

**COUNTY OF SACRAMENTO  
COMMUNITY SERVICES AGENCY**

**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 COUNTY Board of Supervisors  
("COUNTY Board") to grant franchises for such services; and

WHEREAS, the COUNTY 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 terminate Agreement No.  
70[XXX] and execute this Agreement in its place; 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 [REDACTED], 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 – Alternative 1 - Permanent and Temporary Collection Services or Exhibit A – Alternative 2 - Temporary Collection Services, which is attached hereto and incorporated herein. COUNTY Director is authorized to amend the scope of services to address any changes to the type of solid waste services provided by FRANCHISEE during the term of this Agreement.

**4. TERM**

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

**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, sent by mail, or sent by electronic mail addressed as follows:

**TO COUNTY:**

Department of Waste  
Management and Recycling  
10863 Gold Center Dr.  
Rancho Cordova, CA 95670  
Attn: Director  
CommercialWaste@saccounty.  
gov

**TO FRANCHISEE:**

[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 electronically mailed, or if mailed, three (3) calendar 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 E-mail communication to COUNTY.

**6. COMPLIANCE WITH LAWS AND REGULATIONS**

- A. 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.
- B. FRANCHISEE shall, at all times and at its sole cost and expense, observe and comply with all permits, orders, filings, requirements and regulations of any regulatory body having jurisdiction over FRANCHISEE, and shall be solely responsible for

ensuring FRANCHISEE'S compliance therewith and ability to perform under this Agreement.

- C. Economic Sanctions: Pursuant to California State Executive Order N-6-22 (Order) imposing economic sanctions against Russia and declaring support of Ukraine, COUNTY shall terminate any contract with any individual or entity that is in violation of the Order or that is subject to economic sanctions therein, and shall not enter a contract with any such individual or entity while the Order is in effect.

**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.

**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 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 COUNTY to employees of 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 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) calendar 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. RETIREMENT BENEFITS/STATUS**

FRANCHISEE acknowledges and agrees that COUNTY has not made any representations regarding entitlement, eligibility for and/or right to receive ongoing Sacramento County Employee Retirement System ("SCERS") retirement benefits during the term of this Agreement. By entering into this Agreement, FRANCHISEE assumes sole and exclusive responsibility for any consequences, impacts or action relating to such retirement benefits that is or will be occasioned as a result of the services provided by FRANCHISEE under this Agreement. FRANCHISEE waives any rights to proceed against COUNTY should SCERS modify or terminate retirement benefits based on FRANCHISEE's provision of services under this Agreement.

**16. 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.

**17. 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.

**18. 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.

**19. INDEMNIFICATION**

- A. To the fullest extent permitted by law, for work or services provided under this Agreement, FRANCHISEE shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, officials, employees, authorized volunteers and agents (collectively "Indemnified Parties") from and against any and all claims, demands, actions, losses, liabilities, damages, and costs incidental thereto (collectively "Claims"), including cost of defense, settlement, arbitration, expert fees, and reasonable attorneys' fees, arising out of or resulting from FRANCHISEE's performance of this Agreement, regardless of whether caused in part by a party indemnified hereunder, except for loss caused by the sole negligence of an Indemnified Party.
- B. The right to defense and indemnity under this Section arises upon occurrence of an event giving rise to a Claim and tendered in writing to FRANCHISEE. FRANCHISEE shall defend Indemnified Parties with counsel reasonably acceptable to COUNTY.
- C. To the extent permitted by law, this indemnity obligation shall not be limited by the types and amounts of insurance or self-

insurance maintained by FRANCHISEE, FRANCHISEE's subcontractors at any tier, or any party used by FRANCHISEE in performance of this Agreement.

- D. Notwithstanding the foregoing, the parties expressly agree that FRANCHISEE's defense obligation under this indemnity obligation shall require FRANCHISEE to defend the Indemnified Parties until any of the following occur: (1) the judgment has become final by a court of competent jurisdiction, (2) other mutually agreeable dispute resolution or settlement process establishing the proportionate percentage of fault of the parties under law.
- E. 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.
- F. The provisions of this indemnity obligation shall survive the expiration or termination of the Agreement.

## **20. 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. FRANCHISEE shall ensure that insurance coverage is maintained continuously, without lapse, for a minimum of twelve (12) consecutive months during the term of the Agreement. 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 will result in suspension of the franchise pursuant to SCC section 6.20.260.B and may constitute a material breach of contract.

## **21. 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.

**22. WEB ACCESSIBILITY**

FRANCHISEE shall ensure that all web sites and web applications provided by FRANCHISEE pursuant to this Agreement shall comply with the COUNTY's Web Accessibility Policy.

**23. ADVANCED CLEAN FLEETS REGULATION**

FRANCHISEE and any and all subcontractors shall at all times have valid Certificates of Reported Compliance as described in California Code of Regulations, title 13, ("13 CCR") section 2449(n) for fleets of vehicles subject to 13 CCR section 2449 which may be used in performance of this Agreement. No such vehicle is permitted onsite unless and until FRANCHISEE provides COUNTY with a valid Certificate of Reported compliance therefor. Vehicles with a gross vehicle weight greater than 8,500 lbs. and light-duty package delivery vehicles operated in California may be subject to the California Air Resources Board Advanced Clean Fleets regulations, [Advanced Clean Fleets Regulation & Advisories | California Air Resources Board](#). Such vehicles may therefore be subject to requirements to reduce emissions of air pollutants. For more information, see CARB [Advanced Clean Fleets](#).

**24. 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.

**25. SUBCONTRACTS, 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. FRANCHISEE shall obtain prior written approval from COUNTY before subcontracting any of the services delivered under this Agreement. FRANCHISEE remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. FRANCHISEE shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.
- C. 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. 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.
- D. 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.

**26. 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.

**27. SUCCESSORS**

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

**28. TIME**

Time is of the essence of this Agreement.

**29. 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.

**30. DIRECTOR**

As used in this Agreement, "Director" shall mean the Director of the COUNTY Department of Waste Management and Recycling or his/her designee. Director shall administer this Agreement on behalf of COUNTY and is authorized to make administrative amendments to this Agreement on behalf of COUNTY relating to scope of work or services; pricing; performance standards, milestones, schedules, and timelines; management practices; and similar matters. 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.

**31. 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 suspended or 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 fifteen (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.

### **32. DEFAULT, TERMINATION**

- A. Default. This Agreement is granted upon each and every condition herein, and each of the conditions is a material and essential condition to the granting of said franchise. Except for the occurrence of Force Majeure as described in section 35 of this Agreement, 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, and if such failure continues for more than thirty (30) calendar days following written notice from the COUNTY Director of such failure and a demand that correction be commenced by FRANCHISEE, the COUNTY Board shall have the right to terminate this Agreement as provided in SCC Section 6.20.260.
- B. Cure Period. If the nature of the violation is such that it cannot be fully cured within thirty (30) calendar days due to circumstances not under FRANCHISEE'S control, the period of time in which FRANCHISEE must cure the violation shall be extended for such additional time reasonably necessary to complete the cure, as determined by COUNTY Director, provided that: (i) FRANCHISEE has promptly begun to cure; (ii) FRANCHISEE is diligently pursuing its efforts to cure; and (iii) FRANCHISEE provides a timeline, acceptable to COUNTY Director, to complete its cure efforts and responds within seventy-two (72) hours of any status request by COUNTY. Except as provided in section 29.C below, COUNTY may not maintain any action or effect any remedies for default against FRANCHISEE unless and until FRANCHISEE has failed to cure the breach within the time periods provided in section 29, subpart A. or B., as applicable.
- C. Fraud; Deceit; Misrepresentation. FRANCHISEE shall not be entitled to any cure period and COUNTY may immediately proceed with termination of this Agreement as provided in SCC Section 6.20.260.A, if FRANCHISEE has engaged in fraud, deceit, or material misrepresentation in connection with this Agreement, including but not limited to: (i) making false or misleading statements; (ii) withholding or failing to disclose facts or information that were required to be disclosed under this

Agreement; or (iii) intentionally misleading or deceiving COUNTY. Any representation or disclosure made to COUNTY by FRANCHISEE either 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, will constitute a material breach of the Agreement subject to the provisions in this section 29.C.

- D. Notice of Termination. The COUNTY Director shall serve written notice, either personally, by registered or certified mail, or by e-mail, of the termination of a Franchise under this Agreement to where Notice is sent pursuant to section 5 of this Agreement and FRANCHISEE shall cease operation under its Franchise within ten (10) calendar days.

### **33. 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, within thirty (30) calendar days 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.

**34. REPORTS**

Reports under this Agreement shall be in accordance with Exhibit A – Alternative 1 - Permanent and Temporary Collection Services or Exhibit A – Alternative 2 - Temporary Collection Services.

**35. 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.

**36. 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.

**37. 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.

**38. FORCE MAJEURE**

Neither FRANCHISEE nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

**39. 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.

**40. 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.

**41. 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: \_\_\_\_\_

[Name]

[Title]

[Agency or Dept]

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

Name: \_\_\_\_\_

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

“COUNTY”

“FRANCHISEE”

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Agreement approved by Board of Supervisors:

Agenda Date: \_\_\_\_\_

Item Number: \_\_\_\_\_

Resolution No: \_\_\_\_\_

Contract and Franchisee Tax Status Reviewed and Approved by County Counsel:

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

Date: \_\_\_\_\_

Amanda L. McDermott  
Deputy County Counsel

## **EXHIBIT A – Alternative 2 - Temporary Collection Services to Agreement**

### **SCOPE OF SERVICES**

#### **1. APPLICABILITY**

This Scope of Services shall only apply to those FRANCHISEES that are providing temporary solid waste collection services wherein a bin, roll-off box, or similar container is loaded by or on behalf of generator and placed on a temporary basis for a limited duration to collect, transport and dispose of waste materials generated from construction, demolition, renovation, cleanup, or similar short-duration projects.

#### **2. PROHIBITED ONGOING COMMERCIAL COLLECTION SERVICES**

A. A FRANCHISEE operating under Alternative 2 Scope of Services shall not provide ongoing, recurring, or regularly scheduled commercial solid waste collection services to any Generator within the unincorporated County.

For purposes of this section, ongoing or recurring service includes, but is not limited to:

- Regularly scheduled weekly, biweekly, or monthly collection service;
- Provision of permanent containers intended to remain on-site for ongoing business operations; or
- Services structured or marketed as continuing commercial waste collection.

B. Provision of such ongoing commercial solid waste collection services by a FRANCHISEE operating under Alternative 2 constitutes a material violation of this Agreement and may subject the FRANCHISEE to liquidated damages as set forth in Exhibit C.

C. If a FRANCHISEE operating under Alternative 2 intends to provide ongoing commercial solid waste collection services, the FRANCHISEE must notify the COUNTY Director in writing prior to commencing such services. The FRANCHISEE shall not provide such services unless and until the Director has approved a transition to Alternative 1 Scope of Services and the Agreement has been amended accordingly.

#### **3. DEFINITIONS**

For the purposes of this Agreement, all terms used shall have the

same meaning as those defined in SCC section 6.20.030.

**4. MINIMUM SERVICE DOCUMENTATION**

- A. FRANCHISEE shall maintain written service documentation for all services provided under this Franchise. Such documentation may include work orders, invoices, rate sheets, service confirmations, or other records customarily used in the construction and demolition industry and is not required to take the form of a customer service agreement.
- B. At minimum, service documentation shall identify:
  - 1. Service address or project location.
  - 2. Describe the services to be provided by FRANCHISEE and the itemized cost for providing such services to the customer, including but not limited to fees, taxes, administrative costs, and costs for delivery or removal of containers.
  - 3. Date(s) of delivery and removal.
  - 4. Contain clauses that automatically terminate such service documentation and agreements in the event that FRANCHISEE's franchise agreement is terminated.
  - 5. Identify the responsible person who arranges for customer's waste material collection services and implements diversion programs. Responsible person includes but is not limited to a property owner, a business owner, a tenant, or a property manager. A broker is not a responsible person.
- C. FRANCHISEE shall provide such documentation to the customer and/or COUNTY Director within five (5) business days of request.
- D. FRANCHISEE shall comply with the following customer service standards:
  - 1. Respond to inquiries from a customer and/or COUNTY Director within five (5) business days of receiving the inquiry; and
  - 2. At no point in time charge a customer for a service not provided in accordance with the agreed-upon level of service and/or as required by State and/or County regulations.

**5. 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.

**6. DISPOSAL AND DIVERSION OF COMMERCIALY 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.

**7. 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 5 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.

**8. COLLECTION EQUIPMENT**

- A. Any and all vehicles used by FRANCHISEE to perform 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 COUNTY.
- C. FRANCHISEE shall maintain a current list of its vehicles and shall submit to the 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.

**9. FRANCHISEE PROVIDED TEMPORARY WASTE MATERIAL CONTAINERS**

- A. General: FRANCHISEE shall provide temporary 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. Clearly identify the type or types of solid waste or recyclable material or organic material for which they are intended to be used. Labels must be visible, legible, and in good condition.
  4. 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.
  5. Be designed and constructed to be watertight to prevent the leakage of liquids.
  6. 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.
  7. Containers shall be equipped with functioning locking bars or a locking mechanism.
  8. Be kept free of graffiti.
  9. Be replaced, cleaned or repainted as needed so as to present a clean appearance.
  10. No later than January 1, 2036, FRANCHISEE shall provide all Generators with collection containers that comply with the container color requirements specified 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.
- B. COUNTY Director or designee may require special container equipment, and/or container labeling with customer identifying information.
- C. 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.

## **10. 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 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.
- C. 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. The COUNTY Director shall provide FRANCHISEE with the required report format of such submittal.
- D. 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.
- E. FRANCHISEE agrees that, pursuant to Government Code section 7522.56, FRANCHISEE shall make best efforts to determine if any of its employees or new hires providing direct services to COUNTY are members of the Sacramento County Employees' Retirement System (SCERS). FRANCHISEE further agrees that it shall make a report bi-annually (due no later than January 31st and July 31st) to COUNTY with a list of its employees that are members of SCERS along with the total number of hours worked during the previous six (6) months. This report shall be forwarded to where Notice is sent pursuant to section 5 of Agreement.

**11. 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 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.

**12. 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.

**13. DIVERSION PLAN**

- FRANCHISEE shall submit a Diversion Plan to COUNTY as part of its FRANCHISEE Application for COUNTY Franchise. The Diversion Plan shall be approved by COUNTY and incorporated into the Agreement as Attachment 3. The Diversion Plan shall contain at a minimum:
- A. A methodology for how FRANCHISEE will meet COUNTY diversion requirement.
  - B. FRANCHISEE shall further submit a Diversion Plan annually to COUNTY by May 15 each year.

**14. ANNUAL MANDATORY TRAINING**

- A. COUNTY will conduct annual training covering, at minimum, tonnage and revenue reporting requirements.

- B. Attendance is required, at the discretion of COUNTY Director, for FRANCHISEES that meet any of the following criteria, including but not limited to: (i) reporting staff turnover; (ii) staff reassignment impacting reporting; (iii) significant or repeated reporting errors; or (iv) any other issue identified by COUNTY that may impact accurate or timely reporting.
- C. COUNTY will notify FRANCHISEE at least thirty (30) calendar days in advance if attendance is required, specifying the date, time, and format of the training.
- D. Failure to attend may result in non-renewal or delayed renewal of FRANCHISEE'S franchise, in addition to the assessment of liquidated damages identified in Exhibit C, section 3, of this Agreement.

**15. FRANCHISE RENEWAL DOCUMENTS**

FRANCHISEE must annually submit all required franchise renewal documents to COUNTY no later than May 15. Renewal documents submitted after May 15 may subject FRANCHISEE to liquidated damages identified in Exhibit C, section 3, of this Agreement. Renewal documents include, but are not limited to Annual Diversion Plan, vehicle inventory, and insurance certificates.

**16. 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 the 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.** The COUNTY Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the COUNTY 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 the 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. The 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) calendar days in advance of its anniversary date.

FRANCHISEE shall maintain the required insurance coverage continuously for a minimum period of twelve (12) consecutive months during the term of the Agreement.

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) calendar days following the date of receipt of a claim or ten (10) calendar 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 Revised.
- 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 may be required by COUNTY to pay the minimum annual franchise fee amount set forth in Attachment 5 Revised, as set forth in 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 the COUNTY Director on a form provided by said COUNTY Director. If proof of overpayment is satisfactory to the COUNTY Director, the 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 shall 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 (C)
Containers with missing or damaged lid	\$150/service address/failure	2 Business Days	6.20.225 (C)
Containers with graffiti	\$150/service address/failure	2 Business Days	6.20.230 (A)

FAILURE(s)	Amount	Cure Period	SCC section
Containers with missing or damaged labels or labels not adequately visible by user	\$150/service address/failure	2 Business Days	6.20.230 (A)
Containers that are damaged, non-functional, or unusable	\$250/service address/failure	2 Business Days	6.20.225 (E)
Stolen/missing containers not replaced upon reporting of such issue	\$250/service address/failure	5 Business Days	6.20.225 (A)
Containers overflowing, leaking, spilling	\$250/service address/failure	48 hours	6.20.225 (C)
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)	\$500/incident for the first offense \$1,000/incident for the second offense \$2,000/incident for any subsequent offenses within 12 months of first incident	N/A	6.20.225 (F)
Failure to meet Customer Service Standards (Exhibit A, section 2.F) <sup>1</sup>	\$250/day/service address	2 Business Days	6.20.340

FAILURE(s)	Amount	Cure Period	SCC section
Unsecured materials in collection vehicles	\$150/incident	N/A	6.20.170
Provision of non-compliant service <sup>1</sup>	\$10/day/account	N/A	6.20.225 (C)
Inaccurate Quarterly Generator Report <sup>1</sup>	\$10 per inaccurate account submitted after the first five (5) errors per report	N/A	6.20.275
Non-removal of any container within the 5-day period following the customer service agreement and/or service termination date	\$100/day/customer	Until removed	6.20.340
Failure to complete Diversion Plan campaign requirement <sup>1</sup>	\$500/incomplete campaign	N/A	6.20.285
Providing permanent commercial solid waste collection services <sup>2</sup>	\$1,000/service location/month	Until removed	6.20.210
Failure to submit Franchise Renewal Documentation	\$10/day	N/A	6.20.210
Failure to attend mandatory annual meeting	\$500/missed meeting	N/A	6.20.275

<sup>1</sup> Liquidated damages marked with (1) only apply to FRANCHISEES operating under Exhibit A – Alternative 1 - Permanent and Temporary Collection Services

<sup>2</sup> Liquidated damages marked with (2) only apply to FRANCHISEES operating under Exhibit A – Alternative 2 - Temporary Collection Services

- 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 Revised.