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1           Non-Exclusive Temporary Construction and  
2           Demolition Debris Collection Service Agreement

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4                           Executed Between the  
5                           City of Rohnert Park  
6                           And

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11                           This \_\_\_\_ day of \_\_\_\_ 2017  
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## CITY OF ROHNERT PARK

This "AGREEMENT" is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 ("Effective Date"), by and between the City of Rohnert Park, a California municipal corporation, (hereinafter referred to as "CITY") and \_\_\_\_\_, a California [corporation], (hereinafter referred to as "FRANCHISEE").

## RECITALS

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("Act") and subsequent additions and amendments (codified at California Public Resources Code Section 40000 *et seq.*), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste Collection within their jurisdiction; and,

**WHEREAS**, the State of California (the "State") has found and declared that the amount of Solid Waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the Act, directed the responsible State agency, and all local agencies, to promote disposal site Diversion and to maximize the use of feasible Solid Waste reduction, re-use, recycling, and Composting options in order to reduce the amount of Solid Waste that must be disposed of in disposal sites; and,

**WHEREAS**, the CITY Council of the CITY (the "City Council") has determined through a competitive procurement process for Non-Exclusive Temporary Construction and Demolition Debris Collection Service that FRANCHISEE, by demonstrated experience, reputation and capacity, is qualified to provide for the Non-Exclusive Temporary Construction and Demolition Debris Collection Service within the corporate limits of the CITY, the transportation of such material to appropriate places for processing, recycling, Composting and/or disposal; and the processing of materials; and City Council desires that FRANCHISEE be engaged to perform such services on the basis set forth in this AGREEMENT; and

**WHEREAS**, the FRANCHISEE, through its proposal to the CITY, has proposed and represented that it has the ability and capacity to provide for the Non-Exclusive Temporary Construction and Demolition Debris Collection Service within the corporate limits of the CITY; the transportation of such material to appropriate places for processing, recycling, Composting and/or disposal; and the processing of materials; and

**WHEREAS**, this AGREEMENT has been developed by and is satisfactory to the CITY and the FRANCHISEE.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions, and consideration contained herein, the CITY and FRANCHISEE hereby agree as hereinafter set forth:

## ARTICLE 1. Definitions

For the purpose of this Collection Service Agreement, hereinafter referred to as "AGREEMENT," the definitions contained in this Article shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Article, the definition of such word or phrase as contained the City Municipal Code shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender.

1.01 AB 939. The California Integrated Waste Management Act (California Public Resources Code Sections 40000 et al.) redefined solid waste management in an effort to reduce the volume and toxicity of solid waste that is landfilled and incinerated by requiring local governments to prepare and implement plans to improve the management of waste resources.

1.02 AGREEMENT. This written document and all amendments thereto, between the CITY and the FRANCHISEE, governing the provision of Non-Exclusive Temporary Construction and Demolition Debris Collection Service as provided herein.

1.03 Agreement Year. Each twelve (12) month period from January 1st to December 31st, beginning January 1, 2018.

1.04 Applicable Law. For purposes of this AGREEMENT, Applicable Laws includes without limitation, AB 341, AB 939, AB 1594, AB 1826, SB 1016 and all amendments and related subsequent legislation.

1.05 Bin. A metal container, with a capacity of one (1) to eight (8) cubic yards of Construction and Demolition Debris, designed or intended to be mechanically dumped into a loader packer type truck that is approved for such purpose by the CITY.

1.06 Biohazardous or Biomedical Waste. Any waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; including waste resulting from the operation of medical clinics, hospitals, and other facilities processing wastes which may consist of, but not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves.

1.07 CalRecycle. California's Department of Resources Recycling and Recovery (CalRecycle) administers and provides oversight for all of California's state-managed waste handling and recycling programs.

1.08 Change in Law. Any change in (or any new) laws, ordinances, rules, regulations, orders, judgments, decrees, interpretations, decisions or permit requirements, of or by any federal, state or local governmental entity (collectively "Applicable Laws"), applicable on or after the Effective Date.

1.09 CITY. The City of Rohnert Park, California.

1.10 City Representative. That person, or their designee, designated by the CITY to administer and monitor the provisions of this AGREEMENT.

1.11 Collection Service. See Non-Exclusive Temporary Construction and Demolition Debris Collection Service.

1.12 Commercial Service Unit. Any combination of retail, professional, wholesale and industrial facilities, place of business and other commercial enterprises in the Service Area utilizing a common cart or Bin for the accumulation and set-out of Solid Waste.

162           1.13   Composting. The controlled biological decomposition of Organic Waste into a  
163 specific mixture of decayed organic matter meeting the definition of “compost” in Public  
164 Resources Code Section 40116.

165           1.14   Construction and Demolition Debris. Commonly used or discarded materials  
166 removed from construction, remodeling, repair, demolition, or renovation operations on any  
167 pavement, house, commercial building, or other structure, or from landscaping. Such materials  
168 include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard,  
169 aluminum, glass, asphalt material, plastic pipe, roofing material, carpeting, concrete, wood,  
170 masonry, rocks, trees, remnants of new materials, including paper, plastic, carpet scraps, wood  
171 scraps, scrap metal, building materials, packaging and rubble resulting from Construction,  
172 remodeling, renovation, repair and demolition operations on pavements, houses, commercial  
173 buildings and other structures. With the exception of soil, dirt, concrete, and asphalt, Construction  
174 and Demolition Debris does not include Garbage and Exempt Waste.

175           1.15   Container. A Bin or Roll-off Container provided by FRANCHISEE to Service  
176 Recipients for the collection of Construction and Demolition Debris.

177           1.16   County. Sonoma County, California

178           1.17   Disposal Facility. The Sonoma County Landfill/Transfer System owned by  
179 Sonoma County for the disposal of Garbage, Processing Residue, and other materials as  
180 appropriate.

181           1.18   Diversion. Activities that reduce or eliminate the amount of solid waste, garbage,  
182 green waste, and construction and demolition debris that is disposed of in a solid waste or other  
183 permitted landfill.

184           1.19   Dwelling Unit. Any individual living unit in a single-family dwelling (SFD) or multi-  
185 family dwelling (MFD) structure or building intended for, or capable of being utilized for, residential  
186 living other than a hotel or motel.

187           1.20   Effective Date. The date this AGREEMENT is executed.

188           1.21   Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste, Sludge,  
189 automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-  
190 acid batteries, any matter or materials which are not acceptable for disposal at a Solid Waste  
191 landfill as defined in the Act and those wastes under the control of the Nuclear Regulatory  
192 Commission.

193           1.22   Food Waste. Food scraps and trimmings and other putrescible waste that result  
194 from food production, preparation, cooking, storage, consumption or handling. Food Waste  
195 includes but is not limited to: meat, fish and dairy waste, fruit and vegetable waste and grain  
196 waste. Food Waste does not include Exempt Waste.

197           1.23   Franchise Fee. The payment made by FRANCHISEE to CITY for the privilege of  
198 providing Collection Services.

199           1.24   FRANCHISEE. The other party to this AGREEMENT.

200           1.25   Garbage. All putrescible and non-putrescible solid, semi-solid and associated  
201 liquid waste, as defined in California Public Resources Code Section 40191. Garbage does not  
202 include those items defined herein as Construction and Demolition Debris, Green Waste or  
203 Exempt Waste.

204 1.26 Gift. That which is defined, and not exempted, in California Government Code  
205 Section 82028 and the gift regulations of the Fair Political Practices Commission at 2 C.C. R Sec  
206 18940 *et seq.*, as may be amended from time to time.

207 1.27 Green Waste. Any vegetative matter resulting from normal yard and landscaping  
208 maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in  
209 diameter and fits in the Green Waste Cart utilized by the Service Recipient. Green Waste includes  
210 plant debris, such as palm, yucca and cactus, grass clippings, leaves, pruning, weeds, branches,  
211 brush, holiday trees, and other forms of vegetative waste and must be generated by and at the  
212 Service Unit wherein the Green Waste is collected. Green Waste does not include items herein  
213 defined as Garbage or Exempt Waste.

214 1.28 Gross Revenue. All revenue amounts collected by FRANCHISEE for the provision  
215 of Collection Services pursuant to this AGREEMENT, calculated in accordance with Generally  
216 Accepted Accounting Procedures (GAAP). The Gross Revenue, for purposes of this  
217 AGREEMENT, does not include any revenue generated from the sale of Recyclable Material or  
218 Organic Waste, or other receipts from state and local government accounts (e.g. grants, cash  
219 rewards and rebates) resulting from the performance of this AGREEMENT.

220 1.29 Hazardous Waste. Any material which is defined, regulated or listed as a  
221 "hazardous", "toxic", a "pollutant", or words of similar import waste under California or United  
222 States law or any regulations promulgated pursuant to such law, as such state or federal law or  
223 regulations may be amended from time to time; and "designated waste" as defined in California  
224 Water Code Section 13173.

225 1.30 Large Green Waste. Oversized Green Waste such as tree trunks and branches  
226 with a diameter of not less than six (6) inches and not more than two (2) feet and a length of not  
227 more than five (5) feet in its longest dimension, which are attributed to the normal activities of a  
228 SFD, or MFD Service Unit. Large Green Waste must be generated by and at the Service Unit  
229 wherein the Large Green Waste is collected.

230 1.31 Master Operating Agreement ("MOA"). The Agreement for Operation of The  
231 Central Landfill and County Transfer Stations Between County of Sonoma and Republic Services  
232 of Sonoma County, Inc., including Exhibit I thereto, the Agreement for Operations of Sonoma  
233 County Transfer Stations and Material Recovery Facility Between The Ratto Group of Companies,  
234 Inc. and Republic Services of Sonoma County, Inc.

235 1.32 MFD Service Unit. Any combination of Dwelling Units in the Service Area utilizing  
236 a common Bin or cart for the accumulation and set-out of Solid Waste.

237 1.33 Non-Collection Notice. A form developed and used by the FRANCHISEE, as  
238 approved by the CITY, to notify Service Recipients of the reason for non-collection of materials  
239 set out by the Service Recipient for collection by FRANCHISEE pursuant to this AGREEMENT.

240 1.34 Non-Exclusive Temporary Construction and Demolition Debris Collection Service  
241 (Collection Service(s)). Temporary collection and processing of non-putrescible Solid Waste by  
242 utilizing a Container for the temporary collection of Construction and Debris Materials by a person  
243 or company that holds a valid Non-Exclusive Temporary Construction and Demolition Debris  
244 Collection Service Agreement from the CITY and the delivery of that material to permitted and  
245 licensed Processing Facility.

246 1.35 Organic Waste. Those materials which are capable of being composted and which  
247 would otherwise be process as Recyclable Material or disposed of as Garbage. Organic Waste  
248 includes any vegetative matter resulting from normal yard and landscaping maintenance that is

not more than three (3) feet in its longest dimension or six (6) inches in diameter. Organic Waste includes plant debris, such as palm, yucca and cactus, grass clippings, leaves, pruning, weeds, branches, brush, holiday trees, and other forms of vegetative waste. Organic Waste also includes Food Waste, Stable Matter, and food packaging items such as pizza boxes, paper towels, waxed cardboard and food contaminated paper products. Organic Waste does not include items herein defined as Exempt Waste.

1.36 Processing Facility. The licensed and permitted facility designated by the FRANCHISEE and approved by the CITY, for the processing of Construction and Demolition Debris, and other materials as appropriate.

1.37 Recyclable Materials. Those materials which are capable of being recycled and which would otherwise be processed as Organic Waste or disposed of as Garbage. Recyclable Materials include newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; scrap and cast aluminum (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); steel including "tin" cans, aerosol cans (empty, non-toxic products) and small scrap (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; plastic bottles (#1-7); aluminum foil and pans; concrete; used motor oil and filters; dry cell household batteries when contained in a sealed heavy-duty plastic bag; and those materials added by the FRANCHISEE from time to time.

1.38 Residuals. Those materials that are a result of Recyclable Material or Organic Waste processing, such as from the operations at a Processing Facility, that cannot be diverted from landfill disposal.

1.39 Roll-off Container. A metal container with a capacity to hold up to forty (40) cubic yards of Construction and Demolition Debris that is normally loaded onto a motor vehicle and transported to an appropriate facility.

1.40 Service Area. That area within the corporate limits of the City of Rohnert Park, California.

1.41 Service Recipient. An individual or company receiving Non-Exclusive Temporary Construction and Demolition Debris Collection Service.

1.42 Service Recipient Rate. The dollar amount charged by FRANCHISEE to Service Recipients to receive Collection Service.

1.43 Service Unit. SFD Service Units, MFD Service Units, and Commercial Service Units.

1.44 SFD Service Unit. Any Dwelling Unit in the Service Area utilizing a cart, or any combination of Dwelling Units sharing carts, for the accumulation and set out of Solid Waste.

1.45 Sludge. The accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects.

1.46 Solid Waste. Garbage, Recyclable Materials and Organic Waste resulting from the normal activities of a Service Unit. Solid Waste must be generated by and at the Service Unit wherein the Solid Waste is collected and does not include items defined herein as Exempt Waste.

- 293 1.47 SCWMA. The Sonoma County Waste Management Agency.
- 294 1.48 Stable Matter. Manure and other waste matter normally accumulated in stables or
- 295 in livestock or poultry enclosures.
- 296 1.49 Waste Delivery Agreement ("WDA"). That certain agreement between the CITY
- 297 and Republic Services of Sonoma County dated October 23, 2014.
- 298 1.50 Work Day. Any day, Monday through Saturday.

## 299 **ARTICLE 2. Term of AGREEMENT**

300 2.01 Term. The term of this AGREEMENT is a seven (7)-year period beginning

301 January 1, 2018 and terminating on December 31, 2024.

302 2.02 Extensions. -The FRANCHISEE or CITY may request one (1) three (3)-year term

303 extension to this original AGREEMENT and, at CITY's sole option, CITY may grant

304 FRANCHISEE's request to so extend the term. Under no circumstances shall CITY be obligated

305 to extend the term, and under no circumstances shall CITY be obligated to grant the full three (3)

306 years of extension (i.e., an extension for a shorter time period may instead be granted by the

307 CITY if it chooses). FRANCHISEE or CITY must request the three (3) year extension by July 1,

308 2023. In addition, a term extension shall only be granted in the event that at least two (2)

309 Franchisees are eligible for an extension. However, this requirement will not be the sole

310 determinant of whether or not the CITY grants the extension.

311 2.02.1 Notification of Eligibility. Beginning on or about July 1, 2022, provided

312 the City Manager determines that the FRANCHISEE has met all the requirements of the

313 AGREEMENT, including but not limited to the Diversion Requirements set forth in Article 5, the

314 Record Keeping and Reporting Requirements set forth in Article 8, and the Contract Compliance

315 Review per Article 12, the CITY may offer the FRANCHISEE in writing one (1) or more extensions

316 to the term of this AGREEMENT for an amount of time to be determined by the CITY, but for no

317 more than an additional three (3) years total. FRANCHISEE shall provide written notice to the

318 CITY as to whether FRANCHISEE accepts or rejects the CITY's offer within twenty (20) Work

319 Days of the date of the offer. If the FRANCHISEE accepts the offer, the FRANCHISEE shall also

320 submit the Extension Administration Fee payment described in Section 2.02.2 below within twenty

321 (20) Work Days of the offer. If FRANCHISEE fails to provide either the written notice or the

322 payment to the CITY within twenty (20) Work Days, the CITY's offer of an extension shall be

323 deemed withdrawn.

324 2.02.2 Extension Administration Fee. If FRANCHISEE accepts the CITY's

325 offer of extension, the FRANCHISEE shall make a payment to the CITY to cover the CITY's actual

326 administrative costs incurred in extending the AGREEMENT. This payment shall be due to the

327 CITY with the FRANCHISEE's written notice of acceptance described in Section 2.02.1. The total

328 payment amount to the CITY shall not exceed a total of \$5,000 per extension period per

329 FRANCHISEE.

330 2.03 Maximum Term. The maximum term of the AGREEMENT, including all extensions,

331 shall not extend beyond December 31, 2027.

## 332 **ARTICLE 3. Services Provided by the FRANCHISEE**

333 3.01 Award of AGREEMENT. Except as otherwise provided in this AGREEMENT, the

334 FRANCHISEE is herein granted a non-exclusive franchise to provide Temporary Construction

and Demolition Debris Collection Service within the Service Area. No other Solid Waste or recycling service shall be provided by the FRANCHISEE.

3.02 Limitations to Scope of Non-Exclusive Franchise.

3.02.1 No Collection of Garbage, Recyclable Materials or Organic Waste Carts or Bins from any Service Unit covered under the Collection Service Agreement between the City of Rohnert Park and Sonoma County Resource Recovery, LLC, or any successor arrangement entered into by the CITY for such service.

3.02.2 No large items removed from a premise by a property cleanup or maintenance company as an incidental part of the total cleanup or maintenance service offered by the company rather than as a hauling service;

3.02.3 No agricultural waste, stable matter, manure and any other animal by product for use as tallow

3.02.4 No by-products of sewage treatment, including Sludge, ash, grit and screenings;

3.02.5 No Hazardous Waste, regardless of its source;

3.03 FRANCHISEE acknowledges and agrees that the CITY may permit other persons besides the FRANCHISEE to collect any and all types of materials excluded from the scope of this AGREEMENT, as set forth above, without seeking or obtaining approval of FRANCHISEE. If FRANCHISEE can produce evidence that other persons are servicing Garbage, Recyclable Materials, or Organic Waste carts or Bins, or large items in a manner that is not consistent with the CITY's Municipal Code or this AGREEMENT, it shall report the location, the name and phone number of the person or company to the CITY along with FRANCHISEE'S evidence of the violation of the exclusiveness of this AGREEMENT and CITY shall determine and take appropriate action to enforce the Code and this AGREEMENT.

3.03.1 The scope of this AGREEMENT shall be interpreted to be consistent with Applicable Law, now and during the term of the AGREEMENT. If future judicial interpretations of current law, or new laws, regulations, or judicial interpretations, limit the ability of the CITY to lawfully provide for the scope of services as specifically set forth herein, FRANCHISEE agrees that the scope of the AGREEMENT will be limited to Temporary Construction and Demolition Debris collection services and materials which may be lawfully provided and that the CITY shall not be responsible for any lost profits or losses claimed by FRANCHISEE to arise out of limitations of the scope of the AGREEMENT set forth herein. In such an event, it shall be the responsibility of FRANCHISEE to minimize the financial impact of such future judicial interpretations or new or amended laws.

3.04 Service Standards. FRANCHISEE shall perform Collection Services under this AGREEMENT in a thorough and professional manner. Collection Services described in this AGREEMENT shall be performed regardless of weather conditions or difficulty of Collection.

3.05 Hours and Days of Collection.

3.05.1 Collection Services shall be provided, commencing no earlier than 7:00 a.m. and terminating no later than 6:00 p.m., Monday through Friday, and commencing no earlier than 8:00 a.m. and terminating no later than 5:00 p.m. on Saturday, with no service on Sundays. The hours, days, or both of Collection Service may be extended due to extraordinary circumstances or conditions with the prior written consent of the City Representative.

378 3.05.2 The CITY may direct FRANCHISEE to reduce the Collection Service hours  
379 in areas around schools to 3:00 p.m., and in high traffic areas during peak commute hours.  
380 When the CITY is conducting road overlay or slurry projects, the CITY reserves the right to  
381 temporarily redirect or restrict FRANCHISEE from collection in the affected areas or temporarily  
382 change the Collection Service hours if needed. The hours of Collection Service may be  
383 extended due to extraordinary circumstances or conditions with the prior written consent of the  
384 City Representative. If Commercial Service Units are within one hundred (100) feet of SFD or if  
385 the CITY or FRANCHISEE receives repeated noise complaints from residents, the hours of  
386 Collection Service for Commercial Service Units may be revisited between the parties in good  
387 faith.

388 3.06 Manner of Collection Service. The FRANCHISEE shall provide Collection Services  
389 with as little disturbance as possible and shall leave any Container in an upright position at the  
390 same point it was collected without obstructing alleys, roadways, driveways, sidewalks, or mail  
391 boxes unless the FRANCHISEE or Service Recipient applies for and the CITY issues an  
392 encroachment permit.

393 3.07 Temporary Construction and Demolition Debris Containers.

394 3.07.1 Ownership. Ownership of Containers distributed by the FRANCHISEE  
395 shall rest with the FRANCHISEE except in the case of the termination of the AGREEMENT prior  
396 to the expiration of the initial term or optional extension term due to the default of the  
397 FRANCHISEE. Under such circumstances, the CITY shall have the right to take possession of  
398 the Containers and shall retain such possession until satisfactory arrangements can be made to  
399 provide Collection Service using other equipment. Such time of possession, the CITY shall not  
400 be limited, and regardless of the time of possession, there shall be no monies owing to the  
401 FRANCHISEE from the CITY for the use of the equipment. Upon the receipt of written notice from  
402 the CITY, FRANCHISEE shall submit to the City Representative an inventory of Containers,  
403 including their locations.

404 3.07.2 Inspection and Cleaning. FRANCHISEE shall inspect all Containers prior  
405 to delivery. Containers shall be in safe, clean and sanitary, and in operable condition with working  
406 doors, hinges, locking devices, safety devices, floors and side walls without holes, free of material  
407 or material build up, and without broken wheels, welds, or ladders that could cause street damage  
408 or harm to users.

409 3.07.3 Graffiti Removal. FRANCHISEE shall remove any and all graffiti within two  
410 (2) Work Days of FRANCHISEE being notified by the City Representative or public.  
411 FRANCHISEE shall not deliver a Container without FRANCHISEE information visible or with any  
412 graffiti appearing on the Container.

413 3.08 Labor and Equipment. FRANCHISEE shall provide and maintain all labor,  
414 equipment, tools, facility(ies), and personnel supervision required for the performance of  
415 FRANCHISEE'S obligations under this AGREEMENT. FRANCHISEE shall at all times have  
416 sufficient backup equipment and labor to fulfill FRANCHISEE'S obligations under this  
417 AGREEMENT. No compensation for FRANCHISEE'S services or for FRANCHISEE'S supply of  
418 labor, equipment, tools, facilities or supervision shall be provided or paid to FRANCHISEE by the  
419 CITY or by any Service Recipient except as expressly provided by this AGREEMENT.

420 3.09 Transfer, Recycling, and Processing Facilities.

421 3.09.1 Transfer, Recycling, and Processing Facilities. FRANCHISEE shall select  
422 the transfer, and Processing Facilities. Material collected under this AGREEMENT shall be

delivered to permitted and licensed facilities that comply with the CalRecycle regulations under Title 14, Chapter 3, Minimum Standards for Solid Waste Handling and Disposal (Article 5.9 – Sections 17380-17386). Except as set forth below, all material collected as a result of performing Collection Services shall be transported to, and delivered on the same day as collection, to a properly permitted and licensed Disposal, transfer, recycling, or Processing Facility. All material collected will be weighed and documented through a weight ticket using certified scales located at the receiving facility. In the event the recycling, or Processing Facility is closed on a Work Day, the FRANCHISEE shall transport the material at such other legally permitted and licensed facility. FRANCHISEE must assure that all transfer, recycling, and Processing Facilities are properly permitted and licensed to receive material collected under this AGREEMENT. Failure to comply with this provision shall result in the levy of Liquidated Damages as specified in Article 11 of this AGREEMENT and may result in the FRANCHISEE being in default under this AGREEMENT.

3.09.2 ~~Waste Delivery Agreement (“WDA”). In accordance with Section 2.4 of the WDA,~~ FRANCHISEE shall deliver all Residuals from processed Construction and Demolition Debris Collected by FRANCHISEE to the Disposal Facility for the term of the Waste Delivery Agreement, ~~any extension thereof and any other similar CITY waste delivery commitment.~~

3.09.3 Permitted and Licensed Facilities. FRANCHISEE must assure that all disposal, transfer, recycling, or processing facilities selected by FRANCHISEE shall possess all existing permits and approvals by local enforcement agencies for the disposal, transfer, recycling, or processing site to be in full compliance with all regulatory agencies to conduct all operations at the approved location. FRANCHISEE, upon written request from the CITY, shall arrange for the facilities selected by the FRANCHISEE to provide copies of facility permits, notices of violations, inspection areas or concerns, or administrative action to correct deficiencies related to the operation. Failure to provide facility information shall result in the levy of Liquidated Damages as specified in Article 11 of this AGREEMENT and may result in the FRANCHISEE being in default under this AGREEMENT.

3.09.4 Processing and Disposal. FRANCHISEE shall process and dispose of all material collected from Service Units pursuant to this AGREEMENT in accordance with the following hierarchy:

- Reuse
- Disassemble for reuse or recycling
- Recycle
- Disposal

3.09.5 FRANCHISEE shall not landfill such collected material unless the material cannot be reused or recycled.

3.09.6 CITY Direction of Collected Material. CITY reserves the right to direct FRANCHISEE to take collected material pursuant to this AGREEMENT to a designated site or sites for the purpose of permitting persons who will reuse or recycle such material obtain the collected material at no cost. FRANCHISEE shall have no obligation to dispose of the collected material or material residue remaining at the directed site or sites after reusers and recyclers have removed reusable or recyclable items; however, this is subject to, and does not supersede, the requirements of Section 3.09.2 that FRANCHISEE deliver all Residuals from processed Construction and Demolition Debris Collected to the Disposal Facility for the term of the WDA and any extension thereof, or any other similar CITY waste delivery commitment.

3.10 Inspections. The CITY shall have the right to inspect the FRANCHISEE'S facilities or collection vehicles and their contents at any time while operating inside or outside the CITY.

3.11 Spillage and Litter. The FRANCHISEE shall not litter premises in the process of providing Collection Service or while its vehicles are on the road. The FRANCHISEE shall transport all materials collected under the terms of this AGREEMENT in such a manner as to prevent the spilling or blowing of such materials from the FRANCHISEE'S collection vehicle. The FRANCHISEE shall exercise all reasonable care and diligence in providing Collection Service so as to prevent spilling or dropping of material and shall immediately, at the time of occurrence, clean up such spilled or dropped materials. All Containers will be tarped or covered transporting on CITY streets.

3.11.1 The FRANCHISEE shall not be responsible for cleaning up sanitary conditions caused by the carelessness of the Service Recipient; however, the FRANCHISEE shall clean up any material or residue that is spilled or scattered by the FRANCHISEE or its employees.

3.11.2 Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the FRANCHISEE'S operations or equipment repair shall be covered immediately with an absorptive material and removed from the street surface to comply with all local, state, and federal agency rules and regulations. The CITY must be notified of ~~such any liquid~~ spill greater than an eighth (1/8) of a cup within two (2) hours upon incident. When necessary, FRANCHISEE shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. To facilitate such cleanup, FRANCHISEE'S vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

3.11.3 The above paragraphs notwithstanding, FRANCHISEE shall clean up any spillage or litter caused by FRANCHISEE within two (2) hours upon notice from the CITY or public.

3.11.4 In the event damage to CITY streets is caused by a hydraulic oil spill, FRANCHISEE shall be responsible for all repairs to return the street to the same condition prior to the spill. FRANCHISEE shall also be responsible for all clean-up activities related to the spill. Repairs and clean-up shall be performed in a manner satisfactory to the City Representative and at no cost to the CITY.

### 3.12 Ownership of Materials.

3.12.1 Title to Construction and Demolition Debris material shall pass to FRANCHISEE at such time as said materials are placed in the FRANCHISEE'S collection vehicle.

3.12.2 Title to material collected as part of the City Requested- Clean-up Service or Special Collection Service shall pass to FRANCHISEE at the time the material is placed in the Container or other collection vehicle or container approved for use at the event.

### 3.13 Hazardous Waste.

3.13.1 Under no circumstances shall FRANCHISEE'S employees knowingly collect Hazardous Waste, or remove unsafe or poorly containerized Hazardous Waste, from a collection Container. If FRANCHISEE determines that material placed in any Container for collection is Hazardous Waste, or other material that may not legally be accepted at the Disposal Facility or one of the Processing Facilities, or presents a hazard to FRANCHISEE'S employees, the FRANCHISEE shall have the right to refuse to accept such material. The generator shall be contacted by the FRANCHISEE and requested to arrange for proper disposal service. If the generator cannot be reached immediately, the FRANCHISEE shall, before leaving the premises, leave a Non-Collection Notice, which indicates the reason for refusing to collect the material.

3.13.2 If Hazardous Waste is found in a collection Container that poses an imminent danger to people or property, the FRANCHISEE shall immediately notify the Rohnert Park Department of Public Safety. The FRANCHISEE shall immediately notify the CITY of any Hazardous Waste that has been identified.

3.13.3 If Hazardous Waste is identified at the time of delivery to the Disposal Facility, or one of the processing facilities and the generator cannot be identified, FRANCHISEE shall be solely responsible for handling and arranging transport and disposition of the Hazardous Waste.

3.14 Regulations and Record Keeping. FRANCHISEE shall comply with emergency notification procedures required by Applicable Laws and regulatory requirements. All records required by regulations shall be maintained at the FRANCHISEE'S facility. These records shall include waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

## **ARTICLE 4. Rates, Billing and Payments**

4.01 Billing and Collection of Payment. The FRANCHISEE shall be responsible for the billing and collection of payments for all Non-Exclusive Temporary Construction and Demolition Debris Collection Service.

4.02 Production of Invoices. The FRANCHISEE shall produce an invoice, in a form and format that is approved by the City Representative, for services received under this AGREEMENT. The FRANCHISEE'S invoice shall be remitted to the Service Recipient and will include at a minimum; date of service, material collected, weight collected, and total amount charged.

4.03 Methods of Payment. FRANCHISEE shall provide the means for customers to pay bills through one or more of the following methods: cash, checks, credit cards, internet payment service or automatic withdrawal from bank account.

4.04 FRANCHISEE'S Payments to CITY. FRANCHISEE shall make payment to the CITY of such fees as may be specified in this Section.

4.04.1 Franchise Fee. To reimburse CITY for costs associated with administration of the AGREEMENT and the impacts of the operations on CITY facilities and resources, and in consideration of the franchise granted to FRANCHISEE by the AGREEMENT, FRANCHISEE shall make the following Franchise Fee payments to the City:

4.04.1.1 Quarterly Franchise Fee Payments. FRANCHISEE shall pay CITY a quarterly Franchise Fee payment ("Quarterly Franchise Fee Payment") equal to fifteen percent (15%) of all gross receipts paid by customers and collected under the terms of the AGREEMENT. Payment to CITY shall be due by 5:00 p.m. PT on the fifteenth (15<sup>th</sup>) day of the month following the quarter the revenues are collected. If the 15<sup>th</sup> day of the month falls on a day that CITY is closed or a holiday, then the Franchise Fee Payment shall be due on the next business day. Each such payment shall be accompanied by an accounting, which sets forth FRANCHISEE'S gross receipts collected during the preceding month. Gross receipts shall specifically include revenue received by the FRANCHISEE from any entity, including Federal, State, County, or other local facilities within the Service Area for the provision of Collection Services by the FRANCHISEE. Gross receipts shall specifically exclude any revenue from the sale from Recyclable Materials and from grant funding. Failure to pay the correct amount or fees within the required timeline will result in liquidated damages per Article 11.

4.04.2 Reimbursement for the Cost of Procurement. The CITY requires the Franchisee(s) to reimburse the CITY up to **Seventy-Five Thousand (\$75,000)** for the cost of this procurement, divided evenly amongst all Franchisee(s) as determined prior to AGREEMENT execution.

4.04.3 The reimbursement will be made to the CITY in two (2) equal payments. The first payment shall be submitted to the City no later than January 15, 2018 and the second payment shall be submitted to the City no later than January 15, 2019. This amount will be shared equally between all Franchisees that are awarded Agreements.

<u>No. of Agreements Awarded</u>	<u>Amount to be paid by each Franchisee</u>
1	\$75,000
2	\$37,500
3	\$25,000
4	\$18,750
5	\$15,000
6	\$12,500
7	\$10,715

4.04.4 Penalty for Late Payments. Any payments described in this Section 4.04 or elsewhere in the AGREEMENT that are received by the CITY after the due date will be assessed a late penalty equal to twenty-five percent (25%) of the original amount due. Failure by FRANCHISEE to pay both the original payment amount and the late penalty within thirty (30) days of written notice of the delinquency by the CITY will be considered an event of default, and the CITY may terminate the AGREEMENT immediately.

4.05 No acceptance by CITY of any payment shall be construed as an accord that the amount is in-fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim CITY may have against FRANCHISEE for any additional sums payable under the provisions of this AGREEMENT. All amounts paid shall be subject to independent audit and recompilation by CITY. If, after the audit, such recompilation indicates an underpayment FRANCHISEE shall pay to CITY the amount of the underpayment and shall reimburse CITY for all reasonable costs and expenses incurred in connection with the audit and recompilation within ten (10) Work Days of receipt of written notice from CITY that such is the case. If, after audit, such recompilation indicates an overpayment, CITY shall notify the FRANCHISEE in writing of the amount of the overpayment, less costs and expenses incurred in connection with the audit and recompilation. FRANCHISEE may offset the amounts next due following receipt of such written notice by the amount specified therein.

## ARTICLE 5. Minimum Diversion Requirements

5.01 Tonnage Data. On or before April 15, 2018 and quarterly thereafter during the term of this AGREEMENT, FRANCHISEE shall deliver to CITY a quarterly report as specified in Section 8.02.1 listing the actual tonnage delivered by the FRANCHISEE to the Disposal or

Processing Facility, the tonnage of material discarded or landfilled including residue, the tonnage of material recycled or composted by material type (metal, wood, concrete, Green Waste, etc.) for the preceding quarter, and the number of Service Recipients collected.

5.02 Minimum Diversion Requirements. The FRANCHISEE guarantees delivery of all materials collected during the term of this AGREEMENT to a permitted and licensed Processing Facility, recycler or re-user, for processing.

5.03 In the event that the SCWMA or authorized jurisdiction within Sonoma County, certifies a Processing Facility(ies) during the term of the AGREEMENT, if directed by the CITY, the FRANCHISEE guarantees delivery of all materials collected for the remainder of the term of this AGREEMENT to be delivered to a certified Processing Facility.

## ARTICLE 6. Collection Equipment

### 6.01 Equipment Specifications.

6.01.1 General Provisions. All equipment used by FRANCHISEE in the performance of services under this AGREEMENT shall be of a high quality. The collection vehicles shall be designed and operated so as to prevent collected materials from escaping from the vehicles. All collection Containers while driving on CITY streets shall be tarped, covered, or enclosed with screening material to prevent collected materials from leaking, blowing, or falling from the vehicles. All collection vehicles and Containers shall be watertight and shall be operated so that liquids do not spill during collection or in transit.

6.01.2 Clean Air Vehicles. During the term of this AGREEMENT, to the extent required by law, FRANCHISEE shall provide its collection vehicles to be in full compliance with current local, State and federal clean air requirements that were adopted and any other applicable air pollution control laws.

6.01.3 Safety Markings. All Collection equipment used by FRANCHISEE shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and warning flags. All such safety markings shall be subject to the approval of the CITY and shall be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time.

6.01.4 Collection Vehicle Signage and Painting. Collection vehicles, except reserve equipment used on a temporary basis, shall be painted and numbered consecutively without repetition and shall have the FRANCHISEE'S name, FRANCHISEE'S customer service telephone number, and the number of the vehicle painted in letters of contrasting color, at least three (3) inches high, on each side of each vehicle. No advertising shall be permitted other than the name of the FRANCHISEE. FRANCHISEE shall repaint or discontinue the use of a collection vehicle at the request of the City Representative to maintain a positive public image as reasonably determined by the City Representative. Collection vehicle signage may be applied using stickers instead of paint, but only so long as the stickers are designed for permanent use and are appropriately maintained to ensure a clean appearance.

6.01.5 Signage, Painting, and Cleaning. Containers shall be painted and numbered consecutively without repetition and shall have the FRANCHISEE'S name, FRANCHISEE'S customer service telephone number, and the number of the Container painted in letters of contrasting color, at least three (3) inches high, on at least two (2) sides of each Container. No advertising shall be permitted other than the name of the FRANCHISEE. Such Containers as are provided by the FRANCHISEE shall be steam cleaned by the FRANCHISEE

as frequently as necessary so as to maintain sanitary conditions. FRANCHISEE shall repaint or discontinue the use of a Container at the request of the City Representative to maintain a positive public image as reasonably determined by the City Representative. Container signage may be applied using stickers instead of paint, but only so long as the stickers are designed for permanent use and are appropriately maintained to ensure a clean appearance.

6.01.6 Collection Vehicle Noise Level. All collection vehicle operations shall be conducted as quietly as possible and must comply with U.S. EPA noise emission regulations currently codified at 40 CFR Part 205, and other applicable State County and CITY noise control regulations.

6.01.7 Collection Vehicle Size Limitations. Collection vehicles must not exceed a maximum gross vehicle weight ~~rating (GVWR)~~ of 56,000 pounds (includes both the truck and load weight), no more than 3 axles, and a total load capacity of 40 yards.

6.02 Collection Vehicle Registration, Licensing and Inspection. On or before December 1, 2017, or as soon as practical, and annually thereafter on December 1, during the term of this AGREEMENT, FRANCHISEE shall submit documentation to the City Representative to verify that each of the FRANCHISEE'S collection vehicles are in compliance with all registration, licensing and inspection requirements of the California Highway Patrol, the California Department of Motor Vehicles, local permitting agency, and any other Applicable Laws or regulations. FRANCHISEE shall not use any vehicle to perform collection services that is not in compliance with applicable registration, licensing, and inspection requirements.

6.03 Equipment and Collection Vehicle Maintenance. FRANCHISEE shall maintain Collection equipment and vehicles in a clean condition and in good repair at all times. All parts and systems of the collection equipment and collection vehicle shall operate properly and be maintained in a condition satisfactory to CITY. FRANCHISEE shall wash all collection equipment and collection vehicles at least once a ~~week~~month or more frequently as the CITY may require. However, in times of drought conditions, upon Franchisee or City notification, washing of collection equipment and vehicles may be suspended.

6.04 Maintenance Log. FRANCHISEE shall maintain a maintenance log for all collection vehicles. The log shall at all times be accessible to CITY by physical inspection upon request of City Representative, and shall show, at a minimum, each collection vehicle's FRANCHISEE assigned identification number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance of any additional maintenance, a copy of the most recent BIT inspection report, and description of additional maintenance performed.

6.04.1 Equipment and Vehicle Inventory. As of the Effective Date, and annually thereafter as specified in Section 8.02.2, during the term of this AGREEMENT, FRANCHISEE shall provide to CITY an inventory of collection vehicles and major collection equipment used by FRANCHISEE for Collection or transportation and performance of services under this AGREEMENT. The inventory shall indicate each collection vehicle by FRANCHISEE assigned identification number, DMV license number, the most recent BIT inspection report, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of collection vehicles by type, the date of acquisition, the decibel rating and the maintenance status. FRANCHISEE shall submit to the City Representative, either mail or e-mail, an updated inventory annually to the CITY or more often at the request of the City Representative.

6.04.2 Reserve Collection Equipment and Collection Vehicles. The FRANCHISEE shall have available to it, at all times, reserve collection equipment and collection vehicles which can be put into service and operation within one (1) hour of any breakdown. Such reserve

collection equipment and collection vehicles shall correspond in size and capacity to the collection equipment used by the FRANCHISEE to perform the contractual duties.

## ARTICLE 7. FRANCHISEE'S Office

7.01 FRANCHISEE'S Office. The FRANCHISEE shall maintain an office within Sonoma County that provides a toll-free telephone access to residents and businesses of the CITY and is staffed by trained and experienced Customer Service Representatives ("CSR's"). Such office shall be equipped with sufficient telephones that all Collection Service related calls received during normal business hours are answered by an employee within five (5) rings, and shall have responsible persons in charge during Collection hours and shall be open during such normal business hours, 8:00 a.m. to 5:00 p.m. on all Work Days. The FRANCHISEE shall provide either a telephone answering service or mechanical device to receive Service Recipient inquiries during those times when the office is closed. Calls received after normal business hours shall be returned and addressed the next Work Day morning.

7.01.1 Emergency Contact. The FRANCHISEE shall provide the City Representative with an emergency phone number where the FRANCHISEE can be reached outside of the required office hours.

7.01.2 Multilingual/TDD Service. FRANCHISEE shall at all times maintain the capability of responding to telephone calls in English and one (1) other language (Spanish) as the CITY may direct. FRANCHISEE shall at all times maintain the capability or responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

7.01.3 Service Recipient Calls. During office hours, FRANCHISEE shall maintain a telephone answering system capable of accepting at least five (5) incoming calls at one (1) time. FRANCHISEE shall record all calls including any inquiries, service requests, and complaints into a customer service log.

7.01.4 Incoming Calls. All incoming calls will be answered within five (5) rings. Any call "on-hold" in excess of one and one-half (1.5) minutes shall have the option to remain "on-hold" or to be switched to a message center where Service Recipient can leave a message. FRANCHISEE'S CSR shall return Service Recipient calls.

## ARTICLE 8. Record Keeping & Reporting Requirements

### 8.01 Record Keeping.

8.01.1 Accounting Records. FRANCHISEE shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection Services provided under this AGREEMENT, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit, copy, and inspection. FRANCHISEE shall report Gross Revenues received from provision of the Collection Services. FRANCHISEE shall maintain and preserve all cash, billing and disposal records for a period of not less than five (5) years following the close of each of the FRANCHISEE'S fiscal years.

8.01.2 AGREEMENT Materials Records. FRANCHISEE shall maintain records of the quantities of Construction and Demolition Debris Collected from provisions of this AGREEMENT and disposed under the terms of this AGREEMENT, and (ii) Recyclable Materials, by type, collected, processed, sold, donated or given for no compensation, and residue disposed.

732 8.01.3 Other Records. FRANCHISEE shall maintain all other records reasonably  
733 related to provision of Collection Services, whether or not specified in this Article 8 or elsewhere  
734 in the AGREEMENT.

735 8.02 Reporting Requirements. Quarterly reports shall be submitted no later than 5:00  
736 p.m. PT thirty (30) calendar days after the end of the reporting quarter and annual reports shall  
737 be submitted no later than 5:00 p.m. PT thirty (30) calendar days after the end of each Agreement  
738 Year. If the 15<sup>th</sup> day of the month falls on a day that CITY is closed or a holiday, then the report  
739 shall be due the on the next business day. Quarterly and annual reports shall be submitted  
740 electronically via e-mail to the CITY and its designated representative on a CITY approved  
741 reporting form.

742 8.02.1 Quarterly Reports. Quarterly reports to the CITY shall include:

743 8.02.1.1 Material Collected Data. A listing of the tonnage collected from all  
744 Collection Services, diverted and disposed by the FRANCHISEE at the Disposal and  
745 Processing Facility for the preceding quarter, including the number of pulls.

746 8.02.1.2 Recycling Data. The number of gross tons collected, processed,  
747 and sold or delivered to a recycler (other than Processing Facility) by material type for the  
748 preceding quarter. Indicate, by material type (and grade where appropriate), quarterly total of  
749 Recyclable Materials processed and sold including facility name and location. Indicate any  
750 quantities, by material type, donated or otherwise disbursed without compensation. Indicate  
751 quarterly totals and location for Residue disposed.

752 8.02.1.3 Collection Services. Indicate the number of Service Recipients  
753 served within the given period of time

754 8.02.1.4 Diversion. The diversion figures shall be calculated as the tons of  
755 materials collected by FRANCHISEE from the provision of Collection Services in the CITY that  
756 are delivered to the Processing Facility approved by CITY, or that are otherwise handled in a  
757 manner that counts as diversion under applicable CalRecycle regulations (in each case, net of all  
758 residue from processing), divided by the total tons of materials collected in the Service Area by  
759 FRANCHISEE from the provision of Collection Services for the preceding quarter.

760 8.02.1.5 Franchise Fee Payments. Indicate the revenue collected and total  
761 franchise fees paid to CITY for the preceding quarter.

762 8.02.1.6 Operational Problems and Actions Taken. Indicate instances of  
763 property damage or injuries, overweight vehicles, and any loads rejected, reason for rejection  
764 and disposition of load after rejection.

765 8.02.2 Annual Reports. The annual report to the CITY shall include all quarterly  
766 reports in Sections 8.2.1 through 8.2.1.3 summarized by quarter and totaled for the year. The  
767 FRANCHISEE shall include a historical comparison of the last Agreement Year and prior years  
768 with a brief explanation on any increases or decreases in tonnage and Diversion figures of all  
769 Agreement Years. Annual reports to the CITY shall also include:

770 8.02.2.1 A summary of all prior year's Gross Revenue received and  
771 Franchise Fees paid.

772 8.02.2.2 Updated complete inventory of collection vehicles, Containers and  
773 major collection/processing equipment, including stationary, rolling stock and Containers by type  
774 and size. See Section 6.04.1 for additional inventory reporting requirements.

8.02.2.3 A copy of existing permits and approvals by local enforcement agencies for the Disposal, transfer, recycling or Processing Facilities selected by FRANCHISEE.

8.03 Additional Reporting. The FRANCHISEE shall furnish the CITY with any additional reports as may reasonably be required by CITY, such reports to be prepared within thirty (30) days following the reporting period or written notice.

## ARTICLE 9. Nondiscrimination

9.01 Nondiscrimination. In the performance of all work and services under this AGREEMENT, FRANCHISEE shall not discriminate against any person on the basis of such person's race, sex, color, national origin, religion, marital status, age, disability, or sexual orientation. FRANCHISEE shall comply with all applicable local, state, and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

## ARTICLE 10. Service Inquiries and Complaints

10.01 FRANCHISEE'S Customer Service. All service inquiries and complaints shall be directed to the FRANCHISEE. A representative of the FRANCHISEE shall be available to receive the complaints during normal business hours, as specified in Section 7.01. All service complaints will be handled by the FRANCHISEE in a prompt and efficient manner. In the case of a dispute between the FRANCHISEE and a Service Recipient cannot be resolved accordingly, the matter will be reviewed and a decision made by the City Representative.

10.01.1 The FRANCHISEE will utilize the Customer Service Log to maintain a record of all inquiries and complaints in a manner prescribed by the CITY.

## ARTICLE 11. Quality of Performance

11.01 Intent. FRANCHISEE acknowledges and agrees that one of CITY's primary goals in entering into this AGREEMENT is to ensure that the Collection Services are of the highest caliber, that Service Recipient satisfaction remains at the highest level, that the minimum Diversion levels are achieved, and that materials collected are put to the highest and best use to the extent feasible.

11.02 Service Supervisor. As of the Effective Date and annually thereafter during the term of this AGREEMENT, FRANCHISEE shall provide the CITY with the name and contact information of the supervisor to be in charge of the Collection Service within the Service Area. At least thirty (30) calendar days prior to replacing the designated supervisor, FRANCHISEE shall notify CITY in writing of the name and qualifications of the new service supervisor. FRANCHISEE shall insure that such replacement is an individual with like qualifications and experience. The supervisor shall be available to the City Representative through the use of telecommunication equipment at all times that, FRANCHISEE is providing Collection Services. In the event the supervisor is unavailable due to illness or vacation, FRANCHISEE shall designate an acceptable substitute who shall be available and who has the authority to act in the same capacity as the supervisor. The service supervisor shall provide the CITY with an emergency phone number where the supervisor can be reached outside of normal business hours.

11.03 Liquidated Damages. The parties further acknowledge that consistent and reliable Collection Service is of utmost importance to CITY and that CITY has considered and relied on FRANCHISEE's representations as to its quality of service commitment in awarding the AGREEMENT to the FRANCHISEE. The parties further recognize that some quantified standards

of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if FRANCHISEE fails to achieve the performance standards, or fails to submit required documents in a timely manner, CITY, and CITY's residents and businesses will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages. Therefore, without prejudice to CITY's right to treat such non-performance as an event of default under Article 16, the parties agree that the Liquidated Damages amount defined in this Article 11 represent reasonable estimates of the amount of such damages considering all of the circumstances existing on the Effective Date of this AGREEMENT, including the relationship of the sums to the range of harm to CITY, customers and the community as a whole that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the Liquidated Damages provisions at the time that the AGREEMENT was executed.

FRANCHISEE Initial Here \_\_\_\_\_

FRANCHISEE agrees to pay (as Liquidated Damages and not as penalty) the following amounts:

Liquidated Damages		
Item		Amount
a.	Failure to notify the CITY within two (2) hours of an incident related to Section 3.11 Spillage and Litter.	\$100.00 per incident per Service Recipient.
b.	Failure or neglect to make a good faith effort to completely resolve each complaint within 90 days of receiving the complaint from a Service Recipient or CITY.	\$100.00 per incident per Service Recipient.
c.	Failure to clean up or compensate for spillage or litter caused by FRANCHISEE within 90 Work Days of being notified of the incident.	\$300.00 per incident per location.
d.	Failure to repair damage or compensate for damage to customer property caused by FRANCHISEE or its personnel within 90 Work Days of being notified of the incident.	\$500.00 per incident per location.
e.	Failure to repair damage or compensate for damage to CITY property caused by FRANCHISEE or its personnel within 90 Work Days of being notified of the incident.	\$1,500.00 per incident.
f.	Failure to compensate for damage to CITY streets, not within normal wear and tear, caused by FRANCHISEE or equipment of FRANCHISEE within 90 Work Days of being notified of the incident.	\$3,000.00 per incident and the actual cost of repair to CITY's satisfaction—no cost to CITY.
g.	Failure to maintain collection equipment in a clean, safe, and sanitary manner.	\$500.00 per incident per day.

Liquidated Damages		
Item		Amount
h.	Failure to have a collection vehicle operator properly licensed.	\$2,500.00 per incident per day.
i.	Failure to maintain office hours as required by this AGREEMENT.	\$500.00 per incident per day.
j.	Failure to maintain or submit as specified in the AGREEMENT to CITY, all documents and reports required under the provisions of this AGREEMENT.	\$250.00 per incident per day.
k.	Failure to properly cover materials in collection vehicles.	\$500.00 per incident.
l.	Failure to display FRANCHISEE'S name and customer service phone number on collection vehicles and Containers.	\$500.00 per incident per day.
m.	Failure to comply with the hours of operation as required by this AGREEMENT.	\$1,000.00 per incident per day.
n.	Failure to remove graffiti within two (2) Work Days or delivering a debris box with graffiti on it to a customer.	\$500.00 per incident.
o.	Failure to have FRANCHISEE personnel in proper uniform.	\$250.00 per incident per day.
p.	Collection vehicles that exceed 56,000 lbs. GVWR, 3 axles, or load capacity of greater than 40 yards.	\$500.00 per incident
q.	Failure to deliver and process collected materials at Processing Facility prior to delivering Solid Waste to Disposal Facility.	Current Tipping Fee at Sonoma County Landfill System/ton Disposed
r.	Failure to deliver any collected materials to a properly permitted and licensed Disposal Facility, transfer, or Processing Facility, as appropriate, except as otherwise expressly provided in this AGREEMENT.	\$2,500.00 first failure \$5,000.00 second failure. 30 day notice of Termination for third subsequent failure.
s.	Failure to meet collection vehicle noise requirements.	\$250.00 per incident per day.
t.	Failure to provide facility information requested by the CITY within five (5) work days	\$250.00 per incident per day
u.	Failure to pay correct value of Franchise Fee or failure to pay Quarterly Franchise Fee by required due date.	25% of amount due.

Liquidated Damages		
Item		Amount
v.	Failure to pay penalty for incorrectly calculated or late Franchise Fee.	Immediate termination.
w.	Disposal of Residuals at a facility except for Disposal Facility.	Immediate termination.
x.	Failure to maintain or provide required insurance certificates during the term of the Agreement.	Immediate termination.
y.	Failure to cooperate or provide the requested documents for a Performance Review within thirty (30) Work Days.	FRANCHISEE will be considered in Default of AGREEMENT.

11.4. Procedure for Review of Liquidated Damages. The City Representative may assess Liquidated Damages pursuant to this Article 11 on a monthly basis. At the end of each month during the term of this AGREEMENT, the City Representative shall issue a written notice to FRANCHISEE ("Notice of Assessment") of the liquidated damages assessed and the basis for each assessment.

11.4.1. The assessment shall become final unless, within ten (10) calendar days of the date of the notice of assessment, FRANCHISEE provides a written request for a meeting with the City Manager and City Representative to present evidence that the assessment should not be made.

11.4.2. The City Representative shall schedule a meeting between FRANCHISEE and the City Manager or the Manager's designee as soon as reasonably possible after timely receipt of FRANCHISEE'S request for the same.

11.4.3. The City Manager or the Manager's designee shall review FRANCHISEE'S evidence and render a decision sustaining or reversing the liquidated damages as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to FRANCHISEE.

11.4.4. In the event FRANCHISEE does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Assessment, the City Representative's determination shall be final and FRANCHISEE shall submit payment to CITY no later than that tenth (10th) day.

11.4.5. If monies are owed to FRANCHISEE, CITY with notification to FRANCHISEE, will deduct the liquidated damages from amounts otherwise due to FRANCHISEE.

11.4.6. CITY'S assessment or collection of liquidated damages shall not prevent CITY from exercising any other right or remedy, including the right to terminate this AGREEMENT, for FRANCHISEE'S failure to perform the work and services in the manner set forth in this AGREEMENT.

## ARTICLE 12. AGREEMENT Compliance

12.01 Selection and Cost. The CITY may conduct a "Compliance Review" of the FRANCHISEE'S performance and compliance with the requirements of this AGREEMENT during the term of this AGREEMENT, including prior to an extension. At the discretion of the CITY, Compliance Reviews may occur every two (2) years, or as deemed necessary. The Compliance Reviews will be performed by a qualified firm under contract to the CITY. The CITY shall have the final responsibility for the selection of the firm but shall seek and accept comments and recommendations from the FRANCHISEE. The FRANCHISEE shall be responsible for the cost of the Compliance Review, up to a maximum of **Ten Thousand Dollars (\$10,000.00)** per Compliance Review. CONTRACTOR will reimburse CITY thirty (30) days from CITY submitting invoice or request to CONTRACTOR for reimbursement.

12.02 Purpose. The Compliance Review shall be designed to meet the following objectives:

12.02.1 Verify that Franchise Fees, and other fees required under this AGREEMENT, have been properly calculated and paid to the CITY.

12.02.2 Verify FRANCHISEE'S compliance with the reporting requirements and performance standards of this AGREEMENT.

12.03 FRANCHISEE'S Cooperation. FRANCHISEE shall cooperate fully with the review and provide all requested data, including operational data, financial data, and other data requested by the CITY within thirty (30) Work Days. Failure of the FRANCHISEE to cooperate or provide the requested documents in the required time shall be considered an event of default.

12.04 AGREEMENT Actions. Whenever action and/or approval by the CITY is required under this AGREEMENT, the City Manager or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the City Manager determines in his or her discretion that such action or approval requires referral to the City Council for consideration.

## ARTICLE 13. Performance Bond

13.01 Performance Bond. The AGREEMENT must be executed and a performance bond must be furnished by the FRANCHISEE within ten (10) calendar days from the date CITY awards and executes the Agreement; otherwise, the bid bond shall be forfeited to the CITY. The FRANCHISEE shall furnish to the CITY, and keep current, a performance bond in a form that is acceptable to the CITY, for the faithful performance of this AGREEMENT and all obligations arising hereunder in the amount of **Ten Thousand Dollars (\$10,000.00)**.

13.01.1 The performance bond shall be executed by a surety company that is acceptable to the CITY, and is included on the list of surety companies approved by the Treasurer of the United States.

13.02 Letter of Credit. As an alternative to the performance bond required by Section 13.01, at CITY's option, FRANCHISEE may deposit with CITY an irrevocable letter of credit in an amount as set forth in Article 13.01, acceptable to the CITY in form and content and issued by an FDIC insured banking institution chartered to business in the state of California, in the CITY's name, and callable at the discretion of the CITY. Nothing in this Article 13 shall in any way obligate the CITY to accept a letter of credit in lieu of the performance bond.

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## ARTICLE 14. Insurance

14.01 Insurance Policies. FRANCHISEE shall secure and maintain throughout the term of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from or in connection with FRANCHISEE'S performance of work or services under this AGREEMENT. FRANCHISEE'S performance of work or services shall include performance by FRANCHISEE'S employees, agents, representatives and subcontractors.

14.01.1 Minimum Scope of Insurance. Insurance coverage shall be at least this broad:

14.01.1.1 Insurance Services Office Form No. G0 0002 or, if approved by CITY, its equivalent, covering Comprehensive General Liability and Insurance Services Office Form No. GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

14.01.1.2 Insurance Services Office Form No. CA 0001 covering Automobile Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage shall also include code 8, "hired autos" and code 9 "non-owned autos."

14.01.2 Workers' Compensation Insurance as required by the California Labor Code and Employers Liability Insurance and/or Errors and Omissions.

14.01.3 Hazardous Waste and Environmental Impairment Liability Insurance.

14.01.4 Employee Blanket Fidelity Bond.

14.02 Minimum Limits of Insurance. FRANCHISEE shall maintain insurance limits no less than:

14.02.1 Comprehensive General Liability: **Ten Million Dollars (\$10,000,000.00)** combined single limit per occurrence for bodily injury, personal injury, and property damage.

14.02.2 Automobile Liability: **Ten Million Dollars (\$10,000,000.00)** combined single limit per accident for bodily injury and property damage.

14.02.3 Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of **Three Million Dollars (\$3,000,000.00)** per accident.

14.02.4 Employee Blanket Fidelity Bond. Employee Blanket Fidelity Bond in the amount of **Five Hundred Thousand Dollars (\$500,000.00)** per employee, covering dishonesty, forgery, alteration, theft, disappearance, destruction (inside or outside).

14.02.5 Hazardous Waste and Environmental Impairment Liability: **Three Million Dollars (\$3,000,000.00) each occurrence/Ten Million Dollars (\$10,000,000.00)** policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available without involvement of CITY, automatically broaden in its form of coverage to include legislated changes in the definition of waste material and/or irritants, contaminants or pollutants. This policy shall stipulate this insurance is primary and no other insurance carried by CITY will be called upon to contribute to the loss suffered by the FRANCHISEE hereunder and waive subrogation against the CITY and other additional insured's.

14.03 Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to, and approved by, CITY.

14.04 Endorsements. The policies are to contain, or be endorsed to contain, the following provisions:

14.04.1 The CITY, its officers, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of FRANCHISEE; products and completed operations of FRANCHISEE; and with respect to liability arising from work or operations performed by or on behalf of the FRANCHISEE including material parts or equipment furnished in connection with such work or operations; Pollution and/or Asbestos Pollution.

14.04.2 FRANCHISEE'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the FRANCHISEE'S insurance and shall not contribute with it.

14.04.3 Each insurance policy required by this clause shall be occurrence-based, or an alternative form as approved by the CITY and shall be endorsed to state that coverage shall not be cancelled by the Insurer except after thirty (30) days prior written notice has been given to the CITY.

14.04.4 The 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.

14.04.5 The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier act endorsement (MCS-90) TL 1005, TL 1007 and /or other endorsements required by federal or state authorities.

14.04.6 Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the CITY, its officers, officials, employees, and volunteers for losses arising from work performed by the Grantee for the CITY.

14.04.7 All Coverage. Each insurance policy required by this clause shall be occurrence-based or an alternate form as approved by the CITY and endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

14.04.7.1 Any failure to comply with reporting provisions of the policies shall not affect FRANCHISEE'S obligations to CITY, its officers, officials, employees, agents, or volunteers.

14.04.7.2 The CITY, its officers, officials, agents, employees and volunteers shall be named as additional insured on all policies.

14.05 Acceptability of Insurers. Insurance is to be placed with insurers acceptable to the CITY.

14.06 Verification of Coverage. FRANCHISEE shall furnish CITY with original certificates and with amendatory endorsements effecting coverage required by this clause. The endorsements are to be signed by a persons authorized by the Insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY, unless the insurer will not use the CITY's forms. All endorsements are to be received and approved by the CITY before work

commences. As an alternative to the CITY's forms, the Franchisee's insurer may provide complete copies of all required insurance policies, including endorsements effecting coverage required by these specifications.

14.07 Subcontractors. FRANCHISEE shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

14.07.1 Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the CITY.

**City of Rohnert Park  
Risk Management  
130 Avram Avenue  
Rohnert Park, CA 94928**

14.08 Modification of Insurance Requirements. The insurance requirements provided in this AGREEMENT may be modified or waived by the CITY, in writing, upon the request of FRANCHISEE if the CITY determines such modification or waiver is in the best interest of CITY considering all relevant factors, including exposure to CITY.

14.09 Rights of Subrogation. All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY, its officers, officials, employees, and volunteers for losses arising from work performed by FRANCHISEE for the CITY under this AGREEMENT, with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above-described insurance. FRANCHISEE shall ensure that any companies issuing insurance to cover the requirements contained in this AGREEMENT agree that they shall have no recourse against CITY for payment or assessments in any form on any policy of insurance. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event of an Occurrence, Claim or Suit' as it appears in any policy of insurance in which CITY is named as an additional insured shall not apply to CITY.

## ARTICLE 15. Indemnification

15.01 Indemnification of the CITY. FRANCHISEE shall defend, indemnify and hold harmless, to the fullest extent allowed by law, CITY, its officers, officials, employees, volunteers agents and assignees (indemnities), from and against any and all loss, liability, penalties, forfeitures, claims, demands, actions, proceedings or suits, in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from or in any way connected with: (i) the operation of the FRANCHISEE, its agents, employees, FRANCHISEES, and/or subcontractors, in exercising the privileges granted to it by this AGREEMENT; (ii) the failure of the FRANCHISEE, its agents, employees, FRANCHISEES, and/or subcontractors to comply in all respects with the provisions and requirements of this AGREEMENT, Applicable Laws, ordinances and regulations, and/or applicable permits and licenses; and (iii) the acts of FRANCHISEE, its agents, employees, FRANCHISEES, and/or subcontractors in performing services under this AGREEMENT for which strict liability is imposed by law. The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, action, suite injury, death, or damage is also caused in part by any of the indemnitees' negligence. FRANCHISEE's indemnity obligations under all sections of this Article 15 shall survive the expiration or earlier termination of this AGREEMENT.

15.02 The FRANCHISEE'S obligation to defend, hold harmless, and indemnify shall not be excused because of the FRANCHISEE'S inability to evaluate liability or because the FRANCHISEE evaluates liability and determines that the FRANCHISEE is not liable the claimant. The FRANCHISEE must respond within thirty (30) days to the tender of a claim for defense and indemnity by the CITY, unless this time has been extended by the CITY. If the FRANCHISEE fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due the FRANCHISEE under the by virtue of this AGREEMENT as shall reasonably be considered necessary by the CITY, may be retained by the CITY until disposition has been made or the claim or suit for damages, or until the FRANCHISEE accepts or ejects the tender of defense, whichever occurs first. With respect to third party claims against the FRANCHISEE, the FRANCHISEE waives any and all rights of any type to express or implied indemnity against the indemnities.

15.03 Hazardous Substances Indemnification. The FRANCHISEE shall indemnify, hold harmless, defend with counsel acceptable to the CITY, protect and hold harmless the CITY, its officers, officials, employees, agents, assigns and any successor or successors to the CITY's interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, response mediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the forgoing or enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against CITY or is officers, officials, employees, agents, assigns, or contactors arising from or attributable to acts or omissions including but not limited to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertake due to governmental action) concerning any hazardous substance or Hazardous Wastes at any place where FRANCHISEE transports, stores, or disposes of Solid Waste pursuant to this AGREEMENT. The foregoing indemnity is intended to operate as an AGREEMENT pursuant to Section 107(e) of CERCLA, 42 U.S.C. sections 9607(c) and California Health and Safety Code Section 25364, to defend insure, protect, hold harmless and indemnify the CITY from liability.

15.04 FRANCHISEE agrees to protect, indemnify, hold harmless, and defend CITY with counsel selected by FRANCHISEE and approved by CITY, to pay all attorneys' fees, and to indemnify and hold CITY harmless from and against all fines or penalties imposed by CalRecycle if the Diversion goals specified in California Public Resources Code Section 41780 as of the date hereof and hereafter throughout are not met by the CITY with respect to the materials collected by FRANCHISEE and if the lack in meeting such goals are attributable to the failure of the FRANCHISEE to implement and operate the recycling or Diversion programs or undertake the related activities required by this AGREEMENT.

15.05 FRANCHISEE shall defend, hold harmless, and indemnify CITY, its officers, officials, employees, volunteers, agents and assignees (indemnitees) from and against any loss, liability, penalties, forfeiture, claims, damages, demands, actions, proceedings or suits, in law or equity, of every kind and description, arising from the CITY's setting of maximum Service Rates for Collection Service under this AGREEMENT and/or in connection with the application of Article XIIC and Article XIID of the California Constitution to the imposition, payment, or collection of Service Rates and fees for services provided by FRANCHISEE under this AGREEMENT, and/or in connection with the imposition or payment of Franchise Fees under this AGREEMENT.

15.06 Consideration. It is specifically understood and agreed that the consideration inuring to the FRANCHISEE for the execution of this AGREEMENT consists of the promises, payments, covenants, rights, and responsibilities contained in this AGREEMENT.

15.07 Obligation. The execution of this AGREEMENT by the FRANCHISEE shall obligate the FRANCHISEE to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must also be complied with as set forth in Article 14 above.

15.08 Subcontractors. The FRANCHISEE shall require all subcontractors to enter into an AGREEMENT containing the provisions set forth in the preceding subsection in which AGREEMENT the subcontractor fully indemnifies the CITY in accordance with this AGREEMENT.

15.09 Exception. Notwithstanding Sections 15.01, 15.02 and 15.03 of this AGREEMENT, FRANCHISEE'S obligation to indemnify, hold harmless and defend CITY, its officers and employees shall not extend to any loss, liability, penalty, plain, damage, action or suit arising or resulting from acts or omissions constituting willful misconduct or sole negligence on the part of the CITY its officers or employees.

15.10 Damage by FRANCHISEE. If FRANCHISEE'S employees or subcontractors cause any injury, damage, or loss to CITY property, including but not limited to CITY streets or curbs, FRANCHISEE shall reimburse CITY for CITY's cost of repairing such injury, damage, or loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by FRANCHISEE for any such injury, damage, or loss. With the prior written approval of CITY, FRANCHISEE may repair the damage at FRANCHISEE'S sole cost and expense. Damage to CITY streets shall not include normal wear and tear caused by collection vehicles.

## ARTICLE 16. Default

16.01 Termination. The CITY may terminate this AGREEMENT, except as otherwise provided below in this Article, by giving the FRANCHISEE thirty (30) calendar days advance written notice, to be served as provided in Article 33, upon the determination of any one of the following events:

16.01.1 The FRANCHISEE shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or is the subject of a voluntary or involuntary petition in a bankruptcy court seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

16.01.2 By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of the FRANCHISEE, and such possession or control shall continue in effect for a period of sixty (60) calendar days; or

16.01.3 The FRANCHISEE has defaulted, by failing or refusing to pay in a timely manner the Liquidated Damages or other monies due the CITY and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

16.01.4 The FRANCHISEE has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

1120                   16.01.5           In the event that the monies due the CITY under Article 4 or any  
1121 unpaid Liquidated Damages owed to the CITY under Article 11 are the subject of a judicial  
1122 proceeding, the CITY may, at its option, call the Performance Bond, or hold the FRANCHISEE  
1123 in default of this AGREEMENT. All bonds shall be in the form acceptable to the City Attorney;  
1124 or

1125                   16.01.6           The FRANCHISEE has defaulted, by failing or refusing to perform  
1126 or observe the terms, conditions or covenants in this AGREEMENT, including but not limited to  
1127 satisfactory conformance with the requirements of Article 3 and Article 11 hereof, the service  
1128 levels prescribed herein, or any of the rules and regulations promulgated by the CITY pursuant  
1129 hereto, or by wrongfully failing or refusing to comply with the instructions of the City  
1130 Representative relative thereto; provided that said default is not cured within thirty (30) calendar  
1131 days of receipt of written notice by the CITY to do so, or if by reason of the nature of such  
1132 default, the same cannot be remedied within thirty (30) calendar days following receipt by the  
1133 FRANCHISEE of written demand from the CITY to do so, the FRANCHISEE fails to commence  
1134 the remedy of such default within said thirty (30) calendar days following such written notice or  
1135 having so commenced shall fail thereafter to continue with diligence the curing thereof. In any  
1136 dispute concerning failure to remedy or diligence in pursuing a cure, the FRANCHISEE shall  
1137 have the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30)  
1138 calendar days, and (b) that it is proceeding with diligence to cure said default, and such default  
1139 will be cured within a reasonable period of time. However, notwithstanding anything contained  
1140 herein to the contrary, for the failure of the FRANCHISEE to provide Collection Services for a  
1141 period of three (3) consecutive Work Days, on the fourth (4th) Work Day the CITY may secure  
1142 the FRANCHISEE'S equipment, records and other property used or useful in providing  
1143 Collection Services under this AGREEMENT in order to provide interim Collection Services until  
1144 such time as the matter is resolved and the FRANCHISEE is again able to perform pursuant to  
1145 this AGREEMENT; provided, however, if the FRANCHISEE is unable for any reason or cause  
1146 to resume performance at the end of thirty (30) calendar days all liability of the CITY under this  
1147 AGREEMENT to the FRANCHISEE shall cease and this AGREEMENT may be deemed  
1148 terminated by the CITY, and the CITY shall retain equipment, records and other property used  
1149 in providing Collection Services on an interim basis until the CITY has made other suitable  
1150 arrangements for the provision of Collection Services, which may include award of the  
1151 AGREEMENT to another FRANCHISEE.

1152                   16.01.7           In the event that the AGREEMENT is terminated, FRANCHISEE  
1153 shall furnish the CITY with immediate access to all of its business records related to its customer  
1154 and billing accounts for collection services.

1155                   16.02 Violations. Notwithstanding the foregoing and as supplemental and additional  
1156 means of termination of this AGREEMENT under this Article, in the event that FRANCHISEE'S  
1157 record of performance shows that FRANCHISEE has frequently, regularly or repetitively defaulted  
1158 in providing Collection Services, and, after written default notices from CITY, has not timely cured  
1159 such defaults within the applicable cure periods set forth in Section 16.01.6, CITY in its sole  
1160 discretion may determine that FRANCHISEE is a "habitual violator", in which case FRANCHISEE  
1161 shall be deemed to have waived the right to any further notice or grace period to correct any  
1162 subsequent default.

1163                   16.02.1           CITY shall thereupon issue FRANCHISEE a final warning citing the  
1164 circumstances for such determination, and any single default by FRANCHISEE of whatever  
1165 nature, subsequent to FRANCHISEE's receipt of such warning, shall be grounds for immediate  
1166 termination of the AGREEMENT.

16.02.2 In the event of any such subsequent default, CITY may terminate this AGREEMENT upon giving of final written notice to FRANCHISEE, such termination to be effective upon the date specified in CITY's written notice to FRANCHISEE, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and FRANCHISEE shall have no further rights hereunder.

16.02.3 Immediately upon the specified date in such final notice CONTRACTOR shall proceed to cease any further performance under this Agreement.

16.03 Effective Date. In the event of the aforesaid events specified above, and except as otherwise provided in said subsections, termination shall be effective upon the date specified in the CITY's written notice to the FRANCHISEE and upon said date this AGREEMENT shall be deemed immediately terminated and upon such termination all liability of the CITY under this AGREEMENT to the FRANCHISEE shall cease, and the CITY shall have the right to call the performance bond and shall be free to negotiate with other Franchisees for the operation of the herein specified services. The FRANCHISEE's AGREEMENT terminated due to failure to perform shall reimburse the CITY all direct and indirect costs of providing interim Collection Services until a new appointed Franchisee is determined.

16.04 Immediate Termination. CITY may terminate this AGREEMENT immediately upon written notice to FRANCHISEE in the event FRANCHISEE fails to provide and maintain the performance bond as required by this AGREEMENT, FRANCHISEE fails to obtain or maintain insurance policies endorsements as required by this AGREEMENT, FRANCHISEE fails to provide the proof of insurance as required by this AGREEMENT, FRANCHISEE offers or gives any Gift prohibited by CITY administrative policy, or Disposal of Residuals at a facility except for Disposal Facility.

16.05 Termination – Delivery of material to a facility that is not properly permitted or licensed to accept material. The CITY may terminate this AGREEMENT with thirty (30) days written notice in the event the FRANCHISEE delivers material collected under this AGREEMENT to a facility that is not properly permitted or licensed to accept the material collected under this AGREEMENT.

16.06 Termination Cumulative. CITY's right to terminate this AGREEMENT is cumulative to any other rights and remedies provided by law or by this AGREEMENT.

16.07 Reinstatement after Termination. Should this AGREEMENT be terminated by the CITY, the FRANCHISEE or any company acquired by, or sold to the FRANCHISEE shall not be eligible to re-apply for reinstatement to provide Collection Services until after the term of all awarded agreements have expired.

## ARTICLE 17. Modifications to the Agreement

17.01 AGREEMENT Modifications and Changes in Law. The CITY and the FRANCHISEE understand and agree that the California Legislature has the authority to make comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this AGREEMENT. The FRANCHISEE agrees that the terms and provisions of the Municipal Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this AGREEMENT and the Service Recipients of the FRANCHISEE located within the Service Area. In the event any future Change in Law, modifications to the Municipal Code, or directed changes by the CITY materially alters the obligations of the FRANCHISEE,

then the affected compensation as established under this AGREEMENT shall be adjusted. Nothing contained in this AGREEMENT shall require any party to perform any act or function contrary to law. The CITY and FRANCHISEE agree to enter into good faith negotiations regarding modifications to this AGREEMENT which may be required in order to implement changes in the interest of the public welfare or due to Change in Law. When such modifications are made to this AGREEMENT, the CITY and the FRANCHISEE shall negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the FRANCHISEE due to any modification in the AGREEMENT under this Article. The CITY and the FRANCHISEE shall not unreasonably withhold AGREEMENT to such compensation adjustment.

17.01.1 FRANCHISEE acknowledges and agrees that CITY may permit other Franchisees, contractors or companies besides FRANCHISEE to provide additional Collection Services.

## **ARTICLE 18. Legal Representation**

18.01 Acknowledgement. It is acknowledged that FRANCHISEE and CITY each were, or had the opportunity to be, represented by counsel in the preparation of, and contributed equally to the terms and conditions of, this AGREEMENT and, accordingly, the rule that an agreement shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

## **ARTICLE 19. Financial Interest**

19.01 Representation. FRANCHISEE warrants and represents that no elected official, officer, agent or employee of the CITY has a financial interest, directly or indirectly, in this AGREEMENT the compensation to be paid under it and, further, that no CITY employee who acts in the CITY as a "purchasing agent" as defined in the appropriate Section of California Statutes, nor any elected or appointed officer of the CITY, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the FRANCHISEE and, further, that no such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the FRANCHISEE. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the FRANCHISEE.

## **ARTICLE 20. Franchisee's Personnel**

20.01 Personnel Requirements. The FRANCHISEE shall employ and assign qualified personnel to perform all services set forth herein. The FRANCHISEE shall be responsible for ensuring that its employees comply with all Applicable Laws and regulations and meet all Federal, State, and local requirements related to their employment and position.

20.01.1 The CITY may request the transfer of any employee of the FRANCHISEE who materially violates any provision hereof, or who is wanton, negligent, or discourteous in the performance of his duties.

20.01.2 FRANCHISEE'S field operations personnel shall be required to wear a clean uniform shirt bearing the FRANCHISEE'S name. FRANCHISEE'S employees, who normally come into direct contact with the public, including drivers, shall bear some means of individual photographic identification such as a name tag or identification card.

1254 20.01.3 Each driver of a collection vehicle shall at all times carry a valid  
1255 California driver's license and all other required licenses for the type of collection vehicle that is  
1256 being operated.

1257 20.01.4 Each driver of a collection vehicle shall at all times comply with all  
1258 applicable state and federal laws, regulations, and requirements.

1259 20.01.5 FRANCHISEE'S employees, officers, and agents shall at no time  
1260 be allowed to identify themselves or in any way represent themselves as being employees of the  
1261 CITY.

1262 20.01.6 The FRANCHISEE'S name and the customer service telephone  
1263 number shall be properly displayed on all collection vehicles.

## 1264 **ARTICLE 21. Independent Franchisee**

1265 21.01 In the performance of services pursuant to this AGREEMENT, FRANCHISEE shall  
1266 be an independent FRANCHISEE and not an officer, agent, servant or employee of CITY.  
1267 FRANCHISEE shall have exclusive control of the details of the services and work performed and  
1268 over all persons performing such services and work. FRANCHISEE shall be solely responsible  
1269 for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if  
1270 any. Neither FRANCHISEE nor its officers, employees, agents, contractors, or subcontractors  
1271 shall obtain any right to retirement benefits, Workers' Compensation benefits, or any other  
1272 benefits which accrued to CITY employees and FRANCHISEE expressly waives any claim it may  
1273 have or acquire to such benefits.

## 1274 **ARTICLE 22. Laws to Govern**

1275 22.01 The law of the State of California shall govern the rights, obligations, duties, and  
1276 liabilities of CITY and FRANCHISEE under this AGREEMENT and shall govern the interpretation  
1277 of this AGREEMENT.

## 1278 **ARTICLE 23. Consent to Jurisdiction**

1279 23.01 The parties agree that any litigation between CITY and FRANCHISEE concerning  
1280 or arising out of this AGREEMENT shall be filed and maintained exclusively in the Superior Court  
1281 of Sonoma County, State of California, or in the United States District Court for the Northern  
1282 District of California, as applicable pursuant to their respective jurisdiction. Each party consents  
1283 to service of process in any manner authorized by California law.

## 1284 **ARTICLE 24. Assignment**

1285 24.01 No assignment of this AGREEMENT or any right occurring under this  
1286 AGREEMENT shall be made in whole or in part by the FRANCHISEE without the express written  
1287 consent of the CITY. The CITY shall have full discretion to approve or deny, with or without cause,  
1288 any proposed or actual assignment by the FRANCHISEE. Any assignment of this AGREEMENT  
1289 made by the FRANCHISEE without the express written consent of the CITY shall be null and void  
1290 and shall be grounds for the CITY to declare a default of this AGREEMENT and immediately  
1291 terminate this AGREEMENT by giving written notice to the FRANCHISEE, and upon the date of  
1292 such notice this AGREEMENT shall be deemed immediately terminated, and upon such  
1293 termination all liability of the CITY under this AGREEMENT to the FRANCHISEE shall cease, and

the CITY shall have the right to call the performance bond and shall be free to negotiate with other contractors, the FRANCHISEES, or any other person or company for the service which is the subject of this AGREEMENT. In the event of any assignment, the assignee shall fully assume all the liabilities of the FRANCHISEE.

24.02 The use of a subcontractor to perform services under this AGREEMENT shall not constitute delegation of FRANCHISEE'S duties provided that FRANCHISEE has received prior written authorization from the City Representative to subcontract such services and the City Representative has approved a subcontractor who will perform such services. FRANCHISEE shall be responsible for directing the work of FRANCHISEE'S subcontractors and any compensation due or payable to FRANCHISEE'S subcontractor shall be the sole responsibility of FRANCHISEE. The City Representative shall have the right to require the removal of any approved subcontractor for reasonable cause.

24.03 For purposes of this Article when used in reference to FRANCHISEE, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of at least fifty-one percent (51%) of FRANCHISEE'S assets dedicated to service under this AGREEMENT to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of FRANCHISEE to a third party provided said sale, exchange or transfer results in a change of control of FRANCHISEE (with control being defined as ownership of more than fifty percent (50%) of FRANCHISEE'S voting securities); (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling AGREEMENT, escrow arrangement, liquidation, subcontracting or lease-back payments, or other transaction which results in a change of control of FRANCHISEE; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this AGREEMENT, appointment of a receiver taking possession of FRANCHISEE'S property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of control of FRANCHISEE.

24.04 FRANCHISEE acknowledges that this AGREEMENT involves rendering a vital service to CITY's residents and businesses, and that CITY has selected FRANCHISEE to perform the services specified herein based on (i) FRANCHISEE'S experience, skill and reputation for conducting and management of operations in a safe, effective, and lawful fashion, at all times in keeping with applicable environmental laws, regulations and best management practices as governed by Federal, State, and local governments, and (ii) FRANCHISEE'S financial resources to maintain the required equipment and to support its indemnity obligations to CITY under this AGREEMENT. CITY has relied on each of these factors, among others, in choosing FRANCHISEE to perform the services to be rendered by FRANCHISEE under this AGREEMENT.

## ARTICLE 25. Compliance with Laws

25.01 In the performance of this AGREEMENT, FRANCHISEE shall comply with all Applicable Laws, regulations, ordinances, and codes of the Federal, State, and local governments, including without limitation the Municipal Code of the City of Rohnert Park.

25.02 CITY shall provide written notice to FRANCHISEE of any planned amendment to the Municipal Code that would substantially affect the performance of FRANCHISEE'S services

1336 pursuant to this AGREEMENT. Such notice shall be provided at least thirty (30) calendar days  
1337 prior to the City Council's approval of such an amendment.

## 1338 **ARTICLE 26. Permits and Licenses**

1339 26.01 FRANCHISEE shall obtain, at its own expense, all permits and licenses required  
1340 by law or ordinance and maintain same in full force and effect throughout the term of this  
1341 AGREEMENT. FRANCHISEE shall provide proof of such permits, licenses, or approvals and shall  
1342 demonstrate compliance with the terms and conditions of such permits, licenses and approvals  
1343 upon the request of the City Representative.

1344 26.02 FRANCHISEE shall ensure that all facilities selected by the FRANCHISEE obtain,  
1345 at their own expense, all permits and licenses required by law or ordinance and maintain same in  
1346 full force and effect throughout the term of this AGREEMENT. FRANCHISEE shall ensure that  
1347 facilities used by the FRANCHISEE provide proof of such permits, licenses, or approvals and  
1348 shall demonstrate compliance with the terms and conditions of such permits, licenses, and  
1349 approvals upon the request of the City Representative.

## 1350 **ARTICLE 27. Ownership of Written Materials**

1351 27.01 All reports, documents, brochures, public education materials, and other written,  
1352 printed, electronic or photographic materials developed by FRANCHISEE that are expressly  
1353 required by this AGREEMENT or produced by FRANCHISEE at the request of the CITY for use  
1354 under this AGREEMENT, whether developed directly or indirectly by CITY or FRANCHISEE shall  
1355 be and shall remain the property of CITY without limitation or restrictions on the use of such  
1356 materials by CITY. FRANCHISEE shall not use such materials in connection with any project not  
1357 connected with this AGREEMENT without the prior written consent of the City Representative.  
1358 This Article 28 does not apply to ideas or concepts described in such materials and does not apply  
1359 to the format of such materials.

## 1360 **ARTICLE 28. Waiver**

1361 28.01 Waiver by CITY or FRANCHISEE of any breach for violation of any term covenant  
1362 or condition of this AGREEMENT shall not be deemed to be a waiver of any other term, covenant  
1363 or condition or any subsequent breach or violation of the same or of any other term, covenant, or  
1364 condition. The subsequent acceptance by CITY of any fee, tax, or any other monies which may

1365 become due from FRANCHISEE to CITY shall not be deemed to be a waiver by CITY of any  
1366 breach for violation of any term, covenant, or condition of this AGREEMENT.

1367 **ARTICLE 29. Prohibition Against Gifts**

1368 29.01 FRANCHISEE represents that FRANCHISEE is familiar with CITY's prohibition  
1369 against the acceptance of any Gift by a CITY officer or designated employee. FRANCHISEE shall  
1370 not offer any CITY officer or designated employee any Gifts prohibited by the CITY.

1371 **ARTICLE 30. Point of Contact**

1372 30.01 The day-to-day dealings between the FRANCHISEE and the CITY shall be  
1373 between the FRANCHISEE and the City Representative.

1374 **ARTICLE 31. Conflict of Interest**

1375 31.01 FRANCHISEE shall comply with CITY requirements for conflict of interest and will  
1376 file all required disclosure statements.

1377 **ARTICLE 32. Notices**

1378 32.01 Except as provided herein, whenever either party desires to give notice to the  
1379 other, it must be given by written notice addressed to the party for whom it is intended, at the  
1380 place last specified and to the place for giving of notice in compliance with the provisions of this  
1381 paragraph. For the present, the parties designate the following as the respective persons and  
1382 places for giving of notice:

1383 As to the CITY:

1384 **Don Schwartz**  
1385 **Assistant City Manager**  
1386 **City of Rohnert Park**  
1387 **Rohnert Park City Hall**  
1388 **130 Avram Avenue**  
1389 **Rohnert Park, CA 94928**  
1390 **Phone: (707) 588-2200**  
1391 **Email: dschwartz@rpcity.org**  
1392

1393 As to the FRANCHISEE:

1394	<b>Name</b>	_____
1395	<b>D.B.A</b> (if applicable)	_____
1396	<b>Title</b>	_____
1397	<b>Company</b>	_____
1398	<b>Address</b>	_____
1399	<b>TOWN, State, Zip Code</b>	_____
1400	<b>Phone</b>	_____
1401	<b>Fax:</b>	_____
1402	<b>E-Mail:</b>	_____
1403		

1404 32.02 Notices shall be effective when received at the address as specified above.  
1405 Changes in the respective address to which such notice is to be directed may be made by written  
1406 notice.

1407 32.03 Notice by CITY to FRANCHISEE of a collection or other Service Recipient problem  
1408 or complaint may be given to FRANCHISEE orally by telephone at FRANCHISEE'S local office  
1409 with confirmation sent as required above by the end of the Work Day.

## 1410 **ARTICLE 33. Franchisee's Records**

1411 33.01 FRANCHISEE shall maintain any and all letters, books of account, invoices,  
1412 vouchers, canceled checks, and other records or documents evidencing or relating to charges for  
1413 services or expenditures and disbursements charged to Service Recipients for a minimum period  
1414 of five (5) years, or for any longer period required by law, from the date of final payment to  
1415 FRANCHISEE pursuant to this AGREEMENT.

1416 33.02 FRANCHISEE shall maintain all documents and records which demonstrate  
1417 performance under this AGREEMENT for a minimum period of five (5) years, or for any longer  
1418 period required by law, from the date of termination or completion of this AGREEMENT.

1419 33.03 Any records or documents required to be maintained pursuant to this  
1420 AGREEMENT shall be made available for inspection or audit, at any time during regular business  
1421 hours, upon written request by the City Representative, the City Attorney, City Auditor, City  
1422 Manager, or a designated representative of any of these officers. Copies of such documents shall  
1423 be provided to CITY for inspection at the CITY offices when it is practical to do so. Otherwise,  
1424 unless an alternative site is mutually agreed upon, the records shall be available at  
1425 FRANCHISEE'S address indicated for receipt of notices in this AGREEMENT.

1426 33.04 Where CITY has reason to believe that such records or documents may be lost or  
1427 discarded due to the dissolution, disbandment or termination of FRANCHISEE'S business, CITY  
1428 may, by written request or demand of any of the above named officers, require that custody of  
1429 the records be given to CITY and that the records and documents be maintained in City Hall.  
1430 Access to such records and documents shall be granted to any party authorized by  
1431 FRANCHISEE, FRANCHISEE'S representatives, or FRANCHISEE'S successor-in-interest.

## 1432 **ARTICLE 34. Entire Agreement**

1433 34.01 This AGREEMENT and the Exhibits attached hereto constitute the entire  
1434 AGREEMENT and understanding between the parties hereto, and it shall not be considered

1435 modified, altered, changed, or amended in any respect unless in writing and signed by the parties  
1436 hereto.

## 1437 **ARTICLE 35. Severability**

1438 35.01 If any provision of this AGREEMENT or the application of it to any person or  
1439 situation shall to any extent be held invalid or unenforceable, the remainder of this AGREEMENT  
1440 and the application of such provisions to persons or situations other than those as to which it shall  
1441 have been held invalid or unenforceable, shall not be affected, shall continue in full force and  
1442 effect, and shall be enforced to the fullest extent permitted by law.

## 1443 **ARTICLE 36. Right to Require Performance**

1444 36.01 The failure of the CITY at any time to require performance by the FRANCHISEE  
1445 of any provision hereof shall in no way affect the right of the CITY thereafter to enforce same. Nor  
1446 shall waiver by the CITY of any breach of any provision hereof be taken or held to be a waiver of  
1447 any succeeding breach of such provision or as a waiver of any provision itself.

## 1448 **ARTICLE 37. All Prior Agreements Superseded**

1449 37.01 This document incorporates and includes all prior negotiations, correspondence,  
1450 conversations, agreements, contracts and understandings applicable to the matters contained in  
1451 this AGREEMENT and the parties agree that there are no commitments, agreements, contracts  
1452 or understandings concerning the subject matter of this AGREEMENT that are not contained in  
1453 this document. Accordingly, it is agreed that no deviation from the terms of this AGREEMENT  
1454 shall be predicated upon any prior representations, agreements, or contracts, whether oral or  
1455 written.

## 1456 **ARTICLE 38. Headings**

1457 38.01 Headings in this document are for convenience of reference only and are not to be  
1458 considered in any interpretation of this AGREEMENT.

## 1459 **ARTICLE 39. Representations and Warranties of** 1460 **FRANCHISEE**

1461 The FRANCHISEE, by acceptance of this AGREEMENT, represents and warrants the  
1462 conditions presented in this Article 39.

1463 39.01 Corporate Status. The FRANCHISEE is a {corporation} duly organized, validly  
1464 existing and in good standing under the laws of the State of California ("State"). It is qualified to  
1465 transact business in the State and has the power to own its properties and to carry on its business  
1466 as now owned and operated and as required by this AGREEMENT.

1467 39.02 Corporate Authorization. FRANCHISEE (via its Board of Directors,  
1468 shareholders, and/or members, as applicable) has taken all necessary action required by law,  
1469 and under its articles of incorporation, operating agreement, and/or its bylaws, to authorize the  
1470 execution of the AGREEMENT. The Person signing this AGREEMENT on behalf of

FRANCHISEE represents and warrants that they have the authority to do so. This AGREEMENT constitutes the legal, valid, and binding obligation of the FRANCHISEE.

39.03 AGREEMENT Will Not Cause Breach. To the best of FRANCHISEE'S knowledge after responsible investigation, the execution or delivery of this AGREEMENT or the performance by FRANCHISEE of its obligations hereunder does not conflict with, violate, or result in a breach: (i) of any law or governmental regulation applicable to FRANCHISEE; or (ii) any term or condition of any judgment, order, decree, of any court, administrative agency, or other governmental authority, or any AGREEMENT or instrument to which FRANCHISEE is a party or by which FRANCHISEE or any of its properties or assets are bound, or constitutes a default hereunder.

39.04 No Litigation. To the best of FRANCHISEE'S knowledge after responsible investigation, there is no action, suite, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against FRANCHISEE wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate would:

39.04.1 Materially adversely affect the performance by FRANCHISEE of its obligations hereunder;

39.04.2 Adversely affect the validity or enforceability of this AGREEMENT;  
or

39.04.3 Have a material adverse effect on the financial conditions of FRANCHISEE, or any surety or entity guaranteeing FRANCHISEE'S performance under this AGREEMENT.

39.05 No Adverse Judicial Decisions. To the best of FRANCHISEE'S knowledge after responsible investigation, there is no judicial decision that would prohibit this AGREEMENT or subject this AGREEMENT to legal challenge.

39.06 No Legal Prohibition. To the best of FRANCHISEE'S knowledge after reasonable investigation, there is no Applicable Law in effect on the date FRANCHISEE signed this AGREEMENT that would prohibit the FRANCHISEE'S performance of its obligations under this AGREEMENT and the transactions contemplated hereby.

39.07 FRANCHISEES Statements. The FRANCHISEES proposal and other supplemental information submitted to the CITY, which the CITY has relied on in awarding and entering this AGREEMENT, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

39.08 FRANCHISEE'S Investigation. FRANCHISEE has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the AGREEMENT and the work to be performed hereunder. FRANCHISEE has taken such matters into consideration in entering this AGREEMENT to provide services in exchange for the compensation provided for under the terms of this AGREEMENT.

39.09 Ability to Perform. FRANCHISEE possesses the business, professional, and technical expertise to Collect, Transport, and Process the Construction and Demolition Debris

1512 material generated in the CITY. FRANCHISEE possesses the ability to secure equipment,  
1513 facility(ies), and employee resources required to perform its obligations under this AGREEMENT.

1514 39.10 Voluntary Use of Disposal Location. The FRANCHISEE, without constraint and as  
1515 a free-market business decision in accepting this AGREEMENT, agrees to use the Disposal  
1516 Facility for the purposes of disposing of all Residuals Collected in the CITY. Such decision by  
1517 FRANCHISEE in no way constitutes a restraint of trade notwithstanding any Change in Law  
1518 regarding flow control limitations or any definition thereof.

## 1519 **ARTICLE 40. Effective Date**

1520 This AGREEMENT shall become effective as of the Effective Date, having been properly  
1521 executed by the CITY and the FRANCHISEE and the FRANCHISEE shall begin Non-Exclusive  
1522 Temporary Construction and Demolition Debris Collection Service, as covered herein, as of  
1523 January 1, 2018.

1524 IN WITNESS WHEREOF, the CITY and the FRANCHISEE have executed this AGREEMENT on  
1525 the day and year first written above.

1527

1528 CITY OF ROHNERT PARK

Company Name

1529

1530

1531

1532

1533

1534 (Name)

Company Representative/Title

1535 City Manager

1536

1537

Rohnert Park Business

1538

License No. \_\_\_\_\_

1539

1540 (Name)

1541 Assistant City Manager

1542

1543

1544

1545

1546

1547 The foregoing AGREEMENT has been reviewed and approval is recommended:

1548

1549

1550

1551 Resolution No. 2017 - \_\_\_\_\_

1552 Approved by City Council

1553

1554

1555

1556 Approved as to Form:

1557

1558

1559 (Name)

Date

1560 City Attorney

1561

1562