

**COUNTY OF SACRAMENTO
PUBLIC WORKS AND INFRASTRUCTURE**

**FRANCHISE AGREEMENT FOR COMMERCIAL SOLID WASTE
COLLECTION**

THIS FRANCHISE AGREEMENT is made and entered into on _____
_____ by and between the COUNTY OF SACRAMENTO, a political
subdivision of the State of California, hereinafter referred to as "COUNTY",
and BUSINESS NAME, BUSINESS TYPE, hereinafter referred to as
"FRANCHISEE."

RECITALS

WHEREAS, Public Resources Code section 40059 broadly authorizes COUNTY to determine aspects of solid waste handling which are of local concern, including the means of collection and transportation of solid waste and the nature, location, and extent of providing solid waste handling services; and

WHEREAS, COUNTY has determined that it is in its best interest to provide for commercial solid waste collection, transportation, and disposal services by means of non-exclusive franchises; and

WHEREAS, section 6.20.210 of the Sacramento County Code (hereinafter referred to as "SCC") authorizes the Board to grant franchises for such services; and

WHEREAS, the Board, pursuant to the provisions of SCC section 6.20.210, has determined that it is desirable to retain FRANCHISEE to provide commercial solid waste collection, transportation and disposal services within the unincorporated County; and

WHEREAS, the services to be provided by FRANCHISEE for the subject project are not services provided by county employees and, therefore, not subject to the requirements of Sacramento County Charter Section 71-J; and

WHEREAS, the services to be provided by FRANCHISEE are further authorized by Government Code Section 31000; and

WHEREAS, COUNTY and FRANCHISEE desire to enter into this Agreement on the terms and conditions set forth herein.

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

1. GRANT OF FRANCHISE

- A. By this Agreement, COUNTY 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 kept, accumulated or generated within the unincorporated County and to use the public streets and rights of way for such purpose.
- B. This grant is made pursuant to FRANCHISEE's Application for COUNTY Franchise dated _____, which application is incorporated herein by this reference.

2. 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 COUNTY.

- A. Accuracy of Representations. The representation and warranties made by FRANCHISEE in its Application for Franchise are true and correct on and as of the effective date of this Agreement.
- B. Absence of Litigation. There is no litigation pending, as of the effective date of this Agreement, in any court challenging the award or execution of this Franchise or seeking to restrain or enjoin performance thereunder.
- C. Furnishing of Insurance. FRANCHISEE has furnished evidence of the Insurance required by this Agreement.

3. SCOPE OF SERVICES

FRANCHISEE shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

4. TERM

This Agreement shall be effective and commence as of the date first written above and shall remain in effect until _____.

5. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO COUNTY:

TO FRANCHISEE:

Department of Waste
Management and Recycling
10863 Gold Center Dr.
Rancho Cordova, CA 95670
Attn: Doug Sloan

INSERT HERE

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

6. 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 County 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.

7. 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 Sacramento County, California or in the United States District Court for the Eastern District of California, as applicable.

8. LICENSES AND PERMITS

A. 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 COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.

- B. FRANCHISEE further certifies to COUNTY 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.

9. PERFORMANCE STANDARDS

FRANCHISEE shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to FRANCHISEE'S services.

10. 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 COUNTY and shall be delivered to COUNTY 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 COUNTY. COUNTY 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.

11. STATUS OF FRANCHISEE

- A. 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. FRANCHISEE'S assigned personnel shall not be entitled to any benefits payable to employees of COUNTY. COUNTY 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 COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

- B. 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 COUNTY 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.
- C. 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 the COUNTY shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of COUNTY, neither the FRANCHISEE nor FRANCHISEE'S assigned personnel shall have any entitlement as a COUNTY employee, right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY 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 the COUNTY to employees of the COUNTY.
- E. 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.

12. FRANCHISEE IDENTIFICATION

FRANCHISEE shall provide the COUNTY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and SCC chapter 2.160: FRANCHISEE'S name, address, telephone number, social security number or federal tax identification number, and whether dependent health insurance coverage is available to FRANCHISEE.

13. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS

- A. FRANCHISEE's failure to comply with state and federal child, family and spousal support reporting requirements regarding FRANCHISEE's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement.
- B. FRANCHISEE's failure to cure such default within ninety (90) days of notice by COUNTY shall be grounds for termination of this Agreement.

14. BENEFITS WAIVER

If FRANCHISEE is unincorporated, FRANCHISEE acknowledges and agrees that FRANCHISEE is not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the SCC, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should FRANCHISEE or any employee or agent of FRANCHISEE seek to obtain such benefits from COUNTY, FRANCHISEE agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

15. CONFLICT OF INTEREST

FRANCHISEE and FRANCHISEE'S officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

16. LOBBYING AND UNION ORGANIZATION ACTIVITIES

- A. FRANCHISEE shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.
- B. If services under this Agreement are funded with state funds granted to COUNTY, FRANCHISEE shall not utilize any such funds to assist, promote or deter union organization by employees

performing work under this Agreement and shall comply with the provisions of Government Code Sections 16645 through 16649.

17. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

- A. FRANCHISEE agrees and assures COUNTY that FRANCHISEE and any sub-Contractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. FRANCHISEE shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.
- B. FRANCHISEE represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code § 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. FRANCHISEE agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.
- D. FRANCHISEE shall include this nondiscrimination provision in all subcontracts related to this Agreement.

18. INDEMNIFICATION

To the fullest extent permitted by law, FRANCHISEE shall indemnify, defend, and hold harmless COUNTY, its governing Board, officers, directors, officials, employees, and authorized volunteers and agents (collectively "Indemnified Parties"), from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively "Claims"), including cost of defense, settlement, arbitration, expert fees, and reasonable attorneys' fees, resulting from injuries to or death of any person, including employees

of either party hereto, and damage to or destruction of any property, or loss of use or a reduction in value thereof, including the property of either party hereto, arising out of, pertaining to, or resulting from the acts or omissions of FRANCHISEE, its officers, employees, or agents, or the acts or omissions of anyone else directly or indirectly acting on behalf of the FRANCHISEE, or for which FRANCHISEE is legally liable under law. FRANCHISEE understands and agrees that this indemnity obligation shall apply regardless of whether any loss, damage or cost arises from, whether in whole or in part, any acts or omissions, or any other negligence, concurrent or otherwise, on the part of COUNTY, or any other party indemnified hereunder, except only those Claims caused by the sole negligence or willful misconduct of an Indemnified Party.

The right to defense and indemnity under this Section arises upon occurrence of an event giving rise to a Claim and, thereafter, upon tender in writing to FRANCHISEE. FRANCHISEE shall defend Indemnified Parties with counsel reasonably acceptable to SWA. Notwithstanding the foregoing, SWA shall be entitled, on its own behalf, and at the expense of FRANCHISEE, to assume control of its defense or the defense of any Indemnified Party in any legal action, with counsel reasonably selected by it. Should COUNTY elect to initially assume control of its defense, or the defense of any Indemnified Party, it does so without prejudice to its right to subsequently request that FRANCHISEE thereafter assume control of the defense and pay all reasonable attorneys' fees and costs incurred thereby.

This indemnity obligation shall not be limited by the types and amounts of insurance or self-insurance maintained by FRANCHISEE or FRANCHISEE's subcontractors at any tier.

Nothing in this indemnity obligation shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this indemnity obligation shall survive the expiration or termination of the Agreement.

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 thereto, insurance as specified in Exhibit B.

It is the responsibility of FRANCHISEE to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in Exhibit B. It is understood and agreed that COUNTY shall not pay any sum to FRANCHISEE under this Agreement unless and until COUNTY is satisfied that all insurance required by this Agreement is in force at the time services hereunder are rendered. Failure to maintain insurance as required in this agreement may be grounds for material breach of contract.

20. INFORMATION TECHNOLOGY ASSURANCES

FRANCHISEE shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by FRANCHISEE in the performance of services under this Agreement, other than those owned or provided by COUNTY, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to COUNTY under this Agreement.

21. COMPENSATION

- A. Compensation under this Agreement shall be in accordance with Exhibit C, or Exhibit C as modified by COUNTY in accordance with express provisions in this Agreement.
- B. FRANCHISEE shall maintain for five years following 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.

22. ASSIGNMENT

- A. FRANCHISEE acknowledges that this Agreement involves rendering a vital service to commercial solid waste Generators within the unincorporated County, and that COUNTY 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 COUNTY under this Agreement. COUNTY has relied on each of these factors, among others, in choosing the FRANCHISEE to perform the services to be rendered under this Agreement.

- B. This Agreement is a privilege to be held in trust by FRANCHISEE. A franchise granted by COUNTY 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 COUNTY Board of Supervisors ("COUNTY Board"). 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. The COUNTY Board 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 County law, regulation, rule, or ordinance. FRANCHISEE shall promptly notify the COUNTY Director in writing in advance of any proposed assignment, sale, or transfer. In the event the COUNTY Board 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.

23. 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 COUNTY unless agreed in writing by Director and counsel for COUNTY.

24. SUCCESSORS

This Agreement shall bind the successors of COUNTY and FRANCHISEE in the same manner as if they were expressly named.

25. TIME

Time is of the essence of this Agreement.

26. 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.

27. DIRECTOR

As used in this Agreement, "Director" shall mean the Director of the Department of Waste Management and Recycling for County of Sacramento or his/her designee. Director shall administer this Agreement on behalf of the COUNTY, and has authority to make administrative amendments to this Agreement on behalf of the COUNTY including, but not limited to, scope of services, pricing, management practices, etc. Unless otherwise provided herein or required by applicable law, Director shall be vested with all the rights, powers, and duties of COUNTY herein. With respect to matters herein subject to the approval, satisfaction, or discretion of COUNTY or Director, the decision of the Director in such matters shall be final.

28. 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 terminated in accordance with the Termination provisions herein. COUNTY 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 within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, 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.

29. DEFAULT, TERMINATION

A. Default. Except for the occurrence of Force Majeure as described in paragraph D 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 SCC or related ordinances, resolutions, or administrative rules,

the COUNTY Director and FRANCHISEE shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the parties are unable to agree on the informal resolution or cure of the breach within ten (10) business days, the COUNTY Board shall have the right to terminate this AGREEMENT if:

1. Following the ten (10) day meeting period described above, the COUNTY Director shall have given written notice to FRANCHISEE specifying that a particular default or defaults exists which will, unless corrected, constitute a material breach of this Agreement on the part of FRANCHISEE; and
 2. FRANCHISEE fails to correct such default or fails to take reasonable steps to commence to correct such default within thirty (30) days from the date of the notice given by the COUNTY Director under section (1) above and FRANCHISEE thereafter fails to diligently continue to take reasonable steps to correct such default.
- B. In addition, the following events shall constitute a material breach and default under this Agreement:
1. *Misrepresentation.* Any misrepresentation or disclosure made to COUNTY 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.
 2. *Fraud or Deceit.* If FRANCHISEE practices, or attempts to practice, any fraud or deceit upon COUNTY.
 3. *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.
 4. *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 or filings by appropriate proceedings conducted in good faith, 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.

5. *Acts or Omissions.* Any other act or omission by FRANCHISEE which materially violates the terms, conditions, or requirements of this Agreement; the COUNTY ordinances, resolutions, administrative rules or regulations; 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.
 6. *Termination of Service.* In the case of a breach related to the above sections, and the breach continues for more than thirty (30) calendar days after written notice from the COUNTY Director for the correction thereof, provided that where such breach cannot be cured within such thirty (30) day period, FRANCHISEE shall not be in default of this Agreement if FRANCHISEE shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and it continues such performance diligently until completed.
- C. Termination. Upon the occurrence of a material breach, the COUNTY Board shall have the right to terminate this Agreement pursuant to the provisions in article 3 of chapter 6.20 of the SCC. In the event the FRANCHISEE fails to cure the material breach specified in a written notice from the COUNTY Director, then failure to cure may result in a declaration of termination of this Agreement by COUNTY as provided in SCC section 6.20.260.
- D. Force Majeure. The performance of this Agreement may be discontinued or temporarily suspended in the event of Force Majeure. FRANCHISEE shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if FRANCHISEE'S performance is prevented or delayed by Force Majeure. Force Majeure means acts of God including landslides, 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.

- E. Notice of Termination. The COUNTY Director shall serve written notice, either personally or by registered or certified mail, postage prepaid of the termination of a Franchise under this Agreement to the last place of business of FRANCHISEE and FRANCHISEE shall cease operation under its Franchise within ten (10) calendar days.

30. CONDITIONS UPON TERMINATION

- A. In the event this Agreement is terminated:
1. FRANCHISEE shall have no right or authority to engage in Commercial Solid Waste Collection, transportation or disposal operations in the unincorporated County. FRANCHISEE acknowledges that this Agreement does not grant any continuation of service rights under Public Resources Code section 49520, and that FRANCHISEE must cease providing the services authorized by this Agreement upon termination, even if such termination occurs before the end of the unexpired term of the contract or five years, whichever is less, as provided in section 49520.
 2. FRANCHISEE shall, however, remain liable to COUNTY 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 C of this Agreement and for any and all delinquent report charges assessed pursuant to or article 3 of chapter 6.20 of the SCC.
 3. FRANCHISEE shall have a continuing obligation to submit to COUNTY all reports required by section 31 of this Agreement that relate to Commercial Solid Waste or

recycling activities performed by FRANCHISEE up to and including the date of termination.

- B. In the event this Agreement is terminated, then, within the time period specified by the County Board and if directed by the COUNTY Director, FRANCHISEE shall promptly remove all of FRANCHISEE's Commercial Solid Waste containers from all of FRANCHISEE's collection service locations and shall properly dispose of all solid waste in such containers.

31. REPORTS

- A. 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 pursuant to SCC section 6.20.275.A.1 in a format as required by the COUNTY Director.
- B. FRANCHISEE shall submit quarterly Generator data on or before the 15th day of the first month following the end of the reportable quarter and shall be submitted in an excel spreadsheet that includes, but is not limited to, the following required fields:
 - 1. Generator account number;
 - 2. Business name or entity being provided service;
 - 3. Account type (Multifamily or Business);
 - 4. Address of service location;
 - 5. Phone number of service location (if available);
 - 6. Billing address of business or entity being provided service (if different than service location);
 - 7. Name and phone number of business or entity point of contact; and,
 - 8. Collection service level (trash, recycling and/or organics) and frequency.

COUNTY shall provide FRANCHISEE with the required report format of such submittal as required by COUNTY Director pursuant to SCC section 6.20.275.A.2.

- C. FRANCHISEE shall 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:
1. Generator account number;
 2. Business name or entity being provided service;
 3. Account type (Multifamily or Business);
 4. Address of service location;
 5. Phone number of service location (if available);
 6. Billing address of business or entity being provided service (if different than service location);
 7. Name and phone number of business or entity point of contact; and,
 8. Generator's compliance with recycling or organic material recycling requirements.

COUNTY shall provide FRANCHISEE with the required report format and due date of such submittal as required by COUNTY Director pursuant to SCC section 6.20.275.A.3.

- D. FRANCHISEE shall submit progress reports on the implementation of FRANCHISEE'S Diversion Plan as directed by COUNTY Director pursuant to SCC section 6.20.275.A.4.
- E. FRANCHISEE delivering material to solid waste facilities owned or operated by COUNTY shall submit information pursuant to SCC section 6.20.275.A.5 for all tons delivered to such facility.
- F. FRANCHISEE shall report contamination to COUNTY pursuant to Exhibit A, section 8.
- G. 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 SCC section 6.20.275.C. COUNTY Director shall provide FRANCHISEE with the required report format of such submittal.
- H. FRANCHISEE shall submit reports by the specified due dates pursuant to the Franchise Agreement Reporting Schedule, attached hereto as Attachment 1. The Franchise Agreement Reporting Schedule is provided for ease of reference. In the event

of any inconsistencies or ambiguities, this Agreement shall govern over the Franchise Agreement Reporting Schedule.

32. AUDITS, RECORDS, AND INSPECTION AUTHORITY

- A. Upon COUNTY's request, FRANCHISEE shall promptly provide access to the COUNTY Director or his/her designees of all records, accounts or other financial or program information pertinent to conduct of the business and/or requirements of this Franchise as COUNTY deems necessary to determine FRANCHISEE's compliance with legal and contractual requirements, including the correctness and accuracy of claims submitted by FRANCHISEE.
- B. FRANCHISEE shall certify that any response provided to the COUNTY Director or his/her designee, pursuant to this section, is true, complete and correct.
- C. In addition to the requirements in subsections A and B above, FRANCHISEE shall reimburse audit costs incurred by COUNTY staff, and any other costs for FRANCHISEE-related services provided by COUNTY 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, COUNTY staff will retain the services of an independent auditor to verify performance and conduct an audit of FRANCHISEE records.

33. PRIOR AGREEMENTS

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

34. 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.

35. 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.

36. 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.

37. 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)

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

COUNTY OF SACRAMENTO, a
political subdivision of the State of
California

Business Name, Business Type

By: _____
Doug Sloan, Director
Department of Waste Management
and Recycling

By: _____
Name: _____
Title: _____

"COUNTY"

"FRANCHISEE"

Date: _____

Date: _____

Agreement approved by
Board of Supervisors:

Agenda Date: _____

Item Number: _____

Resolution No: _____

THIS AGREEMENT FORMAT HAS BEEN APPROVED BY COUNTY COUNSEL

Prepared by: _____
Richard Shaw, Senior Contract Services Officer
Department of General Services
Contract & Purchasing Services Division
Phone: (916) 876-6373

EXHIBIT A to Agreement

SCOPE OF SERVICES

1. **DEFINITIONS**

For the purposes of this Agreement, all terms used shall have the same meaning as those defined in SCC section 6.20.030.

2. **CUSTOMER SERVICE AGREEMENTS**

FRANCHISEE shall enter into customer service agreements with Generators consistent with SCC section 6.20.340.

3. **OWNERSHIP OF WASTE MATERIAL**

COUNTY does not gain any ownership, control, or right to possess 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 Waste Material that it collects. As described in SCC sections 6.20.160 and 6.20.440, all such Waste Material shall become the property of FRANCHISEE upon its deposit in containers provided by FRANCHISEE.

4. **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 Material and Organic Material at facilities legally permitted to process Source Separated Recyclable Material and Organic Material. FRANCHISEE shall not dispose of Commercial Waste Material 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.

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 the unincorporated County, in accordance with SCC chapter 6.20. Failure to meet the diversion requirement will subject FRANCHISEE to the Recycling Shortfall Penalty provided in SCC section 6.20.777. FRANCHISEE shall not landfill Source Separated Recyclable Material and Organic

Material without notifying the COUNTY as described in section 32 of this Agreement.

- B. Construction and Demolition Debris: When FRANCHISEE provides commercial Waste Material collection services for a project subject to article 6 of chapter 6.20 of the SCC, FRANCHISEE shall assist their Generators in complying with said article.

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 COUNTY-Certified C&D Sorting Facility.

- C. Low-density Population Areas: Waste Material collected in low-density areas depicted in Attachment 2 will be excluded from calculation of the diversion requirement established pursuant to subsection A above.

6. COLLECTION EQUIPMENT

- A. Any and all vehicles used by FRANCHISEE to perform commercial Waste Material collection services shall meet the vehicle inspection, tag and covered load requirements of SCC section 6.20.330.
- B. FRANCHISEE shall submit a Commercial Solid Waste Vehicle Inventory Form of FRANCHISEE's vehicles, as required in SCC section 6.20.245, which shall include but not be limited to, vehicle number, year, make, model, capacity, and vehicle identification number (VIN). FRANCHISEE is required to submit its Commercial Solid Waste Vehicle Inventory Form annually as part of its FRANCHISEE Application for COUNTY Franchise. FRANCHISEE'S Commercial Solid Waste Vehicle Inventory Form shall be approved by the COUNTY.
- C. FRANCHISEE shall maintain a current list of its vehicles and shall submit to COUNTY Director an amended FRANCHISEE Commercial Solid Waste Vehicle Inventory Form, upon request of COUNTY, if such changes occur throughout the term of the Agreement, as required in SCC section 6.20.255, 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 6.20 of the SCC. FRANCHISEE is responsible for ensuring Generator compliance with this requirement, and use of proper facilities for collected material. This requirement does not apply to a Generator's temporary service.
- B. Source Separated Recyclable Materials Collection (Recycling Container): FRANCHISEE shall provide Recycling 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:

Mandatory Commercial Recycling Material
Aluminum Containers
Glass Containers
Plastics #1 and #2
Tin and Bi-Metal Containers
Mixed Paper
Cardboard

- C. Source Separated Organic Material (Organics Container): FRANCHISEE shall provide Organics 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:

Mandatory Commercial Organic Material
Food Waste
Food Soiled Paper
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 (Solid Waste Container):
FRANCHISEE shall provide Solid Waste 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 Waste Materials that meet the following requirements:
1. FRANCHISEE shall place a label on the body or lid of each new container that includes language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that container.
 2. 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.
 3. Be adequately sized and serviced with adequate frequency to meet the Waste Material generation needs of the business and requirements set forth in chapter 6.20 of the SCC.
 4. Be designed and constructed to be watertight to prevent the leakage of liquids.
 5. 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.
 6. Containers shall be equipped with functioning locking bars

- or a locking mechanism.
 - 7. Be kept free of graffiti.
 - 8. Be replaced, cleaned or repainted as needed so as to present a clean appearance.
 - 9. No later than January 1, 2036, FRANCHISEE shall provide all Generators with collection containers that comply with the container color requirements specified in in section 18982 of title 14 of the CCR. 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.
- F. COUNTY Director or designee may require special container equipment, and/or container labeling with customer identifying information.
- G. Violations of the conditions of this section may become the basis for enforcement actions and may be deemed by COUNTY to be a material breach of this Agreement, which shall subject the FRANCHISEE to payment of liquidated damages pursuant to Exhibit C of this Agreement.

8. CONTAMINATION MONITORING, RECORDKEEPING, AND REPORTING

FRANCHISEE shall implement a contamination monitoring, record keeping, and reporting program. This requirement does not apply to a Generator's temporary service.

- A. Contamination Monitoring. FRANCHISEE shall conduct a route review for prohibited container contaminants in Waste Material containers in a manner that results in all routes being reviewed annually. Waste Material containers may be randomly selected along a hauler route.
- 1. Upon finding prohibited container contaminants in a Waste Material 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 Waste Material containers and may include photographic evidence of the violation. The notice may be left on the Generator's Waste Material container, gate, or door at the time the violation occurs, and must be mailed, e-mailed, or

electronically messaged to the Generator.

2. If a FRANCHISEE observes excessive prohibited container contaminants in a Generator's Waste Material collection container(s), it may dispose of the container's contents.

B. Contamination Recordkeeping. FRANCHISEE shall maintain up to five years of the following documents related to its contamination monitoring program.

1. A description of the FRANCHISEE's process for determining the level of Waste Material container contamination.
2. Documentation of all route reviews conducted.
3. Copies of all notices issued to Generators found to have prohibited container contaminants.
4. 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.

1. The number of route reviews conducted for prohibited container contaminants.
2. The number of times notices, violations, or targeted education materials were issued to Generators for prohibited container contaminants.
3. The number of Source Separated Recyclable Material's or Organic Material's containers that were disposed of due to observation of prohibited container contaminants.

All contamination monitoring documentation shall be submitted to COUNTY in a format as directed by COUNTY Director and made part of COUNTY's operational record upon COUNTY request.

9. **ABANDONED CONTAINERS**

- A. If FRANCHISEE abandons any container used to provide commercial Waste Material collection services under the Agreement, COUNTY may remove the container and/or dispose of the contents of the container.

- B. If COUNTY removes a container abandoned by FRANCHISEE and/or disposes of the contents of any container abandoned by FRANCHISEE, COUNTY may charge FRANCHISEE for COUNTY's costs incurred in such removal/disposal and for COUNTY's costs of storage of the container. FRANCHISEE shall reimburse COUNTY for such costs within ten (10) days of the date of COUNTY's invoice for such costs.
- C. For the purposes of this section, "abandoned" includes:
 - 1. FRANCHISEE's failure to remove the container within the time period specified by the COUNTY Board upon termination of the Agreement pursuant to SCC section 6.20.260;
 - 2. FRANCHISEE's failure to remove the container within a reasonable period after the expiration of this Agreement, except in the case where FRANCHISEE has been granted a term extension under this Agreement or FRANCHISEE has been granted a subsequent franchise authorizing FRANCHISEE to collect and transport the type or types of solid waste for which the container was used pursuant to this Agreement.
 - 3. FRANCHISEE's failure to dispose of the contents of the container within five (5) days after COUNTY 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 COUNTY in educational and outreach activities to promote diversion of Recyclable Material and Organic Material.
- B. FRANCHISEE shall provide outreach and education campaigns pursuant to Exhibit A, section 12 below.

12. DIVERSION PLAN

FRANCHISEE shall submit a Diversion Plan annually to COUNTY as part of its FRANCHISEE Application for COUNTY Franchise. The Diversion Plan shall be approved by the COUNTY and incorporated into the Agreement as Attachment 3. The Diversion Plan shall contain at minimum:

- A. A methodology for how FRANCHISEE will meet the COUNTY diversion requirement.
- 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 for required services.
- C. A description of FRANCHISEE'S contamination reduction program, as described in Exhibit A, section 8 of this Agreement.
- D. A description of a minimum of three (3) outreach and education campaigns including quantifiable goals for each campaign.
 - 1. At least one annual campaign will be directed at all Generators covered under each State mandate and will inform the Generators about the State Mandatory Commercial Recycling Law (Assembly Bill 341, Chapter 476, Statutes of 2011), the State Mandatory Commercial Organics Recycling Law (Assembly Bill 1826, Chapter 727, Statutes of 2014), the State Mandatory Short-Lived Climate Pollutants: Organic Waste Reduction Law (Senate Bill 1383, Chapter 395, Statutes of 2016), applicable implementing regulations promulgated by CalRecycle, applicable County requirements, and how to comply with each Law.
 - 2. At least one campaign will be specifically directed at Generators that are not in compliance with either AB 341, and/or AB 1826, and/or SB 1383, and will inform them of

their requirements and how they can comply with these laws;

3. One campaign will be at the choice of FRANCHISEE.
- E. A description of FRANCHISEE'S recordkeeping and reporting systems and how it will accurately meet CalRecycle mandatory reporting requirements under the laws identified in subsection D.1 above.

13. GENERATOR WAIVER PROGRAM

- A. COUNTY shall grant all Generator recycling and organic recycling waivers.
- B. Waiver applications must be submitted by the Generator on a form provided by the COUNTY Director.
- C. FRANCHISEE may assist the Generator with completing the waiver application, but is prohibited from submitting a waiver on the Generator's behalf.
- D. COUNTY shall provide FRANCHISEE with an updated listing of waivers approved by COUNTY, including the Generator s' names, mailing address, service address, and type of waiver.

14. RESTRICTED COLLECTION HOURS IN CERTAIN LOCATIONS

COUNTY Director may designate areas where FRANCHISEE shall not collect commercial Waste Materials during specific times. Attachment 4 to this Agreement identifies such designated area. Failure to comply with this provision will subject FRANCHISEE to liquidated damages identified in Exhibit C, section 3.

EXHIBIT B to Agreement

COUNTY OF SACRAMENTO INSURANCE REQUIREMENTS

Without limiting FRANCHISEE'S indemnification, FRANCHISEE shall procure and maintain for the duration 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 Agreement by FRANCHISEE, its agents, representatives or employees. COUNTY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of COUNTY Risk Manager, insurance provisions in these requirements do not provide adequate protection for COUNTY and for members of the public, COUNTY may require FRANCHISEE to obtain insurance sufficient in coverage, form and amount to provide adequate protection. Any claim by FRANCHISEE that COUNTY's insurance changes result in higher costs will be subject to review and approval by COUNTY, whose approval will not be unreasonably withheld. COUNTY'S requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

1. Verification of Coverage

FRANCHISEE shall furnish COUNTY with certificates evidencing coverage required below. **Copies of required endorsements must be attached to the certificates provided.** COUNTY Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of COUNTY and general public are adequately protected. All certificates, evidences of self-insurance, and additional insured endorsements are to be received and approved by COUNTY before performance commences. COUNTY reserves the right to require that FRANCHISEE provide copies of any policy of insurance including endorsements offered in compliance with these specifications.

2. Minimum Scope of Insurance

Coverage shall be at least as broad as:

GENERAL LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by COUNTY Risk Manager.

AUTOMOBILE LIABILITY: Insurance Services Office's Commercial Automobile Liability coverage form CA 00 01. Commercial Automobile

Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply. Personal Lines automobile insurance shall apply if vehicles are individually owned.

WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.

UMBRELLA or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

3. Minimum Limits of Insurance

FRANCHISEE shall maintain limits no less than:

General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

General Aggregate:	\$2,000,000
Products Comp/Op Aggregate:	\$2,000,000
Personal & Adv. Injury:	\$1,000,000
Each Occurrence:	\$2,000,000
Fire Damage:	\$ 100,000

Automobile Liability:

- A. Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, \$2,000,000 Combined Single Limit.
- B. Personal Lines Automobile Liability for Individually owned vehicles, \$250,000 per person, \$500,000 each accident, \$100,000 property damage.

Workers' Compensation: Statutory.

Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

4. Deductibles and Self-Insured Retention

Any deductible or self-insured retention that apply to any insurance required by this Agreement must be declared and approved by COUNTY.

5. Other Insurance Provisions

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provisions:

6. All Policies:

- a. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-: VII. COUNTY Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of COUNTY and the general public are adequately protected.
- b. MAINTENANCE OF INSURANCE COVERAGE: FRANCHISEE shall maintain all insurance coverages and limits in place at all times and provide COUNTY with evidence of each policy's renewal ten (10) days in advance of its anniversary date.

FRANCHISEE is required by this Agreement to immediately notify COUNTY if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed. FRANCHISEE shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. Failure to maintain required insurance in force shall be considered a material breach of the Agreement.

7. Commercial General Liability and/or Commercial Automobile Liability:

- a. ADDITIONAL INSURED STATUS: COUNTY, its officers, directors, officials, employees, and volunteers are to be endorsed as additional insureds as respects: liability arising out of activities performed by or on behalf of FRANCHISEE; products and completed operations of FRANCHISEE; premises owned, occupied or used by FRANCHISEE; or automobiles owned, leased, hired or borrowed by FRANCHISEE. The coverage shall contain no endorsed limitations on the scope of protection afforded to COUNTY, its officers, directors, officials, employees, or volunteers.
- b. PRIMARY INSURANCE: For any claims related to this agreement, FRANCHISEE'S insurance coverage shall be endorsed to be primary insurance as respect to COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by COUNTY,

its officers, directors, officials, employees, or volunteers shall be excess of FRANCHISEE'S insurance and shall not contribute with it.

- c. SEVERABILITY OF INTEREST: FRANCHISEE'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. SUBCONTRACTORS: FRANCHISEE shall be responsible for the acts and omissions of all its subcontractors and additional insured endorsements as provided by FRANCHISEE'S subcontractor.

8. Workers' Compensation:

WORKERS' COMPENSATION WAIVER OF SUBROGATION: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against COUNTY, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by FRANCHISEE. Should FRANCHISEE be self-insured for workers' compensation, FRANCHISEE hereby agrees to waive its right of subrogation against COUNTY, its officers, directors, officials, employees, agents or volunteers.

9. Notification of Claim

If any claim for damages is filed with FRANCHISEE or if any lawsuit is instituted against FRANCHISEE, that arise out of or are in any way connected with FRANCHISEE'S performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect COUNTY, FRANCHISEE shall give prompt and timely notice thereof to COUNTY. Notice shall be prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.

EXHIBIT C to Agreement

COMPENSATION

1. FRANCHISE FEES

- A. During the term of the Agreement, FRANCHISEE shall pay to COUNTY Franchise Fees. Such fees shall be in the amount established for commercial solid waste services as set forth by resolution of the COUNTY Board, currently set at 10% of FRANCHISEE's gross collection revenue pursuant to the Fee and Penalty Schedule attached hereto as Attachment 5.
- B. Franchise Fees shall not be paid 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 within the unincorporated County pursuant to this Agreement regardless of the method of disposal or handling.
- D. FRANCHISEE shall pay the minimum annual franchise fee amount set forth in Attachment 5, as required by SCC section 2.60.265(H).
- E. 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 COUNTY pursuant to article 3 of chapter 6.20 of the SCC.
- B. FRANCHISEE shall pay all required Franchise Fees to:
Department of Waste Management & Recycling
Attention: Administration & Finance
10863 Gold Center Drive
Rancho Cordova, CA 95670
- C. If FRANCHISEE remits Franchise Fees by personal delivery to COUNTY, 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 COUNTY Director 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 COUNTY, FRANCHISEE may submit a request for refund to COUNTY Director on a form provided by said COUNTY Director. If proof of overpayment is satisfactory to COUNTY Director, COUNTY Director shall refund to FRANCHISEE any overpayment on FRANCHISEE's subsequent monthly invoice. FRANCHISEE shall not apply any overpayment as a credit against any Recycling Shortfall Penalty, Franchise Fees or other amounts payable to unless specifically so authorized by the COUNTY Director in writing.

3. **LIQUIDATED DAMAGES**

Failure of FRANCHISEE to provide Waste Material collection containers and services as required by this Agreement will be subject to the assessment of liquidated damages pursuant to the following schedule:

FAILURE(s)	Amount	Cure Period	SCC section
Non-lockable containers / Non-functional lock bars	\$150/service address/failure	2 Business Days	6.20.225 (D)
Containers with missing lid	\$150/service address/failure	2 Business Days	6.20.225 (D)
Containers with graffiti	\$150/service address/failure	2 Business Days	6.20.230 (A)
Containers with missing labels	\$150/service address/failure	2 Business Days	6.20.230 (A)
Containers overflowing, leaking, spilling	\$250/service address/failure	48 hours	6.20.225 (B)
Use of collection vehicle(s) without required County inspection	\$150/vehicle	N/A	6.20.165

Verified collection outside of restricted collection hours (Exhibit A, section 14)	\$150/incident	N/A	6.20.225 (G)
Unsecured materials in collection vehicles	\$150/incident	N/A	6.20.170
Provision of non-compliant service	\$5/day/account	N/A	6.20.225 (B) Eff. 4/1/22

- A. If any of the failures identified above are brought to the attention of COUNTY, COUNTY shall notify FRANCHISEE in writing of such failure, including the associated liquidated damages amount and the SCC section being violated, and provide FRANCHISEE with an opportunity to correct said failure within the cure period specified above. Proof of corrective action must be provided to COUNTY in writing by FRANCHISEE within the time period specified in the notice.
- B. If proof of corrective action is not provided by FRANCHISEE within the time period specified in the notice, COUNTY shall immediately assess the liquidated damage amount according to the schedule above by preparing an invoice to FRANCHISEE for such amounts, which invoice FRANCHISEE shall promptly pay as part of FRANCHISEE's next monthly payment to COUNTY.
- C. Continued failure to take any corrective action stated in the notice shall be deemed a material breach of this Agreement, and may constitute grounds for termination pursuant to section 29 (C).
- D. COUNTY Director's decision on the assessment of liquidated damages shall be final. Any disputes arising from this section shall be resolved pursuant to section 28.

4. **LATE FEES AND PENALTIES**

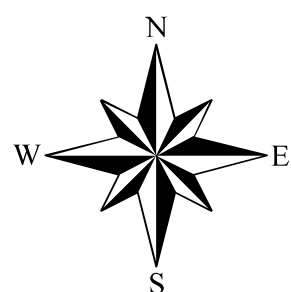
FRANCHISEE shall pay late fees and penalties to COUNTY pursuant to Attachment 5.

Attachment 1 of Agreement

FRANCHISE AGREEMENT REPORTING SCHEDULE

REPORT	FREQUENCY	DUE DATE(S)
Tonnage	Quarterly	May 1, August 1, November 1, February 1
Generator Data	Quarterly	April 15, July 15, October 15, January 15
Annual Diversion Plan Progress	Quarterly	April 15, July 15, October 15, January 15
Revenue	Monthly	May 1, August 1, November 1, February 1
Generator Non-Compliance	Monthly	February 15, March, 15, April 15, May 15, June 15, July 15, August 15, September 15, October 15, November 15, December 15, January 15
County Facility Delivered Tonnage*	Quarterly	May 1, August 1, November 1, February 1
Generator Contamination	60 days after notice issued	60 days after notice issued

*Only for Franchisee delivering material to solid waste facilities owned or operated by the County.

[illegible]

Legend

 Exclusion Zone

 City Limits

Attachment 3 of Agreement

ANNUAL DIVERSION PLAN

To be completed and submitted by Applicant as part of the County Franchise Application process and attached hereto as Attachment 3 to County Franchise Agreement

DRAFT

Attachment 4 to Agreement

COLLECTION HOURS RESTRICTION- FAIR OAKS BOULEVARD

The following parcels in Sacramento County, including the address 2381 Fair Oaks Boulevard, being designated for commercial solid waste and recycling collection on Monday through Friday between the hours of 8:00 am to 5:00 pm, and on Saturday between the hours of 9:00 am to 1:00 pm are as follows:

Parcel No. 294-0120-025	Parcel No. 294-0280-003
Parcel No. 294-0280-001	Parcel No. 294-0280-004
Parcel No. 294-0280-002	Parcel No. 294-0280-005

Below is graphical representation of the area that is covered by this Agreement.



Attachment 5 of Agreement

FEE AND PENALTY SCHEDULE

(PENDING COUNTY BOARD OF SUPERVISORS APPROVAL)

DRAFT