

**NON-EXCLUSIVE INDUSTRIAL WASTE COLLECTION AGREEMENT  
BETWEEN THE CITY OF STOCKTON AND CALIFORNIA WASTE  
RECOVERY SYSTEMS, LLC**

This Agreement is made and entered into on \_\_\_\_\_ 2024, by and between the CITY OF STOCKTON, a municipal corporation ("CITY"), and California Waste Recovery Systems, LLC ("CONTRACTOR").

**RECITALS**

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

The CITY has determined that the public health, safety and welfare require that non-exclusive contracts be awarded to qualified companies for the collection, transport and disposal of industrial waste in the CITY; and

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; and

One of the purposes of this Agreement is to regulate such enterprises in order to ensure the orderly collection, transportation, recycling and disposal of industrial waste in the CITY and to minimize the potential for adverse effects on the local environment; and

The CITY requires haulers wishing to provide industrial waste collection services in the CITY to enter into an agreement with the CITY in order to regulate this business, ensure its orderly operation and to minimize the potential for adverse effects to the local environment; and

CONTRACTOR has requested that the CITY enter into a non-exclusive industrial waste collection agreement; and

The CITY has determined that entering into a non-exclusive agreement with the CONTRACTOR is in the public's interest; and

The CITY intends to receive value for entering into the non-exclusive agreement; and

CONTRACTOR acknowledges that it shall arrange for the proper disposal of all

industrial waste collected in the CITY and the CITY is not instructing CONTRACTOR how to collect, transport or recycle or dispose of industrial waste so long as its operation is consistent with City Code, applicable laws, and diversion requirements (AB 939 and California Green Building Standards Code, 24 CCR, Part 11); and

The CITY and CONTRACTOR desire to enter into an industrial waste collection Agreement in order that CONTRACTOR may provide industrial waste collection, transportation and disposal services in the CITY.

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

### **Section 1. Grant of Non-Exclusive Agreement.**

a. The CITY hereby grants to CONTRACTOR a non-exclusive right to engage in the collection of industrial waste, as defined in Title 8, Chapter 8.04.290 through 8.04.340 of the Stockton Municipal Code, and authorizes CONTRACTOR to engage in the business of collecting, transporting, recycling and disposing of solid waste and recyclables generated by industrial generators within the Stockton City limits. Industrial generators include manufacturing facilities, factories, food processors, refineries, and publicly operated treatment works.

b. The CITY will not take any action, such as granting of an exclusive franchise, which would deprive CONTRACTOR from competing to provide services included in this Agreement for the period this Agreement is in effect.

c. The CONTRACTOR shall be entitled to apply for and obtain new permits as may be required for collection of industrial waste upon the expiration of the term of this Agreement if CONTRACTOR meets permit conditions as are set forth by then current city ordinances. All future permit(s) will be issued pursuant to terms provided for by ordinance, which may include, but not be limited to, payment of permit issuance fees, permit fees, AB 939 fees, and diversion goals, including the California Green Building Standards Code, 24 CCR, Part 11 (CALGreen).

### **Section 2. Acceptance of Non-Exclusive Agreement.**

CONTRACTOR hereby enters into this Agreement on the terms and conditions set forth in this Agreement, City Code, and all related ordinances and resolutions.

### **Section 3. Exceptions to Agreement.**

The following services are expressly excluded from this Agreement:

a. Self-haul materials, which are generated by an industrial entity and

delivered by that entity directly to a transfer station or disposal facility.

b. All residential and commercial solid waste, recyclables, and organics that are collected pursuant to the terms of two separate Collection Services Agreements for Recycling, Organics, and Solid Waste Collection, Processing, and Disposal Services with USA Waste of California, Inc. (WM), and Sunrise Sanitation, Inc. (Republic Services)

c. Removal of materials from premises by a contractor or individual as an incidental part of a gardening, landscaping, tree trimming, cleaning, construction, demolition, maintenance or similar service offered by that contractor or individual and not a subcontracted hauling contractor.

#### **Section 4. Term of Agreement.**

Subject to Sections 23 and 36 of this Agreement, the initial term of this Agreement shall commence on January 1, 2025, and shall expire on December 31, 2029. The term of the Agreement may be extended up to two (2) optional five-year terms by a written amendment executed by both parties. However, the total term of the Agreement including the extended term shall not exceed fifteen (15) years. This section constitutes the CITY's five-year notice that may or may not be required under Public Resources Code Section 49520. The parties agree that CONTRACTOR shall be entitled to a notice of at least one hundred and twenty (120) days prior to the expiration of this Agreement in the event the CITY determines to change the system from a non-exclusive collection system to an exclusive collection system after expiration of the term hereof.

#### **Section 5. Conditions for Effectiveness.**

The effectiveness of this Agreement is subject to CONTRACTOR's satisfaction of all the conditions set forth below.

a. Accuracy of Representations. The representation and warranties made by CONTRACTOR upon entering into this Agreement 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. CONTRACTOR has furnished evidence of the Insurance required by Section 15 of this Agreement.

**Section 6. Contractor Fees.**

a. Upon final execution hereof, CONTRACTOR shall pay to CITY a one-time fee of \$100,000 (One hundred thousand dollars) pursuant to Section 4 above. During the term of this Agreement, yet subject to the effective date of the applicable City Code provisions relating to the payment of fees, CONTRACTOR shall pay to the CITY such fees, as set forth below, for the privilege of engaging in the business of collecting, recycling, transporting and disposing of industrial waste from within the City limits:

(1) The Contractor fees listed in subsections 2 and 3 shall be determined based on all industrial recycling and solid waste collection revenues billed and received by CONTRACTOR from customers located in the CITY or, if CONTRACTOR provides the service for free, contractor fees shall be based on fair market value of the service as determined by the Public Works Director.

(2) CONTRACTOR shall pay to the CITY a Contractor Permit Fee equal to eighteen and one-half percent (18.5%) of the gross revenue collected for performing industrial waste collection services.

(3) CONTRACTOR shall also pay to the CITY an AB 939 Fee equal to five percent (5%) of the gross revenue collected for performing industrial waste collection services.

b. Contractor Permit and AB 939 fees may be modified in the amount and manner of payment at any time during the term of this Agreement at the sole discretion of the CITY.

c. Contractor shall pay the City a one-time \$100,000 fee before the Agreement is approved pursuant to Section 4 above.

**Section 7. Contractor Fees - Permit and AB 939 Fee Payments.**

a. Contractor Permit and AB 939 fees shall be payable monthly and shall be due and payable on or before the fifteenth (15) day of the month immediately following the month in which collection services were provided. Each payment shall be calculated in accordance with the provisions of this Agreement.

b. The Contractor Permit and AB 939 fees shall be paid to the City's Administrative Services Department. 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 Contractor Permit and AB 939 fees payable in such form and detail as the CITY may require and such other information as the CITY may determine is material to a determination of the amount due. CONTRACTOR shall pay all required Contractor Permit and AB 939 fees to:

City of Stockton  
Attention: Administrative Services Department  
P.O. Box 2107  
Stockton, CA 95201  
Email: [billing@stocktonca.gov](mailto:billing@stocktonca.gov)

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 Contractor Permit and AB 939 fees are not paid by the CONTRACTOR at the times required by this Section, then in addition to the Contractor fees, the CONTRACTOR shall pay a late payment charge in an amount equal to five percent (5%) of the Contractor fee that is due, plus interest equal to one percent (1%) for each month in which the Contractor fee was not timely paid.

e. If CONTRACTOR remits Contractor Permit and AB 939 fees by personal delivery to the CITY, such payment shall be deemed timely only if delivered on or before the due date. If CONTRACTOR remits Contractor Permit and AB 939 fees by mail or other delivery service, such payment shall be deemed timely only if (1) the envelope containing the payment bears a postmark or receipt showing that the payment was mailed or sent on or before the due date or (2) CONTRACTOR submits proof satisfactory to the City Manager that the payment was in fact deposited in the mail or sent on or before said due date.

f. In the event CONTRACTOR believes that it has paid Contractor Permit and AB 939 fees in excess of the fees due to the CITY, CONTRACTOR may submit a request for refund to the City Manager on a form provided by said City Manager. If proof of overpayment is satisfactory to the City Manager, the City Manager shall and is hereby authorized to refund to CONTRACTOR any overpayment. CONTRACTOR shall not apply any overpayment as a credit against any Contractor fees or other amounts payable to the CITY unless specifically so pre-authorized by the City Manager in writing.

## **Section 8. Ownership of Industrial Solid Waste.**

The CITY does not gain any ownership or right to possess industrial solid waste collected by CONTRACTOR pursuant to this Agreement. Subject to the provisions of this Agreement, CONTRACTOR shall have title to and may retain, recycle, process, dispose of, or use the industrial solid waste which it collects.

## **Section 9. Disposal of Industrial Solid Waste.**

CONTRACTOR shall dispose of industrial solid waste collected or transported by

CONTRACTOR only by taking such industrial solid waste to a landfill or transfer station, which is lawfully authorized to accept such solid waste, with notice to the CITY of the location. CONTRACTOR may take recycled materials to a permitted facility of its choice with notice to the CITY of the location. CONTRACTOR shall not dispose of such industrial solid waste by depositing it on any land, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system.

#### **Section 10. Public Access to CONTRACTOR**

A responsible and qualified representative of the CONTRACTOR shall be available at the CONTRACTOR's office during office hours for communication with the CITY or the public.

#### **Section 11. Customer Education**

CONTRACTOR shall provide to each customer a printed list that outlines the materials that may be placed in industrial waste containers and those that are unacceptable.

#### **Section 12. Tonnage Reports**

a. CONTRACTOR shall file with the Public Works Director or designee a quarterly report of the quantities of industrial waste collected, transported, diverted, and/or disposed. Such report shall be in such form and detail as required by the Public Works Director or designee. Specifically, the report shall contain, but not be limited to, the following information:

(1) The industrial waste tonnage the CONTRACTOR collected within the CITY that was diverted during the previous quarter and the location of the facility where such waste was diverted;

(2) The industrial waste tonnage collected within the CITY that was disposed of during the previous quarter and the location of the disposal facility where the disposal of such waste occurred.

b. CONTRACTOR shall maintain quarterly records, on forms prescribed by the Public Works Director or designee, containing such information as may be required by the Public Works Director or designee pertaining to the number and types of accounts served by the CONTRACTOR. This information shall be provided to the Public Works Director or designee upon request.

c. The Public Works Director or designee shall maintain guidelines, forms and other appropriate material to assist CONTRACTOR in preparing the reports required by this Section. CONTRACTOR's failure to file the reports required by this Section shall constitute cause for termination or suspension of this Agreement.

d. If the quarterly report required under subsection a, above, is not filed by the due date, the report shall be deemed delinquent, and the CONTRACTOR 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 (15) days, the CONTRACTOR 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 Contractor fees or other charges payable by the CONTRACTOR for the same period.

e. Each quarterly report shall be submitted on or before the fifteenth (15th) day of the calendar month immediately following the reportable quarter and shall be submitted to the Public Works Director or designee by email to [stocktonswr@stocktonca.gov](mailto:stocktonswr@stocktonca.gov).

f. As part of an investigation for terminating this Agreement for cause, subject to Section 23 of this Agreement and upon the reasonable request of the Public Works Director or designee, CONTRACTOR shall submit to the CITY monthly reports including a listing of each receptacle size in the CITY from which CONTRACTOR collected industrial waste during the reportable month; the number of collections of each listed container during the reportable month; the total volume (cubic yards) of industrial waste collected in the CITY during the reportable month; the total weight (in tons) of industrial waste disposed of by CONTRACTOR at landfills and transfer stations during the reportable month; the total weight (in tons) and the weight by material category (in tons) of industrial waste delivered by CONTRACTOR to recycling and materials recovery facilities during the reportable month; the number of service locations by volume (cubic yards) of service provided; CONTRACTOR's gross receipts for collection services provided in the CITY during the reportable month; and such additional information as may be required by the Public Works Director or designee. Such monthly reports shall be prepared in a form as required by the Public Works Director or designee.

### **Section 13. Inspection Authority.**

a. CONTRACTOR shall at all times maintain, without limitation, the following: accurate and complete accounts of all revenues arising out of its operations under this Agreement; any service complaints received and how they were resolved; all solid waste collected, transported and/or disposed of; the source of such solid waste; and the final destination of such solid waste. CONTRACTOR's books, accounts and records reasonably necessary for the enforcement of this 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 provide CONTRACTOR written notice at least three (3) business days prior to any inspection, audit or examination of these records.

b. In the event any audit conducted by the CITY or by the CITY's representative discloses that CONTRACTOR has made any intentional misrepresentation with respect to the Contractor fees or its diversion amounts to the CITY or discloses

that CONTRACTOR has underpaid Contractor fees due to the CITY in an amount greater than One Thousand Dollars (\$1,000) or ten percent (10%) of the Contractor fees payable to the CITY during the period covered by the audit, whichever amount is greater, then in addition to any other remedies available to the CITY, CONTRACTOR shall reimburse the CITY for the CITY's costs incurred in the performance of the audit. Such reimbursement shall be paid by CONTRACTOR, along with any underpaid Contractor fees, late payments and interest, within thirty (30) days after the date the CITY notifies CONTRACTOR of the amount of the CITY's costs.

#### **Section 14. Service Fees**

CONTRACTOR shall set its own service fees for industrial waste collection services.

#### **Section 15. Insurance Requirements.**

CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees, or subcontractors. With respect to General Liability, Errors & Omissions, Contractors Pollution Liability, and/or Asbestos Pollution Liability, coverage should be maintained for a minimum of five (5) years after contract completion.

#### **Minimum Scope and Limits of Insurance.**

Coverage shall be at least as broad as:

(1) **Commercial General Liability (CGL).** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) **Automobile Liability.** Insurance Services Office Form Number CA 0001 covering any auto (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned (Code 9) autos, with limit no less than **\$2,000,000** per accident for bodily injury and property damage.

(3) **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

(4) **Contractors Pollution Liability** applicable to the work being



performed, with a limit no less than **\$1,000,000** per claim or occurrence and **\$1,000,000** aggregate per policy period of one year.

If CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to CITY.

### ***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by CITY. The City of Stockton may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be

subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City of Stockton. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

### **Other Insurance Provisions.**

**A.** The General Liability, Automobile Liability, Contractors Pollution Liability, and/or Asbestos Pollution policies are to contain, or be endorsed to contain, the following provisions:

(1) **The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds** with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

(2) For any claims related to this project, the **Contractor's insurance coverage shall be primary and non-contributory** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees,

agents, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, agents, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

(3) Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

**B.** The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Contractor pursuant to the contract. This coverage may also be provided on the Contractors Pollution Liability policy.

**C.** If General Liability, Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form:

(1) The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.

(2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

(3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.

(4) A copy of the claims reporting requirements must be submitted to the City of Stockton for review.

(5) If the services involve lead-based paint or asbestos identification / remediation, the Contractors Pollution Liability shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification / remediation, the Contractors Pollution Liability shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.

***Umbrella or Excess Policy***

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying

Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A:VII if admitted in the State of California.

### ***Verification of Coverage***

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City of Stockton before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by

these specifications, at any time. City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

### ***Waiver of Subrogation***

**Contractor hereby grants to City of Stockton a waiver of subrogation which any insurer may acquire** against City of Stockton, its officers, officials, employees, and volunteers, 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 but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Contractor, its employees, agents, and subcontractors.

### ***Subcontractors***

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

### ***Duration of Coverage***

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be ***provided for at least five (5) years after completion of the contract of work***.

***Special Risks or Circumstances***

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**Certificate Holder Address**

The address for mailing certificates, endorsements and notices shall be:

City of Stockton  
Its Officers, Officials, Employees and Volunteers  
400 E Main Street, 3rd Floor – HR  
Stockton, CA 95202

**Section 16. Indemnity.**

To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify City of Stockton and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation

costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City of Stockton. This obligation is independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this agreement. These obligations shall survive the completion or termination of this agreement.

**Section 17. Equipment.**

All equipment used or provided by CONTRACTOR shall be kept in a safe and sanitary condition. Vehicles and containers shall be cleaned and painted as needed, as reasonably determined by the CITY.

**Section 18. Abandoned Containers.**

a. If CONTRACTOR abandons any container used for industrial waste collection services under the Agreement, the CITY may remove the container and/or dispose of the contents of the container.

b. If the CITY removes a container abandoned by CONTRACTOR and/or disposes of the contents of any container abandoned by CONTRACTOR, the CITY may charge CONTRACTOR for the CITY's costs incurred in such removal/disposal and for

the CITY's costs of storage of the container. CONTRACTOR shall reimburse the CITY for such costs within ten (10) days after the date of the CITY's invoice for such costs.

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

(1) CONTRACTOR's failure to remove the container within the time period specified by the CITY upon termination of the industrial waste collection Agreement;

(2) CONTRACTOR's failure to remove the container within a reasonable period after the expiration of the Agreement granted to CONTRACTOR, except in the case where CONTRACTOR has been granted an extension of the term of said Agreement or CONTRACTOR has been granted an industrial waste collection Agreement authorizing CONTRACTOR to collect and transport the type or types of waste for which the container was used pursuant to this AGREEMENT.

(3) CONTRACTOR's failure to dispose of the contents of the container within five (5) days after the City Manager issues written notice to CONTRACTOR to dispose of the contents.

## **Section 19. CONTRACTOR Provided Industrial Waste Collection Containers**

a. General. Containers used for storage of industrial waste shall be designed and constructed to prevent the leakage of liquids. All containers shall be painted and shall prominently display the name and contact information of the CONTRACTOR.

b. SB 1383 Compliance. All containers shall have SB 1383-compliant labels and colors.

c. Cleaning, Painting, Maintenance. CONTRACTOR shall replace, clean or repaint all containers as needed to present a clean appearance as reasonably determined by the City.

## **Section 20. Personnel**

a. Driver Qualifications. CONTRACTOR 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. CONTRACTOR shall provide suitable operational and safety training for all of its employees who operate vehicles or equipment for collection of industrial waste, or who are otherwise directly involved in such collection.

**Section 21. Compliance With Law.**

In providing the services required under this Agreement, CONTRACTOR 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 22. Permits and Licenses.**

CONTRACTOR shall obtain and maintain, at CONTRACTOR's sole expense, all permits and licenses required by any governmental agency to provide the operation required by this Agreement, including, without limitation, a City business license.

**Section 23. Default, Termination.**

a. Default. The CITY shall provide written notice of a material default or failure to comply with any obligation or duty imposed on CONTRACTOR under this Agreement or City ordinance. The City Manager and CONTRACTOR shall thereupon meet and confer in good faith 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, the City Manager shall have the right to terminate this Agreement. If CONTRACTOR 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, as stated above, given by the CITY and CONTRACTOR thereafter fails to diligently continue to take reasonable steps to correct such default, CITY shall then provide notice of termination.

b. Termination. Upon the occurrence of a material breach, failure to cure will result in a notice of termination of this Agreement by the CITY in accord with the following:

The City Manager shall serve written notice, either personally or by registered or certified mail, postage prepaid of the termination of this Agreement, sent to the last place of business of the CONTRACTOR as provided in the notices section, below, and the CONTRACTOR shall cease operation under this Agreement within ten (10) days after receipt of said notice unless CONTRACTOR has requested an appeal hearing before the CITY, pursuant to §1.44.070 of the Stockton Municipal Code, prior to the expiration of the ten (10) day period. In the event CONTRACTOR requests such an appeal hearing, said CONTRACTOR may continue collecting and transporting or disposing of refuse until the CITY has rendered its decision on the termination of this Agreement.

c. Event of Default. The following events shall constitute a material breach

and default under this Agreement:

(1) *Misrepresentation.* Any misrepresentation or disclosure made to the CITY in this Agreement, or any application or document delivered to the City by the CONTRACTOR 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.

(2) *Fraud or Deceit.* CONTRACTOR practices, or attempts to practice, any fraud or deceit upon the CITY.

(3) *Failure to Maintain Insurance Coverage.* CONTRACTOR fails to provide or maintain in full force and affect the Worker's Compensation, liability, or indemnification coverage as required by this Agreement.

(4) *Violation(s) of Regulation.* If the CONTRACTOR violates any permits, orders or filing of any regulatory body having jurisdiction over the CONTRACTOR which violation or non-compliance materially affects the CONTRACTOR's ability to perform under this Agreement, provided that the CONTRACTOR may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred during the pendency of the contestation or appeal, to the extent the CONTRACTOR is able to adequately perform during that period.

(5) *Acts or Omissions.* Any other act or omission by CONTRACTOR which materially violates the terms, conditions, or requirements of this Agreement, City Code, AB 939 and other state requirements, as they may be amended from time to time, or any order, directive, rule, or regulation issued there under and which is not corrected or remedied within the time set in the written notice of the violation or, if the CONTRACTOR cannot reasonably correct or remedy the breach within the time set forth in such notices, if the CONTRACTOR 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) *Challenge to terms of this Agreement.* Challenge of any of the terms herein in a court of law or legislative body. By entering into this Agreement, the CONTRACTOR agrees to all its terms.

(7) *Failure to meet diversion requirement.* CONTRACTOR fails to maintain diversion requirements consistent with CITY Code, AB 939 and the California Green Building Standards Code, 24 CCR, Part 11, for the collection of industrial and solid waste materials within the CITY in each calendar year.

(8) *Collection of Non-Industrial Waste.* If CONTRACTOR collects non-industrial waste:

(i) Except as provided by subsection (iv) below, CONTRACTOR's collection of non-industrial waste as herein provided is a material breach of this Agreement. If CONTRACTOR collects non-industrial waste, in addition to any other remedies the CITY may have, including but not limited to terminating this Agreement, CITY shall impose liquidated damages as provided by subsection 23(d), beginning with the first full or partial day that non-industrial waste was collected and continuing, daily, until the collection of non-industrial waste ceases and CONTRACTOR's equipment is removed from the business.

(ii) In addition to paying liquidated damages, CONTRACTOR shall remove all of CONTRACTOR's equipment and discontinue collection service within two (2) business days after receiving written notice from the Public Works Director or designee ("Director") of the collection of non-industrial waste, except as provided in subsection (iii), below.

(iii) Upon request of CONTRACTOR for a determination whether a particular business is classified "industrial," as guided by or defined herein or by Stockton Municipal Code 8.04.290 as amended, the Public Works Director or designee ("Director") shall, within ten (10) business days after receipt of the request, advise CONTRACTOR in writing of the Director's determination. In making the determination, the Public Works Director or designee shall ascertain whether the City business license classification of the business is "industrial" or "non-industrial" in accordance with section 5.08.050 (Manufacturing, Packing, and Processing) of the Stockton Municipal Code. The Public Works Director or designee shall designate the business "industrial" or "non-industrial" based upon the definitions set forth in Stockton SMC 5.08.050 as amended, and with reference, as necessary, to the business license classification. The Public Works Director or designee shall notify all affected parties of the "industrial" or "non-industrial" designation, including exclusive franchisees and non-exclusive commercial and industrial collectors. CONTRACTOR, exclusive franchisees, and non-exclusive commercial and industrial collectors may appeal the Public Works Director or designee's decision by filing a written appeal with the Public Works Director or designee within ten (10) business days of the decision. The Public Works Director or designee shall render a decision on the appeal within ten (10) business days and notify all affected parties of such decision. The Public Works Director or designee 's appeal decision shall be final.

(iv) Notwithstanding subsections (i), (ii) and (iii), above, if CITY subsequently determines that its original determination that classified a business as industrial was erroneous, then CITY shall notify CONTRACTOR that the business is not industrial and CONTRACTOR shall, within three (3) business days after receipt of said notice ("Grace Period") remove CONTRACTOR's equipment and discontinue the collection service. If the CONTRACTOR removes CONTRACTOR's equipment and discontinues the collection service at the business within the Grace Period, no liquidated damages shall be assessed against CONTRACTOR and the CONTRACTOR shall not be in default under the Agreement. However, if the CONTRACTOR has not removed CONTRACTOR's equipment and discontinued the collection service at the



business within the Grace Period, liquidated damages shall be assessed against the CONTRACTOR by the CITY pursuant to section 23(d), below.

In the case of a breach related to the above sections, except section 23(c)(8), above, and the breach continues for more than thirty (30) calendar days after written notice from the City Manager for the correction thereof, provided that where such breach is subject to cure but cannot be fully cured within such thirty (30) day period, the CONTRACTOR shall not be in default of this Agreement if CONTRACTOR 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.

d. Liquidated Damages. The Parties recognize that if CONTRACTOR fails to perform its obligations, the City and residents of City will suffer damages that are and will be impractical and extremely difficult to ascertain and determine. The parties agree that the liquidated damages as provided hereafter represent a reasonable estimate of the amount of such damages for breach(es) of the provisions of this Agreement, without prejudice to City's right to treat uncorrected non-performance as an Event of Default and subject to termination. Liquidated Damages are paid as damages and not as a penalty.

Notwithstanding any other remedy provided for by this Agreement, CONTRACTOR agrees to pay liquidated damages for each day CONTRACTOR is in breach or violation of any term or provision of this Agreement. Liquidated damages shall be in addition to the obligation of the CONTRACTOR to cure the default or violation as required by section 23 of this Agreement. The number of liquidated damages for each breach or violation shall be one hundred dollars (\$100) for the first day of each breach, two hundred and fifty dollars (\$250) for the second day of each breach and five hundred dollars (\$500) for the third day and for each day thereafter until each breach or violation is cured. These liquidated damages shall be in addition to any other action, including but not limited to termination of the Agreement, that the City may elect to take against the CONTRACTOR for a breach or violation of the Agreement.

Except with respect to violations of section 23(c)(8), above, prior to assessing liquidated damages, and in addition to any other available remedies City may impose, City shall provide written notice to CONTRACTOR of its intention to do so. The notice shall include a brief description of the incident or nonperformance. CONTRACTOR may review (and copy at its own expense) all information in the possession of City relating to the assessment of liquidated damages. THE CONTRACTOR may, within ten (10) working days after receiving the notice, request a meeting with the appropriate City representative. CONTRACTOR may present evidence in writing and through testimony of its employees and others relevant to the incident or nonperformance. The City representative shall provide CONTRACTOR with a brief written explanation of his or her determination regarding each breach prior to authorizing the assessment of liquidated damages. The decision of the City representative shall be final. The assessment of liquidated damages issued by the City shall be made in writing and the CONTRACTOR shall, at its own expense, remit to the City the damages specified in said assessment

within fifteen (15) days thereafter.

With respect to violations of section 23(c)(8) above, liquidated damages may be assessed by the City upon expiration of the applicable cure period.

e. Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, terrorism, fire, flood, strikes, war, epidemics, pandemics, shortage of power or other acts or causes reasonably beyond the control of that party. The party experiencing the force majeure event agrees to give the other party notice promptly following the occurrence of a force majeure event, and to use diligent efforts to re-commence performance as promptly as commercially practicable.

#### **Section 24. Conditions Upon Termination.**

a. In the event the Industrial Waste Agreement is terminated:

(1) CONTRACTOR shall have no right or authority to engage in industrial waste collection, transportation or disposal operations in the CITY.

(2) CONTRACTOR shall, however, remain liable to the CITY for all Contractor fees that would otherwise be payable by CONTRACTOR, for all late payment charges and interest assessed pursuant to Section 7 of this Agreement, for any and all delinquent report charges assessed pursuant to Section 12 of this Agreement, and for any indemnity obligations under Section 16.

(3) CONTRACTOR shall have a continuing obligation to submit to the CITY all reports required by Section 12 of this Agreement which relates to industrial waste collection activities performed by CONTRACTOR up to and including the date of termination.

(4) CONTRACTOR shall allow the industrial waste generators served by CONTRACTOR to arrange industrial waste collection services with a collector authorized to perform such services, without penalty or liability for breach of contract on the part of the generators.

b. In the event this Agreement is terminated, then within the time period specified by the CITY and if directed by the City Manager, CONTRACTOR shall remove all of CONTRACTOR's industrial waste collection containers from all of CONTRACTOR's collection service locations and shall properly divert or dispose of all industrial waste collection in such containers.

c. In the event this Agreement is terminated, then within ten (10) days of such termination or expiration and upon notification by the City Manager to do so, CONTRACTOR shall:

(1) Submit to the City Manager a list of the names and addresses of industrial waste generators in the CITY for which CONTRACTOR provided services as of the date of termination or expiration (i.e., CONTRACTOR's customer list); and

(2) Send written notification to each industrial waste generator on CONTRACTOR's customer list that CONTRACTOR is no longer authorized to provide industrial waste collection in the CITY. Such notification shall be in the form provided by the City Manager and shall be personally delivered or shall be sent by first class mail, postage prepaid, to the customers' billing addresses. CONTRACTOR shall submit to the City Manager an affidavit, signed under penalty of perjury, stating that the required notification has been provided by CONTRACTOR to all of CONTRACTOR's customers in the CITY.

## **Section 25. Notices.**

Except as otherwise provided in this Agreement, all notices required by this Agreement 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: Harry Black, City Manager  
City of Stockton  
425 N. El Dorado Street, 2<sup>nd</sup> Floor  
Stockton, CA 95202

To CONTRACTOR: David Vaccarezza, Owner  
California Waste Recovery Systems, LLC  
175 Enterprise Court, Suite A  
Galt, California 95632

Notice shall be deemed effective on the date personally served or, if mailed, on the second (2<sup>nd</sup>) business day after the date it was postmarked and mailed.

## **Section 26. Relationship of Parties**

The parties intend that the CONTRACTOR shall perform the services required by this Agreement as an independent contractor and not as an officer or employee of the CITY nor as a partner of or joint ventures with the CITY. No employee or agent of the CONTRACTOR shall be deemed to be an employee or agent of the CITY. Except as expressly provided herein, the CONTRACTOR shall have the exclusive control over the manner and means of conducting the industrial waste collection services performed under this Agreement and all persons performing such services. CONTRACTOR 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 the CITY.

CONTRACTOR agrees that this Agreement is not made in the interest of, or on behalf of, any undisclosed person, partnership, association, organization, or corporation. CONTRACTOR has not directly or indirectly colluded, conspired, connived or agreed with any person, partnership, association, organization, or corporation to secure any advantage against the CITY.

### **Section 28. Governing Law**

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

### **Section 29. 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 San Joaquin County, 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, Eastern District of California.

### **Section 30. Agreement Not Assignable**

Any agreement granted is a privilege to be held in trust by the original CONTRACTOR. This Agreement entered by the 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.

### **Section 31. 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 32. CONTRACTOR's Investigation**

CONTRACTOR has made an independent investigation and is satisfied that it

knows the conditions and circumstances surrounding the Agreement, and the responsibilities and duties required by said agreement.

### **Section 33. Notice**

The parties agree that CONTRACTOR shall be entitled to notice of at least one hundred and twenty (120) days prior to the expiration of this Agreement in the event the CITY determines to change the system from a non-exclusive collection system to an exclusive collection system after expiration of the term hereof. The parties acknowledge that this Agreement fulfills the CITY's obligation under Section 49520 through 49524 of the Public Resources Code.

### **Section 34. Entire Agreement**

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

### **Section 35. 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. This Agreement is not intended to create any rights in any third party or parties, notwithstanding the provisions of section 23(c)(8).

### **Section 36. Amendment**

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

### **Section 37. Severability**

The provisions of this Agreement are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

### **Section 38. Authority to Execute**

The undersigned represent and warrant they are each duly authorized by the

parties to execute this Agreement and carry out the duties and responsibilities agreed to herein.

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

ATTEST:  
KATHERINE ROLAND, CMC, CPMC  
INTERIM CITY CLERK

CITY OF STOCKTON, a municipal corporation

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

By: \_\_\_\_\_  
HARRY BLACK, City Manager

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

CALIFORNIA WASTE RECOVERY  
SYSTEMS, LLC

By: \_\_\_\_\_  
ASSISTANT CITY ATTORNEY

By: \_\_\_\_\_  
DAVID VACCAREZZA, President

APPROVED AS TO FORM:  
COUNSEL FOR CONTRACTOR

By: \_\_\_\_\_  
NAME, Title