE");

- a) Information, goals and actions to be taken concerning reuse, source reduction and recycling programs, including composting;

- b) Proposed public education and customer information programs;
- c) The monitoring, record keeping and reporting data and information, and the procedures for obtaining same, relative to the collection, transportation, receipt and processing of solid waste and recyclable materials; and
- d) The capabilities and functions of the MRF, including annual throughput capacity (tons per year) and the recycling capacity, the initial estimates and subsequent determinations as to the inbound composition of the waste stream delivered to the MRF, and the estimated and subsequently the actual costs of operations and the revenues derived from the MRF.

The master plan shall be reviewed and updated annually by the Contractor, with the approval of the County, within ninety (90) days after the end of each operating year during the term hereof, and shall specify the obligations and responsibilities of each party. The annual Master Plan update prepared by the Contractor shall contain all of the requisite information, and shall be prepared in such a format so that, if approved by the County, it may be submitted by the County to applicable governmental regulator agencies in compliance with the waste diversion reporting requirements of A.B. 939 or other applicable laws and regulations. The initial master plan and each annual update thereof shall be signed and dated by both parties and shall be attached hereto as Exhibit "C" and incorporated herein by this reference thereto.

**4.03 Contractor Responsibilities.** During the term of this Franchise Agreement, Contractor shall:

- a) Before April 1, 1996, develop and operate a residential curbside collection recycling program, approved by the County Administrative Officer, serving all single family and multi-family premises, as well as a commercial recycling program for business premises, which programs shall be available to all customers of the Contractor within the County and shall provide for weekly collection;
- b) Deliver all recyclable solid waste or material to either the Collector's MRF or the MRF of a designated landfill disposal site, as provided in Section 3.06 hereinabove;



- c) Cooperate with the efforts of the County and public entities designated by the County to develop and implement public education and information programs designed to promote reuse, source reduction, recycling and composting in general, as well as specific waste stream reduction strategies;
- d) Prepare and distribute public information and education materials in the form of a quarterly newsletter for all residential and commercial premises with the County;
- e) Cooperate with the waste diversion planning of the County and coordinate activities and programs with adjacent jurisdictions to the extent possible within the County;
- f) Advise and assist the County in the development of reporting procedures for all parties engaging in the collection, transportation, receipt and processing of solid waste and recyclable materials, in order to develop accurate information with which to measure compliance with state laws and regulations;
- g) Maintain all necessary records and comply with all waste diversion reporting requirements established by the county and required by law, and provide the County annually, in a timely fashion, all data and information, and in such a format, as will permit the County to comply with its reporting requirements under A.B. 939 or any other applicable law or regulations; and
- h) Keep itself fully informed with regard to any changes and developments regarding recycling and integrated waste management practices, procedures, laws and technology, and provide the County with information and any recommendations or suggestions regarding same.

**4.04 County Responsibilities.** During the term of this Franchise Agreement, the County agrees to use its best efforts and act reasonably within the Board of Supervisor's discretion as a legislative body, to:

- a) Carry out its responsibilities as set forth in its SREE and applicable laws and regulations, including the approval or disapproval of the Contractor's programs for ensuring compliance with A.B. 939.

- b) Consider, enact, administer, and enforce appropriate laws, regulations, incentives, and sanctions necessary to gain the waste diversion participation of residential and commercial premises within the County as deemed reasonably necessary to ensure diversion goal compliance.
- c) Provide for appropriate compensation of Contractor through rate adjustments to cover any and all expenses related to programs and activities approved by County to meet the waste diversion goals of A.B. 939.
- d) Cause the development of reporting procedures for all parties engaging in the collection, transportation, receipt, and processing of solid waste recyclable materials, and monitor and enforce reporting in order to develop accurate information with which to measure compliance with state laws and regulations.

4.05 A.B. 939 Indemnification. Provided that the County's Board of Supervisors has acted reasonably, within its discretion as a legislative body, to adopt and implement all solid waste diversion services, programs, and activities as requested by Contractor (in its five-year plan), and provided that same are within the County's authority and ability to implement, then Contractor agrees to protect, defend (with counsel approved by County), and indemnify County against all fines or penalties imposed by the California Integrated Waste Management Board in the event the source reduction and recycling goals or any other requirements of A.B. 939, or any amendments thereto, are not met by the County; provided, however, that the Contractor's liability for said fines or penalties shall be limited to that percentage of the total County waste stream that Contractor has collected during the preceding period as identified in the most current update of the master plan referred to in Section 4.02.

4.06 Dedication of MRF to Public Use. The County shall have the right of full use of and access to the MRF during the useful life of that facility as part of Monterey County's Integrated Waste Management Plan and no transfer of the ownership of the MRF shall occur without the prior written consent of the County, which may not be unreasonably withheld; and the site upon which Contractor constructs the MRF shall contain a deed restriction, in a form satisfactory to the County Counsel, assuring the public use of and access to same and providing for its reversion and conveyance to a public entity designated by the County's Board of Supervisors or other successor public agency upon breach of that condition.

4.07 MRF Financial Adjustments. Upon completion of any debt service payments related to the construction or equipment of the MRF, the collection

or service fees for customers within the County shall be adjusted to reflect the reduction in costs of the MRF operations. If any agency or entity, that is not a fiscal participating agency in the initial construction and asset acquisition of the MRF later requests or obtains service from the MRF, that agency or entity shall pay its share of the capital costs of the MRF, which will be determined based on each participating agency's proportionate contribution to the MRF. The County shall have the option of receiving a refund or a credit in its collection or service fees of the amount of its proportionate contribution. If the MRF ceases to be utilized by the Contractor any time during the term of this Franchise Agreement, County shall be refunded or credited in its collection rates its proportionate financial contribution to the MRF capital costs from any sale of property or equipment of the MRF.

## **ARTICLE 5. ACCOUNTING RECORDS, REPORTS AND FINANCIAL STATEMENTS**

5.01 Accounting Records. Contractor shall prepare and maintain all counting and other records relating to its services provided to the County hereunder, including but not limited to, monthly and annual revenues and expenses, assets, liabilities, net worth, billing records, customer lists, A.B. 939 compliance records, and customer complaints, for a period of not less than five (5) years or any longer period required by law.

5.02 Separate Records: Allocation. The accounting and other records shall be prepared and maintained separately both on behalf of the Contractor as well as on behalf of any subsidiary company or operating division of the Contractor providing services within or to the County (e.g., Marina Disposal Service). If any of the revenues, expenses, assets, liabilities or net worth of the Contractor (or any of its other subsidiary companies or separate operating divisions or accounts) are allocated to Marina Disposal Service, or vice versa, then each such allocation shall be identified and the allocation methodology shall be defined in the Collector's records and financial statements.

5.03 Form of Records: Inspection. The accounting and other records shall be kept in a manner and format approved by the County Auditor. All records shall be subject to inspection and audit by the County or its agents upon five (5) business days' advance notice to Contractor, and shall be kept and maintained and made available to County at Contractor's regular place of business, but in no event outside the County of Monterey.

5.04 Annual Financial Statements. Contractor shall furnish to County Administrative Officer five (5) copies of each of the documents specified in

Section 10.41.220 of the Monterey County code, as may be amended from time to time, including Annual Financial Statements within one hundred and eighty (180) days after the end of the Contractor's operating fiscal year. Each Annual Financial Statements shall be prepared and signed by an independent certified public accountant and shall include, separately and for the Contractor, for any subsidiary company or operating division providing services within the County (e.g., CVDS or DMDS), and for the MRF, a comparative balance sheet, a comparative operating and income statement, a statement of source and application of funds, and a statement of any changes in owner's equity, in which shall be set forth the names of the principal officers and stockholders of the Contractor.

5.05 Independent Audit. The County may at any time, by the County Auditor or an outside certified public accountant, conduct an audit, examination or review of the Annual Financial Statements of the Contractor or any of its subsidiary companies or operating divisions, including the MRF. Such audit examination or review shall be at the expense of the County provided, however, that should any audit, examination or review of Contractor's records reveal an underpayment of more than three percent (3%) of any fee required under this Franchise Agreement, the Contractor shall bear the entire cost of the audit, examination or review.

## **ARTICLE 6. COLLECTION RATES AND ADJUSTMENTS**

6.01 Current Rates. The rates, fees, and charges for all solid waste collection, transportation, recycling, and disposal services of Contractor, as currently in effect as of the date of this extended Franchise Agreement, are set forth in Exhibit D attached to this Agreement. The attached list of rates includes a new rate schedule for compacted solid waste, which is now charged on a weight and not a volume basis, as approved by the Board of Supervisors by a resolution adopted concurrently herewith.

6.02 Rate Increase. Notwithstanding the foregoing, the Contractor shall be entitled to request an increase in the rates and fees charged to its customers. The Board of Supervisors may review the current rates and the proposed rate increase, and may, by resolution and at the sole discretion of the Board of Supervisors, raise the rates in order to provide a fair return to the Contractor.

6.03 Notice and Request for Rate Adjustment. The Contractor shall give written notice of the amount and the effective date of any proposed rate adjustment requested by it to the County and all of the Contractor's customers within the County not less than ninety (90) days prior to the proposed effective date of the requested increase. The Collector shall also provide to the county at said time all of the information required by the County Administrative

Officer, along with the most recent copies of the Contractor's annual financial statements, and any quarterly updates, as described in Section 5.04 hereinabove. The County Administrative Officer or the Board of Supervisors may also request in writing any reasonably related additional financial information in regard to the proposed rate adjustment, which shall be provided to the county at no cost within fifteen (15) days of the Contractor's receipt of the written request therefore. It shall be the Contractor's responsibility to provide sufficient data to support the proposed rate adjustment and sufficient lead time for the County Administrative Officer and the Board of Supervisors to properly evaluate the data provided. The County Administrative Officer shall exercise his or her best efforts so that he or she may schedule, within thirty (30) days after the expiration of the above-mentioned ninety (90) day notice period and receipt of all requested materials, a Board of Supervisors' meeting to call for a public hearing on the matter.

**6.04 Limitation on Rate Adjustment.** No rate adjustment shall be considered by the Board of Supervisors if the Contractor shall have increased its rates for such service at any time during the twelve (12) month period immediately prior to the proposed effective date of the increase, except where the County increases the franchise payment pursuant to Section 7.04 of this Agreement. In addition, the amount of any cost of living rate increase shall not exceed the lesser of ten percent (10%) of the existing rate for such service or three-quarters (3/4) of the percentage increase in the Consumer Price Index for the San Francisco-Oakland Bay Area (All Items, All Urban Consumers) as published by the U.S. Department of Labor for the twelve (12) month period immediately prior to the date of the written notice of the proposed rate increase required by Section 6.03 above. In addition, goodwill, or any similar accounting consideration, shall be disallowed from the rate base for the purpose of any proceeding to calculate or determine any regulated rate.

**6.05 Adjustment Procedures.** If the rate adjustment is requested solely on the basis of any increase in landfill tipping fees, the requested adjustment in the Collector's fees, along with a staff report regarding same, shall be submitted to the Board of Supervisors for approval on its consent agenda, where the Board can approve it without further processing or discussion. In the alternative, the Board can determine to remove the matter from the consent agenda and discuss and consider it at length, or call for a public hearing on the proposed increase. In all other situations involving cost-of-living or other non-tipping fee adjustments, the Board of Supervisors will schedule the matter for a public hearing and a full review of the submitted rate increase application materials.

**6.06 Target Rate of Return.** In giving consideration to a rate adjustment, the Board of Supervisors may consider any material or substantial changes in the Contractor's labor costs; equipment repair and replacement costs; taxes,

insurance, gasoline and other overhead items, excluding interest expense for working capital and penalty charges for late fee payments; and net profit during the preceding period. A further consideration for the Board of Supervisors may be to have the Contractor calculate its average return in other local jurisdictions served by it as a target for its return on assets or equity or return on income. This "target" rate of return would not be a guaranteed rate but only a basis for negotiations and consideration by the County in these rate adjustments proceedings. The Board of Supervisors shall not increase rates in order to reimburse the Contractor for any losses or diminished rate of return during any period of time prior to the adjustment proceedings, but shall increase rates only to provide a fair return to the Contractor for future periods.

6.07 County Rate Review Process. Notwithstanding any other provision contained in Article 6 of this Agreement, in the event the Board of Supervisors establishes a rate review process, which may include a committee for the review of any proposed rate adjustment which may be requested pursuant to the terms of this Agreement or Chapter 10.41 of the Monterey County Code, as may be amended from time to time, Contractor shall adhere to and follow such process and no rate adjustment shall be considered or adopted by the Board of Supervisors until such rate review process has been completed.

## **ARTICLE 7. BILLING AND FRANCHISE FEE**

7.01 Billing. Contractor shall perform and be responsible for all billing and make all collections with regard to the services it provides under this Franchise Agreement. Contractor agrees to maintain a system of billing approved by the County Administrative Officer and to make no substantial changes in the system or method used without the prior approval of the County Administrative Officer. Contractor shall have the right to bill its customers for service three (3) months in advance.

7.02 Itemized Statements: County Surcharge. Bills to solid waste service customers shall be itemized for each classification of services but shall not designate that portion of recipient's bill attributable to any County franchise fee or license fee as a separate item. As the request of the Board of Supervisors, the Contractor shall include in its bills to service recipients any applicable fees or surcharges as may be imposed by action of the Board of Supervisors, including but not limited to A.B. 939 fees or household hazardous waste program fees, and shall remit such funds collected on behalf of the County within thirty (30) days of collection. Any such fees may be separately designated on the Contractor's itemized bills and the Contractor may charge the County a reasonable fee, agreed to by the Board of Supervisors, for the actual amount of any incremental increase in its billing and collection for this service to the County.

7.03 County Assumption of Billing. The County reserves the right to assume and perform all billing functions to the service recipients of the Contractor, upon giving the Contractor one hundred eighty (180) days' prior written notice of the County's intended action. Upon its assumption of the billing services, the County may charge the Contractor a reasonable fee or increase the franchise fee to compensate the County for the services.

7.04 Franchise Payment to County. In consideration of the exclusive franchise granted herein, Contractor shall pay to the County a percentage as set forth in Exhibit E or as may be established by resolution of the Board of Supervisors, at the Board of Supervisor's sole discretion, from time to time of Contractor's annual gross revenues (as defined in Section 2.07) derived from all of its integrated solid waste management services performed within or for the County, in accordance with generally accepted accounting services, payable in monthly installments within thirty (30) days after the end of each calendar month during the term of this Franchise Agreement. Such resolution shall become effective ninety (90) days after adoption. Payments made more than thirty (30) days after the date due shall be delinquent and Contractor shall pay a late charge of two percent (2%) per month, or any part thereof, on the amount delinquent, to cover added administrative expenses on the part of the County by reason of such delinquency. The parties agree that such late charge represents a fair estimate of such additional expense to the County. The parties further agree and acknowledge that franchise payment and any adjustment therein shall not be deemed or considered for any reason or purpose to be a general or special tax pursuant to the laws of the State of California.

## **ARTICLE 8. INDEMNIFICATION, INSURANCE AND SECURITY**

8.01 Indemnification of County. Contractor, upon demand of the County, made by and through the County Counsel, shall protect, defend, indemnify and hold harmless County, its elected officials, officers, employees, volunteers and agents, from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments, including attorney's fees, arising out of or resulting in any way from Contractor's exercise of this franchise, including the provision of any services under this Franchise Agreement, unless such claim is due to the sole negligence or willful acts of the County, its elected officials, officers, employees, agents or contractors.

8.02 Workers' Compensation and Employers' Liability Insurance. Contractor shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement full workers' compensation insurance and Employers' Liability Insurance with a minimum limit of One Million Dollars

(\$1,000,000.00) in accordance with the provisions and requirements of the Labor Code of the State of California. Copies of policies and endorsements that implement the required coverage shall be filed and maintained with the County Administrative Officer throughout the term of this Franchise Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to County Administrative Officer. The policy shall also be amended to waive all rights of subrogation against the County, its elected or appointed officials, employees, or agents for losses which arise from work performed by the named insured for the County.

8.03 Liability Insurance. Contractor shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement a Broad Form Comprehensive General Liability (occurrence) policy (with County Insurance Endorsement Form) with a minimum limit of Three Million Dollars (\$3,000,000.00) aggregate and Two Million Dollars (\$2,000,000.00) per occurrence, and a Commercial Auto Liability Insurance policy (with County Insurance Endorsement Form) (auto), with a minimum limit of Two Million Dollars (\$2,000,000.00). Said insurance shall protect Contractor and County from any claims for damages for bodily injury, including accidental death, as well as from any claim for property damages which may arise from any and all operations performed pursuant to this Franchise Agreement. The following language is required to be made a part of all of the insurance policies required by this Section:

a) "The County of Monterey, its employees, agents, franchisees and officers are hereby added as additional insured as respects liability arising out of activities performed by or on behalf of Contractor."

b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the County of Monterey may possess, including any self-insured retention the County may have, and any other insurance the County does possess shall be considered excess insurance and shall not contribute with it."

c) "This policy shall act for each insured, as though a separate policy has been written for each. This, however, will not act to increase the limit of liability of the insuring company."

d) "Thirty (30) days' prior written notice by certified mail, return receipt requested, shall be given to the County Administrative Officer in the event of suspension, cancellation, reduction in coverage or in limits or non-renewal of this policy for whatever reason. Such notice shall be sent to the County Counsel."



The insurance required by this Agreement shall be with insurers which are Best A+ rated, and California-Admitted, or better. The County shall be included as an additional insured on each of the policies and policy endorsements. The insurance required by this Agreement is in addition to, and not in lieu or limitation of, the indemnification provisions in Section 8.01 above. Contractor shall obtain the written consent of the County Administrative Officer prior to changing any insurers providing insurance under this Franchise Agreement, which consent shall not be withheld unreasonably.

**8.04 Evidence of Insurance Coverage: Insurance Repository.**

Contemporaneously with the execution of this Agreement, Contractor shall file copies of the policies or executed endorsements evidencing the above required insurance coverage with the County Administrative Officer. In addition, County Auditor and County Counsel shall have the right of inspection of all insurance policies required by this Agreement. Contractor also agrees to establish an insurance policy repository and to maintain copies of insurance policies required pursuant to this Franchise Agreement for ten (10) years after the end of the term during which services are to be provided pursuant to this Franchise Agreement or, in the alternative, Contractor may deliver copies of all of such policies to the County Administrative Officer. Contractor shall notify the County Administrative Officer and County Counsel before destroying copies of such policies. This provision shall survive the expiration of the period during which services are to be provided under this Franchise Agreement.

**8.05 Faithful Performance Security.** Within twenty (20) days of a request by the County Administrative Officer, Contractor shall furnish to County, and shall file with the County Administrative Officer, cash or an irrevocable letter of credit, approved by the County Administrative Officer and approved as to the terms and form by the County Counsel, executed by Contractor as principal and by a bank or savings and loan institution licensed to do business in the State of California, with a financial condition and record of services satisfactory to the County, in the sum of Fifty Thousand Dollars (\$50,000.00), conditioned upon the faithful performance by Contractor of its obligations under this Franchise Agreement, and payable on demand of the County. The amount of the security required by this Article shall be adjusted annually on the anniversary date of the execution of this Franchise Agreement by the annual percentage January-to-January change in the Consumer Price Index referred to above in Section 6.04. In lieu of such security, Contractor may provide County with such other security for faithful performance as may be approved by County Administrative Officer and the County Counsel.

## **ARTICLE 9. EMERGENCY OPERATION AND TERMINATION**

9.01 Interruption of Services. In the event that solid waste collection, transportation, recycling and disposal services of Contractor are interrupted by a labor dispute, or if some other state of emergency is found to exist, so that scheduled collection, transportation, recycling or disposal services are discontinued for more than seventy-two (72) hours, or Contractor otherwise defaults or is unable to perform under the terms of this Franchise Agreement, the County, by adoption of a resolution by a four-fifths (4/5ths) vote of the Board of Supervisors, shall have the right to forthwith take temporary possession of all facilities and equipment of Contractor for the purpose of continuing the services which Contractor has agreed to provide hereunder, to preserve and protect the public health, safety and welfare. County shall have the right to retain possession of said facilities and equipment and to render the required services until Contractor can demonstrate to the satisfaction of the Board of Supervisors that the required services can be resumed by Contractor.

9.02 Termination of Contract for Cause. The services to be undertaken by Contractor under this Franchise Agreement shall be carried out in a manner satisfactory to the County Administrative Officer and the Board of Supervisors. All terms and conditions of the Franchise Agreement are considered material, and in the event Contractor defaults in the performance of any of the covenants or agreements to be kept, done or performed by it under the terms of this Agreement, County Administrative Officer either on his own initiative or at the direction of the Board of Supervisors, shall give the Contractor written notice either by mail or by personal service, setting forth the default and demanding that Contractor correct the same within thirty (30) days. If the Contractor fails, neglects or refuses for a period of more than thirty (30) days thereafter to make good or perform the defaults, then County without further notice and without suit or other proceeding, may cancel and annul the rights and privileges granted in this Franchise Agreement. In the event of termination of the Agreement for breach or default by Contractor, as hereinabove specified, County shall have the right forthwith to take possession of all trucks and other equipment of Contractor for the purpose of performing the service agreed to be performed by Contractor. County shall have the right to retain possession of said trucks and equipment until other suitable trucks and equipment can be purchased or otherwise acquired by County for said purpose and shall pay Contractor the reasonable rental value of such trucks and equipment during the time and same are used by County for said purpose.

9.03 Termination for Public Use. The County reserves the right to, at any time after the eighth (8<sup>th</sup>) full year of operations under this extended Franchise Agreement, determine by a resolution adopted by a four-fifths (4/5ths) vote of

the Board of Supervisors, following a noticed public hearing, that the public welfare, convenience and necessity require that the County itself or some other public or governmental agency can best provide the integrated solid waste management services covered by this Franchise Agreement. Prior to conducting any public hearing pursuant to this Section, sixty (60) days' prior written notice thereof shall be given to the Contractor. Any resolution of public convenience and necessity, adopted by a four-fifths (4/5ths) vote of the Board of Supervisors, would not become effective for a period of at least one hundred eighty (180) days, or such longer period specified in the resolution. In the event of such action, the County agrees to acquire or fully pay and reimburse Contractor for all unamortized costs of its equipment, investments and outstanding loans and obligations, at fair market value, if or as if, acquired through the County's exercise of its rights of eminent domain, except that no allowance shall be made for franchise value, goodwill, going concern or earning power.

#### **ARTICLE 10. FRANCHISE TRANSFER; COUNTY CONSENT, FEES**

10.01 No Transfer Without Consent. The Franchise granted by this Franchise Agreement shall not be transferred, sold, hypothecated, sublet or assigned (collectively "transferred"), nor shall any of the rights or privileges therein be hypothecated, leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, either by act of Contractor or by operation of law, without the prior written consent of the County expressed by resolution. Any attempt to do any of the foregoing with respect to any of the rights herein without the consent of County shall be void. For purposes of this Franchise Agreement, any dissolution, merger, consolidation, change in control or other reorganization of Contractor shall be deemed an assignment of this Agreement. For purposes of this Article a change of corporate name shall not be deemed to be a franchise transfer.

10.02 County's Consent. The County shall not unreasonably withhold its consent to a transfer of the franchise granted by this Franchise Agreement. The County may impose reasonable conditions of approval on a transfer, including but not limited to conditions requiring acceptance of amendments to this Franchise Agreement and the payment of a fee to the County. The applicant for the transfer shall demonstrate to the County Administrative Officer's satisfaction that it has the operational and financial ability to carry out the obligations of the Franchise Agreement.

10.03 Application for Transfer Fees. Any application for a franchise transfer shall be made in a manner prescribed by the County Administrative Officer. The application shall include a Franchise Transfer Application Fee in an amount to be set by County, by Resolution of the Board of Supervisors. The

Franchise Transfer Application Fee is intended to offset the County's anticipated costs of all reasonable and customary direct and indirect administrative expenses, including consultants and attorneys, necessary to analyze the application. Contractor shall reimburse the County for all reasonable consultant's, attorney's and staff costs directly related to the County's consideration of the application for transfer not offset by the Franchise Transfer Application Fee, whether or not the County approves the application for transfer of the franchise. County's request for reimbursement under this Article shall be supported with evidence of the expense or cost incurred. Contractor shall reimburse County within thirty (30) days of receipt of County's request for reimbursement.

**10.04 Exceptions for Security Interest.** Notwithstanding the above, the Contractor shall be entitled to pledge, encumber, or grant any security interest in the franchise provided that Contractor shall first notify and obtain County consent to such transaction, subject to the following conditions:

- a) Any consent so granted by county shall not be deemed a consent to the exercise by such pledge, encumbrancer or secured party of any rights of the holder under the franchise, unless so noted by the County'
- b) Any consent so granted by County shall not be deemed a consent to any subsequent transfer or assignment as referred to herein, and any such subsequent transfer or assignment shall be deemed an assignment of the franchise, within the meaning of this Article, and shall be void without the prior written consent of the County, expressed by resolution; and
- c) The pledge, encumbrancer, or secured party shall have executed and delivered to County an instrument in writing agreeing to be bound by all of the provisions of the franchise as set forth in this Franchise Agreement.

## **ARTICLE II. SERVICE COMPLAINTS AND STANDARDS; LIQUIDATED DAMAGES**

**11.01 Service Complaints.** Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of all customer and waste generator complaints relating to service and billing. Contractor shall record in a separate log all complaints, noting the name, address and telephone number of the complainant, date and time of complaint, nature of complaint, and nature and date of the remedial action or resolution. This complaint log shall be available for inspection by County.

Contractor shall respond to all complaints from customers within eight (8) working hours. In particular, if a complaint involves a failure to collect solid waste from a residential or business premises, as required by this Franchise Agreement, Contractor shall collect the solid waste in question within such eight (8) hour period, provided it has been delivered for collection in accordance with the Municipal Code and this Franchise Agreement.

11.02 Service Standards. The parties acknowledge that consistent and reliable integrated solid waste management collection and recycling services are of utmost importance to the County and that County has considered and relied on Contractor's representations as to its quality of service commitment in awarding the franchise to it and extending this Franchise Agreement. The parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, the County and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages which the County will suffer.

11.03 Liquidated Damages. Therefore, without prejudice to the County's right to treat such non-performance as an event of default under Article 9.02, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date of this Franchise Agreement, including the relationship of the sums to the range of harm to County that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the places provided herein, each party specifically confirms the accuracy of the statement made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Franchise Agreement was made. The determination of non-performance shall be made by the County Administrative Officer after providing Contractor with five (5) days notice of the basis on which each such determination of non-performance is made.

Contractor

County

Initial Here: \_\_\_\_\_

Initial Here: \_\_\_\_\_

Contractor agrees to pay (as liquidated damages and not as a penalty) the amount or amounts set for below:

a) Collection Reliability.

For each failure over five (5) annually to commence service to a new customer a account within seven (7) days after order: \$100.00

For each failure to collect solid waste, which has been properly delivered for collection, from an established customer account on the scheduled collection day: \$100.00

For each failure to collect solid waste, which has been properly delivered for collection, from the same customer on two consecutive scheduled pickup days: \$100.00

b) Collection Quality

For each occurrence over five (5) annually of damage to private property: \$300.00

For each occurrence over ten (10) annually of failure to return emptied refuse cans to the curb and place upright with lids secured to or to retrieve carts moved by others which have been reported to Contractor by the customer or the County: \$100.00

For each occurrence over five (5) annually of excessive noise: \$100.00

For each occurrence of discourteous behavior: \$300.00

For each failure over ten (10) annually to clean up solid waste spilled from solid waste containers (cans, carts, bins or

debris boxes):	\$100.00
For each occurrence over five (5) annually of collecting waste outside authorized hours:	\$200.00
c) <u>Customer Responsiveness.</u>	
For each failure to respond to a customer complaint within eight (8) working hours:	\$ 25.00
For each failure to report customer complaints to county as required by Article 11.01:	\$100.00
d) <u>Timeliness of Submissions to County.</u>	
For each failure to submit any report or document required by this Franchise Agreement on the date or within the time required:	\$100.00 for each day the application is late

The amounts of the liquidate damages set forth above shall be increased on each anniversary day of this Franchise Agreement by the past year's Consumer Price Index for the San Francisco-Oakland Bay Area (All Items, All Urban Consumers).

Neither the imposition nor the payment of such liquidated damages shall limit the County's right to treat the Contractors' failure to meet the performance standards as an event of default under Article 9.02. The County may determine the occurrence of events giving rise to liquidated damages through the observations of its own employees or investigation of customer complaints.

11.04 Notice and Hearing. Prior to assessing liquidated damages, County shall give Contractor notice of its intention to do so. The notice will be accompanied by a list of each incident, giving the date and a brief description. Contractor may review (and make copies at its own expense) all information in the possession of the County relating to incidents on the list. Contractor

may, within ten (10) days after receiving the notice and list request a meeting with the County. If a meeting is requested it shall be held by the County Administrative Officer. The Contractor may present evidence in writing and through testimony of its employees and others relevant to the incidents on the list. The County Administrative Officer will provide Contractor with a written explanation of his or her determination on each incident prior to directing the County Treasurer to bill the Contractor for liquidated damages, which shall be due and payable to the County within thirty (30) days after they are billed.

## **ARTICLE 12. GENERAL PROVISIONS**

12.01 Ownership of Solid Waste. Solid waste, including recyclable solid waste, once placed in containers or bins for collection or at curbside, ownership shall transfer to the Contractor. Subject to Contractor's duty to meet the source reduction and recycling goals which apply to County, the Contractor is hereby granted the right, pursuant to the terms of this Franchise Agreement, to retain, recycle, compost, dispose of and otherwise use such solid waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Contractor. Subject to the provisions of this Franchise Agreement, Contractor shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of or use the solid waste which it collects. Solid waste which is disposed of by Contractor at a disposal site (whether landfill, transfer station or MRF) shall become the property of the owner or operator of the disposal site once deposited there by Contractor.

12.02 Discouragement of Scavenging. Contractor shall take whatever legal actions, if any, which may be appropriate and effective to discourage scavenging of recyclable solid waste from the residential and commercial solid waste streams.

12.03 Pavement Damage. Normal wear and tear on County streets resulting from general vehicular traffic excepted, Contractor shall be responsible for any and all damage to County's driving surfaces, whether or not paved, resulting from the operation of Contractor's vehicles providing integrated solid waste management services within the County pursuant to this Franchise Agreement. Contractor understands that the exercise of this franchise may involve operation of its collection vehicles over private roads and streets. Disputes between Contractor and its service recipients as to damage to private roads and streets are civil matters and complaints of damage will be referred to Contractor as a matter within its sole responsibility and as matter within the scope of Section 8.01 above.

12.04 Property Damage. Any physical damage caused by the negligent or willful acts or omissions of employees of Contractor to public property shall be repaired or replaced by Contractor at its sole expense. Except as provided in



Article 8 and Section 12.03 above, this Franchise Agreement does not purport to affect in any way Contractor's civil liability to any third parties.

**12.05 Additional Rules and Regulations.** The County Administrative Officer shall have the power to establish in writing such additional rules and regulations respecting the accumulation, collection, transportation, recycling and/or disposal of solid waste as are not inconsistent with the provisions of this Franchise Agreement or any applicable ordinances or laws, providing such rules and regulations are found to be necessary or convenient by the County Administrative Officer for the enforcement of the provisions of this Franchise Agreement, the provisions of any and all applicable laws and ordinances, and the preservation of the public peace, health, safety and welfare; and Contractor shall comply with any and all such rules and regulations adopted in writing by the County Administrative Officer.

**12.06 Local Office.** Contractor shall at all times during the term of this Franchise Agreement maintain an office within Monterey County, said office to have a local listed telephone number and to be open during normal business hours. At least one location shall be maintained within the County throughout the term of this Franchise Agreement where customers may pay bills for services received from the Contractor.

**12.07 Compliance With Laws: Permits and Licenses.** Contractor's business shall be conducted and maintained in strict compliance with all applicable laws, ordinances, regulations, and other requirements of all federal, state, county, city or other governmental agency having jurisdiction of the collection, handling, transporting, recycling and disposal of solid waste covered by this Franchise Agreement, including but not limited to, Chapter 10.41 of the Monterey County Code, as such provisions may be amended from time to time, as well as all applicable state and other laws and regulations regarding employment practices, safety and the licensing and operation of motor vehicles and other equipment. Similarly, and consistent with the provisions of this paragraph, Contractor will obtain and pay for all necessary permits, licenses, and other consents for the operation of Contractor's business. Contractor represents and warrants that it has full power and authority to enter into this Franchise Agreement and perform integrated waste management services hereunder, and holds all permits and licenses which are required by law or regulation for the complete performance of those services in accordance with the terms of this Franchise Agreement.

**12.08 Reimbursement of County Expenses.** The Contractor shall, within thirty (30) days after receipt from the County of a written itemization, reimburse the County for its reasonable costs and expenses, including staff time and fees for consultants and attorneys, associated with the negotiating, drafting and granting of this extended Franchise Agreement at the request of

the Contractor, with said reimbursement sum not to exceed Three Thousand Dollars (\$3,000.00).

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

To County: County Administrative Officer  
Courthouse  
P. O. Box 180  
Salinas, CA 93902-0180

Copy to: County Counsel  
Courthouse  
P. O. Box 1587  
Salinas, CA 93902-1587

To Contractor: Carmel Marina Corporation  
P. O. Box 1306  
Castroville, CA 95012  
Fax Number: (408) 633-5494

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or sent by fax or, if mailed, three (3) business days from the date such notice is deposited in the United States mail.

**12.10 Force Majeure.** Contractor shall not be in default under this Franchise Agreement in the event that the collection, transportation, Recycling and/or disposal services of Contractor are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affective the County; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; strikes, lockouts and other labor disturbances; or other catastrophic events which are beyond the reasonable control of Contractor.

"Other catastrophic events" does not include the financial ability of Contractor to perform or failure of Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public entity where such failure occurs because Contractor has failed to exercise reasonable diligence. In the event a labor disturbance interrupts collection and transportation of solid waste, and/or recycling solid waste by Contractor, as required under this

Franchise Agreement, County may elect to exercise its rights under Section 9.01 of this Agreement .

12.11 Independent Status. Contractor is an independent contractor and entity and not an officer, agent, servant or employee of the County. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Franchise Agreement shall be construed as creating a partnership or joint venture between County and Contractor nor an arrangement for the disposal of hazardous substances. Neither Contractor nor its officers, employees, agents or subcontractors shall obtain any rights to retirement or other benefits which accrue to County employees.

12.12 Insolvency or Bankruptcy. If Contractor shall, at any time during the term of this Franchise Agreement, become insolvent, or if proceedings in bankruptcy shall be instituted by or against Contractor, or if Contractor shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of Contractor shall be appointed in any suit or proceeding brought by or against Contractor, or if Contractor shall make any assignment for the benefit of creditors, then in each and every case, this Franchise Agreement and the rights and privileges granted hereunder shall immediately cease, terminate and be forfeited and canceled; provided, however, that if Contractor shall, within six (6) days after the filing and service on Contractor of any involuntary petition in bankruptcy or for appointment of a receiver, commence property proceedings to dismiss or deny the position or vacate the receivership and shall expeditiously pursue and diligently exhaust all proper remedies toward that end, the bankruptcy or receivership shall not constitute a default until the entry of a final determination adverse to Contractor.

12.13 Amendment or Modification. This Agreement may be amended, altered or modified only in writing, specifying such amendment, alteration or modification, executed by authorized representatives of both of the parties hereto.

12.14 Contract Replaced. Upon the effective date hereof, this Franchise Agreement shall replace and supersede the presently existing contract between the parties referred to in paragraph 2 of the Recitals above.

12.15 Further Actions. Each of the parties agree to execute and deliver to the other such documents and instruments, and to take such actions, as may reasonably be required to give effect to the terms and conditions of this Franchise Agreement.

**12.16 Interpretation.** This Franchise Agreement has been negotiated by and between the representatives of both parties and their attorneys. Accordingly, any rule of law (including Civil Code #1654) or legal decision that would require interpretation of any ambiguities in this Franchise Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Franchise Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.

**12.17 Captions.** Titles or captions of articles and sections contained in this Franchise Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision of its.

**12.18 Severability.** If any of the provisions of this Franchise Agreement are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement, unless this Franchise Agreement without the severed provision would frustrate a material purpose of either party in entering into this Agreement.

**12.19 Waiver.** No waiver of any right or obligation of either party hereto shall be effective unless in writing, specifying such waiver, executed by the party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Franchise Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

**12.20 Counterparts.** This Franchise Agreement may be executed in two counterparts, each of which shall be deemed an original, but both of which shall be deemed to constitute one and the same instrument.

**12.21 Effective Date.** This Agreement shall become effective upon the recordation of the deed restriction as described in Paragraph 4.06 of this Agreement. It is understood that such deed restriction must be executed by all property owners and any tenants thereon.

**12.22 Entire Agreement.** This Franchise Agreement constitutes the entire and complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to such subject matter.

IN WITNESS WHEREOF, this Franchise Agreement has been  
executed by the duly authorized officers of each of the parties on the  
date first shown above.

COUNTY OF MONTEREY  
CARMEL MARINA CORPORATION

By \_\_\_\_\_  
By \_\_\_\_\_  
Chair  
Vice President

ATTEST:

ATTEST:

\_\_\_\_\_  
Clerk to the Board of Supervisors  
Secretary