

**AMENDED AND RESTATED FRANCHISE AGREEMENT
FOR SOLID WASTE COLLECTION, DISPOSAL
AND RECYCLING SERVICES**

THIS FRANCHISE AGREEMENT is made and entered into effective July 1, 2023 (“Effective Date”) between the City of Sutter Creek, a municipal corporation of the State of California, hereinafter referred to as “City”; and ACES WASTE SERVICES, INC., a California corporation, hereinafter referred to as “Contractor” or “ACES”. This Agreement supersedes the previous franchise agreement between the City and Contractor, dated January 1, 2015.

WHEREAS, the public health, safety and welfare, and Public Resources Code § 40059 require measures be taken by the City to provide for collection and disposal of refuse; and,

WHEREAS, Contractor desires to collect and dispose of all solid waste, garbage, rubbish, green waste, organic waste and waste matter including recyclables, accumulated in City and any service area over which it has jurisdiction.

NOW, THEREFORE IT IS HEREBY AGREED between the parties hereto as follows:

ARTICLE A. DEFINITIONS.

1. As used in this Franchise, the terms “collection”, “collection vehicle or equipment”, “garbage”, “litter”, “putrescible”, “recyclable material”, “recycling”, “removal”, “refuse”, “resource recovery”, “rubbish”, “scavenging” and “solid waste” shall have the meaning and be defined as set forth in Article 09.08.010 of the Sutter Creek Municipal Code and any amendments thereto.

ARTICLE B. REFUSE COLLECTION AREA.

1. The collection area for the collection of refuse by Contractor as herein provided is described as follows:

All residential, commercial, and industrial areas within the boundaries of the City of Sutter Creek as they exist on the effective date of this Franchise Agreement, and as they may be hereafter modified or increased by annexation or de-annexation. Territory annexed to the City shall be added to the franchise area granted by this Agreement, and Contractor shall be permitted to adjust rates to be consistent with his corresponding schedule within said area.

ARTICLE C. FRANCHISE PURPOSE, TERM, AND COMMENCEMENT

1. **Exercise of City Rights.** City chooses to exercise its authority under Public Resources Code § 40059, its police power authority under the Constitution of the State of

California, and other applicable law, including the General Ordinances of the City of Sutter Creek, Chapter 9.08, to grant an exclusive franchise for the collection and disposal of all solid waste, garbage, refuse, green waste, organic waste, construction and demolition debris and recyclable materials as more fully set forth herein.

Notwithstanding this grant of franchise, City retains and reserves to itself the full authority to regulate, correct, and control all activities of the franchise, including removal, termination, and suspension.

To the maximum extent allowed by law, City shall provide for franchisee control of all solid waste, garbage, refuse, green waste, organic waste, construction and demolition debris and recyclable materials (“Collection Materials”) upon relinquishment of ownership by placement in the refuse collection and disposal system operated by franchisee.

2. Exclusive Franchise. City grants to Contractor the exclusive right to collect, haul, and dispose of the Collection Materials within City for the period commencing upon the operational date of this Franchise, which is July 1, 2023, and continuing to and including December 31, 2033 (“Initial Term”). The parties shall have the option to extend the Agreement for one additional (5) five-year term (“Extended Term”). The Extended Term shall automatically commence upon the expiration of the Initial Term unless either party gives 180 days’ written notice to the other that it will not exercise the option to extend the Agreement as this paragraph provides.

Contractor shall commence collection, hauling, and disposal operations under this Agreement on the operative date of this Franchise. Upon Franchise expiration or termination of this Agreement for any reason, City shall have the full right and authority to solicit proposals from any and all interested persons for these franchise privileges, without any obligations to or preference for the contractor herein.

ARTICLE D. REPRESENTATIONS, WARRANTIES AND COVENANTS

1. Representations and Warranties of Contractor. Contractor hereby makes the following representations and warranties for the benefit of the City as of the effective date of this Agreement:

- A) Contractor is duly organized and validly existing as a corporation in good standing under the laws of the State of California;
- B) Contractor has full legal right, power, and authority to execute, deliver, and perform this Agreement, and has duly authorized the execution and delivery of this Agreement by all necessary and proper action by its Board of Directors, or by its shareholders, if necessary;
- C) The person signing this Agreement on behalf of the Contractor is authorized to do so, and this Agreement has been duly exercised and delivered by Contractor in accordance with the authorization of its Board

of Directors or by its shareholders, if necessary, and constitutes a legal, valid and binding obligation of Contractor enforceable against Contractor in accordance with its terms;

- D) Neither the execution and delivery by Contractor of this Agreement, nor the performance by Contractor of its obligations hereunder conflicts with, violates, or will result in a violation of any existing applicable law;
- E) Contractor has sufficient financial resources to perform all aspects of its obligations hereunder;
- F) Contractor has the expert, professional and technical capability to perform all of its obligations under this Agreement.

2. Representations and Warranties of the City. The City hereby makes the following representations and warranties to and for the benefit of Contractor as of the effective date of this Agreement:

- A) The City is a California municipal corporation, duly organized and validly existing under the laws of the State of California, with full legal right, power and authority to enter into and perform its obligations under this Agreement;
- B) The Party executing this Agreement on behalf of the City is duly authorized by the City Council to do so. This Agreement constitutes the legal, valid and binding Agreement of the City and is enforceable against the City in accordance with its terms.

3. Contractor's Covenants. Contractor covenants it shall obtain and deliver to City within 15 days of the Effective Date, the following documents;

- A) **Certificates of Insurance.** Contractor shall have furnished the City with satisfactory Certificate(s) of Insurance in the form and according to the provisions of Article F of this Agreement. Such certificates shall be signed by Contractor's insurer, and shall clearly state the types of and amounts of coverage required under Article F, the effective dates and expiration dates of the policies, and all required endorsements.
- B) **Performance Bond.** Unless waived by the City, Contractor shall have provided the City with, and the City shall have accepted, the Performance Bond or Alternative Performance Security as described in Article F of this Agreement.

4. City Option to Terminate. If the foregoing documents have not been delivered to City in satisfactory form within 15 days of the Effective Date of this Agreement, City may terminate this Agreement with no continuing obligations to

contractor and with resort to the rights and remedies provided for in Article M, Section 2 hereof.

ARTICLE E. COMPLIANCE WITH LAW, PERMITS

1. **Compliance with Law.** Contractor shall comply, at its expense, fully and faithfully with all local, state and federal and state laws, ordinances, regulations and permit requirements, as they may be amended from time to time, applicable to its performance under this Agreement or in any way related to Contractor's performance of the services required under this Agreement; including but not limited to local, state, and federal laws, ordinances and regulations relating to collection, disposal and processing of solid waste, recyclables, and yard waste; and laws, ordinances and regulations relating to protection of the environment. Without limiting the generality of the foregoing, Contractor shall, at its sole expense, prepare and complete, or arrange for the preparation and completion, of, any environmental impact report or other environmental reviews required under applicable local, state and federal law for the construction, modification or operation of physical plants, if any, necessary to perform the services provided under this Agreement.

2. **Permits, Authorizations, Licenses.** Contractor shall obtain and shall maintain throughout the term of this Agreement, at Contractor's sole expense, all necessary permits, licenses, inspections and approvals required for Contractor to perform all the work and services agreed to be performed by Contractor pursuant to this Agreement. Contractor shall show proof of such permits, licenses, or approvals upon the request of the City.

3. **Short-Lived Climate Pollutants Compliance.** 14 C.C.R. §17402 et seq., pursuant to California Public Resources Code §42652 et seq., requires local governments to reduce landfill disposal of organic waste by 75% by 2025 and to increase edible food waste recovery by 20%, subject to certain rural jurisdiction exemption(s). The City has obtained a requisite rural jurisdiction exemption, under 14 C.C.R. §18984.11 and/or Section 18984.12, from the State of California. Said exemption is valid until the later of December 31, 2026 or until 5 years after California reaches its goal of 50% organics reduction. Contractor shall coordinate with City, prior to the expiration of City's exemption, to develop a City-wide organic waste reduction and recycling program, ready for implementation at the expiration of the exemption period. The program shall be compliant with the then current applicable regulations in place at the time of implementation.

ARTICLE F. INDEMNIFICATION AND INSURANCE

1. **Contractor's Duty to Indemnify City.** To the maximum extent allowed by law, Contractor shall protect, defend, indemnify and hold harmless the City, its agents, officers, employees, successors, and appointed and elected officials (collectively, "Indemnitees") from and against all liabilities, claims, suits, allegations, actions, damages, interest, penalties, fines, and/or causes of action (collectively "claims") arising

from or in connection with Contractor's exercise of the franchise, or which are caused by Contractor's failure to comply with laws legally binding on Contractor which are described in Article E. Contractor shall to the maximum extent allowed by law, indemnify and hold harmless the Indemnitees from and against all costs of investigations, litigation, negotiation or alternative dispute resolution; counsel fees' expenses incurred in obtaining expert testimony and the attendance of witnesses; and all other expenses and liabilities incurred in connection with the defense of any action or proceedings brought thereon, and from and against any orders, judgments or decrees which may be entered thereon, except to the extent such claims arise solely out of the active negligence or willful misconduct of the City. In the event of legal challenge to the issuance of this franchise, City shall be responsible for defense of any legal action arising from allegation of procedural irregularities in the granting of the franchise. Franchisee shall be responsible for, and shall indemnify and hold City harmless from, any legal action arising from the award of this franchise to franchisee, including any allegation of unfair business practices in the obtaining of the franchise, save and except for any procedural irregularities in granting the franchise. The City shall provide Contractor with prompt notice of any claims, and Contractor may assume the defense of any claim. Contractor shall have authority to settle any claim, provided such settlement fully releases and extinguishes Indemnitees' alleged liability under the claim. The provisions of this subsection shall survive the termination of this Agreement.

2. AB939 Indemnification.

- A) To the maximum extent allowed by law, Contractor agrees to indemnify and hold harmless the City against all fines and/or penalties imposed by CalRecycle based on Contractor's failure to comply with laws, regulations, or permits issued or enforced by CalRecycle or the lead enforcement agency or caused or contributed to by Contractor's failure to perform obligations under this Agreement. This indemnity obligation is subject to the limitations and conditions in California Public Resource Code section 40059.1 but is enforceable to the maximum extent allowable by that section. This indemnity shall survive the termination or earlier expiration of this Agreement. Contractor shall have no obligation, however, to hold harmless or indemnify City from a claim if it is determined by a court of competent jurisdiction that such claim was caused by the sole negligence or willful misconduct of City.

3. **Insurance.** Irrespective of, and in addition to, the indemnity and hold harmless provisions set forth above, Contractor shall secure and maintain throughout the course of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The cost of insurance, as of the commencement date of this franchise, shall be included in the Contractor's fixed price for provision of service hereunder.

- A) **Comprehensive General Liability Insurance.** Contractor, at its own expense, shall maintain liability and property damage insurance and for the period covered by this Agreement in the amount of Two Million dollars (\$2,000,000) per occurrence combined single limit coverage. The amount of this coverage may be increased upon mutual Agreement of the parties, and the costs of such increases shall be considered during City Council review of any rate increases sought by Contractor. Such coverage shall include, but not be limited to, protection against claims arising from: Bodily and personal injury, including death resulting therefrom; damage to property resulting from activities contemplated under this Agreement; product liability; and claims relating to completed operations. The City, its officers, employees, appointed and elected officials, agents and volunteers (collectively “Insured Parties”) shall be named as additional insureds for all liability arising out of: activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; and automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Any failure to comply with reporting or other provisions of the policies including breaches of warranties, shall not affect coverage provided to the Insured Parties. The policy shall stipulate that this insurance is primary insurance and that no other insurance carried by the City will be called upon to contribute to a loss suffered by Contractor hereunder. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the City and shall provide that written notice must be given to the City thirty days prior to policy cancellation by certified mail, return receipt requested. Contractor shall notify the City within ten days of its knowledge of any material change in coverage.
- B) **Automobile Liability Insurance.** Contractor, at its own expense, shall maintain automobile liability insurance for the period covered by this Agreement in the amount of Two Million Dollars (\$2,000,000) per occurrence combined single limit coverage for personal and bodily injury and property damage. The amount of this coverage may be increased upon mutual agreement of the parties; the costs of such increases shall be considered during City Council review of any rate increases sought by Contractor. The City may require increases in the amount of coverage on an annual basis proportionate to inflation in the regional Consumer Price Index. Such coverage shall include, but shall not be limited to, the use of owned and non-owned automobiles. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the City and shall provide that written notice must be given to the City thirty days prior to policy cancellation by certified mail, return receipt requested. Contractor shall notify the City within ten days of its knowledge of any material change in coverage.

- C) **Worker Compensation Insurance.** Contractor, at its own expense, shall carry and maintain full Worker Compensation Insurance, as required by the California Labor Code and Employer's Liability insurance with limits as required by law. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the City. Such policies shall provide that written notice must be given to the City thirty days prior to cancellation by certified mail, return receipt requested. Contractor shall notify the city within ten days of its knowledge of any actual or impending material change in coverage under insurance policies or self-insurance programs.
- D) **Non-renewal or Cancellation.** Upon notification of receipt by the City of a notice of cancellation, material change in coverage, or expiration of policy(ies), Contractor shall file with the City a certified copy of a new or renewal policy(ies) and certificates for such policy(ies) satisfactory to the City.
- E) **Failure to Comply.** If at any time during the term of the Agreement, Contractor fails to comply with the provisions of Article F (3), the City may, in addition to any other remedy available to City, take out and maintain, at Contractor's expense, such insurance as the City may deem proper and charge the cost thereof to the Contractor.
- F) **Attachments Incorporated.** Copies of the initial certificates of insurance and policy endorsements are attached hereto and incorporated herein by reference as Attachment 1.

ARTICLE G. SERVICES TO BE PERFORMED BY CONTRACTOR

1. **General.** The work to be performed and services to be provided by Contractor includes, but is not limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the work and provide the services described, at the times and in the manner required by this Agreement. The enumeration of, and specification of requirements for, particular items of labor, supervision, equipment, materials or supplies shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not. Contractor shall perform the work and provide the services pursuant to this Agreement in a thorough and professional manner so that the residents and businesses within City are provided reliable, courteous, and high-quality service at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this article, whether such other aspects are enumerated elsewhere in the Agreement or not.

ARTICLE H. COLLECTION OPERATION DUTUES

1. **Frequency of Collection.** Contractor shall make at least one weekly collection of all refuse from all residential, commercial and institutional subscribing customers within the collection area unless otherwise approved by the City. All residential collection services are to be provided curbside. The pickup days and schedule shall be designated by Contractor and shall not be changed without at least 30 days prior written notice to the City and the customer affected by any such change.

2. **Equipment.** The equipment shown on the Equipment List, attached hereto as Attachment 3 and incorporated herein by reference, shall be maintained at all times during the term hereof, unless said equipment is replaced with comparable or better equipment. All equipment used by Contractor for the collection and hauling of garbage shall be of the watertight “compactor” type truck. Equipment used exclusively for the collection of refuse may be of any suitable type but shall be provided with coverings to adequately contain the refuse within the truck body. Contractor shall maintain all trucks in a clean and sanitary condition, and shall have clearly visible an insignia and telephone number on each truck designating the name of the Contractor. Contractor shall clean the inside of the trucks regularly after dumping, and shall keep the outside of the bodies free from dirt and filth.

3. **Hours of Collection.** Refuse collections shall generally commence at 6:00 a.m., but Franchisee may, if reasonably required, commence pickup at 5:00 a.m. in residential areas. Such collection may be made in any commercial and industrial districts, except the “downtown” area, at any time subject to such reasonable modifications of collection periods as may be imposed by the City. Collections in the “downtown commercial area” shall occur prior to 12:00 p.m. No regularly scheduled residential collections shall be made on Saturdays or Sundays, and no regularly scheduled collections may be made on Sundays without prior notification to the City. All collections shall be made as quietly as possible.

4. **Standard of Care.** Contractor shall not litter in the process of making collection from any residence or business, nor allow any refuse to blow or fall from any vehicle used for collections. Contractor shall repair or replace at its expense containers damaged as a result of its negligent handling thereof, reasonable wear and tear excepted. Contractor shall replace lids or covers on containers immediately after emptying.

5. **Customer Complaints and Business Office.** Contractor shall supply city with copies of all complaint reports and information as to their disposition upon request. All complaints shall be processed within 24 hours of receipt between Monday and Thursday evening. Complaints received on Friday or a weekend shall be processed on the following Monday. Contractor agrees to establish and maintain at a designated location a satisfactory business office in which its business operations shall be conducted, and public access during normal business hours is provided. Nothing contained herein shall prevent Contractor from discontinuing service for customer nonpayment.

6. Special Cleanups. Contractor shall provide a Spring and Fall Cleanup annually, to subscribers with accounts in good standing, at no additional cost. Contractor will provide the City and each subscriber with literature explaining the scope and schedule of the special cleanups. The service shall only be valid for subscribers with accounts in good standing, and up to 1 cubic yard of waste per subscriber per Special Cleanup.

7. Disposal Operations.

a. All refuse collected in the area described herein by Contractor shall be disposed of at either its Pine Grove Transfer Station or Western Amador Recycling Facility (“WARF”) and ultimately deposited at the Keifer Landfill operated by the County of Sacramento or at such other approved place as the parties may agree. Contractor may also direct haul refuse to the Keifer Landfill without deposit at the Transfer Station or the WARF. Refuse will only be disposed of in landfill sites having all the necessary permits and approvals of any administering jurisdiction.

b. All recyclable materials will be consolidated at either its Pine Grove Transfer Station or Western Amador Recycling Facility (“WARF”) and ultimately processed further at Cal-Waste Recovery Systems in the City of Galt, or at such other approved recycling/processing facility.

8. Expected Performance Level. Contractor understands and acknowledges that every detail of this solid waste handling operation is important to the City for the protection of the health and safety of its residents. Therefore, Contractor agrees to and shall develop and maintain a high and uniform level of orderly and uninterrupted service, cleanliness, appearance, well maintained equipment and responsible training and business techniques which will protect and enhance customer needs and contribute to the service reputation of the City and this franchise system. Accordingly, Contractor agrees:

- A) To hire and carefully supervise efficient, competent, sober, and courteous operators and employees for the conduct and operation of the business;
- B) To maintain all equipment shown on the Equipment List (Attachment 3), to conform with public health standards of cleanliness and neatness, including regular disinfecting and cleaning of each truck.
- C) To purchase and maintain said equipment in a manner capable of satisfying all of the City’s standards and meeting all customer needs. Normal downtime for repairing and service of said equipment is not a material failure to perform the work.
- D) Contractor shall have a contingency plan, incorporated herein as Attachment 4. Such plan shall include the ability to bring additional or replacement equipment and/or personnel to the franchise area, in order to perform the required work in the event of a deficiency.

- E) Contractor shall comply, as a part of Contractor's duties hereunder, with all State, Federal, Regional, or other appropriate governmental authorities, rules and regulations relating to resource reduction and/or recycling.

ARTICLE I. PERFORMANCE BOND

1. Performance Bond or Alternative Performance Security. Contractor shall provide the City with security acceptable to the City to assure Contractor's prompt and faithful performance of its obligations under this Agreement, by procuring and providing the City with a fully prepaid surety bond (performance bond) in the amount of \$250,000 payable to the City, executed as surety by a corporation authorized to issue surety bonds in the State of California and which corporation is acceptable to the City. At the City's sole option, contractor may satisfy this requirement by providing as alternative performance security a fully prepaid irrevocable letter of credit issued by a financial institution acceptable to the City. Such performance bond or alternative security shall be provided for the maximum term obtainable for such bond or alternative security, and should be continued by periodic renewal at the option of the Surety, provided that Surety shall give six-months' notice in writing to the City of either cancellation or its intent not to renew the bond or alternative security. Franchisee shall not be relieved of duties pursuant to this article as a result of any such cancellation or its intent not to renew the bond or alternative security. Franchisee shall not be relieved of duties pursuant to this article as a result of any such cancellation or failure of Surety to renew a performance bond or alternative security. In the event of such a cancellation or expiration, contractor shall obtain a substitute performance bond or alternative security meeting the conditions set forth in this article or as subsequently amended by the City Council, prior to the cancellation or expiration of any performance bond or alternative security. The Performance Bond or alternative Performance Security may be waived by the City, at its sole discretion, assuming performance is satisfactory to the City.

2. City's Right to Draw Against, Contractor Obligation to Replenish. The City shall have the right to draw against the performance security in the event of a material breach or default by Franchisee or failure of Franchisee to substantially perform any obligation under this agreement. Franchisee hereby waives and relinquishes any and all right of protest if City, after a finding of material breach or failure to substantially perform by the City Council, elects to draw upon the performance bond or other alternative security. Such funding shall only be made after a public hearing of which Franchisee shall be duly noticed at which Franchisee will be allowed an opportunity to be heard. It is understood that franchisee's waiver does not bind the principal/obligor issuing the bond.

3. Termination of Performance Bond. Under no circumstances, other than City's waiver, shall Contractor change, or allow the expiration of the Performance Bond or alternative Performance Security provided under this Agreement without written notice to the City and without written authorization from the City to allow such change or expiration. In the event of Contractor's default, the Performance Bond shall remain in

effect until the City or its designated agent has completed all of Contractor's obligations under the Agreement.

ARTICLE J. RATES.

1. **Rates.** For all services required to be performed under this Franchise, Contractor shall not charge any amount in excess of the rates fixed pursuant to the Rate Adjustment Methodology described below. The second year of this contract will be treated as Rate Year 2 for the purposes of the Rate Adjustment Process described below. A list of Current Services, Rates, and Special Charges are incorporated herein by reference and included in Attachment 2.

2. **Fuel Surcharge.** Contractor shall have the right to implement a fuel surcharge as a direct pass through in the customer rates. The fuel surcharge may be implemented once per calendar quarter if the average price for diesel fuel paid by the Contractor in the previous quarter increases by ten percent (10%) or more above the baseline rate established the preceding year during the Rate Adjustment Process as described in Section 3, below. The surcharge shall be determined using the formula set forth in Attachment 6. Ratepayers' bills will clearly indicate the additional charge as a fuel surcharge. Once the average quarterly diesel fuel price paid by Contractor falls below the ten percent (10%) threshold established by this section, the fuel surcharge shall be removed from the ratepayers' bills. The implementation of quarterly surcharges shall be determined during the months of July, October, January and April.

3. **Rate Adjustment Methodology.** The Rate Adjustment Process will be on a three-year cycle with a cost-based adjustment (Detailed Rate Adjustment) in Rate Year 1 followed by Indexed Rate Adjustments (Refuse Rate Index) in Rate Year 2 and Rate Year 3. The cycle will then repeat with a Detailed Rate Adjustment in Rate Year 4 and so forth in successive years.

Detailed Rate Adjustments under the Agreement shall occur in the same years, and simultaneously with, detailed rate adjustments that occur in accordance with Contractor's separate Franchise Agreement with the County of Amador, if Contractor is providing franchise service to the County. The Parties recognize that coordinating the City's and County's detailed rate reviews in this manner will provide efficiency in the review process, achieve an economy of scale in the review, and result in lower review costs. For purposes of this Agreement, and to conform the City's rate-review schedule to the County's schedule, a Detailed Rate Review shall not be conducted more than once every three (3) Calendar Years. A request for a detailed rate review shall be made in writing by Contractor at least four (4) months prior to the beginning of the Fiscal Year in which the results for the detailed rate review are to be applied. Contractor shall pay all reasonable costs for each detailed rate review whether incurred by Contractor or City, and the cost of such a detailed rate review shall be an allowable Pass-Through Cost. Notwithstanding the foregoing, or any provision of the Agreement to the contrary, the parties shall mutually have the right to waive a Detailed Rate Review for any year for which such a review would be required. If the parties mutually elect to waive a Detailed

Rate Review, any adjustment in rate for that year shall be adjusted pursuant to the Refuse Rate Index, as the Agreement provides. If the parties mutually elect to waive a Detailed Rate Review for a particular year, a Detailed Rate Review shall not occur until the next regularly scheduled year in which a Detailed Review would be authorized under this Section (i.e., every third year, after two successive years of adjustments per the Refuse Rate Index).

- A) DETAILED RATE REVIEW. A Detailed Rate Review will be performed in each Rate Year that requires a Detailed Rate Adjustment.

1. Non-Allowable Expenses

- a) Fines.
- b) Liquidated Damages.
- c) Penalties and Violations.
- d) Income Taxes.
- e) Charitable or Political Contributions (including CRRC PAC Expense; CRRC dues other than PAC expenses are an “Allowable Expense”).
- f) Good Will.
- g) Employee free services in excess of normal weekly garbage service and limited roll off service (debris box/employee/year).
- h) Related party charges in excess of that which would otherwise reasonably be charged by an unrelated party.
- i) Long-term rental or lease charges for collection vehicles or equipment which are greater than the cost of acquisition (although normal interest/financing charges and costs borne by the leasing/rental company that would normally be the responsibility of the hauling company if they owned the assets directly. These costs include but are not limited to license fees, property taxes, insurance, repairs and maintenance).
- j) Costs that are not reasonable or necessarily incurred in the performance of the services provided in accordance with the Franchise Agreement.
- k) Unless specified in this section, all other reasonable or necessary expenses incurred by ACES in the performance of the services provided in accordance with the Franchise Agreement are allowable.

2. Pass Through Costs and Expenses (Not Subject to Profit)

- a) Third-party Transfer, Processing and Disposal Expenses (ACES material transport costs are an “Allowable Expense”).
- b) Host Fees, Franchise Fees, and Administration Fees.
- c) Regulatory or Other Fees.

- d) Third-party Rate Review Costs. The cost of third-party review shall be passed through to ratepayers over a period of three years, commencing in the fiscal year that follows final completion of the DRR, and recovered in equal quarterly installments during each fiscal year.
- e) Reimbursement for expenses of Proposition 218 compliance.

3. Other Allowable Expenses. Reasonable Franchise-related Marketing Expense, Promotional Expense and Travel Expenses are Allowable Expenses.

4. Variance Analysis. Upon express written request by City, ACES shall provide line-item revenue and expense variance analysis for prior 4 years (since last Detailed Rate Review) and provide explanation of significant variances as part of Detailed Rate Application.

5. Other Terms Related To Profit. Eighty-Seven point Five percent (87.5%) Operating Ratio contingent upon the City's compliance with all terms and conditions of the Franchise Agreement and any and all other related requirements. Determination of compliance shall rest solely with the City.

6. Basis for Rate Adjustment Calculation. The rate adjustment for the Current Year is to be based on the Rate Adjustment Methodology applied to the results for the Prior Year (e.g., FYE 2022 Actual results will serve as the basis for 2023 Rate Adjustment).

7. Schedule for Annual Rate Adjustments

- a) Detailed and Indexed Rate Applications due to City by June 15th
- b) Detailed Rate Review to be completed, and City Council action, by October 15th.
- c) Rate Adjustment to become effective on January 1st.

8. Other Terms Related to Detailed Rate Adjustment

- a) ACES to provide Income Statements annually including Indexed Rate Adjustment Rate Years.
- b) Income Statement to be audited for Detailed Rate Review year only (with exception of Material Sales Revenues which City reserves the right to have audited every year).
- c) Notwithstanding the Schedule for Annual Rate Adjustments, if an extraordinary or unanticipated event should occur, including change in law, new or increased/decreased governmental or regulatory fees or tip fees or other event that materially affects ACES' compensation and over which they have no control, then

ACES or City may request an Interim Compensation Adjustment. At the City's discretion, the Interim Compensation Adjustment may be incorporated into the base rate, but not more frequently than quarterly. ACES shall clearly document the reason for the proposed adjustment, calculation of the proposed cost adjustments and supporting documentation. The City reserves the right to determine what constitutes a material affect that would trigger an Interim Compensation Adjustment as a result of events other than a change in law, increase/decrease in governmental or regulatory fees or tip fees.

- d) There are to be no Balancing Accounts associated with the Rate Adjustment process. Either party may request a full cost-based rate application (Detailed Rate Review) in place of an Indexed Rate Application. If allowed, any associated third-party cost in excess of \$5,000 is to be paid by the party making the request.
 - e) ACES is to identify any revenues and/or expenses that are allocated and identify the specific allocation methods. City reserves the right to review any such allocations for reasonableness.
 - f) City reserves the right to review ACES' franchised operations to obtain assurances that ACES is operating in a cost-effective manner. City recognizes that there are many reasonable and cost-effective ways of providing solid waste services and the City is not interested in dictating the specific collection methodologies, the City's concern is that the chosen methods are reasonable and can be reasonably justified by ACES.
 - g) Any third-party costs of future rate reviews are to be paid by ACES and are to be allowed as a Pass Through Cost not subject to profit.
- B) **INDEXED RATE ADJUSTMENT.** An Indexed Rate Adjustment will occur in Rate Year 2 and 3 and as set forth above. An Indexed Rate Adjustment will be based upon the Refuse Rate Index ("RRI").
- 1) Rate Year 2
 - a) RRI to be applied to the total of each applicable category (e.g., labor, fuel, R&M, depreciation, Other: from detailed rate review Income Statement (Rate Year 1) to generate Year 2 Indexed Expenses that will serve as the basis for the Year 2 Rate Adjustment Calculation.
 - b) Disposal expenses to be projected based on best available information.
 - c) Material Sales revenues to be set to prior year actual revenues during RRI years to account for commodity price fluctuations.

City reserves the right to require that Material Sales revenue be audited during RRI years.

2) Rate Year 3. RRI to be applied to Rate Year 2 Indexed Expenses that will serve as the basis for the Rate Year 3 Adjustment calculation. Material Sales revenue to be set to prior year actual revenues during RRI years to account for commodity price fluctuations.

3) Other Terms Related To Refuse Rate Index

- a) Indexed Adjustment for “All other” costs to be set at 100% of CPI rather than 75% as originally proposed.
- b) Consideration to be given to the use of CA No 2 Diesel Fuel Index or other proposed index (e.g., CA No 2 Diesel Ultra Low Sulfur Fuel) mutually agreed upon by ACES and City.
- c) Material Sales Revenues to be set to prior year actuals during RRI years to account for commodity price fluctuations.

ARTICLE K. FRANCHISE FEES

1. Payment. In consideration of the franchise privileges granted by City, and in recognition of the reasonable costs City incurs to maintain its public streets, comply with AB 939, and administer this Agreement, Contractor shall pay to City on a quarterly basis a franchise fee of seven percent (7%) of the gross revenues from Contractor’s operations in the City annually. Franchise fees shall be paid to and received by City on or before the last business day of each quarter. Any late franchise fee payment shall be subject to a 1.5% per month late fee. In addition, Contractor shall pick up all City garbage and refuse at the locations and in the frequencies detailed in Attachment 5, without charge. The City may adjust the franchise fee from time to time during the term of this Agreement. Any adjustment to the franchise fee shall be considered a pass-through adjustment, and as such shall be recoverable to Contractor through an adjustment to the rates.

2. Profits/Losses from Recycling Operation. In addition to franchise fees paid on the basis of gross revenues derived from solid waste collection and disposal services, Contractor shall include revenues, if any, and expenses from the collection and sale of recyclable materials generated from ACES’ Sutter Creek recycling program as separate line items on its operating statements.

3. City Administration. In addition to the Franchise Fee required under this Article, Contractor shall pay the City an annual Administration Fee to cover the City’s administrative, legal, and other costs associated with or arising from the City’s performance of the City’s duties under this Agreement if it is determined by the City that the Franchise Fees paid did not fully provide for any and all costs that were reasonably related to the City’s performance of its duties under this Agreement for that fiscal year. On or before the last day of a fiscal year, the City shall provide Contractor a written

statement identifying and summarizing any expenses it incurred, with sufficient proof included, in accordance with this section during that fiscal year. Contractor shall thereupon pay the total sum of such expenses within the following fiscal year in quarterly installments at the same time and in the same manner as franchise fees are paid . The Administrative Fee shall not exceed \$5,000.00 per year.

ARTICLE L. REPORTS AND FINANCIAL AUDITING

1. **Financial Reporting.** Contractor shall submit to the City quarterly and annual year-end financial statements which clearly identify Contractor's profits or losses. Such statements shall be prepared pursuant to standard bookkeeping procedures, said procedures being acceptable to the City. Quarterly statements shall be provided within 30 days of the end of the quarter. Financial statements as determined to be necessary by the City Council shall be required in the event of any request by contractor for a rate increase. Contractor shall also provide City with quarterly financial reports showing the performance of Contractor's recycling programs. Contractor agrees to and shall keep true and correct records and books of account from which the City may readily determine the status and progress of the Franchisee's business operation. The Contractor further agrees that City, by any of its authorized personnel, may inspect such books and records in Contractor's business office at reasonable times. City shall have the right to examine equipment orders, customer accounts and other related records, as deemed necessary by City.

2. **Annual Reports.** Upon request by the City, within one hundred twenty (120) days after the close of Contractor's fiscal year (Contractor's fiscal year ends December 31st each year), Contractor shall submit to the City a written annual report, in a form approved by the City, including but not limited to, the following information:

- A) A summary of the previous year's (or in the case of the initial year, the initial year's) activities including, but not limited to, services begun or discontinued during the reporting year, and the number of customers for each class and level of service.
- B) Contractor shall also submit annual revenue statements to the City setting forth quarterly franchise fees and the basis for calculation thereof, certified by an officer of the contractor. Said statement shall include revenues received under this Agreement, outstanding accounts receivable, bad debt write-offs and recoveries, and regulatory fees submitted to the City.
- C) A list of Contractor's Officers and member of its Board of Directors.

3. **AB939 Requirements.** During the term of this Franchise Agreement, Contractor shall submit "Quarterly Station Notification to County or Regional Agency" to County of Amador as lead agency for the AB939 Regional Agency, with a courtesy copy submitted to City, and more often if required by law, information reasonably

required by City to meet its reporting obligations imposed by AB939, and the regulations implementing AB939, in a manner approved by City. Contractor agrees to submit said courtesy copy to the City in electronic form if reasonably requested by City. Contractor agrees to render all reasonable cooperation and assistance to the City in meeting the requirements of City's Source Reduction and Recycling Element and Non-Disposal Facility Element.

4. **Waste Audits.** Grantee shall conduct waste audits at the request of City where such waste audits are necessary to enable City to comply with the requirements of State or Federal law. The results of such audits will be memorialized on forms approved by the City. The purpose of the audit will be to identify volume and characteristics of Solid Waste being generated by the customer. A copy of the audit shall be provided by the Contractor to the City, and to Contractor's own files.

5. **Customer Lists.** Upon request by City, Contractor shall immediately furnish to City current copies of customer lists, pick-up addresses and corresponding parcel numbers and service levels. City acknowledges that information pertaining to the accounts or customer list is confidential information which City will protect from public disclosure, except in the event of substantial default by Contractor, or where disclosure is required by court order.

Franchisee shall use all reasonable efforts to observe and protect the rights of privacy of customers. Information identifying individual customers, or the composition or content of a customer's refuse or recyclables shall not be revealed to any person, private agency or company, unless upon the request of federal or state law enforcement personnel, the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Franchisee from preparing, participating in, or assisting in the preparation of waste characterization studies or other reports requested by the City under the Franchise Agreement or required or requested by any governmental agency.

Grantee shall not market or distribute outside the normal course of its business mailing lists with the names and addresses of customers.

6. **Financial Auditing.** At City's request, annual financial statements shall be reviewed and certified, at Contractor's expense, by a certified public accountant mutually approved by City and Contractor. The form of the review shall be acceptable to City. Such reviews shall be conducted initially as a limited scope and screen review, which examines the validity of representative sampling of financial data. If significant discrepancies are found in the initial screening review, a more comprehensive audit shall be conducted at contractor's expense.

7. **Failure to Report.** The refusal, failure or neglect of the grantee to file any of the reports required, or to provide material information to City, or the intentional inclusion of any materially false or misleading statement or representation made knowingly by Contractor shall be deemed a material breach of the Franchise Agreement,

and shall subject the Contractor to all remedies, legal or equitable, which are available to the City under the Franchise Agreement.

ARTICLE M. DEFAULT, TERMINATION, WAIVER.

1. Default and Automatic Termination. Contractor shall be deemed to be in default under this Franchise and all rights and privileges granted to contractor shall terminate upon thirty (30) days written notice and this Agreement shall be terminated automatically if:

- A) Contractor's collection or disposal service remains inoperative for any period of five (5) or more consecutive business days, unless due to force majeure.
- B) Contractor fails to submit required franchise fee payments to City or maintain all required policies of insurance.
- C) Contractor: (i) becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property; or (ii) being or becoming a party to a voluntary or involuntary bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Franchisee under the laws of any jurisdiction, which proceeding, if involuntary in nature, has not been dismissed within sixty (60) days; or (iii) taking any action approving of, consenting to, or acquiescing in, any such proceeding; or (iv) being a party to the levy of any distress, execution or attachment upon the property of the Franchisee which shall substantially interfere with the Franchisee's performance hereunder. In the event of the Franchisee being or becoming insolvent or bankrupt, the Franchisee shall: (i) assume or reject this Agreement within sixty (60) days after the order for relief; (ii) promptly cure any failure to perform its obligations or any event of default arising under this Agreement for reasons other than the event set forth in this paragraph; (iii) provide adequate assurance of future performance under this Agreement under 11 USC Section 365(b)(1)(c), or any successor provision of the Federal Bankruptcy Code. The foregoing provisions shall not prevent the City from requesting such other conditions to assumption of this Agreement, as it deems reasonable and necessary; and (iv) Franchisee concludes any other transfer of this franchise except as authorized by Article N of this Agreement.
- D) Contractor fails to perform any material condition, covenant or performance requirement in the Agreement, as established by the City Council findings of fact and a decision supported thereby.

2. Duties Upon Termination. In the event of termination of this Franchise Agreement for any reason, Contractor shall:

- A) Within Thirty (30) days of written notice from City, cease all operations hereunder; and
- B) Immediately cause all business records, customer lists, addresses, billing data and other pertinent operating information to be transferred to City; and
- C) Immediately pay all amount of fees (including attorney's fees and court costs) which may be owing and appoint City or any of its officers as its attorney-in-fact to execute all instruments and to do all things necessary to accomplish the operations of garbage collection and disposal on behalf of the public; and
- D) Permit City to provide collection service by any means available to City, and pay any and all costs incurred by City over and above the amount of the performance bond (defined in Article I herein). In such event, City shall also have the right to the use and possession of all items of operating equipment used in the business of Contractor within the franchise area, for the purpose of providing garbage collection service. This provision shall be in addition to any other remedies available to City at law or in equity to compensate it for losses caused by Contractor's breach or to compel compliance with this Franchise. In such event, City shall hold harmless, indemnify and defend Franchisee from any liability proximately cause by City's use and operation of such equipment and shall provide liability insurance coverage satisfactory to Franchisee in the reasonable exercise of its discretion.
- E) Notwithstanding the foregoing, and at City's sole election, in the event of termination, Contractor shall provide all services pursuant to this Agreement for a period of three months following the effective date of termination, or for a lesser period as determined by City.

3. Waiver. The waiver of any default or defaults shall not operate as a waiver of any successive defaults and all rights of the City on default by contractor shall continue, notwithstanding one or more waivers.

4. System and Services Review. To provide for technological, economic, and regulatory changes in Solid Waste collection, to facilitate recycling programs, to promote competition in the Solid Waste Industry, and to achieve a continuing, advanced Solid Waste collection system, the following system and services review procedures are hereby established:

- A) Public Hearing. At City’s sole option, City may hold a public hearing on or about the first anniversary date of the Franchise Agreement to review Franchisee’s collection systems and services. Subsequent system and services review hearing may be scheduled each two (2) years thereafter.

- B) Franchisee’s Report. Sixty (60) days after receiving notice from the City, Franchisee shall submit a report to City indicating the following:
 - 1) Performance of all Solid Waste collection and recycling services provided by Franchisee.
 - 2) Changes recommended to improve the City’s ability to meet the goals of AB939.
 - 3) Any specific plans for provisions of such new services by the Franchisee along with the estimated expenses and adjustments to rates necessary to compensate Franchisee for providing such services.

- C) Service Review Topics. Topics for discussion and review at the system and services review hearing shall include, but shall not be limited to, services provided, customer complaints, rights of privacy, amendments to the Franchise Agreement, developments in the law, and new initiatives for meeting or exceeding AB939’S goals and regulatory constraints.

ARTICLE N. ASSIGNMENT.

1. **Right of Assignment.** Neither this Franchise, nor any rights, privileges or duties hereunder, shall be assignable or transferable in whole or in part by the Contractor by stock transfer, formation of a new partnership, corporation or entity or any other conveyance mechanism without prior written approval by City Council Resolution after the following findings of fact:

- A) Capacity of the proposed assignee as to financial competency, performance and service, record, and equipment inventory;

- B) Guarantee of performance by assignee based upon financial security and insurance and bonding capability;

- C) An assignment or transfer under this section shall not include a transaction(s) with an Affiliate of Contractor. Nor shall an assignment or transfer under this section include any transfer to an intervivos or testamentary trust for estate planning purposes.

2. **Transfer Fee.** Any application for a franchise transfer shall be made in a manner prescribed by the City Manager. The application shall include a reasonable transfer fee in an amount to be set by the City Council to cover the anticipated cost of all

direct administrative expenses including reasonable attorney fees necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses.

3. **Non-recoverable Costs.** These Franchise Transfer Fees are over and above any Franchise Fees specified in this Franchise Agreement and shall not be recoverable costs for rate setting purposes.

ARTICLE O. LIABILITY FOR BREACH.

In the event of any defaults on the part of Contractor, City may elect to permit Contractor to cure and correct the same pursuant to a written notice from City specifying the nature of the default, the time within which to cure and any procedures required. Upon receipt of any such notice to cure a default, contractor shall pay to City all damages, costs, and expenses, including reasonable attorney's fees incurred by City as a result of the default. City may adopt and impose a schedule of monetary penalties for each occurrence of a default or violation or infraction of any provision of this Franchise. Such schedule shall be adopted by City Council Resolution, following a public hearing conducted for the purpose of considering said schedule.

ARTICLE P. NOTICES

All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery when delivered personally to the parties as specified below or three (3) days following the date deposited in the United States Mail. All notices or other communications sent by mail shall be sent postage prepaid by certified first class mail, return receipt requested, to the address specified below:

If to the City, address to:

City Manager
18 Main Street
Sutter Creek, CA 95685

If to the Contractor, address to:

Paul Molinelli, Sr.
ACES Waste Services INC.
6500 Buena Vista Road
Ione, CA 95640

ARTICLE Q. SEVERABILITY.

Each article, part, term, and provision of this Franchise shall be considered severable. If for any reason any article, part, term or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation of a

court or agency having valid jurisdiction, such determination shall not impair the operation or affect the remaining portions, articles, parts, terms or provisions of this Franchise and the latter will continue to be given full force and effect and bind the parties hereto. The invalid article, part, term, or provision shall be deemed not to be a part of this Franchise.

ARTICLE R. ENTIRE FRANCHISE.

This Franchise and the documents and applicable state and local laws referred to herein shall be the entire, full, and complete Franchise between the parties and shall supersede to obligate the Contractor to perform accordingly hereunder.

1. **Force Majeure.** Franchisee shall not be in default under this Franchise Agreement in the event that the collection, transportation and/or disposal services of Franchisee are temporarily interrupted or discontinued for reasons outside the reasonable control of the Franchisee, including but not limited to riots, wars, sabotage, civil disturbance, insurrection, explosions, health pandemics, natural disasters such as floods, fires, earthquakes, disturbances, excessive snow, acts of God, or other similar or dissimilar events which are beyond the reasonable control of Franchisee. Other events do not include the financial inability of the Franchisee to perform or the failure of the Franchisee to obtain any necessary permits or licenses from other governmental agencies of the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Franchisee.

2. **Independent Contractor.** Franchisee is an independent contractor and not an officer, agent, servant, or employee of City. Franchisee is solely responsible for the acts and omissions of its officers, agents, employees, grantees, and subgrantees, if any. Nothing in this Franchise Agreement shall be construed as creating a partnership or joint venture between City and Franchisee. Neither Franchisee nor its officers, employees, agents or subgrantees shall obtain any rights to retirement or other benefits which accrue to City's employees.

3. **Right of Entry.** Franchisee shall have the right, until receipt of written notice revoking permission to pass is delivered to Franchisee, to enter or drive on any private street, court, place, easement, or other private property for the purpose of collecting or transporting Solid Waste pursuant to this Franchise Agreement.

4. **Law to Govern: Venue.** The law of the State of California shall govern this Franchise Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Amador.

5. **Successors and Assigns.** Subject to the other terms and conditions herein, this Agreement shall be binding upon and inure to the benefit of the respective successors, permitted assigns, administrators and trustees of the City and Franchisee.

6. **Fees and Assigns.** Franchisee shall not, nor shall it permit any agent, employee or subgrantee employed by it to request, solicit, demand or accept, either directly or indirectly, any compensation or gratuity for the collection of Solid Waste otherwise required to be collected under this Franchise Agreement.

7. **Entire Agreements and Amendment.** No amendment of this Franchise Agreement shall be valid unless in writing duly executed by the Parties. This Franchise Agreement contains the entire Agreement between the Parties and no promises, representations, warranty, or covenant not included in this Agreement have been or are relied upon by either party. This Franchise Agreement is intended to supersede and replace all prior agreements between the parties, except as otherwise specifically provided in this Agreement.

8. **Compliance with Franchise Agreement.** Grantee shall comply with those provisions of the City Code which are applicable, and with any and all amendments to such applicable provisions during the term of this Franchise Agreement, provided that such provisions are not inconsistent with the terms of this Franchise Agreement.

9. **Police Powers.** Nothing in this Agreement is intended to or may limit City's authority pursuant to its Police Powers.

10. **Exhibits Incorporated.** Exhibits are attached to and incorporated in this Franchise Agreement by reference.

11. **Joint Drafting.** This Franchise Agreement was drafted jointly by the Parties to the Franchise Agreement; no presumption shall arise from the identity of the drafter.

12. **Judicial Review.** Nothing in this Agreement shall be construed to prevent either party from seeking redress to the courts for the purposes of legal review of administrative proceedings in regard to rate setting or City's actions taken pursuant to this Agreement, or for the purpose of interpreting or enforcing the provisions contained in this Agreement. Provided, however, that prior to the institution of any such judicial proceedings the parties shall first meet and confer informally in order to resolve any such dispute. The parties may utilize the services of a mutually acceptable mediator for purposes of dispute resolution. In that event, each party shall pay for the costs of one-half of the mediation.

ARTICLE S. MISCELLANEOUS

1. **Compliance with Hazardous Waste Laws.** The Parties hereto recognize that federal, state and local agencies with responsibility for defining Hazardous Waste and for regulating the collection, hauling or disposing of such substances, are continually

providing new definitions, tests and regulations concerning these substances. Under this Agreement, it is Franchisee's responsibility to keep current with the regulations and tests on such substances and to identify such substances and to comply with all federal, state and, to the extent not inconsistent with this Agreement, local regulations concerning such substances. Franchisee shall make every reasonable effort to prohibit the collection and disposal of Hazardous Waste in its operation.

2. **Non-Collection Tags.** When solid waste is not collected from any solid waste customer, Franchisee shall notify its customer why the collection was not made and shall attach tags approved by the City to the waste not so collected which clearly identify the reasons for such non-collection.

3. **No Collection or Disposal of Hazardous Waste.** Except as provided in this subsection, Franchisee shall not collect, handle, process, transport, arrange for the transport of or dispose of Hazardous Waste pursuant to this Franchise Agreement.

4. **Enforcement.** Contractor may protect the rights granted to it by the provisions of this Agreement and may enforce the provisions of this Agreement against any persons or businesses, without limitation, through any legal means necessary. Notwithstanding Contractor's right to independently enforce its rights granted herein through any legal means necessary, City shall retain all of its rights with regard to pursuing or not pursuing remedies concerning violations or alleged violations of City's solid waste ordinance or other ordinances.

ARTICLE T. PROPOSITION 218

1. **Proposition 218 Compliance.** City shall be responsible for complying with all requirements of XIID of the California Constitution and all requirements of Government Code Section 53750 *et seq.* (collectively, "Proposition 218"), to the extent compliance with Proposition 218 is required. Contractor shall cooperate with City in providing the records and documentation, including customer and mailing lists with corresponding assessor parcel numbers, necessary to provide all notices and information required to conduct majority protest proceedings under Proposition 218. In conducting such proceedings, City shall consult with Contractor, as necessary, and shall keep Contractor reasonably informed of the progress concerning each protest hearing City conducts. However, City shall at all times act independently of Contractor in administering majority protest proceedings and shall at all times exercise its own judgment in ascertaining and applying the requirements of Proposition 218.

2. **Reimbursement for Expenses of Proposition 218 Compliance.** Following the completion of any proceeding under Proposition 218, Contractor shall reimburse City for all expenses incurred in providing notices to affected ratepayers and conducting the majority protest proceeding required by that initiative. Such expenses shall include the reasonable costs that City administration, staff, and counsel incur in providing or administering the notices, hearing, and counting of protests required. For Purposes of Article J, Section 2 of the Agreement, such expenses shall be treated as pass-through costs and expenses.

3. **Reductions in Service Following Majority Protest.** Following a majority protest to any requested rate increase, the Parties shall promptly meet and confer to discuss the impact to Contractor on its ability to provide further services under the Agreement. As part of their efforts to meet and confer, the Parties shall discuss modifications to the services Contractor provides, or reductions in the levels of service it provides, that would allow Contractor to continue to receive a reasonable profit under the Agreement. Should the Parties agree on modifications and/or reductions in service, they shall enter into a separate amendment to the Agreement to memorialize the agreed upon terms. In no event, however, shall any modification in service or reduction in the service level be authorized in violation of any minimum performance standard governing the collection of solid wastes and recycled materials, including but not limited to any provision of the Integrated Waste Management Act (“AB 939”), Titles 14 and 27 of the California Code of Regulations, and Chapter 9.08 of the Sutter Creek Municipal Code.

ATTACHMENTS:

- | | |
|--------------|--|
| Attachment 1 | Copies of the initial certificates of insurance, police endorsements |
| Attachment 2 | List of Current Services, Rates, and Special Charges |
| Attachment 3 | Equipment List |
| Attachment 4 | Contingency Plan |
| Attachment 5 | Pick Up Locations |
| Attachment 6 | Fuel Surcharge |

AGREED AND ACCEPTED:

CITY OF SUTTER CREEK

ACES WASTE SERVICES, INC.

Interim City Manager

President

Date: _____

Date: _____

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AGREED AND ACCEPTED:

CITY OF SUTTER CREEK

ACES WASTE SERVICES, INC.

Jandra Spellman
Interim City Manager

Paul Moloney Jr
President

Date: 20 June 2023

Date: 6-20-2023