

CONTRACT #: 2021-xxxxx  
CONTRACT NAME: Commercial Waste Collection Franchise  
CONTRACT PROJECT #: 15005861  
DEPARTMENT: Public Works  
DIVISION: Recycling and Solid Waste

**CITY OF SACRAMENTO  
FRANCHISE AGREEMENT FOR  
COMMERCIAL SOLID WASTE COLLECTION**

**THIS AGREEMENT** is made at Sacramento, California, by and between the CITY OF SACRAMENTO, a charter city and municipal corporation ("CITY"), and

*Name of FRANCHISEE*  
*Address*  
*Phone / Fax / E-mail*

("FRANCHISEE"), as of the Effective Date, \_\_\_\_\_, as defined below.

**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 collection within their jurisdiction; and

Chapter 13.24 of the Sacramento City Code authorizes the City Council to enter into non-exclusive franchise agreements for the collection, transportation, and disposal services of commercial solid waste, recyclable materials, and organic materials; and

A non-exclusive franchise to operate, maintain, and provide the collection of solid waste, recyclable materials, and organic waste along, across, and over City public streets and rights of way promotes the public health, safety, and welfare by promoting permanence and stability among the businesses wishing to provide such services and accountability to the City for compliance with current and future state mandates; and

The City has determined that it is in its best interests to provide for commercial solid waste collection, transportation, and disposal services by means of non-exclusive franchisees; and

The City has determined that the grant of such franchise to the Franchisee is in the public interest; and

The State of California has found and declared that the amount of solid waste generated in California, coupled with diminishing disposal capacity and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement a recycling and waste management program. Through the enactment of various legislation, including the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), the State has directed local agencies, to promote diversion and reduction in landfill disposal and to maximize the use of feasible waste reduction, reuse, recycling, and composting options in order to reduce the amount of solid waste that must be disposed.

NOW, THEREFORE, in consideration of the mutual promises hereafter set forth, CITY and FRANCHISEE agree as follows:

### **Section 1: Agreement Documents**

All exhibits and documents attached or referred to in this Agreement are incorporated as if set forth herein, including:

1. Exhibit A – Scope of Services
2. Exhibit B – Compensation
3. Exhibit C – Insurance

If there is a conflict between the terms and conditions of any document prepared or provided by the FRANCHISEE and made a part of this Agreement and the other terms or conditions of the Agreement, the other terms and conditions of the Agreement control.

### **Section 2: Grant and Acceptance of Franchise**

1. By this Agreement, CITY hereby grants to FRANCHISEE a non-exclusive commercial solid waste collection franchise authorizing FRANCHISEE to engage in the business of collecting, transporting, and disposing of commercial solid waste accumulated or generated within the City of Sacramento and to use the public streets and rights of way for such purpose.
2. This grant is pursuant to the disclosures, statements, and information contained in FRANCHISEE's Application for City Franchise Agreement.
3. FRANCHISEE hereby accepts the Franchise on the terms and conditions set forth in this Agreement, and all related ordinances and resolutions.

### **Section 3: Representatives and Notice**

CITY Representative for this Agreement is:

*Name/Title*  
*Address*  
*Phone/Fax/E-mail*

The FRANCHISEE Representative for this Agreement is:

*Name/Title*  
*Address*  
*Phone/Fax/E-mail*

Unless otherwise provided in this Agreement, all FRANCHISEE questions and correspondence pertaining to this Agreement must be addressed to the CITY Representative. All CITY questions and correspondence must be addressed to the FRANCHISEE Representative.

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

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

FRANCHISEE shall maintain functional Electronic Mail (Email) during the entire duration of the Agreement and provide CITY with such Email address for CITY communication to FRANCHISEE. FRANCHISEE shall notify CITY of any change in its functional Email address in writing via US Mail or Email communication to CITY.

#### Section 4: Term and Scope of Services

1. **Services.** Subject to the terms and conditions set forth in this Agreement, FRANCHISEE shall provide the services described in attached Exhibit A ("Scope of Services").
2. **Commencement Date.** The Commencement Date of this Agreement shall be July 1, 2021, and shall be the date FRANCHISEE commences the provision of collection, transportation, processing, and disposal services described by this Agreement. During the time between the Effective Date and Commencement Date, FRANCHISEE shall perform any and all activities necessary to commence services on the Commencement Date.
3. **Term.** The Term of this Agreement shall be one (1) year, unless extended by CITY pursuant to Subsection 4 below.
4. **Option to Extend Term.** CITY, at its sole discretion, shall have the option to extend this Agreement four (4) times by one (1) year for a total of five (5) years, pursuant to the terms and conditions of this Agreement. If CITY elects to exercise the option, it shall give written notice of its election not less than ninety (90) calendar days prior to the initial expiration date or extended termination date of this Agreement.

#### Section 5: Compensation

1. Compensation under this Agreement shall be in accordance with Exhibit B ("Compensation") and Attachment 1 to Exhibit B, or Exhibit B and any attachments as modified by the CITY in accordance with express provisions in this Agreement and chapter 13.24 of the Sacramento City Code.
2. FRANCHISEE shall maintain for five years following expiration or termination of this Agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.

#### Section 6: Conditions of Effectiveness

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

1. **Accuracy of Representations.** The representation and warranties made by FRANCHISEE in its Application for Franchise are true and correct on and as of the Effective Date of this Agreement.
2. **Effectiveness of City Council Action.** The City Council shall have taken action approving this Agreement prior to or on the Effective Date, provided that no restraining order of any kind has been issued.
3. **Furnishing of Insurance.** FRANCHISEE has furnished evidence of the insurance requirements set forth in the attached Exhibit C.
4. **Company Status.** FRANCHISEE is a business duly organized, validly existing, and in good standing under the laws of the State of California. It is qualified to transact business in the

State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

5. **Company Authorization.** FRANCHISEE has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of FRANCHISEE (or the members, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The person signing this Agreement on behalf of FRANCHISEE has authority to do so.
6. **Agreement Will Not Cause Breach.** To the best of FRANCHISEE's knowledge, after reasonable investigation, neither the execution or delivery of this Agreement nor the performance of this Agreement by FRANCHISEE: a) conflicts with, violates, or results in a breach of any applicable law; or, b) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any Agreement or instrument to which FRANCHISEE is a party or by which FRANCHISEE or any of its properties or assets are bound, or constitutes a default thereunder.
7. **No Litigation.** To the best of FRANCHISEE's knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against FRANCHISEE with an unfavorable decision, ruling, or finding, in any single case or in the aggregate, that would adversely affect the performance by FRANCHISEE of its obligations in this Agreement or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of FRANCHISEE or any surety guaranteeing FRANCHISEE's performance under this Agreement, which has not been waived by CITY in writing.
8. **No Adverse Judicial Decisions.** To the best of FRANCHISEE's knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Agreement and may subject this Agreement to legal challenge.
9. **Ability to Perform.** FRANCHISEE possesses the business, professional, and technical expertise to manage, collect, transport, treat, store, and dispose of the solid waste and to manage, collect, transport, store, and process recyclable materials and organic materials, and FRANCHISEE possesses the equipment, facility, and employee resources required to perform this Agreement.
10. **FRANCHISEE's Statements.** The FRANCHISEE's application and any other supplementary information submitted to CITY, which CITY has relied on in awarding and entering this Agreement, do not: a) contain any untrue statement of a material fact; or b) omits a material fact that would make any stated information misleading.
11. **FRANCHISEE's Investigation.** FRANCHISEE has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. FRANCHISEE has taken such matters into consideration in entering this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.
12. **Non-Discrimination in Employee Benefits.** This Agreement may be subject to Sacramento City Code chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. A summary of the requirements, entitled "Requirements of the Non-Discrimination in Employee Benefits Code (Equal Benefits Ordinance)," can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>

FRANCHISEE acknowledges and represents that FRANCHISEE has read and understands the requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.54. If requested by CITY, FRANCHISEE shall promptly provide any documents and information required by CITY to verify FRANCHISEE's compliance.

FRANCHISEE's violation of Sacramento City Code chapter 3.54 constitutes a material breach of this Agreement, for which CITY may terminate the Agreement and pursue all available legal and equitable remedies.

13. **Considering Criminal Conviction Information in the Employment Application Process.** This Agreement may be subject to the requirements of Sacramento City Code chapter 3.62, Procedures for Considering Criminal Conviction Information in the Employment Application Process. A summary of the requirements, entitled "Ban-The-Box Requirements," can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>

The Ban-The-Box Requirements are applicable to certain contracts with CITY in an amount of \$250,000 or more (either initial value or total value after amendment) or if the total value of all FRANCHISEE's contracts with CITY is \$250,000 or more over a 12-month period.

FRANCHISEE acknowledges and represents that FRANCHISEE has read and understands these requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.62. If requested by CITY, FRANCHISEE shall promptly provide any documents and information required by CITY to verify FRANCHISEE's compliance. FRANCHISEE shall require applicable subcontractors to fully comply with all applicable requirements of Sacramento City Code chapter 3.62 and include these requirements in all subcontracts covered by Sacramento City Code chapter 3.62. FRANCHISEE's violation of Sacramento City Code chapter 3.62 constitutes a material breach of this Agreement, for which CITY may terminate the Agreement and pursue all available legal and equitable remedies.

14. **Local Business Enterprise Program.** The Local Business Enterprise Program Participation Requirements ("LBE Participation Requirements") may be applicable to this Agreement. A summary of the requirements, entitled "LBE Participation Requirements," can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>

FRANCHISEE acknowledges and represents that FRANCHISEE has read and understands these requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.60. If requested by CITY, FRANCHISEE shall promptly provide any documents and information required by CITY to verify FRANCHISEE's compliance. FRANCHISEE shall require applicable subcontractors to fully comply with all applicable requirements of Sacramento City Code chapter 3.60 and include these requirements in all subcontracts covered by Sacramento City Code chapter 3.60.

FRANCHISEE's violation of Sacramento City Code chapter 3.60 constitutes a material breach of this Agreement, for which CITY may terminate the Agreement and pursue all available legal and equitable remedies.

## **Section 7: Compliance with Laws**

FRANCHISEE shall, at all times and at its sole cost and expense, observe and comply with all applicable

Federal, State, regional, and City laws, regulations, rules, and ordinances, including those of other states, cities, or counties which may have jurisdiction over any service provided by FRANCHISEE under this Agreement.

### **Section 8: Governing Laws and Jurisdiction**

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in the Sacramento County Superior Court, Sacramento, California or in the United States District Court for the Eastern District of California, as applicable.

### **Section 9: Licenses and Permits**

1. FRANCHISEE shall possess and maintain all necessary licenses, permits, certificates, and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by CITY, including a City Business Tax Certificate and any required certification issued by the California Secretary of State. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the suspension or termination of this Agreement by CITY.
2. FRANCHISEE further certifies to CITY that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. FRANCHISEE certifies that it shall not contract with a subcontractor that is so debarred or suspended.

### **Section 10: Performance Standards**

FRANCHISEE shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to FRANCHISEE'S services. FRANCHISEE shall assign only competent personnel to perform on its behalf under this Agreement.

### **Section 11: Ownership of Work Product**

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by FRANCHISEE provided hereunder shall be the exclusive property of CITY and shall be delivered to CITY upon completion of the services authorized hereunder. FRANCHISEE may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by CITY. CITY recognizes that all technical data, evaluations, plans, specifications, reports, and other work products are instruments of FRANCHISEE'S services and are not designed for use other than what is intended by this Agreement.

### **Section 12: Status of Franchisee - Independent Contractor**

1. It is understood and agreed that FRANCHISEE (including FRANCHISEE'S employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Neither FRANCHISEE nor FRANCHISEE'S assigned personnel will be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to FRANCHISEE under the provisions of this Agreement; and as an independent contractor, FRANCHISEE hereby indemnifies and holds

CITY harmless from any and all claims that may be made against CITY based upon any contention by any third party, including any state or federal agency, that an employer-employee relationship exists by reason of this Agreement or by the reason of the nature or performance under the Agreement.

2. It is further understood and agreed by the parties hereto that FRANCHISEE in the performance of its obligation hereunder is subject to the control or direction of CITY as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by FRANCHISEE for accomplishing the results. To the extent that FRANCHISEE obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use will be at FRANCHISEE's sole discretion based on FRANCHISEE's determination that the use will promote FRANCHISEE's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that FRANCHISEE use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement. As used in this Agreement, "sole discretion" or "sole judgment" means that the party authorized to exercise its discretion or judgment may do so based on an unfettered assessment of its own interests, without considering how its decision affects the other party, and unconstrained by the implied covenant of good faith and fair dealing.
3. If, in the performance of this Agreement, any third persons are employed by FRANCHISEE, such person shall be entirely and exclusively under the direction, supervision, and control of FRANCHISEE. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by FRANCHISEE, and CITY shall have no right or authority over such persons or the terms of such employment.
4. It is further understood and agreed that as an independent contractor and not an employee of CITY, neither the FRANCHISEE nor FRANCHISEE'S assigned personnel shall have any entitlement as a CITY employee, right to act on behalf of CITY in any capacity whatsoever as agent, nor to bind CITY to any obligation whatsoever. FRANCHISEE shall not be covered by worker's compensation; nor shall FRANCHISEE be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by CITY to employees of CITY.
5. It is further understood and agreed that FRANCHISEE must issue W-2 and 941 Forms for income and employment tax purposes, for all of FRANCHISEE'S assigned personnel under the terms and conditions of this Agreement.

### **Section 13: FRANCHISEE Not an Agent**

Except as CITY may specify in writing, FRANCHISEE and FRANCHISEE's personnel have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. FRANCHISEE and FRANCHISEE's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.

### **Section 14: Conflict of Interest**

FRANCHISEE covenants that neither it, nor any officer or principal of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the CITY's interests or that would in any way hinder FRANCHISEE's performance under this Agreement. FRANCHISEE further covenants that in the

performance of this Agreement, no person having any such interest will be employed by it as an officer, employee, agent, or subcontractor, without the City's written consent.

FRANCHISEE agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the City's interests during the performance of this Agreement. If FRANCHISEE is or employs a former officer or employee of the CITY, FRANCHISEE and any former City officer or employee shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission, or committee.

### **Section 15: Confidentiality of CITY Information**

During performance of this Agreement, FRANCHISEE may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special, and unique assets of the CITY.

FRANCHISEE agrees to protect all CITY Information and treat it as strictly confidential, and further agrees that FRANCHISEE shall not at any time, either directly or indirectly, divulge, disclose, or communicate in any manner any CITY Information to any third party without the CITY's prior written consent.

In addition, FRANCHISEE must comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by FRANCHISEE of this section is a material violation of this Agreement and shall justify legal and equitable relief.

### **Section 16: Franchisee Information**

1. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by FRANCHISEE under this Agreement. In this Agreement, the term "information" means and includes: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. FRANCHISEE shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
2. FRANCHISEE shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by FRANCHISEE under this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify FRANCHISEE not later than ten days after CITY is served with any such claim, action, lawsuit, or other proceeding. However, CITY's failure to provide notice within the ten-day period does not relieve FRANCHISEE of its obligations hereunder, which survive any termination or expiration of this Agreement.
3. All proprietary and other information received from FRANCHISEE by CITY, whether received in connection with FRANCHISEE's proposal to CITY or in connection with FRANCHISEE's



performance, will be disclosed upon receipt of a request for disclosure, in accordance with the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to FRANCHISEE of any request for the disclosure of such information.

FRANCHISEE will then have five days from the date it receives notice to petition the court for a protective order to prevent the disclosure of the information. FRANCHISEE shall have sole responsibility for defense of the actual "trade secret" designation of such information.

4. The parties understand and agree that any failure by FRANCHISEE to respond to the notice provided by CITY and seek a protective order, in accordance with the provisions of subsection C, above, constitutes a complete waiver by FRANCHISEE of any rights regarding the information designated "trade secret" by FRANCHISEE, and the information will be disclosed by CITY in accordance with the Public Records Act.

### **Section 17: Emergency/Declared Disaster Requirements**

If an emergency is declared by the City Manager, or if any portion of the City is declared a disaster area by the county, state, or federal government, this Agreement may be subjected to increased usage. FRANCHISEE shall serve the CITY during a declared emergency or disaster, subject to the same terms and conditions that apply during non-emergency/non-disaster conditions. The compensation set forth in this Agreement will apply, without markup, regardless of the circumstances. If FRANCHISEE is unable to fulfill the terms of the Agreement because of a disruption in its routes or service, then FRANCHISEE shall provide proof of the disruption. Acceptable forms of proof will include, but are not limited to, a letter or notice from FRANCHISEE's source stating the reason for the disruption.

### **Section 18: Indemnity**

1. Indemnity: FRANCHISEE shall defend, hold harmless, and indemnify CITY, its officers, and employees, and each and every one of them, from and against all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, and expenses of every type and description, whether arising on or off the site of the work or services performed under this Agreement, including any fees and costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including Liabilities for personal injury or death, damage to personal, real, or intellectual property, damage to the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by FRANCHISEE, any subcontractor (including lower-tier subcontractors) or agent of FRANCHISEE, their respective officers and employees, and anyone else for whose acts of omissions any of them may be liable, whether or not the Liabilities (i) are caused in part by a party indemnified hereunder, or (ii) are litigated, settled, or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage, or expense, to the extent arising from the active negligence or willful misconduct of, or defects in design furnished by, CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the supervision and control of FRANCHISEE or any subcontractor (including lower-tier subcontractors) or agent of FRANCHISEE.
2. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement will not affect or limit any of

CITY's rights under this Section, nor will the limits of any insurance limit the liability of FRANCHISEE hereunder. This section will not apply to any intellectual property claims, actions, lawsuits, or other proceedings subject to the provisions of FRANCHISEE Information above.

3. Survival. The provisions of this section will survive any expiration or termination of this Agreement.

## **Section 19: Insurance**

Without limiting FRANCHISEE's indemnification, FRANCHISEE shall maintain in force at all times during the term of this Agreement and any extensions or modifications, insurance as specified in Exhibit C. It is the responsibility of FRANCHISEE to notify its insurance advisor or insurance carrier regarding coverage, limits, forms, and other insurance requirements specified in Exhibit C. Failure to maintain insurance as required in this Agreement may be grounds for termination of this Agreement.

## **Section 20: Debarment Certification**

1. Pursuant to 2 CFR, Part 200, and applicable Executive Orders, the CITY is restricted in its ability to contract with certain parties that are debarred, suspended, or otherwise excluded or ineligible for participating in Federal assistance programs or activities. By signing this Agreement, FRANCHISEE warrants and certifies under penalty of perjury under the laws of the State of California that FRANCHISEE, including any owner, partner, director, officer, or principal of the FRANCHISEE, or any person in a position with management responsibility or responsibility for the administration of federal funds:
  - (a) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency;
  - (b) Has not within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, or other criminal felony;
  - (c) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above;
  - (d) Has not, within a three-year period preceding this certification, had one or more public contracts (federal, state, or local) or transactions terminated for cause or default;
  - (e) Has not been notified, within a three-year period preceding this certification, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied. Federal taxes are considered delinquent if the tax liability has been finally determined and the taxpayer is delinquent in making payment, as defined in Section 52.209-5 of the Federal Acquisition Regulations.
2. FRANCHISEE further warrants and certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency. Any exceptions to the warranties and certifications in this Section must be disclosed to the CITY.

3. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining FRANCHISEE's responsibility. Disclosures must indicate to whom exceptions apply, the initiating agency, and dates of action.
4. CITY will review the Federal Government's System for Award Management Exclusions maintained by the General Services Administration for eligibility, prior to the execution of this Agreement. FRANCHISEE shall provide immediate written notice to the CITY if, at any time prior to execution, FRANCHISEE learns this certification is erroneous or has become erroneous by reason of changed circumstances. If it is later determined that FRANCHISEE's warranties and certification in this Section were erroneous, the CITY may terminate this Agreement for default.

## **Section 21: Assignment**

1. FRANCHISEE acknowledges that this Agreement involves rendering a vital service to commercial solid waste generators within the City of Sacramento, and that CITY has franchised FRANCHISEE to perform the services specified herein based on: (1) FRANCHISEE'S experience, skill, and reputation for conducting its solid waste collection in a safe, effective and responsible fashion, at all times in keeping with applicable waste management laws, regulations and good solid waste management practices, and (2) FRANCHISEE's financial resources to maintain the required equipment and to support its obligations to CITY under this Agreement. CITY has relied on each of these factors, among others, in choosing the FRANCHISEE to perform the services to be rendered under this Agreement.
2. This Agreement is a privilege to be held in trust by FRANCHISEE. A franchise granted by CITY shall not be transferred, sold, leased, assigned, or relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the prior approval of the Sacramento City Council ("CITY Council"). This restriction includes the transfer of ownership of the Agreement, or a majority of the ownership or control of the FRANCHISEE, or the conveyance of a majority of the FRANCHISEE's stock to a new controlling interest. This Agreement shall become void upon the abandonment of FRANCHISEE. CITY Council shall not unreasonably withhold approval of a franchise assignment, provided that such assignment does not unreasonably impact competition and the assignee is qualified to perform its obligations as required by this Agreement and any implementing City law, regulation, rule, or ordinance.
3. FRANCHISEE shall promptly notify the Solid Waste Manager in writing in advance of any proposed assignment, sale, or transfer. In the event the CITY Council approves of any assignment, sale, or transfer, said approval shall not relieve FRANCHISEE of any of its obligations or duties under this Agreement unless this Agreement is modified in writing to that effect.

## **Section 22: Amendment and Waiver**

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon CITY unless agreed in writing by the CITY.

## **Section 23: Successors**

Subject to the provisions of section 21, this Agreement shall bind the successors of CITY and FRANCHISEE in the same manner as if they were expressly named.

#### **Section 24: Time**

Time is of the essence in the performance of this Agreement. FRANCHISEE shall devote the necessary time and effort to its performance under this Agreement. Neither party will be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

#### **Section 25: Interpretation**

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

#### **Section 26: Solid Waste Manager**

As used in this Agreement, "Solid Waste Manager" shall mean the Integrated Waste General Manager of the Recycling and Solid Waste Division, City of Sacramento Department of Public Works or his/her designee. Solid Waste Manager shall administer this Agreement on behalf of CITY. FRANCHISEE shall meet and confer with the Solid Waste Manager to resolve differences, implement, and execute the requirements of this Agreement.

#### **Section 27: Disputes**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, FRANCHISEE shall continue without delay to carry out all its responsibilities under this Agreement unless the Agreement is otherwise suspended or terminated in accordance with chapter 13.24 of the Sacramento City Code or the Termination provisions of this Agreement. CITY shall not be required to make payments for any services that are the subject of this dispute resolution process until such dispute has been mutually resolved by the parties. If the dispute cannot be resolved either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

#### **Section 28: Default, Termination**

1. **1. Default.** Except for the occurrence of Force Majeure as described in paragraph 4 of this section, in the event of any material failure or refusal of FRANCHISEE to comply with any obligation or duty imposed on FRANCHISEE under this Agreement or the City Code or related ordinances, resolutions, or administrative rules, the CITY may provide notice of a default pursuant to the provisions of chapter 13.24 of the Sacramento City Code provided it is a situation where there is the ability to cure the default.
2. The following events shall constitute a material breach under this Agreement:
  - A. *Misrepresentation.* Any misrepresentation or disclosure made to CITY by FRANCHISEE in connection with or as an inducement to entering this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
  - B. *Fraud or Deceit.* If FRANCHISEE practices, or attempts to practice, any fraud or deceit

upon CITY.

- C. *Failure to Maintain Insurance Coverage.* If FRANCHISEE fails to provide or maintain in full force and effect the Worker's Compensation, liability, or insurance coverage as required by this Agreement.
  - D. *Violations of Regulation.* If FRANCHISEE violates any permits, orders or filing of any regulatory body having jurisdiction over FRANCHISEE which violation or non-compliance materially affects FRANCHISEE'S ability to perform under this Agreement, provided that FRANCHISEE may contest any such orders as set forth in Chapter 13.24 of the Sacramento City Code, in which case no breach of the Agreement shall be deemed to have occurred during the pendency of the contestation or appeal, to the extent FRANCHISEE is able to adequately perform during that period.
  - E. *Acts or Omissions.* Any other act or omission by FRANCHISEE which materially violates the terms, conditions, or requirements of this Agreement; resolutions, administrative rules, or the City Code; the California Integrated Waste Management Act of 1989 (as codified in Public Resources Code section 40000 et seq.), as it may be amended from time to time; or any order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if FRANCHISEE cannot reasonably correct or remedy the breach within the time set forth in such notices, if FRANCHISEE should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- 3. Termination. Upon the occurrence of a material breach, the CITY may have the right to terminate this Agreement pursuant to the provisions in chapter 13.24 of the Sacramento City Code.
  - 4. Force Majeure. The performance of this Agreement may be discontinued or temporarily suspended in the event of Force Majeure. FRANCHISEE shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if FRANCHISEE'S performance is prevented or delayed by Force Majeure. Force Majeure means acts of God including landslides, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, or government restraint. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances, and litigation, including appeals, shall be entirely within the discretion of FRANCHISEE and FRANCHISEE may make settlement thereof at such time and on any such terms and conditions as it may deem to be advisable, and no delay in making such settlement shall deprive FRANCHISEE of the benefit of this section.
  - 5. Notice of Termination. The CITY shall serve written notice in accordance with chapter 13.24 of the Sacramento City Code, either personally or by registered or certified mail, postage prepaid of the termination of a Franchise under this Agreement to the last place of business of FRANCHISEE.

## **Section 29: Conditions Upon Termination**

- 1. In the event this Agreement is terminated:
  - A. FRANCHISEE shall have no right or authority to engage in commercial solid waste collection, transportation, or disposal operations within the City.

- B. FRANCHISEE shall, however, remain liable to CITY for any and all Franchise Fees that would otherwise be payable by FRANCHISEE, for any and all late payment charges and interest assessed, for any liquidated damages assessed pursuant to Exhibit B – Compensation or Attachment 1 to Exhibit B of this Agreement and for any and all delinquent report charges assessed pursuant to chapter 13.24 of the City Code.
  - C. FRANCHISEE shall have a continuing obligation to submit to CITY all reports required by Section 30 of this Agreement and chapter 13.24 of the City Code relating to commercial solid waste or recycling activities performed by FRANCHISEE up to and including the date of termination.
2. In the event this Agreement is terminated, then, within the time period specified by CITY, FRANCHISEE shall promptly remove all of FRANCHISEE's commercial solid waste and recyclables containers from all of FRANCHISEE's collection service locations and shall properly dispose of all solid waste or recyclables in such containers.

### **Section 30: Reports**

1. FRANCHISEE shall submit quarterly tonnage reports on or before the first day of the second calendar month immediately following the reportable quarter and shall be submitted as required in CITY Code section 13.24.280 or as otherwise amended, in a format as required by the Solid Waste Manager.
2. FRANCHISEE shall submit quarterly generator data in an excel spreadsheet that includes, but is not limited to, the following required fields:
- A. Generator account number;
  - B. Business name or entity being provided service;
  - C. Generator type (Multifamily or Business);
  - D. Address of service location;
  - E. Phone number of service location (if available);
  - F. Billing address of business or entity being provided service (if different than service location);
  - G. Name and phone number of business or entity point of contact; and,
  - H. Collection service level (trash, recycling and/or organics) and frequency.
- CITY shall provide FRANCHISEE with the required report format of such submittal as required by the Solid Waste Manager as directed in CITY Code section 13.24.280 or as otherwise amended.
3. FRANCHISEE shall, on a monthly basis, submit data of generators that are not in compliance with recycling or organic material recycling requirements in an excel spreadsheet that includes, but is not limited to, the following required fields:
- A. Generator account number;
  - B. Business name or entity being provided service;
  - C. Generator type (Multifamily or Business);
  - D. Address of service location;
  - E. Phone number of service location (if available);

- F. Billing address of business or entity being provided service (if different than service location);
- G. Name and phone number of business or entity point of contact; and,
- H. Generator's compliance with recycling or organic material recycling requirements.

CITY shall provide FRANCHISEE with the required report format and due date of such submittal as required by the Solid Waste Manager.

- 4. FRANCHISEE shall submit progress reports on the implementation of the FRANCHISEE'S Diversion Plan as provided for in the application form completed by FRANCHISEE and as directed by the Solid Waste Manager pursuant to CITY Code section 13.24.280 A.5 or as otherwise amended.
- 5. FRANCHISEE shall report contamination to the CITY pursuant to Exhibit A, Section 6 — Contamination Monitoring, Recordkeeping, and Reporting.
- 6. FRANCHISEE shall submit monthly revenue reports on or before the first day of the second month immediately following the month in which collection services were provided as required in CITY Code section 13.24.330 or as otherwise amended. CITY shall provide FRANCHISEE with the required report format of such submittal.

### **Section 31: Audits, Records, and Inspection Authority**

- 1. Upon CITY's request, FRANCHISEE shall promptly provide access to the Solid Waste Manager or his/her designees of all records, accounts, or other financial or program information pertinent to the conduct of the business and/or requirements of this Franchise as CITY deems necessary to determine FRANCHISEE's compliance with legal and contractual requirements, including the correctness and accuracy of claims submitted by FRANCHISEE.
- 2. FRANCHISEE shall certify that any response provided to the Solid Waste Manager or his/her designee, pursuant to this section, is true, complete, and correct.
- 3. In addition to the requirements in subsections 1 and 2 above, FRANCHISEE shall reimburse audit costs incurred by CITY staff, and any other costs for FRANCHISEE-related services provided by CITY staff or its contractors, in the event of significant audit findings including but not limited to, detailed follow-up audits when staff determines that documentation reported by FRANCHISEE is inadequate or incomplete. Where necessary, CITY staff will retain the services of an independent auditor to verify performance and conduct an audit of FRANCHISEE records.

### **Section 32: Prior Agreements**

This Agreement constitutes the entire contract between CITY and FRANCHISEE regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between CITY and FRANCHISEE regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

### **Section 33: Severability**

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

### **Section 34: Survival of Terms**

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this Agreement shall so survive.

### **Section 35: Headings**

The section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

### **Section 36: Attorney Fees**

Except as required by Section 19, the Parties will bear their own attorney fees and costs in connection with this Agreement.

### **Section 37: Authority to Execute**

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

### **Section 38: Duplicate Counterparts**

This Agreement may be executed in counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

Signatures scanned and transmitted electronically shall be deemed original signatures for purposes of this Agreement, with such scanned signatures having the same legal effect as original signatures. This Agreement may be executed through the use of an electronic signature and will be binding on each party as if it were physically executed.

**(SIGNATURE PAGE FOLLOWS)**



Executed as of the day and year first above stated.

**CITY OF SACRAMENTO**

A Municipal Corporation

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

Print name: \_\_\_\_\_

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

For: Howard Chan, City Manager

ATTEST:

\_\_\_\_\_

City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

City Attorney

**Attachments**

Exhibit A	Scope of Services
Exhibit B	Compensation
Exhibit C	Insurance

**FRANCHISEE:**

\_\_\_\_\_  
NAME OF FIRM

\_\_\_\_\_  
Federal I.D. No.

\_\_\_\_\_  
State I.D. No.

\_\_\_\_\_  
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (*check one*):

\_\_\_\_\_ Individual/Sole Proprietor

\_\_\_\_\_ Partnership

\_\_\_\_\_ Corporation (*may require 2 signatures*)

\_\_\_\_\_ Limited Liability Company

\_\_\_\_\_ Other (*please specify:* \_\_\_\_\_)

\_\_\_\_\_  
**Signature of Authorized Person**

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Additional Signature (*if required*)

\_\_\_\_\_  
Print Name and Title

# Exhibit A

## Scope of Services

This Exhibit A incorporates by this reference the Franchise Agreement between FRANCHISEE ("FRANCHISEE") and the City of Sacramento ("CITY"), (referred to collectively herein as the "parties"), for Commercial Solid Waste Collection (the "Agreement"). This Exhibit A provides the Scope of Services for the Agreement. In the event of a conflict between Exhibit A and the Agreement, the terms of Exhibit A shall prevail.

### 1. Definitions

For purposes of this Agreement, all terms used shall have the same meaning as those defined in chapter 13.24 of the Sacramento City Code.

### 2. Ownership of Waste Material

CITY does not gain any ownership or right to possess commercial solid waste material collected by FRANCHISEE pursuant to this Agreement. Subject to the provisions of this Agreement, FRANCHISEE shall have the right to retain any benefit resulting from its right to retain, recycle, process, dispose of, or use the commercial solid waste material that it collects.

### 3. Disposal and Diversion of Commercially Generated Waste Material

FRANCHISEE shall dispose of commercial solid waste collected or transported by FRANCHISEE only by taking such commercial solid waste to a landfill or transfer station lawfully authorized to accept such solid waste. FRANCHISEE shall divert recyclable and organic material at facilities legally permitted to process source separated recyclable material and organic material. FRANCHISEE shall not dispose of commercial 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.

### 4. Commercial Waste Collection Service Agreements with Generators

FRANCHISEE shall provide to their generators a service agreement, as described in CITY Code section 13.24.570, or as otherwise amended.

### 5. Diversion Programs

- A. Source Separated Recyclable Material and Organic Material: FRANCHISEE is required to divert from landfilling source separated recyclable material and organic material collected and removed by it within CITY region, in accordance with chapter 13.24 of the City Code. Failure to meet the diversion requirement will subject FRANCHISEE to the Recycling Shortfall Penalty provided for in CITY Code section 13.24.760, or as otherwise amended. FRANCHISEE shall not landfill source separated recyclable material and organic material without notifying CITY as described in CITY Code section 13.24.480, or as otherwise amended.
- B. Construction and Demolition Debris: When FRANCHISEE provides commercial solid waste collection services for a project subject to Construction and Demolition ("C&D") Debris in chapter 8.124 of the City Code, FRANCHISEE shall assist their generators in complying with the C&D Debris requirements set forth in the City Code.

Diversion credit from mixed construction and demolition debris for compliance with mandates will only be recognized if FRANCHISEE delivers mixed C&D debris to a C&D Sorting Facility certified by the County of Sacramento.

## **6. Collection Equipment**

- A. Any and all vehicles used by FRANCHISEE to perform commercial solid waste collection services shall meet the vehicle inspection, tag and covered load requirements of CITY Code section 13.24.430, or as otherwise amended.
- B. FRANCHISEE shall submit a Franchisee commercial solid waste vehicle inventory of FRANCHISEE's vehicles, as required in CITY Code section 13.24.110 or as otherwise amended, and shall include but not limited to, vehicle number, year, make, model, capacity, and vehicle identification number (VIN). FRANCHISEE is required to submit the Franchisee commercial solid waste vehicle inventory annually as part of its Franchise Application or Franchise Renewal Application.
- C. If FRANCHISEE's vehicle inventory has changed between the application or renewal application date and the effective date of this agreement, FRANCHISEE must submit to Solid Waste Manager an amended inventory, as required in CITY Code section 13.24.180 or as otherwise amended, prior to commencing the provision of services under this Agreement.

## **7. Franchisee Provided Waste Material Containers**

- A. General. Each generator shall be provided solid waste, recyclable material, and organic material services. This provision of three or more containers shall comply with the collection container requirements specified in chapter 13.24 of the City Code. FRANCHISEE is responsible for ensuring generator compliance with this requirement and use of proper facilities for collected material.
- B. Source Separated Recyclable Materials Collection (Blue Container): FRANCHISEE shall provide blue containers to generators for collection of source separated recyclable materials and shall provide source separated recyclable materials collection service, as described below. FRANCHISEE shall transport the source separated recyclable materials to a recyclable materials processing facility.

Source separated recyclable materials that are mandated to be accepted for collection in the source separated recyclable materials commercial collection program include the following:

- Aluminum Containers
- Glass Containers
- Plastics #1 and #2
- Tin and Bi-Metal Containers
- Mixed Paper
- Cardboard

- C. Source Separated Organic Material (Green Container): FRANCHISEE shall provide green containers to generators for collection of organic material and shall provide organic material collection service.

FRANCHISEE shall transport organic material to an organic material processing facility, or a transfer

facility for transfer and transport to an organic material processing facility.

Organic materials that are mandatory to be accepted for collection in the commercial collection program include the following:

- Food Waste
- Green Waste
- Compostable Plastic Bags\*

\*Compostable plastic bag material must meet ASTM D6400 sections 5.1 through 6.4.2 standard for compostability as published May 2019.

- D. Commercial Solid Waste Collection (Gray Container): FRANCHISEE shall provide gray containers to generators for collection of solid waste and shall provide solid waste collection service. FRANCHISEE shall transport the solid waste to a disposal facility or a transfer facility for transfer and transport to a disposal facility.
- E. FRANCHISEE shall provide containers used for storage of solid waste materials that meet the following requirements:
- (i) FRANCHISEE shall place a label on the body or lid of each container that includes language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that container.
  - (ii) Container must be clearly identified, with the name, or recognizable corporate or company logo, and phone number of the Franchisee that is legible from a distance of fifty (50) feet.
  - (iii) Be adequately sized and serviced with adequate frequency to meet the waste material generation needs of the business.
  - (iv) Be designed and constructed to be watertight to prevent the leakage of liquids.
  - (v) Be equipped with lids which are to be kept closed and shall be placed in a way that does not prevent the lid from being closed.
  - (vi) Containers shall be equipped with functioning locking bars or a locking mechanism.
  - (vii) Be kept free of graffiti.
  - (viii) Be replaced, cleaned, or repainted as needed so as to present a clean appearance.
  - (ix) No later than January 1, 2036, FRANCHISEE shall provide all generators with collection containers that comply with the container color requirements specified in Title 14 of the California Code of Regulation ("CCR") Section 18982. If an existing container breaks or is otherwise rendered non-functional, FRANCHISEE shall replace the non-functional container with a container that complies with the color requirements. Until January 1, 2036, FRANCHISEE is not required to replace functional collection containers that do not comply with these color requirements prior to the end of the useful life of those containers. New and replacement collection containers, however, must meet new color requirements.
- F. In addition to any and all requirements listed in section E., above, the owners and tenants of properties in the downtown collection area, as defined in Attachment 1 to Exhibit A, are

required to comply with all of the requirements below, as specified in CITY Code section 13.10.510 or as otherwise amended:

- (i) All commercial containers shall be equipped with locks and shall remain locked at all times, except when refuse or recyclables are being deposited or collected in accordance with this Agreement and pursuant to chapter 13.24 of the City Code.
  - (ii) All commercial containers shall have the name, address, and telephone number of the owner, and of the tenant, if different than the owner, written on the front of the container with either paint or some form of indelible ink.
  - (iii) No container shall be placed or located in such a manner that blocks or impedes passage through the alley or through any doorway of any building adjoining the alley, even if the building is abandoned or out of use.
- G. Solid Waste Manager or designee may require special container equipment, and/or container labeling with customer identifying information.
- H. Violations of the conditions of this section may become the basis for enforcement actions. In addition, violations of the conditions of this section may be determined to be a material breach of this Agreement and will subject the FRANCHISEE to payment of liquidated damages, pursuant to Exhibit B of this Agreement.

## **8. Contamination Monitoring, Recordkeeping, and Reporting**

FRANCHISEE shall implement a contamination monitoring, record keeping, and reporting program.

- A. Contamination Monitoring. FRANCHISEE shall conduct a route review for prohibited container contaminants in containers in a manner that results in all routes being reviewed annually. Containers may be randomly selected along a hauler route.
- (i) Upon finding prohibited container contaminants in a container, the FRANCHISEE, shall notify the generator of the violation. The notice shall, at a minimum, include information regarding the generator's requirement to properly separate materials into the appropriate containers and may include photographic evidence of the violation. The notice may be left on the generator's container, gate, or door at the time the violation occurs, and must be mailed, e-mailed, or electronically messaged to the generator.
  - (ii) If a FRANCHISEE observes excessive prohibited container contaminants in a generator's collection container(s), it may dispose of the container's contents.
- B. Contamination Recordkeeping. FRANCHISEE shall maintain for five years after expiration or termination of this Agreement, the following documents related to its contamination monitoring program.
- (i) A description of the FRANCHISEE's process for determining the level of container contamination.
  - (ii) Documentation of all route reviews conducted.
  - (iii) Copies of all notices issued to generators found to have prohibited container contaminants.
  - (iv) Documentation of the number of source separated recyclable material's or organic

material's containers that were disposed of due to observation of prohibited container contaminants.

- C. Contamination Reporting. FRANCHISEE shall report the following, relative to its implementation of the contamination monitoring requirements.
- (i) The number of route reviews conducted for prohibited container contaminants.
  - (ii) The number of times notices, violations, or targeted education materials were issued to generators for prohibited container contaminants.
  - (iii) The number of source separated recyclable materials or organic materials containers that were disposed of due to observation of prohibited container contaminants.

All contamination monitoring documentation shall be submitted to CITY in a format as directed by Solid Waste Manager and made part of CITY's operational record within sixty (60) days of creation.

## 9. Abandoned Containers

- A. If FRANCHISEE abandons any container used to provide commercial solid waste material collection services under the Agreement, CITY may remove the container and/or dispose of the contents of the container.
- B. If CITY removes a container abandoned by FRANCHISEE and/or disposes of the contents of any container abandoned by FRANCHISEE, CITY may charge FRANCHISEE for CITY's costs incurred in such removal/disposal and for CITY's costs of storage of the container. FRANCHISEE shall reimburse CITY for such costs within ten (10) days of the date of CITY's invoice for such costs.
- C. For the purposes of this section, "abandoned" includes:
- (i) FRANCHISEE's failure to remove the container within the time period specified by termination of the Agreement pursuant to chapter 13.24 of the City Code.
  - (ii) FRANCHISEE's failure to remove the container within a reasonable period after the expiration of the Franchise granted to FRANCHISEE, except in the case where FRANCHISEE has been granted an extension of the term of said Franchise or FRANCHISEE has been granted a subsequent commercial solid waste collection franchise authorizing FRANCHISEE to collect and transport the type or types of solid waste for which the container was used pursuant to this Agreement.
  - (iii) FRANCHISEE's failure to dispose of the contents of the container within five (5) days after CITY issues written notice to FRANCHISEE to dispose of the contents.

## 10. Personnel

- A. Driver Qualifications. FRANCHISEE agrees that all drivers shall be trained and qualified in the operation of collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.
- B. Safety Training. FRANCHISEE shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of solid waste, or who are otherwise directly involved in such collection.

## **11. Education and Outreach**

- A. FRANCHISEE shall assist CITY in educational and outreach activities to promote diversion of recyclable material and organic material.
- B. FRANCHISEE shall provide an outreach and education plan according to FRANCHISEE's Diversion Plan.

## **12. Diversion Plan**

FRANCHISEE shall implement its Diversion Plan submitted annually as part of its Franchise Application or Franchise Renewal Application and approved by CITY. FRANCHISEE Diversion Plan shall contain the following elements:

- A. A methodology for how FRANCHISEE will meet City diversion requirements.
- B. A compliance plan that describes the proposed methodology for identifying generators required to have source separated recycling and organic material services, proposed methodology for tracking compliant/noncompliant generators, and proposed efforts for increasing subscription levels.
- C. A description of the Franchisee's contamination reduction program, as described in Section 7. Contamination Monitoring, Recordkeeping, and Reporting.
- D. A description of a minimum of three (3) outreach and education campaigns and quantifiable goals for each campaign.
  - (i) At least one annual campaign will be directed at all serviced generators and will inform the serviced generators about both the State Mandatory Commercial Recycling Law (AB 341) and applicable City requirements, and State Mandatory Commercial Organics Recycling Law (AB 1826), the State Mandatory Short-Lived Climate Pollutants Law (SB 1383), and applicable City requirements, and how to comply with each Law.
  - (ii) At least one campaign will be specifically directed at those serviced generators that are not in compliance with either the State Mandatory Commercial Recycling Law (AB 341), the State Mandatory Commercial Organics Recycling Law (AB 1826) and/or the State Mandatory Short-Lived Climate Pollutants Law (SB 1383) and will inform them of their requirements and how they can comply.
  - (iii) One campaign will be at the choice of FRANCHISEE and will not be directly related to above campaigns subsections D(i) or D(ii) above.
- E. A description of the FRANCHISEE's recordkeeping and reporting systems and how it will accurately meet CalRecycle mandatory reporting requirements under AB 341, AB 1826, and SB 1383.

## **13. Generator Waiver Program**

- A. CITY shall grant all generator recycling and organic recycling waivers.
- B. Waiver applications must be submitted by the generator on a form provided by Solid Waste Manager.
- C. FRANCHISEE may assist the generator with completing the waiver application but is



prohibited from submitting a waiver on the generator's behalf.

- D. CITY shall provide FRANCHISEE with an updated listing of waivers approved by CITY, including the generators' names, mailing address, service address, and type of waiver.

#### **14. Restricted Collection Hours In Certain Locations**

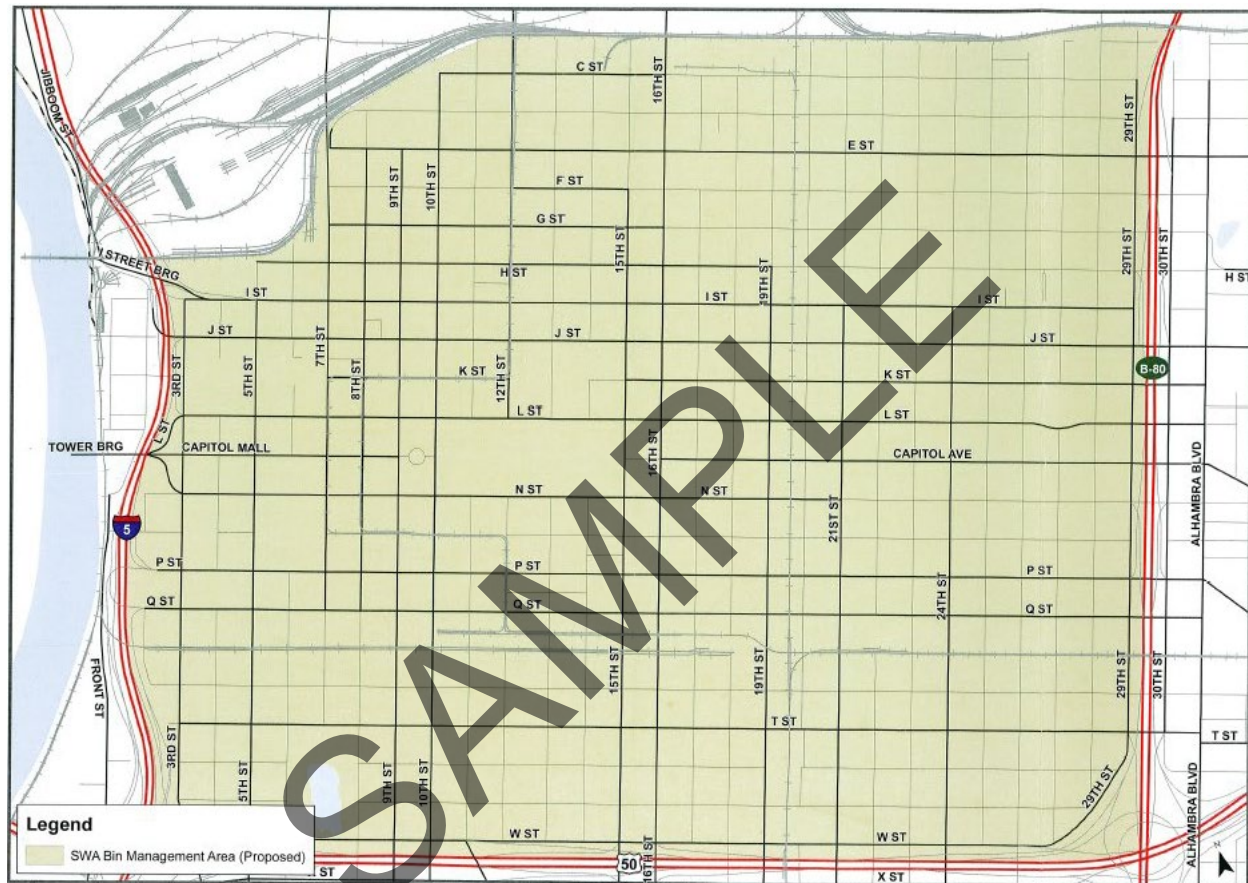
- A. Solid Waste Manager may designate areas where FRANCHISEE shall not collect waste materials during specific times.
- B. Attachment 1 to this Exhibit A identifies any designated areas.
- C. Violation of this provision will subject FRANCHISEE to liquidated damages identified in Exhibit B – Compensation or attachment 1 to Exhibit B.

SAMPLE

# Attachment 1 to Exhibit A

## Downtown Service Area

This Attachment 1 to Exhibit A incorporates by this reference the Franchise Agreement between FRANCHISEE ("FRANCHISEE") and the City of Sacramento ("CITY"), (referred to collectively herein as the "parties"), for Commercial Solid Waste Collection (the "Agreement"). This Attachment 1 to Exhibit A defines the Downtown Service Area. In the event of a conflict between this Attachment 1 to Exhibit A and the Agreement, the terms of this Attachment 1 to Exhibit A shall prevail.



# Exhibit B

## Compensation

This Exhibit B incorporates by this reference the Franchise Agreement between \_\_\_\_\_ (“FRANCHISEE”) and the City of Sacramento (“CITY”), (referred to collectively herein as the “parties”), for Commercial Solid Waste Collection (the “Agreement”). This Exhibit B provides the Compensation for the Agreement. In the event of a conflict between Exhibit B and the Agreement, the terms of Exhibit B shall prevail.

### 1. FRANCHISE FEES

- A. During the term of the Agreement, FRANCHISEE shall pay to CITY Franchise Fees. Such fees shall be in the amount established for commercial solid waste services as set forth by resolution of the City Council, which will be 10% as of the Commencement Date of July 1, 2021, pursuant to the Attachment 1 to Exhibit B – Fee and Penalty Schedule.
- B. Franchise Fees shall not be owed by FRANCHISEE for revenues received from federal, state and local governments, including school districts.
- C. FRANCHISEE shall pay Franchise Fees on all solid waste collected pursuant to this AGREEMENT regardless of the method of disposal or handling.
- D. For calculation of gross collection revenue and calculation of franchise fees, FRANCHISEE may deduct collection revenues for source-separated recyclable material and organic material, provided those materials are diverted from disposal.

### 2. FRANCHISE FEE PAYMENT

- A. FRANCHISEE shall pay Franchise Fees to CITY pursuant to CITY Code section 13.24.240, or as otherwise amended.
- B. FRANCHISEE shall pay all required Franchise Fees to:  
City of Sacramento, Recycling and Solid Waste Division  
Attention: Accounts Receivable  
2812 Meadowview Road, Building 1  
Sacramento, CA 95832
- C. If FRANCHISEE remits Franchise Fees by personal delivery to CITY, such Franchise Fees shall be deemed timely paid only if delivered on or before the due date. If FRANCHISEE remits Franchise Fees by mail or other delivery service, such Franchise Fees shall be deemed timely only if: (1) the envelope containing the Franchise Fee payment bears a postmark or receipt showing that the payment was mailed or sent on or before the due date or (2) FRANCHISEE submits proof satisfactory to Solid Waste Manager that the Franchise Fee payment was in fact deposited in the mail or sent on or before said due date.
- D. In the event FRANCHISEE believes that it has paid Franchise Fees in excess of the amounts due to CITY, FRANCHISEE may submit a request for refund to Solid Waste Manager on a form provided by said Solid Waste Manager. If proof of overpayment is satisfactory to Solid Waste Manager, Solid Waste Manager shall refund to FRANCHISEE any overpayment. FRANCHISEE shall not apply any overpayment as a credit against any Recycling Shortfall Penalty, Franchise Fees, or other amounts payable to the CITY unless specifically so authorized by the Solid Waste Manager in writing.

### **3. Liquidated Damages**

- A. Failure of FRANCHISEE to provide solid waste collection containers and services that conform to this Agreement will be subject to liquidated damages according to Attachment 1 to Exhibit B – Fee and Penalty Schedule.
- B. If any deficiencies are brought to the attention of CITY, CITY shall contact FRANCHISEE who shall be given a cure period to provide proof of corrective action for such deficiency. Proof of corrective action must be provided by FRANCHISEE as requested by CITY.
- C. If proof of corrective action is not provided by FRANCHISEE within the cure period, CITY may take enforcement action. Furthermore, continued failure to take corrective action shall be deemed a breach of this Agreement and shall constitute grounds for the termination of this Agreement by CITY.
- D. Any Liquidated Damage fees shall be assessed to the FRANCHISEE and shall be due as part of FRANCHISEE's monthly payment to CITY.

### **4. LATE FEES AND PENALTIES**

FRANCHISEE shall pay late fees and penalties to CITY pursuant to the Attachment 1 to Exhibit B – Fee and Penalty Schedule.

SAMPLE

# Attachment 1 to Exhibit B

## Fee and Penalty Schedule

This Attachment 1 to Exhibit B incorporates by this reference the Franchise Agreement between FRANCHISEE ("FRANCHISEE") and the City of Sacramento ("CITY"), (referred to collectively herein as the "parties"), for Commercial Solid Waste Collection (the "Agreement"). This Attachment 1 to Exhibit B provides the fees and penalties for the Agreement. In the event of a conflict between this Attachment 1 to Exhibit B and the Agreement, the terms of this Attachment 1 to Exhibit B shall prevail.

### Fees and Charges

Fee	Amount	Notes
Franchise fee	10% of revenue	Calculated at 10% of reported disposal revenue. Minimum of \$1,000 per fiscal year (July-June).
Refundable cash deposit	\$500.00	Required for each collection vehicle unless sufficient financial assurance provided to CITY.
RSW Notice & Order Appeal Processing	\$400.00	Applied to processing appeals of Notice and Orders issued by RSW Code Enforcement. This fee is non-refundable and payable prior to having the hearing date scheduled.
Delinquent Franchise Fee Payment	10% of franchise fee owed, compounded 1.5% monthly until paid - min: \$200 / max: \$1,000	Franchisee fees are due on the first business day of the second month following the close of each month. The 10% late fee is applied when the franchise fee is not paid on time. If it is still unpaid by the first of the next month, the franchise will increase by 1.5% of the owed franchise fee plus the original late fee plus applied interest.
Delinquent Quarterly Tonnage Report Fee	\$50.00	Correct and accurate Quarterly Tonnage Reports are due the first business day of the second month following the close of each quarter. An automatic charge of \$50/day will be applied until the accurate tonnage report is received. Staff will determine whether a tonnage report is correct.
Uncovered load fine	1st violation: \$50 2nd violation: \$100 Succeeding violations: \$200	All franchisee vehicles and all privately owned or operated vehicles transporting solid waste, recyclable material, or organic material in the city must have their vehicle loads covered with a tarp or equivalent cover, or otherwise adequately secured, to ensure protection from littering during transportation.
Delinquent Quarterly Compliance Report Fee	\$25.00	Correct and accurate Compliance Reports are due the first business day of the second month following the close of each quarter. An automatic charge of \$50/day will be applied until the accurate tonnage report is received. Staff will determine whether a tonnage report is correct.
Re-inspection fee	\$268.00 / inspection	This fee is applied per inspection, commencing with the second inspection.
Recycling shortfall penalty	\$25.00 / ton of recycling shortfall	Charged per ton of shortfall from 30% diversion requirement.

### Liquidated Damages

Issue	Amount
Broken or missing lock bar	\$150.00
Broken or missing lock	\$150.00
Broken or missing lid	\$150.00
Container graffiti	\$150.00
Bin not properly labeled	\$150.00
Overflowing bin	\$250.00
Operating vehicle without valid inspection (per day)	\$150.00

# Exhibit C

## Insurance

1. **Insurance Requirements.** During the entire term of this Agreement, FRANCHISEE shall maintain the insurance coverage described in the Insurance Terms below. Full compensation for all premiums that FRANCHISEE is required to pay for the insurance coverage described herein shall be included in the compensation specified under this Agreement. No additional compensation will be provided for FRANCHISEE's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the City.

FRANCHISEE's liability to the City is not in any way limited to or affected by the amount of insurance coverage required or carried by the FRANCHISEE in connection with this Agreement.

2. **General Liability Minimum Scope and Limits of Insurance Coverage.** Commercial General Liability Insurance is required providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of the FRANCHISEE and subcontractors, products and completed operations of FRANCHISEE and subcontractors, and premises owned, leased, or used by FRANCHISEE and subcontractors, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of FRANCHISEE and subcontractors; products and completed operations of FRANCHISEE and subcontractors; and premises owned, leased, or used by FRANCHISEE and subcontractors.

3. **Automobile Liability Minimum Scope and Limits of Insurance Coverage.** *(Check the applicable provision.)*

  X   Automobile Liability Insurance is required providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than two million dollars (\$2,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the FRANCHISEE.

The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

       No automobile liability insurance is required, and by signing this Agreement, FRANCHISEE certifies as follows:

"FRANCHISEE certifies that a motor vehicle will not be used in the performance of any work or services under this Agreement. If, however, FRANCHISEE does transport items under this Agreement, or this Agreement is amended to require any employees of FRANCHISEE to use a vehicle to perform services under the Agreement, FRANCHISEE understands that it must maintain and provide evidence of Automobile Liability Insurance providing coverage at least

as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the FRANCHISEE."

4. **Excess Insurance.** The minimum limits of insurance required above may be satisfied by a combination of primary and umbrella or excess insurance coverage, provided that any umbrella or excess insurance contains, or is endorsed to contain, a provision that it will apply on a primary basis for the benefit of the City, and any insurance or self-insurance maintained by City, its officials, employees, or volunteers will be in excess of FRANCHISEE's umbrella or excess coverage and will not contribute to it.
5. **Workers' Compensation Minimum Scope and Limits of Insurance Coverage.** *(Check the applicable provision.)*

- ☒ Workers' Compensation Insurance is required with statutory limits and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Workers' Compensation policy shall include a waiver of subrogation in favor of the City.
- ☐ No work or services will be performed on or at CITY facilities or CITY Property, therefore a Workers' Compensation waiver of subrogation in favor of the CITY is not required.
- ☐ No Workers' Compensation insurance is required, and by signing this Agreement, FRANCHISEE certifies as follows:
- "FRANCHISEE certifies that its business has no employees, and that it does not employ anyone, and is therefore exempt from the legal requirements to provide Workers' Compensation insurance. If, however, FRANCHISEE hires any employee during the term of this Agreement, FRANCHISEE understands that Workers' Compensation with statutory limits and Employer's Liability Insurance with a limit of not less than one million dollars (\$1,000,000) is required. The Workers' Compensation policy will include a waiver of subrogation in favor of the City."

6. **Professional Liability Minimum Scope and Limits of Insurance Coverage.** Professional Liability Insurance providing coverage on a claims-made basis for errors and omissions, or malpractice with limits of not less than one million dollars (\$1,000,000):

Is ☐ Is not ☒ required for this Agreement.

If required, such coverage must be continued for at least  year(s) following the completion of all Services under this Agreement. The retroactive date must be prior to the date this Agreement is approved or any Services are performed.

7. **Other Insurance Provisions.** The policies must contain, or be endorsed to contain, the following provisions:
- A. FRANCHISEE's insurance coverage, including excess insurance, shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-

insurance maintained by the City, its officials, employees or volunteers will be in excess of FRANCHISEE's insurance and will not contribute with it.

- B. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the City, its officials, employees or volunteers.
- C. Coverage shall state that FRANCHISEE's insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- D. FRANCHISEE shall provide the City with 30 days written notice of cancellation or material change in the policy language or terms.

8. **Acceptability of Insurance.** Insurance must be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Exhibit C must be declared to and approved by the City in writing before execution of this Agreement.

9. **Verification of Coverage.**

- A. FRANCHISEE shall furnish City with certificates and required endorsements evidencing the insurance required. Certificates of insurance must be signed by an authorized representative of the insurance carrier. Copies of policies shall be delivered to the City Representative on demand.
- B. FRANCHISEE shall send all insurance certificates and endorsements, including policy renewals, during the term of this Agreement directly to:

City of Sacramento  
c/o Exigis LLC  
PO Box 947  
Murrieta, CA 92564

- C. Certificate Holder must be listed as:

City of Sacramento  
c/o Exigis LLC  
PO Box 947  
Murrieta, CA 92564

- D. The City may withdraw its offer of Agreement or cancel this Agreement if the certificates of insurance and endorsements required have not been provided before execution of this Agreement. The City may withhold payments to FRANCHISEE and/or cancel the Agreement if the insurance is canceled or FRANCHISEE otherwise ceases to be insured as required herein.

10. **Subcontractor Insurance Coverage.** FRANCHISEE shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in this Exhibit C.