

COMMERCIAL DEBRIS HAULERS FRANCHISE AGREEMENT BETWEEN THE CITY OF LINCOLN AND USA WASTE OF CALIFORNIA, INC.

This Agreement is made and entered into this 1st day of March, 2022 by and between the CITY OF LINCOLN ("CITY"), and USA WASTE OF CALIFORNIA, INC. ("FRANCHISEE").

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

WHEREAS, the City has determined that the public health, safety and welfare require that non-exclusive franchises be awarded to qualified companies for the collection, transport and disposal of commercial debris within the City; and

WHEREAS, the Legislature has found and declared in Section 49510 of the Public Resources Code that it is in the public interest to foster and encourage solid waste enterprise so that, at all times, there will continue to be competent enterprises willing and financially able to furnish needed solid waste handling service.

WHEREAS, one of the purposes of this Agreement is to regulate such franchises in order to ensure the orderly collection, transportation and disposal of commercial debris within the City and to minimize the potential for adverse effects it may have on the local environment; and

WHEREAS, The City requires all haulers, including governmental and public entities, providing commercial solid waste services within the City to obtain a non-exclusive franchise in order to regulate this business, ensure its orderly operation and to minimize the potential for adverse effects it may have on the local environment; and

WHEREAS, FRANCHISEE has applied to the City for a Commercial Debris Haulers Franchise; and

WHEREAS, the City has reviewed FRANCHISEE'S application for the purpose of determining whether FRANCHISEE meets the requirements for the granting of such Franchise; and

WHEREAS, the City has determined that the grant of such Franchise to FRANCHISEE is in the public interest; and

SCANNED

WHEREAS, The City intends to receive value for the franchise issued; and

WHEREAS, FRANCHISEE agrees to and acknowledges that it shall arrange for the proper disposal of commercial debris collected in the City and the City is not instructing Franchisee how to collect, transport or dispose of debris so long as its operation is consistent with City Ordinance; and

WHEREAS, the City and FRANCHISEE desire to enter into a Commercial Debris Haulers Franchise Agreement in order that FRANCHISEE may perform commercial solid waste collection, transportation and disposal services within the City.

NOW, THEREFORE, based on the mutual promises contained herein, the parties agree as follows:

Section 1. Grant of Franchise.

a. The City hereby grants to FRANCHISEE a non-exclusive Commercial Debris Haulers Franchise ("Franchise") authorizing FRANCHISEE to engage in the business of collecting, transporting and disposing of commercial debris, as defined in Lincoln Municipal Code section 8.06.020, kept, accumulated or generated in the City and to use the public streets and rights of way for such purpose.

b. This grant is pursuant to FRANCHISEE's application for the Franchise, which application is incorporated herein by this reference.

Section 2. Acceptance of Franchise.

FRANCHISEE hereby accepts the Franchise on the terms and conditions set forth in this Agreement, City Ordinance and resolutions. Execution of this Agreement shall not constitute the notification required by Public Resources Code Section 49520.

Section 3. Term of Franchise.

(a) Subject to Section 20 of this Agreement, the term of the Franchise granted to FRANCHISEE shall be for five (5) years. If the City determines to change the non-exclusive franchise system to an exclusive franchise system, and if FRANCHISEE has been providing commercial solid waste services for more than three previous years, FRANCHISEE will be entitled to provide said services for up to five years as provided in Public Resources Code section 49520.

(b) In the event the City assumes the sole responsibility for collecting solid waste with its own employees within the City or if the City amends its ordinances to change the solid waste regulations to provide for a different non-exclusive commercial debris haulers franchise or permit system, the City may terminate this Agreement and may terminate the Commercial Debris Haulers Franchise granted to FRANCHISEE upon not less than one year written notice to FRANCHISEE.

Section 4. Conditions for Effectiveness.

The effectiveness of this Agreement is subject to FRANCHISEE's satisfaction of each and all of the conditions set forth below, each of which may be waived in whole or in part by the City.

a. Accuracy of Representations. The representation and warranties made by FRANCHISEE in its Application for Franchise are true and correct on and as of the effective date.

b. Absence of Litigation. There is no litigation pending on the effective date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.

c. Furnishing of Insurance. FRANCHISEE has furnished evidence of the Insurance required by Section 12 of this Agreement.

Section 5. Limitations on Scope of Franchise.

Under the terms of this Franchise, the Franchisee has the authority to collect only roll off boxes and debris boxes not generally serviced by the City.

Section 6. Franchise Fees.

a. During the term of the Franchise, FRANCHISEE shall pay to the City franchise fees for the privilege of engaging in the business of collecting, transporting and disposing of commercial debris and recyclables kept, accumulated or generated in the City.

b. Franchise fees shall be payable on all gross commercial debris collection revenues received from customers located within in the City. The franchise fee shall be calculated based on gross collection revenues prior to FRANCHISEE imposing the franchise fee on its customers.

c. Such franchise fees shall be in the amount established for commercial debris services as set forth by Resolution No. 2003-067 adopted by the City Council. Franchise fees may be modified in the amount and manner of payment at any time during the term of this Agreement by a resolution of the City Council. However, the initial franchise fee shall be ten percent (10.0%) of all gross commercial debris collection revenues received from customers located within the City.

d. FRANCHISEE shall pay commercial debris franchise fees on all "solid waste", as defined by ordinance, collected pursuant to the Franchise and this AGREEMENT regardless of the method of disposal or handling.

Section 7. Franchise Fee Payment.

a. Franchise fees shall be payable on a monthly basis, and shall be due and payable on the first day of the second month immediately following the month in which collection services were provided. Each payment shall be calculated in accordance with the provisions of this AGREEMENT and City Ordinance.

b. The Franchise fee shall be paid to the City of Lincoln, to the attention of the City Manager or the City Manager's designee ("Administrator"). Each payment shall be accompanied by a written statement, verified by the person making the payment, or a duly authorized representative of the person, showing the calculation of the Franchise fee payable in such form and detail as the Administrator may require and such other information as the Administrator may determine is material to a determination of the amount due.

c. No statement filed under this section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the City from collecting by appropriate action the sum that is actually due and payable.

d. If Franchise fees are not paid by the Franchisee at the times required by this Section, then in addition to the Franchise fees, the Franchisee shall pay a late payment charge in an amount equal to two percent (2%) of the Franchise fee that is due, plus interest equal to one and one-half percent (1.5%) for each month in which the Franchise fee was not timely paid.

e. FRANCHISEE shall pay all required Franchise fees to:

City of Lincoln, Finance Department
600 Sixth Street
Lincoln, CA 95648

f. If FRANCHISEE remits Franchise fees by personal delivery to the City, such Franchise fees shall be deemed timely paid only if delivered on or before the due date. If FRANCHISEE remits Franchise fees by mail or other delivery service, such Franchise fees shall be deemed timely only if (1) the envelope containing the Franchise fee payment bears a postmark or receipt showing that the payment was mailed or sent on or before the due date or (2) FRANCHISEE submits proof satisfactory to the Administrator that the Franchise fee payment was in fact deposited in the mail or sent on or before said due date.

g. In the event FRANCHISEE believes that it has paid Franchise fees in excess of the fees due the City, FRANCHISEE may submit a request for refund to the Administrator on a form provided by said Administrator. If proof of overpayment is satisfactory to the Administrator, the Administrator shall refund to FRANCHISEE any overpayment. FRANCHISEE shall not apply any overpayment as a credit against any Franchise fees or other amounts payable to the City unless specifically so authorized by the Administrator in writing.

Section 8. Ownership of Solid Waste.

The City does not acquire any ownership or right to possess solid waste collected by FRANCHISEE pursuant to this Agreement.

Section 9. Disposal of Commercial Debris.

a. FRANCHISEE shall dispose of commercial debris collected or transported by FRANCHISEE only by taking such commercial debris to a facility that recovers a minimum of 50% material collected from construction and demolition and a minimum of 22% of all other commercial mixed waste. At no time shall debris be transported to a landfill facility for disposal, without first recovering recyclable material contained in transported debris in accordance with these minimums. Notwithstanding the previous sentence, the following commercial debris may be taken to other approved facilities provided the commercial debris is site source separated and is 100% recycled: cardboard, wood, green waste, metal, paper, aluminum, and glass.

b. The FRANCHISEE shall advise the City and its clients of any flow control agreement that would dictate the recovered material destination.

Section 10. Reports.

a. FRANCHISEE shall file with the Administrator a quarterly report of the quantities of commercial debris collected, transported, diverted, and/or disposed. Such report shall be in such form and detail as required by the Administrator. Specifically, the report shall contain, but not be limited to, the following information:

- (1) the commercial debris tonnage collected and removed within the City during the previous quarter;
- (2) the total revenue collected for the removal of commercial debris during the previous quarter.
- (3) Copies of all scale receipts attached with quarterly report form.

b. The Administrator shall establish guidelines, forms and other appropriate material to assist FRANCHISEE in preparing the reports required by this section. A FRANCHISEE's failure to file the reports required by this section shall constitute a default pursuant to Section 20 of this agreement or cause for suspension or termination pursuant to Lincoln Code section 8.01.140.

c. If the quarterly report required under subsection a. is not filed by the due date, the report shall be deemed delinquent, and the FRANCHISEE shall pay to the City a delinquent report charge in the amount of fifty dollars (\$50.00). If the report remains delinquent for more than fifteen days, the grantee shall pay to the City a delinquent report charge in the amount of one hundred dollars (\$100.00). Such delinquent report charge shall be in addition to any franchise fees or other charges payable by the FRANCHISEE for the same period of time.

d. Each quarterly report shall be submitted on or before the first day of the second calendar month immediately following the reportable quarter and shall be submitted as provided in Section 22 of this Agreement.

e. FRANCHISEE shall be required to retain monthly reports in the form required by the Administrator, including a listing of each container size in the City from which FRANCHISEE collected commercial debris during the reportable month; the number of collections of each listed container size during the reportable month; the total volume of commercial debris collected in the City during the reportable month; the total weight (in tons) of commercial debris disposed of by FRANCHISEE at landfills and transfer stations during the reportable month; the total weight and the weight by material category (in tons) of commercial debris disposed of by FRANCHISEE during the reportable month; the total weight and the weight by material category (in tons) of commingled recyclables disposed of by FRANCHISEE at recycling and materials recovery facilities during the reportable month; the number of service locations by volume (cubic yards) of service provided; FRANCHISEE's gross receipts for collection services provided in the City during the reportable month; and such additional information as may be required by the Administrator. If requested by the Administrator in conjunction with an investigation into FRANCHISEE's Default pursuant to Section 20 of this agreement, such monthly reports shall be submitted to the Administrator.

Section 11. Inspection Authority.

a. FRANCHISEE shall at all times maintain accurate and complete accounts of all revenues and income arising out of its operations under the franchise granted pursuant to City Ordinance; all commercial debris collected, transported and/or disposed of; the source of such commercial debris; and the final destination of such commercial debris. FRANCHISEE'S books, accounts and records reasonably necessary for the enforcement of City Ordinance and the franchise agreement shall be made available for inspection, examination and audit during normal business hours by authorized officers, employees and agents of the City. The City shall give FRANCHISEE written notice at least three (3) business days prior to any inspection, audit or examination of these records.

b. If the Administrator determines that an audit is necessary, FRANCHISEE shall be responsible for reimbursement of audit costs, including any City or Consultant services, to perform audits of accounts of all FRANCHISEE revenues and income arising out of operations under the franchise granted pursuant to this Agreement.

c. FRANCHISEE shall be responsible for reimbursement of audit costs for City staff, and any other City or consultant services, to perform detailed follow-up audits where staff determines that documentation, as reported by FRANCHISEE, is inadequate.

Section 12. Insurance Requirements.

FRANCHISEE shall obtain and shall maintain throughout the term of this Agreement, at FRANCHISEE's sole cost and expense, insurance against claims for

injuries to persons or damages to property which may arise from or in connection with the performance of work pursuant to this Agreement by FRANCHISEE, its agents, representatives, employees or contractors.

a. Minimum Scope and Limits of Insurance. FRANCHISEE shall maintain at least the following minimum insurance coverage's:

- (1) *Comprehensive General Liability:* \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this AGREEMENT or the general aggregate limit shall be twice the required occurrence limit.
- (2) *Automobile Liability:* \$2,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall include hired autos and non-owned autos.
- (3) *Workers' Compensation and Employers' Liability:* Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

b. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be described in FRANCHISEE'S application for this Franchise. If FRANCHISEE desires to change its deductible or self-insured retention after the effective date of this Agreement, it shall first obtain approval of City Manager for these increases. FRANCHISEE shall be responsible for payment of all deductibles or self-insured retentions.

c. Other Insurance Provisions. The required insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) *General Liability and Automobile Liability Coverages.*

(a) The City, its officers, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of FRANCHISEE; products and completed operations of FRANCHISEE; premises owned, leased or used by FRANCHISEE; and automobiles and vehicles owned, leased, hired or borrowed by FRANCHISEE. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees and agents and contractors.

(b) FRANCHISEE's insurance coverage shall be primary insurance as it respects to the City, its officers, employees, agents and contractors for all liability arising out of activities performed by, or on behalf of FRANCHISEE; products and completed operations of FRANCHISEE; premises owned, leased or used by FRANCHISEE; and

automobiles owned, leased, hired or borrowed by FRANCHISEE. Any insurance or self-insurance maintained by the City, its officers, employees, agents or contractors shall be in excess of FRANCHISEE's insurance and shall not contribute with it.

(c) Any failure of FRANCHISEE to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or contractors.

(d) Coverage shall state that FRANCHISEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) *All Coverages.* Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City.

d. Placement of Insurance. Insurance shall be placed with insurers acceptable to the City Manager. FRANCHISEE must place insurance with a current A.M. Best rating of no less than A:VII. The City Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the City Manager, the interests of the City and the general public are adequately protected.

e. Proof of Insurance. FRANCHISEE shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Proof of insurance shall be mailed or personally delivered to the address provided in Section 22 of this Agreement.

FRANCHISEE ACKNOWLEDGES THAT UNDER CITY ORDINANCE AND THE COMMERCIAL DEBRIS HAULERS FRANCHISE GRANTED TO FRANCHISEE WILL NOT BECOME EFFECTIVE, AND FRANCHISEE WILL HAVE NO AUTHORITY TO PERFORM COMMERCIAL DEBRIS COLLECTION IN THE CITY, UNLESS FRANCHISEE PROVIDES SATISFACTORY PROOF OF INSURANCE PRIOR TO BEGINNING OPERATIONS AS A FRANCHISEE.

f. Modification of Insurance Requirements. The City shall retain the right at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the City Manager, the insurance provisions in this Agreement do not provide adequate protection for the City and for members of the public, the City may require FRANCHISEE to obtain insurance sufficient in coverage, form and amount to provide adequate protection. The City's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at

the time a change in insurance is required. The City Manger may modify these insurance requirements only upon approval of the City Council.

g. Waiver of Subrogation. Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the FRANCHISEE for all work performed by the contractor, its employees, agents and subcontractors.

Section 13. Indemnity.

FRANCHISEE agrees to defend, with counsel approved by the City, indemnify, and hold harmless the City and all of its agents, officers, servants, and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the City employees, agents or officers which arise from, or in any manner connected or related with, or are caused by willful or negligent acts or omissions of FRANCHISEE, or its agents, officers or employees, in the performance of the non-exclusive Franchise or this Agreement, or in performing the work or services therein, and all costs and expenses of investigating and defending against same; provided, however, that FRANCHISEE's duty to indemnify and hold harmless shall not include any claims or liability to the extent arising from the established sole negligence, active negligence, or sole willful misconduct of the City, its agents, officers, servants and employees.

Section 14. Equipment.

a. Any and all containers provided to waste generators by FRANCHISEE for storage, collection or transportation of commercial solid wastes or recyclables shall meet the requirements of the City Ordinance.

b. Any and all vehicles used by FRANCHISEE to perform commercial debris collection services shall meet the requirements the City Ordinance.

Section 15. Abandoned Containers.

a. If FRANCHISEE abandons any container used to provide commercial debris collection services under the Franchise, the City may remove the container and/or dispose of the contents of the container.

b. If the City removes a container abandoned by FRANCHISEE and/or disposes of the contents of any container abandoned by FRANCHISEE, the City may charge FRANCHISEE for City costs incurred in such removal/disposal and for City costs of storage of the container. FRANCHISEE shall reimburse City for such costs within ten (10) days of the date of the City invoice for such costs.

c. For the purposes of this section, "abandoned" includes:

- (1) FRANCHISEE's failure to remove the container within the time period specified by the City Council upon termination of the Commercial Debris Haulers Franchise pursuant to City Ordinance;
- (2) FRANCHISEE's failure to remove the container within a reasonable period after the expiration of the Franchise granted to FRANCHISEE, except in the case where FRANCHISEE has been granted an extension of the term of said Franchise or FRANCHISEE has been granted a subsequent Commercial Debris Haulers Franchise authorizing FRANCHISEE to collect and transport the type or types of solid waste for which the container was used pursuant to this AGREEMENT.
- (3) FRANCHISEE's failure to dispose of the contents of the container within five (5) days after the Administrator issues written notice to FRANCHISEE to dispose of the contents.

Section 16. Franchisee Provided Solid Waste Containers.

a. General. Containers used for storage of solid waste shall be designed and constructed to be watertight and prevent the leakage of liquids. All containers shall be painted and shall prominently display the name of the FRANCHISEE.

b. Cleaning, Painting, Maintenance. FRANCHISEE shall make reasonable efforts to replace, clean or repaint all containers as needed so as to present a clean appearance.

Section 17. Personnel.

a. Driver Qualifications. FRANCHISEE agrees that all drivers shall be trained and qualified in the operation of collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

b. Safety Training. FRANCHISEE shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of solid waste, or who are otherwise directly involved in such collection.

Section 18. Compliance With Law.

FRANCHISEE shall perform all collection, transportation and disposal operations in accordance with applicable federal, state, and local law, including City Ordinances, in accordance with all regulations promulgated under such laws, and in accordance with the terms and conditions of this AGREEMENT.

Section 19. Permits and Licenses.

FRANCHISEE shall obtain and maintain, at FRANCHISEE's sole cost and expense, all permits and licenses applicable to FRANCHISEE's operations under the Franchise required of FRANCHISEE by any governmental agency.

Section 20. Default, Termination.

a. **Default.** Except for the occurrence of Force Majeure, as defined in subsection (d), in the event of any material failure or refusal of FRANCHISEE to comply with any obligation or duty imposed on FRANCHISEE under this Agreement or City Ordinances, City Administrator and FRANCHISEE shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the parties are unable to agree on the informal resolution or cure of the breach within ten (10) business days, City Administrator shall have the right to terminate this Agreement if:

- (1) Following the ten (10) day meeting period described above, City shall have given written notice to FRANCHISEE specifying that a particular default or defaults exists which will, unless corrected, constitute a material breach of this Agreement on the part of FRANCHISEE, and
- (2) FRANCHISEE fails to correct such default or fails to take reasonable steps to commence to correct such default within thirty (30) days from the date of the notice given by City under Section (1) above and FRANCHISEE thereafter fails to diligently continue to take reasonable steps to correct such default.

b. The following events shall also constitute a material breach and default under this Agreement:

- (1) **Misrepresentation.** Any misrepresentation or disclosure made to the City by the FRANCHISEE in connection with or as an inducement to entering this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- (2) **Fraud or Deceit.** If the FRANCHISEE practices, or attempts to practice, any fraud or deceit upon the City.
- (3) **Failure to Maintain Coverage.** If the FRANCHISEE fails to provide or maintain in full force and effect the Worker's Compensation, liability, or indemnification coverage as required by this Agreement.
- (4) **Violations of Regulation.** If the FRANCHISEE violates any permits, orders or filing of any regulatory body having jurisdiction over the

FRANCHISEE which violation or non-compliance materially affects the FRANCHISEE'S ability to perform under this Agreement, provided that the FRANCHISEE may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise shall be deemed to have occurred during the pendency of the contestation or appeal, to the extent the FRANCHISEE is able to adequately perform during that period.

- (5) Acts or Omissions. Any other act or omission by FRANCHISEE which materially violates the terms, conditions, or requirements of this Agreement, City Ordinances, AB 939, as it may be amended from time to time, or any order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the FRANCHISEE cannot reasonably correct or remedy the breach within the time set forth in such notices, if the FRANCHISEE should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- (6) Termination of Service. In the case of a breach related to the above sections, and the breach continues for more than thirty (30) calendar days after written notice from the Administrator for the correction thereof, provided that where such breach cannot be cured within such thirty (30) day period, the FRANCHISEE shall not be in default of this Agreement if FRANCHISEE shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and it continues such performance diligently until completed.

c. Termination. Upon the occurrence of a material breach, failure to cure will result in a declaration of termination of this Agreement by the City as provided by City Ordinance.

d. Force Majeure. The performance of this Agreement may be discontinued or temporarily suspended in the event of Force Majeure. FRANCHISEE shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if FRANCHISEE'S performance is prevented or delayed by Force Majeure. Force Majeure means acts of God including landslides, lightening, forest fires, storms, floods, freezing and earthquakes, civil disturbances, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, or government restraint, or other events beyond FRANCHISEE'S reasonable control that prevent or delay performance. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances, and litigation, including appeals, shall be entirely within the discretion of the FRANCHISEE and FRANCHISEE may make settlement thereof at such time and on any such terms and conditions as it may deem to be advisable, and

no delay in making such settlement shall deprive FRANCHISEE of the benefit of this Section.

e. City Manager shall serve written notice, either personally or by registered or certified mail, postage prepaid of the termination of a Franchise under this Agreement to the last place of business of the FRANCHISEE and the FRANCHISEE shall cease operation under its FRANCHISE within ten (10) days after receipt of said notice unless FRANCHISEE has requested an appeal hearing before the City Council prior to the expiration of the ten (10) day period. In the event FRANCHISEE requests such an appeal hearing, said FRANCHISEE may continue collecting and transporting or disposing of refuse until the City Council has rendered its decision on the termination of the Franchise.

f. Any FRANCHISEE whose Franchise has been terminated has the right to an appeal hearing before the City Council. FRANCHISEE shall request such a hearing in writing to the City Clerk within ten (10) calendar days after receipt of notice of termination, and the City Council shall hold the appeal hearing not later than thirty (30) days following the receipt of the written request if requested by FRANCHISEE. The Clerk shall give written notice of the time, date and place of the appeal hearing to FRANCHISEE and the Administrator. The City Council shall render its decision within fifteen (15) calendar days after the close of the appeal hearing and its decision shall be final; provided, however, that nothing herein shall limit FRANCHISEE'S right to seek judicial review or remedies.

Section 21. Conditions Upon Termination.

a. In the event the Commercial Debris Haulers Franchise is terminated:

- (1) FRANCHISEE shall have no right or authority to engage in solid waste collection, transportation or disposal operations in the City.
- (2) FRANCHISEE shall, however, remain liable to the City for any and all Franchise fees that would otherwise be payable by FRANCHISEE, for any and all late payment charges and interest assessed pursuant to Section 7 of this Agreement and for any and all delinquent report charges assessed pursuant to Section 10 of this Agreement.
- (3) FRANCHISEE shall have a continuing obligation to submit to the City all reports required by Section 10 of this Agreement which relates to solid waste activities performed by FRANCHISEE up to and including the date of termination.

b. In the event the Franchise is terminated, then within the time period specified by the City Council and if directed by the Administrator, FRANCHISEE shall remove all of FRANCHISEE's solid waste containers from all of FRANCHISEE's

collection service locations and shall properly dispose of all solid waste in such containers.

Section 22. Notices.

Except as otherwise provided in this Agreement, all notices required by this Agreement or by the Commercial Debris Haulers Franchise shall be given by personal service or by deposit in the United States mail, postage pre-paid and return receipt requested, addressed to the parties as follows:

To City: City of Lincoln
 Department of Public Works
 600 Sixth Street
 Lincoln, CA 95648

To FRANCHISEE: Waste Management
 8761 Younger Creek Drive
 Sacramento, CA 95928

Notice shall be deemed effective on the date personally served or, if mailed, three days after the date deposited in the mail.

Section 23. Relationship of Parties.

The parties intend that the FRANCHISEE shall perform the services required by this Agreement as an independent contractor and not as an officer or employee of the City. No employee or agent of the FRANCHISEE shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the FRANCHISEE shall have the exclusive control over the manner and means of conducting the solid waste collection services performed under this Agreement and all persons performing such services. FRANCHISEE shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents shall not obtain any rights to retirement benefits, worker's compensation benefits, or any other benefits which accrue to the employees of the City by virtue of their employment with said agency.

FRANCHISEE agrees that this Agreement is not made in the interest of, or on behalf of, any undisclosed person, partnership, franchisee, association, organization, or corporation. FRANCHISEE has not directly or indirectly colluded, conspired, connived

or agreed with any person, partnership, franchisee, association, organization, or corporation to secure any advantage against the City.

Section 24. Compliance with Law.

In providing the services required under this Agreement, FRANCHISEE shall at all times, at its sole cost, comply with all applicable laws of the United States, the State of California, the City and other states, cities or counties which may have jurisdiction over any service provided in this Agreement and with all applicable regulations promulgated by any federal, state, regional or local administrative and regulatory agency, now in force and as they may be enacted, issued or amended during the term of this Agreement.

Section 25. Governing Law.

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California and the United States.

Section 26. Jurisdiction.

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California in the County of Placer which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Agreement is made in and will be performed in the City. Federal courts may have jurisdiction over certain lawsuits arising from this Agreement and these should be brought and concluded within the federal system.

Section 27. Assignment.

a. FRANCHISEE acknowledges that this Agreement involves rendering a vital service to the businesses within the City, and that the City has franchised FRANCHISEE to perform the services specified herein based on (1) FRANCHISEE'S experience, skill and reputation for conducting its solid waste collection in a safe, effective and responsible fashion, at all times in keeping with applicable waste management laws, regulations and good solid waste management practices, and (2) FRANCHISEE's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the FRANCHISEE to perform the services to be rendered by the FRANCHISEE under this Agreement.

b. Any franchise granted is a privilege to be held in trust by the original FRANCHISEE. A franchise issued by City shall not be transferred, sold, leased, assigned, or relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the prior approval of the City Council. This restriction includes the transfer of ownership

of the Franchise, or a majority of the ownership or control of the FRANCHISEE, or the conveyance of a majority of the FRANCHISEE's stock to a new controlling interest. Franchises shall become void upon the abandonment of same by the FRANCHISEE. The City Council shall not unreasonably withhold approval of a Franchise assignment, provided that such assignment does not unreasonably impact competition and the assignee is qualified to perform its obligations as required by this Franchise Agreement and any implementing City ordinance.

c. FRANCHISEE shall promptly notify the Administrator in writing in advance of any proposed assignment, sale, or transfer. In the event the City Council approves of any assignment, sale, or transfer, said approval shall not relieve FRANCHISEE of any of its obligations or duties under this Agreement unless this Agreement is modified in writing to that effect.

Section 28. Binding on Successors.

The provisions of this Agreement shall inure to the benefit to and be binding on the successors and permitted assigns of the parties.

Section 29. Waiver.

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

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

Section 30. Franchisee's Investigation.

FRANCHISEE has made an independent investigation (satisfactory to it) of the conditions and, circumstances surrounding the Agreement and the work to be performed by it.

Section 31. Notice.

The parties agree that in the event the City determines to change the system from a non-exclusive franchise system to an exclusive franchise system, FRANCHISEE shall be entitled to a further extension of this Franchise equivalent to the minimum five year notice of franchise termination required by Public Resources Code section 49520, and may exercise all of FRANCHISEE'S rights during that additional five year period. This Agreement does not affect the rights or obligations of the parties under Section 49520 through 49524 of the Public Resources Code.

Section 32. Entire Agreement.

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

Section 33. Interpretation.

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.


Section 34. Amendment.

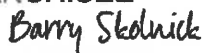
This Agreement may not be modified or amended in any respect except by a written agreement duly approved and signed by the parties.

Section 35. Severability.

If any nonmaterial provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

City of Lincoln
By: 
City Manager

~~FRANCHISEE~~
By: 
2A649847C68F47C...
Title President
Company USA Waste of California, Inc.