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City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. 13815 C.M.S.

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 15.34 (“CONSTRUCTION AND DEMOLITION DEBRIS WASTE REDUCTION AND RECYCLING REQUIREMENTS”) TO ESTABLISH A NON-EXCLUSIVE FRANCHISE AGREEMENT SYSTEM FOR THE HAULING OF SUCH DEBRIS TO BECOME EFFECTIVE JULY 1, 2015; AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE SUCH NON-EXCLUSIVE FRANCHISE AGREEMENTS

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, in 1990 the Alameda County Waste Reduction and Recycling Initiative Charter Amendment established a county-wide solid waste diversion goal of seventy five (75) percent by 2010; and

WHEREAS, in 2000 the City Council of the city of Oakland approved Ordinance No. 12253 C.M.S., adopting the Construction and Demolition Debris Waste Reduction and Recycling Requirements; and

WHEREAS, in 2002 the City Council of the City of Oakland approved Resolution No. 77500 C.M.S., adopting a goal of seventy five (75) percent reduction of waste going to landfills by 2010 in support of the Measure D goal, and the implementation date established by the Alameda County Source Reduction and Recycling Board; and

WHEREAS, in 2006 the City Council of the City of Oakland approved Resolution No. 79774 C.M.S. adopting a Zero Waste Goal by 2020; and

WHEREAS, in 2006 the City Council of the City of Oakland approved Resolution No. 80286 C.M.S., adopting a Zero Waste Strategic Plan; and

WHEREAS, in 2012 the City Council of the City of Oakland approved Resolution No. 83689 C.M.S., establishing Zero Waste System Design; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a), the Oakland City Charter Article X, and Oakland Municipal Code Chapter 8.28, the City determined that the public health, safety, and well-being require that an exclusive right be awarded to qualified contractors to provide for the collection of Mixed Materials and Organics and for the collection of Residential Recycling and that commercial recyclers and collection of construction and demolition debris shall be provided pursuant to a non-exclusive system, all in order to meet the requirements of the Act and the City's Zero Waste Goal by 2020, and to implement the Zero Waste Strategic Plan and the Zero Waste System Design; and

WHEREAS, the new Zero Waste System makes various changes to the manner in which solid waste is regulated handled and solid waste collection services are made available to the public, which therefore requires that Chapter 15.34 of the Oakland Municipal Code, entitled "Construction And Demolition Debris Waste Reduction And Recycling Requirements," be amended to implement the new system; and

WHEREAS, the City has independently reviewed, considered and confirmed the environmental analysis conducted for these services; and

WHEREAS, this environmental analysis concludes that there would not be the potential for significant environmental impacts, and therefore no further environmental review is required; and

WHEREAS, the City Council finds and determines that the requirements of the California Environmental Quality Act ("CEQA") have been satisfied, and this action on the part of the City Council is exempt from CEQA pursuant, CEQA Guidelines section 15301, CEQA Guidelines section 15307, CEQA Guidelines section 15308, CEQA Guidelines section 15273, CEQA Guidelines section 15183, and/or CEQA Guidelines section 15061 (b) (3); and

WHEREAS, each of the foregoing provides a separate and independent basis for an exemption and when viewed collectively provides an overall basis for an exemption, as further described and explained in the accompanying environmental analysis dated July 8, 2014 attached to the September 19, 2014 City Administrator report to the City Council (Attachment D), incorporated herein by the reference as if fully set forth herein; and

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 15.34 ("Construction and Demolition Debris Waste Reduction and Recycling Requirements") of the Oakland Municipal Code is herein provided, with additions underscored and deletions ~~stricken through~~.

**Chapter 15.34 - CONSTRUCTION AND DEMOLITION DEBRIS
COLLECTION, TRANSPORTATION, WASTE REDUCTION AND
RECYCLING REQUIREMENTS**

15.34.010 - Title.

The provisions of ~~Section 15.34.010 through Section 15.34.090 inclusive~~, shall be known as the City of Oakland "Construction and demolition debris collection, transportation, waste reduction and recycling requirements."

(Ord. 12253 § 1 (part), 2000)

15.34.020 - Purpose and intent.

The purpose of these provisions is to prescribe requirements designed to meet and further the goals of the California Integrated Waste Management Act of 1989 Assembly Bill 939 and the Alameda County Waste Reduction and Recycling Act of 1990 (Measure D). ~~These requirements shall apply to affected projects as specified in this chapter.~~

The intent of these provisions is to divert at a minimum fifty (50) percent of C&D debris from landfills; process and return the materials into the economic mainstream thereby conserving natural resources; and stimulate markets for recycled and salvaged materials.

The City ~~Manager~~Administrator or his/her designee is authorized to develop guidelines to implement the requirements of this chapter, which may be amended from time to time.

(Ord. 12253 § 1 (part), 2000)

15.34.030 - Definitions.

For the purpose of this ~~Chapter~~ 15.34, the following definitions shall apply:

"Addition" means an extension or increase in floor area or height of a building or structure (as adopted in Section 15.04.005).

"Affected project" means a project that requires a waste reduction and recycling plan ("WRRP") because it meets one or more of the following criteria:

1. It is new construction;
2. It is nonresidential or apartment house demolition;
3. It is a nonresidential or apartment house addition or alteration, that has a permit~~construction~~ valuation greater than or equal to fifty thousand dollars (\$50,000.00) ~~in year 2000 dollars (subject to inflation adjustments).~~

Affected projects exclude projects required to divert C&D debris under the 1997 requirements of the Modifications to the Standard Specifications for Public Works Construction (Ordinance No. 12049 C.M.S.).

"Alteration" means any change, addition or modification in construction or occupancy (as adopted in Section 15.04.005).

"Apartment house" means any building or portion thereof that contains three or more dwelling units and, for the purpose of this chapter, includes residential condominiums (as adopted in Section 15.04.005).

"Appeal" means the process outlined in Section 15.34.090.

"Applicant" means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity that undertakes any construction, demolition, addition, or alteration project within the city.

"Building official" means the officer or other designated authority charged with the administration and enforcement of the California Building Code ("CBC") and the city's amendments to the CBC (as adopted in Section 15.04.005).

"Construction" means the manner or method of building (as adopted in Section 15.04.005).

"Construction and demolition debris," "C&D debris," or "construction debris" means ~~waste building materials resulting from construction, addition, remodeling, repair, alteration or demolition operations (as adopted on any house, residential property, commercial building, pavement or other structure for which the city requires a building or demolition permit, or from a non-permitted municipal project. Construction and demolition debris includes but is not limited to rocks, soils, tree remains and other plant debris which results from land clearing or land development operations in Section 8.28.010 and Section 15.04.005).~~ preparation for construction. C&D debris may include materials that have been source separated.

"Demolition" means the deconstructing, destroying, razing, tearing down, or wrecking of any facility including its foundation, covered by this chapter. As used herein, the word "demolition" shall include any partial demolition and any interior demolition affecting more than ten percent of the replacement value of the structure as determined by the Building Official. Demolition work includes: (1) ~~proper disposal of recyclables, solid waste, and hazardous~~ handling of materials pursuant to applicable regulations and approved plans, if any, (2) termination of utilities serving the premises including permits and final inspections and approvals, (3) removal of driveways and repair of public sidewalks, as required, and (4) site cleanup and restoration including grading, landscaping, and fencing as required.

"Divert," "diverted," or "diversion" means to use C&D debris for any purpose other than disposal in a landfill, incineration facility, or alternative daily cover. Methods to divert materials from landfills include reuse, salvage, and recycling.

"Diversion attainment" means at least fifty (50) percent by weight of the total C&D debris is diverted on an affected project.

"Fixed body vehicle" means any wheeled motor vehicle that does not rely on a roll-off box or

other detachable container to collect, contain and transport material.

"Hearing Officer" means the city staff designated by the City Manager ~~Administrator~~ to whom appeals can be made under this chapter.

~~"Nonaffected~~Non-affected projects" means projects that do not require a WRRP. Applicants for ~~nonaffected~~Non-affected projects shall be encouraged to divert at least fifty (50) percent of all project-related C&D debris.

~~"Recyclables" or "recycle" or "recycling" means residential, commercial, or industrial materials or by-products which are set aside, handled, packaged, or offered for collection in a manner different than solid waste for the purpose of being reused or processed and then returned to the economic mainstream in the form of commodities (as adopted in Section 8.28.010).~~

"Non-permitted municipal projects" means construction and/or demolition projects on or of city-owned property, managed by city employees, which are not required to obtain a building or demolition permit.

"Recycle" or "Recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, or thermally destroying C&D debris.

"Reuse" means recovering material for repeated use in the same form. This includes materials that are reused at the same location as they are generated.

"Salvage" means the recovering of C&D debris from a building or demolition site for the purpose of recycling, reuse, or proper storage for future recycling or reuse.

~~"Source separated" means recyclables materials that have been segregated from solid waste C&D debris, for the purpose of diversion, by or for the generator thereof on at the premises service address at which they the materials were generated for handling different from that of solid waste. This does not require that different types of recyclable commodities be separated from each other, except from organic recyclable material (as adopted in Section 8.28.010).~~

"Summary report" means the report to be submitted to the Building Official at the conclusion of the affected project and prior to the final inspection, issuance of a temporary certificate of occupancy, or certificate of occupancy.

"Targeted materials" means the C&D debris listed on the WRRP form that could potentially be reused, recycled, or salvaged.

"Unpermitted materials" means wastes or other materials that class III disposal sites may not receive under their permits.

"WRRP" means waste reduction and recycling plan.

"WRRP form" means a form, provided by the city for the purpose of compliance with this chapter that must be submitted by the applicant for any affected project.

"WRR Review Official" means the Waste Reduction and Recycling Review Official who is the city staff designated and authorized by the City Manager Administrator and is responsible for implementing this chapter.

(Ord. 12253 § 1 (part), 2000)

15.34.040 — Collection and Transportation of C&D debris.

~~A. — It is unlawful for any person other than the city's licensed franchised collector or those persons employed by the franchise collector to collect or haul any construction and demolition debris within the city except:~~

~~1. Source separated construction and demolition debris, including but not limited to those collected by a person under contract to the city and those collected through private arrangements between the generator and the collector. Loads, which consist of mixed paper and which contain more than ten percent by weight of residual, shall not be considered source separated recyclables. Loads which consist of recyclables other than mixed paper and which contain more than five percent by weight of residual shall not be considered source separated recyclables; or,~~

~~2. — Construction and demolition debris: (1) removed from a premises by a licensed contractor as an incidental part of a total construction, remodeling or demolition service offered by that contractor, rather than as a separately contracted or subcontracted hauling service using debris boxes or similar apparatus, or (2) directly loaded onto a fixed body vehicle and hauled directly to a transfer station, or disposal facility.~~

A. Pursuant to the authority provided by Article X, Section 1000 of the Oakland City Charter, any franchise for the collection and transportation of C&D debris within the city may be granted by the City Administrator on such terms and conditions as are determined by the City Council to be in the best interests of the city. Such terms and conditions shall be evidenced by a written non-exclusive franchise agreement, approved in form by the City Council, and executed by the City Administrator and franchisee(s).

B. It is unlawful to collect, transport or dispose of construction and demolition debris anywhere in the city except as provided for in this chapter. It is unlawful for any person other than persons in possession of a non-exclusive franchise agreement granted by the city, or those persons employed by such franchised collector(s) to collect or transport any construction and demolition debris within the city except:

1. Donated Materials. Construction and demolition debris generated in the city that are

donated by the generator.

2. Materials Hauled by Owner or its Contractor. Construction and demolition debris that are removed from any service address and are transported to a processing or disposal site by:

- (a) The owner of such service address;
- (b) The full-time employee of the owner that uses the owner's equipment to transport materials; or,
- (c) A construction contractor performing construction work at the service address, whose collection and transport of the C&D debris is incidental to the service being performed, provided that such contractor uses a fixed-body vehicle for the collection and transportation of the C&D debris, and such contractor collects and transports the materials at no additional or separate fee using contractor's employees and contractor's equipment. For purposes of this section, except as set forth below, the term "incidental to the service being performed" shall mean that the material requiring collection and transportation is generated by the activity of the contractor performing the hauling.
 - I. For example, a construction contractor who remodels a kitchen can collect and transport those materials related to such construction in a fixed body vehicle for no additional fee without obtaining a non-exclusive C&D debris franchise agreement granted by the city.
 - II. As an additional example, a contractor whose responsibility with relation to the project is to clean up a site and transport C&D debris generated by other contractors or the owner/occupant must obtain a non-exclusive C&D debris franchise agreement from the city, and the collection and transport of such C&D debris from the site by such contractor is not considered as "incidental to the service being performed".
 - III. Nothing in this section shall authorize a demolition contractor performing demolition services in relation to a city-approved building or demolition permit to collect and transport C&D debris without obtaining an executed non-exclusive C&D debris franchise agreement granted by the city.
- (d) Projects on City Property. C&D debris removed from a project site by city employees, provided that the C&D debris being removed is generated from a city-owned property.

3. Effective until December 31, 2015, those persons who have submitted a complete application for a non-exclusive C&D debris franchise agreement to the city may collect or transport construction and demolition debris within the city provided they do so in accordance with the terms and conditions of the city's non-exclusive construction and demolition debris franchise agreement. Such compliance shall include the fulfillment of the obligations of the non-exclusive franchise agreements and this Chapter.

C. Construction and demolition debris collected under this chapter shall only be transported to

and processed and/or disposed of at facilities permitted to accept, process and/or dispose of construction and demolition debris under applicable law.

D. The following materials shall not be collected under this chapter unless a collector is otherwise authorized to do so by applicable law: hazardous waste (as defined by Section 8.28.10), medical waste (as defined by Section 8.28.10), unacceptable waste (as defined by Section 8.28.10), batteries, human waste and other potentially infectious material, and liquid wastes.

E. Nothing in this Section 15.34.040 shall prevent other persons from collecting, transporting, processing and/or marketing materials that have been source separated by material type.

15.34.045 City fees.

The city may collect from non-exclusive C&D debris franchisees monies to recover the cost of administering the C&D debris program and in consideration of award of a franchise agreement.

(Ord. 12253 § 1 (part), 2000)

15.34.050 - Submission of a waste reduction and recycling plan (WRRP).

A. WRRP Forms. For affected projects, prior to issuance of a building or demolition permit, the applicant shall complete and submit a WRRP form to the city's Building Official. The completed WRRP form shall delineate all of the following:

1. The estimated volume or weight of the affected project C&D debris to be generated, listed by each type of material; and
2. Volume or weight of the C&D debris to be reused, salvaged or recycled listed by each type of material; and
3. The estimated volume or weight of C&D debris that will be landfilled listed by each type of material.

(Ord. 12253 § 1 (part), 2000)

15.34.060 - Review of WRRP.

A. Notwithstanding any other provision of this chapter, no building or demolition permit shall be issued by the city for any affected project prior to approval of the WRRP by the WRR Review Official. Approval shall not be required if an emergency demolition is required to protect public health or safety pursuant to Section 15.36.080

- B. Using the established guidelines, the WRR Review Official shall approve a WRRP only if:
1. The WRRP provides all the information set forth in Section 15.34.050 of this chapter; and
 2. The WRRP indicates that at least fifty (50) percent by weight of all C&D debris generated by the project will be diverted; or
 3. The Applicant~~applicant~~ demonstrates good cause as to why at least fifty (50) percent by

weight of all C&D debris generated by the project will not be diverted.

If the WRR Review Official fails to approve the WRRP, he/she shall explain in writing the basis for denial.

(Ord. 12253 § 1 (part), 2000)

15.34.070 - Submission of a completed summary report.

- A. Documentation. At the conclusion of each affected project and prior to the final inspection, issuance of temporary certificate of occupancy, or certificate of occupancy by the city, the applicant shall submit to the Building Official a summary report which contains the following documentation:
1. The actual volume or weight of C&D debris that was diverted by type of material, diversion method, and the actual volume or weight of C&D debris that was not diverted;
 2. Any additional information the applicant believes is relevant to determining its efforts to comply in good faith with this Chapter 15.34
 3. Any barriers encountered that prohibited diversion of C&D debris; and
 4. Any recommended actions that would further the efforts to recycle C&D debris.
- B. Determination of Diversion. The WRR Review Official shall review the information submitted under Section 15.34.050(A) to determine whether the applicant has diverted fifty (50) percent by weight of the C&D debris based on established guidelines, as follows:
1. Diversion Attainment. The applicant shall be found to have achieved a diversion attainment if at least fifty (50) percent by weight of the C&D debris generated by the affected project is diverted, and appropriate documentation as outlined in Section 15.34.070 is provided.
 2. Good Faith Effort. When the WRR Review Official determines that the affected project has not achieved diversion attainment, he/she shall determine whether the applicant has made a good faith effort to comply with this Chapter 15.34. In making this determination, the WRR Review Official may consider information submitted by the applicant, the availability of markets for the C&D debris that was not diverted, the size and type of project, the documented efforts of the applicant to divert C&D debris, and barriers encountered.
 3. Nonattainment. The WRR Review Official shall determine the affected project to have a nonattainment status if he/she determines that the applicant has not made a good faith effort to achieve diversion attainment or if the applicant fails to submit the documentation required by Section 15.34.070. All nonattainment information including applicant name, type and size of project, and any reason for nonattainment shall be documented by the WRR Review Official.

(Ord. 12253 § 1 (part), 2000)

15.34.080 - City's rights to monitor and inspect.

- A. Audit. City's WRR Review Official may inspect and monitor all affected projects to determine levels of actual diversion activities and validate the information provided in the WRRP and summary report.
- B. Supporting Documentation. Applicant shall retain the receipts or weight tickets for the quantities of materials reused, salvaged, recycled and landfilled as indicated in the summary report form for one year after the final inspection, and issuance of temporary certificate of occupancy or certificate of occupancy.
- C. Materials Targeted for Diversion. The City Manager/Administrator or his/her designee may change the C&D debris materials targeted for diversion from time to time, based on local markets and conditions to further the intent of this chapter.

(Ord. 12253 § 1 (part), 2000)

15.34.090 - Appeals.

An appeal of the WRR Official's decision not to approve the WRRP shall be made to the Hearing Officer according to the following appeal procedures:

- A. Within ten calendar days after the date of a written decision by the WRR Review Official to deny the WRRP, an appeal in writing from said decision must be filed with the WRR Review Official by the applicant or any other interested party on a form prescribed by the WRR Review Official. The appeal shall state specifically the error, abuse of discretion, or claim where the decision of the WRR Review Official was not supported by substantial evidence in the record.
- B. Upon receipt of the appeal, the Hearing Officer shall set the date for consideration thereof and, not less than ten days prior thereto, give a written notice to the applicant and or appellant.
- C. In deciding the appeal, the Hearing Officer shall consider the purpose and intent, as well as the letter, of the pertinent provisions of this Chapter 15.34, and shall affirm, modify, or reverse the written decision of the WRR Review Official.
- D. The written decision of the Hearing Officer shall be final.
- E. Appeal fees shall be in accordance with the city's master fee schedule.

15.34.100 – Violations, enforcement and remedies

- A. Penalty for Violation. Any person convicted of an infraction under the provision of this chapter shall be punished upon a first conviction by a fine of not more than one hundred dollars (\$100.00) and, for a second conviction within a period of one year, by a fine of not more than two hundred dollars (\$200.00) and, for a third or any subsequent conviction within a one-year period, by a fine of not more than five hundred dollars (\$500.00). Any violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be

punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months or by both.

- B. Continuing Violation. Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or permitted by the person and shall be punishable accordingly as herein provided.
- C. Violations Deemed a Public Nuisance. In addition to the penalties herein provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety and welfare, and is declared and deemed a nuisance.
- D. Civil Actions. In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the city. In any such action, the city may seek, and the court shall grant, as appropriate, any or all of the following remedies:
1. A temporary and/or permanent injunction;
 2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection (including attorneys' fees);
 3. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation (including attorneys' fees).
- E. Authority to Issue Citations. Authorized enforcement officials or employees may issue a citation and notice to appear in the manner prescribed by Chapter 5c of Title 3, Part 2 of the Penal Code, including Section 853.6 (or as the same may hereafter be amended). It is the intent of the City Council that the immunities prescribed in Section 836.5 of the Penal Code be applicable to public officers or employees or employees acting in the course and scope of employment pursuant to this chapter.
- F. Administrative Enforcement Option. Chapters 1.08, 1.12 and 1.16 of this code, which provide for alternative code enforcement mechanisms, including but not limited to a civil penalty program and an administrative citation program, are incorporated by reference as if fully set forth herein.
- G. Remedies Not Exclusive. Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

(Ord. 11819 § 1 (part), 1995: prior code § 6-4.18)

Section 2. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

Section 3. The City Council has independently reviewed, considered, and confirmed this environmental determination and finds and determines that the action complies with the CEQA for the reasons stated in the June 2, 2015 Council Agenda Report, hereby incorporated by reference, and directs the City's Environmental Review Officer to file a Notice of Exemption.

Section 4. The City Council does hereby find and declare that the above recitals are true and correct and hereby makes them a part of this Ordinance.

Section 5. The City Administrator is authorized to execute all documents that may be necessary and consistent with the basic intent and purpose of implementing Non-Exclusive Franchise Agreements for the Hauling of Construction and Demolition Debris (*Exhibit A*), including but not limited to Franchise Agreement amendments, modifications, notices, and related actions.

Section 6. The City Administrator is authorized to accept and appropriate C&D Administrative Fees and Application Fees into Fund 1710 (Recycling Program), and C&D Franchise Fees into Fund 1010 (General Purpose Fund).

Section 7. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses, or phrases may be declared invalid or unconstitutional.

Section 8. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 9. This Ordinance is enacted pursuant to the City of Oakland's general police powers, specified in Section 106 of the Charter of the City of Oakland and Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 22, 2015

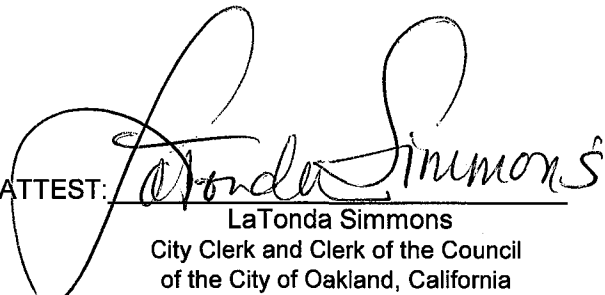
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, and PRESIDENT GIBSON MCELHANEY — 8

NOES- \emptyset

ABSENT- \emptyset

ABSTENTION- \emptyset

ATTEST: 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date
JUN 02 2015

DATE OF ATTESTATION: July 1, 2015

Exhibit A

NON-EXCLUSIVE FRANCHISE AGREEMENT

BETWEEN

THE CITY OF OAKLAND

AND

FOR

CONSTRUCTION AND DEMOLITION DEBRIS

COLLECTION SERVICES

_____ , 2015

Exhibit A

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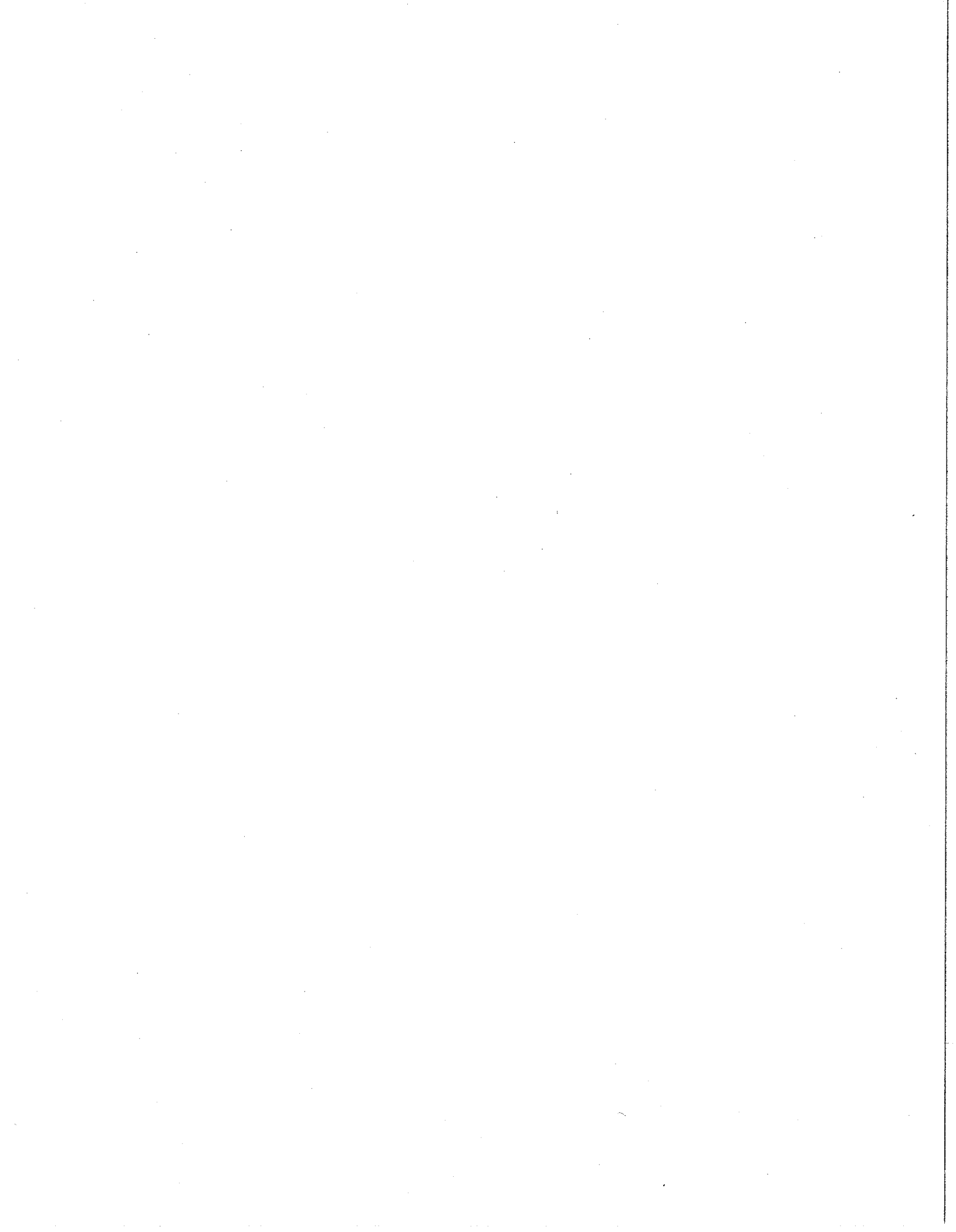
Exhibit A

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Exhibit A

List of Exhibits

- A. Standard Reporting Template
- B. Schedule for Liquidated Damages
- C. Secretary's Certification
- D. Statement of Applicant's Understanding and Representations
- E. Business Tax Certificate
- F. Insurance Documents (as required by Section 10.2)



1 **NON-EXCLUSIVE FRANCHISE AGREEMENT**

2 **BETWEEN**

3 **THE CITY OF OAKLAND**

4 **AND**

5 _____

6 **FOR CONSTRUCTION AND DEMOLITION DEBRIS**

7 **COLLECTION SERVICES**

8 This non-exclusive franchise agreement (Agreement) is made and entered into this _____ day of
9 _____, 20____, by and between the City of Oakland, (CITY) and
10 _____ (hereinafter referred to as the
11 FRANCHISEE).

12 **RECITALS**

13 This Agreement is entered into with reference to the following facts and circumstances:

14 **WHEREAS**, the legislature of the state of California ("State"), by enactment of the California Integrated
15 Waste Management Act of 1989 ("AB 939") and subsequent additions and amendments (codified at
16 California Public Resources Code section 40000 et seq.), has declared that it is in the public interest to
17 authorize and require local agencies to make adequate provisions for solid waste Collection within their
18 jurisdiction;

19 **WHEREAS**, the State, through enactment of the California Integrated Waste Management Act of 1989
20 (California Public Resources Code section 40000, et seq.) also recognizes the important health and safety
21 consideration to long-term planning for local government's adequate Disposal needs. The California
22 Integrated Waste Management Act of 1989 declares that the responsibility for management of solid
23 waste is a shared responsibility between the State and local governments. The State requires local
24 governments to make adequate provision for at least fifteen (15) years of garbage Disposal capacity to
25 preserve the health, safety and well- being of the public. The California Integrated Waste Management
26 Act of 1989, Oakland City Charter Article X and Oakland Municipal Code Chapter 8.28 also authorize
27 local governments to enter into exclusive franchise contracts to provide garbage handling services for
28 the health, safety and well-being of its citizens (California Public Resources Code section 40059);

29 **WHEREAS**, in 1990 the Alameda County Waste Reduction and Recycling Initiative Charter Amendment
30 established a county-wide solid waste diversion rate goal of seventy-five (75) percent by 2010;

31 **WHEREAS**, in 2002 the City Council of the City of Oakland passed Resolution No. 77500 C.M.S., to adopt
32 a goal of seventy-five (75) percent reduction of waste going to landfills by 2010 in support of the

33 Measure D goal, and the implementation date established by the Alameda County Source Reduction and
34 Recycling Board;

35 **WHEREAS**, in 2006 the City Council of the City of Oakland approved Resolution No. 79774 C.M.S. which
36 adopted a Zero Waste Goal by 2020;

37 **WHEREAS**, in 2006 the City Council of the City of Oakland passed Resolution No. 80286 C.M.S., adopting
38 a Zero Waste Strategic Plan;

39 **WHEREAS**, in 2012 the City Council of the City of Oakland passed Resolution No. 83689 C.M.S., adopting
40 a Zero Waste System Design;

41 **WHEREAS**, it is the intent of CITY to provide for the Collection and Processing of Construction and
42 Demolition Debris through this Agreement;

43 **WHEREAS**, CITY has entered into separate exclusive contracts to provide residential and commercial
44 mixed materials collection and processing, residential recycling collection and processing, and disposal
45 services within the Service Area;

46 **WHEREAS**, Customers may voluntarily subscribe to and cancel Construction and Demolition Debris
47 Collection Services from FRANCHISEE, and re-subscribe to Construction and Demolition Debris Services
48 with any other company holding a similar non-exclusive franchise agreement with the City for such
49 service, in accordance with Chapter 8.28.100 of the City of Oakland Municipal Code;

50 **WHEREAS**, the City Council has determined through an application and review process for Construction
51 and Demolition Debris Collection Services that FRANCHISEE is qualified to provide for the Collection of
52 Construction and Demolition Debris within the corporate limits of CITY, the transportation of such
53 material to appropriate places for Processing, Recycling, and/or Disposal; and City Council desires that
54 FRANCHISEE be engaged to perform such services on the basis set forth in this Agreement;

55 **WHEREAS**, FRANCHISEE, through its application to CITY, has proposed and represented that it has the
56 ability and capacity to provide for the Collection of Construction and Demolition Debris within the
57 corporate limits of CITY; and the transportation of such material to appropriate places for Processing,
58 Recycling, and/or Disposal;

59 **WHEREAS**, CITY wishes to engage FRANCHISEE to provide the services specified within this Agreement,
60 in accordance with the terms and conditions of this Agreement; and

61 **WHEREAS**, this Agreement has been developed by and is satisfactory to CITY and FRANCHISEE.

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

64

65

ARTICLE 1 DEFINITIONS

66 For purposes of this Agreement, unless a different meaning is clearly required, the following words and
67 phrases shall have the following meanings respectively ascribed to them by this Article and shall be
68 capitalized throughout this Agreement. It is the CITY's intent that the terms as defined by this Article

69 will, wherever possible, align and correspond with terms defined and used in Sections 8.28 and 15.34 of
70 the OMC. In the event of a conflict between the definition of a term in the OMC, as it may be amended
71 from time to time, and in this Agreement, the definition in the OMC shall prevail.

72 **"AB 341"** means the California legislation (Stats. 2006, Ch. 476), as it may be amended from time to
73 time, that, among other things, added Chapter 12.8 of Part 3 of Division 30 of the Public Resources Code
74 (commencing with section 42649) imposing mandatory commercial recycling requirements and
75 requirements that each jurisdiction implement an outreach and education program and monitor
76 compliance with the mandatory commercial Recycling requirements.

77 **"AB 939"** means the California Integrated Waste Management Act (Public Resources Code section 40000
78 et seq.), as amended from time to time.

79 **"Agreement"** means this written document and all amendments thereto, between CITY and
80 FRANCHISEE, governing the provision of the services provided herein, including all exhibits hereto, as it
81 may be amended from time to time.

82 **"Applicable Law"** means all federal, State, and local laws, regulations, rules, orders, judgments, degrees,
83 permits, approvals, or other requirements of any governmental agency having jurisdiction over the
84 Collection, Transportation, Recycling, Processing, and Disposal of Construction and Demolition Debris
85 that are in force on the Effective Date and as they may be enacted, issued, or amended during the Term
86 of this Agreement.

87 **"Bin"** means a watertight metal or plastic Container with a hinged plastic lid and a capacity of between
88 one (1) and seven (7) cubic yards, designed or intended to be mechanically dumped into a packer type
89 truck, which is approved by CITY and labeled as specified by CITY. Bins may also include Compactors
90 that are owned or leased by the Customer, contingent upon confirmation of compatibility from
91 FRANCHISEE.

92 **"Cart"** means a watertight heavy plastic receptacle with a rated capacity of approximately twenty (20),
93 thirty-two (32), sixty-four (64) or ninety-six (96) gallons, having a hinged tight-fitting lid, and two (2)
94 wheels, that is approved by CITY and is labeled as specified by CITY.

95 **"Change in Law"** means the adoption, promulgation, or modification of any generally applicable and
96 enforceable federal, state, local joint power authority (JPA), or foreign rule, law, regulation, ordinance,
97 order, judgment, decree, permit or administrative agency guidelines (excluding orders, judgments, and
98 decrees specific to a particular facility) (collectively, "Laws") duly adopted and promulgated officially in
99 writing for uniform application occurring after the Effective Date. Change in Law does not include
100 changes initiated by FRANCHISEE. Change in Law shall not include (i) Laws enacted or adopted prior to
101 the Effective Date, or (ii) Laws particular to the solid waste, recycling, and C&D collection, hauling,
102 processing and disposal industry that are enacted or finally adopted or approved prior to the Effective
103 Date of this Agreement but initially become effective after such date.

104 **"CITY"** means the City of Oakland, California, a municipal corporation.

105 **"City C&D Contract Manager"** means the City representative specified in Section 7.5, who is the main
106 point of contact for this Agreement.

107 **"Collect or Collection (or variation thereof)"** means the act, by FRANCHISEE, of picking up and
108 transporting Construction and Demolition Debris from the place of generation in the Service Area.

109 **"Compactor"** means any Roll-Off Box or Bin which has a compaction mechanism, whether stationary or
110 mobile, contingent upon confirmation of compatibility from FRANCHISEE.

111 **"Construction and Demolition Debris (C&D)"** Materials resulting from construction, remodeling, repair
112 or demolition operations on any house, residential property, commercial building, pavement or other
113 structure for which CITY requires a building or demolition permit, or from a non-permitted municipal
114 project. Construction and Demolition Debris includes but is not limited to rocks, soils, tree remains and
115 other plant debris which results from land clearing or land development operations in preparation for
116 construction. Construction and Demolition Debris may include materials that have been Source
117 Separated.

118 **"Container(s)"** means a Bin, Cart, Roll-Off Box, Compactor, or other item approved by CITY for use in
119 containing materials set out for Collection under the terms of this Agreement.

120 **"County"** means the County of Alameda, California.

121 **"Customer"** means the Person or Persons initiating construction, remodeling, repair or demolition
122 operations on any house, residential property, commercial building, pavement or other structure for
123 which CITY requires a building or demolition permit, who generates Construction and Demolition Debris,
124 and who has arranged for Collection services as provided under this Agreement. The definition of
125 Customer also includes any agent, contractor, or other Persons working on Customer's behalf.

126 **"Disposal or Dispose (or variation thereof)"** means the disposition of Construction and Demolition
127 Debris and Residuals received at a Disposal Site under the terms of this Agreement, or (a) the placement
128 of any materials Collected pursuant to this Agreement in landfills, including as "beneficial reuse" as
129 defined by California Code of Regulations Title 27, Chapter 3, Article 1, section 20686; or (b) disposition
130 to "incinerators" as defined by Alameda County Waste Reduction and Recycling Initiative Charter
131 Amendment (Measure D) Subsection 64.150 T.

132 **"Disposal Site(s)"** means the Disposal site(s) selected by the FRANCHISEE or its Subcontractor(s) for
133 Disposal of material intended by Customer for Disposal consistent with its obligations under Chapter
134 15.34 of the OMC, and for Disposal of Residuals from Processing of Construction and Demolition Debris.
135 Any Disposal Site selected by FRANCHISEE shall be permitted and operated in full compliance with all
136 Applicable Laws.

137 **"Divert or Diversion (or variation thereof)"** means the avoidance of Disposal at a Disposal Site or other
138 landfill, or through "transformation" as defined by Public Resources Code section 40201, of any
139 materials Collected pursuant to this Agreement, through Processing.

140 **"Effective Date"** means the date set forth in the introductory paragraph of this Agreement.

141 **"Fixed Body Vehicle"** means any wheeled motor vehicle that does not rely on a Roll-Off Box or other
142 detachable Container to Collect, contain and Transport material.

143 **"FRANCHISEE"** means _____ (insert franchisee's name).

144 **"Hazardous Waste"** for purposes of this Agreement, Hazardous Waste shall include those wastes
145 defined as Hazardous Waste in Oakland Municipal Code section 8.28.010 or as subsequently amended.
146 Section 8.28.010 currently defines Hazardous Waste as any hazardous waste, material, substance or
147 combination of materials which because of its quantity, concentration or physical, chemical or infectious
148 characteristics may cause or significantly contribute to an increase in mortality or an increase in serious
149 irreversible or incapacitating reversible illness or may pose a substantial present or potential risk to
150 human health or the environment when improperly treated, stored, Transported, Disposed or otherwise
151 managed and which requires special handling under any present or future federal, State or local law
152 excluding de minimis quantities of waste of a type and amount normally found in residential garbage
153 after implementation of programs for the safe Collection, Recycling, treatment and Disposal of
154 Household Hazardous Waste in compliance with sections 41500 and 41802 of the California Public
155 Resources Code. Hazardous Waste shall include but not be limited to: (a) substances that are toxic,
156 corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any fraction thereof) and their
157 derivatives; (c) explosives, asbestos, radioactive materials, toxic substances or related hazardous
158 materials; and (d) substances defined, regulated or listed (directly or by reference) by applicable local,
159 state or federal law as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutant,"
160 "reproductive toxins," "toxic waste" or "toxic substances" or similarly identified as hazardous to human
161 health or the environment, including those so defined in or pursuant to any of the following statutes: (i)
162 the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") of 1980, 42
163 USC section 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC section 1802,
164 et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC section 6901 et seq.; (iv) the Clean
165 Water Act, 33 USC section 1251 et seq.; (v) California Health and Safety Code section 25115-25117,
166 25249.8, 25281 and 25316; (vi) the Clean Air Act, 42 USC section 7901 et seq.; and (vii) California Water
167 Code section 13050. All rules and regulations adopted and promulgated pursuant to such statutes and
168 future amendments to or recodifications of such statutes and any regulations adopted pursuant to these
169 statutes after the date of this Agreement, as well as any subsequently enacted federal or California
170 statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of
171 air, surface waters, groundwater, soil or other media contaminated with such substances any other
172 hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or
173 regulated under any other applicable federal, state or local environmental laws currently existing or
174 hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"),
175 petroleum, natural gas and synthetic fuel products and by-products. The parties intend that this
176 definition not be limited to any particular statutory or regulatory regime and that it be construed as
177 broadly as possible.

178 **"Liquidated Damages"** means the amounts due by FRANCHISEE to CITY for failure to meet specific
179 quantifiable standards of performance as described in Section 11.4 and Exhibit A.

180 **"Oakland Municipal Code (OMC)"** means the City of Oakland Municipal Code, as the same may be
181 amended, supplemented, or modified from time to time.

182 **"Party or Parties"** refers to CITY and FRANCHISEE, individually or together.

183 **"Person(s)"** means an individual, association, partnership, corporation, joint venture, school, the United
184 States, the State of California, any municipality or other political subdivision thereof or any other entity
185 whatsoever.

186 **"Process, Processed or Processing (or any variation thereof)"** means an operation or series of
187 operations, whether involving equipment, manual labor, or mechanical or biological processes that
188 sorts, enhances, upgrades, concentrates, decontaminates, packages or otherwise prepares Construction
189 and Demolition Debris and returns marketable elements thereof to the economic mainstream in the
190 form of raw material for new, reused or reconstituted products. Processing begins at the time the
191 Construction and Demolition Debris is delivered to the Processing Site and ends when the finished
192 Processed materials are sold or reused and the Residual material is properly Disposed.

193 **"Processing Site(s)"** means the facility(ies) selected by FRANCHISEE for Processing that meets the
194 Diversion obligations of specific Customers as provided in Chapter 15.34 of the OMC. Any Processing
195 Site selected by FRANCHISEE shall be permitted and operated in full compliance with all Applicable Laws.

196 **"Processor"** means the operator of a Processing Site.

197 **"Rates"** means the charges and fees FRANCHISEE bills and collects from each Customer receiving service
198 pursuant to this Agreement.

199 **"Recycle or Recycling (or any variation thereof)"** means the process of Collecting, sorting, cleansing,
200 treating, and reconstituting materials for the purpose of using the altered form in the manufacture of a
201 new product. Recycling does not include burning, incinerating, or thermally destroying Construction and
202 Demolition Debris. "Recycle" or "Recycling" are included within the definition of Processing.

203 **"Residual or Residue"** means materials remaining after the Processing of Construction and Demolition
204 Debris that cannot reasonably be Diverted.

205 **"Roll-Off Box"** means a metal Container of between six (6) and fifty (50) cubic yards that is normally
206 loaded onto a Roll-Off Collection Truck and transported to an appropriate facility. A Roll-Off Box may be
207 open topped or covered at the discretion of CITY with or without a compaction unit. Roll-Off Boxes shall
208 also include Trailers.

209 **"Roll-Off Collection Truck"** means a Collection vehicle with a mechanical device such as a winch that
210 pulls or loads a Roll-Off Box onto the truck bed or attached trailer and separately transports each Roll-
211 Off Box to a Processing Site.

212 **"Service Address"** means the physical location of the property receiving Collection services.

213 **"Service Area"** means that area within the corporate limits of the City of Oakland.

214 **"Source Separated"** means materials that have been segregated from Construction and Demolition
215 Debris, for the purpose of Diversion, by or for the Customer at the Service Address at which the
216 materials were generated.

217 **"State"** means the State of California.

218 **"Subcontractor"** means a party who has entered into a contract, express or implied, with the
219 FRANCHISEE for the performance of an act that is necessary for the FRANCHISEE's fulfillment of its
220 obligations under this Agreement.

221 "Term" means the Term of this Agreement, including extension periods if granted, as provided for in
222 Article 3.

223 "Tonnage" means the total weight in tons Collected, Recycled, Diverted, or Disposed of, as the context
224 requires, where a ton is equivalent to two thousand (2,000) standard pounds.

225 "Trailer" means any unpowered vehicle that is designed to be detached from another, powered, vehicle
226 and is used for the purposes of holding and/or transporting Construction and Demolition Debris.

227 "Transport or Transportation (or any variation thereof)" means the act of moving materials from one
228 place to another by means of a vehicle.

229 "Unpermitted Materials" means wastes or other materials that the Disposal Site(s) may not receive
230 under their permits, including:

231 (1) All materials that the Disposal Site(s) are not permitted to accept, *excluding* white goods with
232 chlorinated fluorocarbons and capacitors removed, and other materials that FRANCHISEE accepts
233 and safely handles, Recycles, or Disposes;

234 (2) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely
235 to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which
236 may be Hazardous Materials if it contains more than one percent (1%) asbestos;

237 (3) Auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances,
238 which remain after the shredding of automobiles;

239 (4) Hazardous Materials;

240 (5) Infectious wastes that have disease transmission potential and are classified as Hazardous Wastes
241 by the State Department of Health Services, including pathological and surgical wastes, medical
242 clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubing, bottles, drugs,
243 patient care items that as linen or personal or food service items from contaminated areas,
244 chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known
245 infectious diseases, where "Infectious Waste" means biomedical waste generated at hospitals,
246 public or private medical clinics, dental offices, research laboratories, pharmaceutical industries,
247 blood banks, mortuaries, veterinary facilities and other similar establishments that are identified
248 in the California Health and Safety Code Section 25117.5;

249 (6) Liquid wastes that are not spadeable, usually containing less than fifty percent (50%) solids,
250 including cannery and food Processing wastes, landfill leachate and gas condensate, boiler
251 blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings,
252 rendering plant byproducts, sewage sludge not meeting certain quality criteria (i.e., unclassified
253 sludge less than B), and those liquid wastes that may be Hazardous Wastes;

254 (7) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the
255 State Health and Safety Code, and any waste that contains a radioactive material, the storage or
256 Disposal of which is subject to any other State or federal regulation;

257 (8) Non-hazardous waste that may pose special Disposal problems because of its potential
258 contaminate the environment and which may be Disposed of only in Class II disposal sites or Class
259 III disposal sites pursuant to a variance issued by the California Department of Health Services, if
260 not permitted at the Disposal Site under Applicable Law, including permits.

261 This definition will be promptly amended to reflect any applicable changes in permits or Applicable Law.

262 "Work Day" means any day, Monday through Saturday excluding New Year's Day, Thanksgiving Day, and
263 Christmas Day.

264 **ARTICLE 2**

265 **REPRESENTATIONS AND WARRANTIES OF THE FRANCHISEE**

266 **2.1 REPRESENTATIONS AND WARRANTIES**

267 The FRANCHISEE, by execution of this Agreement, represents and warrants the following to the CITY, for
268 the purpose of inducing CITY to enter into this Agreement and to consummate the transactions
269 contemplated hereby:

270 A. **Corporate Status.** FRANCHISEE is duly organized, validly existing and in good standing under the
271 laws of the State. It is qualified to transact business in the Service Area and State and has the
272 power to own its properties and to carry on its business as now owned and operated and as
273 required by this Agreement.

274 B. **Authorization.** FRANCHISEE has the authority to enter into this Agreement and to perform its
275 obligations under this Agreement. The Council of FRANCHISEE (or the shareholders, if necessary),
276 sole proprietor, or partners have taken all actions required by law, its articles of incorporation, its
277 bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this
278 Agreement on behalf of FRANCHISEE represents and warrants that they have authority to do so
279 and the Secretary's Certification in Exhibit B confirms this. This Agreement constitutes the legal,
280 valid, and binding obligation of the FRANCHISEE.

281 C. **Agreement Will Not Cause Breach.** To the best of FRANCHISEE's knowledge after reasonable
282 investigation, the execution or delivery of this Agreement or the performance by FRANCHISEE of
283 its obligations hereunder does not conflict with, violate, or result in a breach: (i) of any law or
284 governmental regulation applicable to FRANCHISEE; (ii) any term or condition of any judgment,
285 order, or decree of any court, administrative agency or other governmental authority; or, (iii) any
286 Agreement or instrument to which FRANCHISEE is a party or by which FRANCHISEE or any of its
287 properties or assets are bound, or constitute a default thereunder.

288 D. **No Litigation.** To the best of FRANCHISEE's knowledge after reasonable investigation, there is no
289 action, suit, proceeding or investigation, at law or in equity, before or by any court or
290 governmental authority, commission, board, agency or instrumentality decided, pending or
291 threatened against FRANCHISEE wherein an unfavorable decision, ruling or finding, in any single
292 case or in the aggregate, would:

293 1. Materially adversely affect the performance by FRANCHISEE of its obligations hereunder;

- 294 2. Adversely affect the validity or enforceability of this Agreement; or,
- 295 3. Have a material adverse effect on the financial condition of FRANCHISEE, or any surety or
- 296 entity guaranteeing FRANCHISEE's performance under this Agreement.
- 297 E. **No Adverse Judicial Decisions.** To the best of FRANCHISEE's knowledge after reasonable
- 298 investigation, there is no judicial decision that would prohibit this Agreement or subject this
- 299 Agreement to legal challenge.
- 300 F. **No Legal Prohibition.** To the best of FRANCHISEE's knowledge after reasonable investigation,
- 301 there is no Applicable Law in effect on the date FRANCHISEE signed this Agreement that would
- 302 prohibit FRANCHISEE's performance of its obligations under this Agreement and the transactions
- 303 contemplated hereby.
- 304 G. **FRANCHISEE's Statements.** FRANCHISEE's application and any other supplementary information
- 305 submitted to the CITY, which CITY has relied on in entering this Agreement, do not: (i) contain any
- 306 untrue statement of a material fact; or, (ii) omit to state a material fact that is necessary in order
- 307 to make the statements made, in light of the circumstances in which they were made, not
- 308 misleading.
- 309 H. **FRANCHISEE's Investigation.** FRANCHISEE has made an independent investigation (satisfactory to
- 310 it) of the conditions and circumstances surrounding the Agreement and the work to be performed
- 311 hereunder. FRANCHISEE has considered such matters in entering this Agreement to provide
- 312 services in exchange for the compensation provided for under the terms of this Agreement.
- 313 I. **Ability to Perform.** FRANCHISEE possesses the business, professional, and technical expertise to
- 314 Collect, Transport, Recycle, Process, and Dispose Construction and Demolition Debris generated in
- 315 the Service Area. FRANCHISEE possesses the equipment, facility(ies), and employee resources
- 316 required to perform its obligations under this Agreement.

317 **ARTICLE 3**

318 **TERM OF AGREEMENT**

319 **3.1 EFFECTIVE DATE**

320 FRANCHISEE may provide the Collection, Transportation, Processing, and Disposal services authorized by

321 this Agreement commencing on the Effective Date of .

322 **3.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

323 The obligation of CITY to permit this Agreement to become effective and to perform its undertakings

324 provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which

325 may be waived, in written form, in whole or in part by CITY.

326 A. **Accuracy of Representations.** The representations and warranties made in Article 2 of this

327 Agreement are true and correct on and as of the Effective Date.

328 B. **Absence of Litigation.** There is no litigation pending on the Effective Date in any court challenging

329 the award or execution of this Agreement or seeking to restrain or enjoin its performance.

330 C. **Furnishings of Insurance.** FRANCHISEE has furnished evidence of the insurance required by
331 Article 10 that is satisfactory to CITY.

332 D. **Effectiveness of City Council Action.** The City Council's action approving the form of this
333 Agreement shall have become effective and all Parties shall have signed the Agreement pursuant
334 to Applicable Law prior to or on the Effective Date, provided that no restraining order of any kind
335 has been issued.

336 **3.3 INITIAL TERM**

337 The initial Term of this Agreement shall commence on the Effective Date and continue in full force for
338 eighteen (18) months, or until January 1, 2017, whichever occurs first. The Term may be extended
339 pursuant to Section 3.4 or terminated early in accordance with Section 11.2.

340 **3.4 CITY OPTION TO EXTEND**

341 A. **General.** Subject to the approval of the City Council, CITY shall have the option to extend the
342 Term of this Agreement in increments of twelve (12) months. CITY may, in its sole discretion,
343 grant multiple extensions to the Term of this Agreement. FRANCHISEE must be in full compliance
344 with the terms of the Agreement in order to be offered an extension. If CITY extends the
345 Agreement, it shall give written notice to FRANCHISEE at least ninety (90) calendar days prior to
346 expiration of the initial Term or of any subsequent extension. CITY's written notice shall specify
347 the revised expiration date of the Agreement. Any such extension shall not become effective
348 unless FRANCHISEE agrees to the extension, in writing, at least thirty (30) calendar days prior to
349 expiration of the initial Term or of any subsequent extension. In entering into this Agreement,
350 FRANCHISEE understands and agrees that FRANCHISEE is solely responsible for managing its direct
351 business obligations and responsibilities to its Customers regardless of whether or not CITY offers
352 an extension(s) of this Agreement as provided in this Section 3.4.

353 B. **CITY Reserved Rights.** In offering an extension, CITY reserves the right and FRANCHISEE expressly
354 acknowledges CITY right, to include modified or additional requirements including, but not limited
355 to:

- 356 1. Changes to the definition of Construction and Demolition Debris or to related definitions.
- 357 2. Changes to minimum requirements related to vehicles, Containers, signage, reporting,
358 outreach and education, insurance, Liquidated Damages, etc.
- 359 3. Requiring that FRANCHISEE designate and CITY approve of Processing and/or Disposal Sites to
360 be utilized for Construction and Demolition Debris. CITY may require that FRANCHISEE choose
361 its designated facilities from a list of "certified" or otherwise pre-selected approved facilities.
- 362 4. Requiring Processing of all Construction and Demolition Debris Collected by FRANCHISEE,
363 unless demonstrated by FRANCHISEE that Processing will not result in Diversion.
- 364 5. Placing requirements on the marketing of materials recovered through Processing.
- 365 6. Changes to the limitations defined in Section 4.2.
- 366 7. New or modified fees as provided in Section 8.5.

- 367 8. Establishment of maximum rates FRANCHISEE may bill Customers as provided in Section 9.2.
- 368 9. Any changes that are required or deemed necessary by CITY due to a Change in Law.
- 369 10. Modifying Customer permit requirements under Chapter 15.34 of the OMC, or other relevant
370 portions of the OMC.
- 371 11. Any other changes for management of Construction and Demolition Debris in support of the
372 Zero Waste Strategic Plan or other CITY policies or programs.

373 **ARTICLE 4**
374 **SCOPE OF AGREEMENT**

375 **4.1 SCOPE OF AGREEMENT**

376 This Agreement, granted to FRANCHISEE, authorizes FRANCHISEE to Collect, Transport, Process, and
377 Dispose of Construction and Demolition Debris placed for Collection, provided that the Customer has
378 voluntarily arranged for FRANCHISEE to provide Collection services. Customers may provide their own
379 Containers as long as they are in substantial compliance with the Container requirements of Section 6.4.

380 FRANCHISEE shall be responsible for the following services:

- 381 A. Collecting Construction and Demolition Debris placed by Customers for temporary or ongoing
382 Collection of Construction and Demolition Debris as requested by Customer, consistent with
383 Customer's obligations under Chapter 15.34 of the OMC, as applicable.
- 384 B. Providing each Customer, upon delivery of requested Container(s), a printed list that specifies the
385 Construction and Demolition Debris allowed in the Container and Unpermitted Materials that
386 cannot be placed in the Container (i.e., Hazardous Wastes). Such list shall be reviewed and
387 approved by the City C&D Contract Manager.
- 388 C. Transporting Collected Construction and Demolition Debris to the appropriate Processing or
389 Disposal Site(s).
- 390 D. Furnishing all labor, supervision, vehicles, Containers (except as Customer may provide its own
391 Containers), other equipment, materials, supplies, and all other items and services necessary to
392 perform its obligations under this Agreement.
- 393 E. Paying or ensuring payment of all expenses related to provision of services required by this
394 Agreement including, but not limited to, fees, taxes, regulatory fees, Collection costs,
395 Transportation costs, Processing costs, Disposal costs, utilities, etc..
- 396 F. Providing all services required by this Agreement in a thorough and professional manner so that
397 Customers are provided timely, reliable, courteous and high-quality service at all times.
- 398 G. Performing all services in substantial accordance with this Agreement and with the requirements
399 of Chapter 15.34 of the OMC, as applicable, at all times using best industry practice for
400 comparable operations.

401 H. Complying with Applicable Law.

402 I. Performing or providing all other services necessary to fulfill its obligations under this Agreement.

403 The enumeration and specification of particular aspects of service, labor, or equipment requirements
404 shall not relieve FRANCHISEE of the duty of accomplishing all other aspects necessary to fulfill its
405 obligations under this Agreement whether such requirements are enumerated elsewhere in the
406 Agreement or not.

407 Nothing in this Agreement shall be interpreted to grant to FRANCHISEE an exclusive or non-exclusive
408 right to Collect, Transport, Dispose and/or Process Construction and Demolition Debris from a Service
409 Address that was not generated as a result of construction, remodeling, repair or demolition operations
410 which are directly related to a construction or demolition project at the Service Address. By way of
411 example and without any limitation, this Agreement does not authorize FRANCHISEE to Collect,
412 Transport, Dispose and/or Process Construction and Demolition Debris generated by activities at a
413 Service Address which are not directly related to a permitted construction or demolition project (by way
414 of further example, Collection of materials generated by construction activities on the third floor of a
415 building wherein only the third floor is under construction is included in the scope of this Agreement,
416 however Collection of materials generated by other activities on the fourth floor is not).

417 **4.2 LIMITATIONS TO SCOPE**

418 The scope of the Agreement shall be non-exclusive. Construction and Demolition Debris may be
419 Collected and Transported by other Persons provided that such Persons do so in accordance with the
420 Oakland Municipal Code, including but not limited to the following:

421 A. **Construction and Demolition Debris Collected by Other Approved Parties.** Construction and
422 Demolition Debris Collected by any other party that has executed an Agreement with the CITY for
423 Construction and Demolition Debris Collection Services.

424 B. **Donated Materials.** Construction and Demolition Debris generated in the Service Area that are
425 donated by the Customer.

426 C. **Materials Hauled by Owner or its Contractor.** Construction and Demolition Debris that is
427 removed from any Service Address and Transported to a Processing Site or Disposal Site by:

428 1. The owner of such Service Address;

429 2. The full-time employee of the owner that uses the owner's equipment to transport materials;
430 or,

431 3. A construction contractor performing construction work at the Service Address, whose
432 Collection and Transport of the Construction and Demolition Debris is incidental to the service
433 being performed, provided that such contractor uses a Fixed-Body Vehicle for the Collection
434 and Transportation of the Construction and Demolition Debris, and such contractor Collects
435 and Transports the materials at no additional or separate fee using contractor's employees
436 and contractor's equipment. For the purposes of this section, except as set forth below, the
437 term "incidental to the service being performed" shall mean that the material requiring
438 Collection and Transport is generated by the activity of the contractor performing the hauling.

- 439 i. For example, a construction contractor who remodels a kitchen can Collect and
440 transport those materials related to such construction in a Fixed Body Vehicle for no
441 additional fee without infringing on the scope of this Agreement.
- 442 ii. As an additional example, a contractor whose sole responsibility with relation to the
443 project is to clean up a site and remove materials generated by other contractors or
444 the owner/occupant is subject to the requirements of this Agreement, and the
445 Collection and Transport of such materials from the site by such contractor is not
446 considered as "incidental to the service being performed".
- 447 iii. Nothing in this Agreement shall authorize a demolition contractor performing
448 demolition services in relation to a City-approved building or demolition permit to
449 Collect and Transport Construction and Demolition Debris without an executed non-
450 exclusive franchise agreement with CITY for Construction and Demolition Debris
451 Collection Services.

452 In the event of a dispute between the FRANCHISEE and City C&D Contract Manager
453 regarding the applicability of this section, the City Administrator, or its designee, shall
454 make all final determinations.

455 D. **State Government Facilities.** Construction and Demolition Debris generated by public schools,
456 cities, the County, or federal facilities (with the exception of facilities subject to 42 U.S.C. Section
457 6961(a)).

458 E. **Projects on City Property.** Construction and Demolition Debris removed from a project site by
459 CITY employees, provided that the Construction and Demolition Debris being removed is
460 generated from a City-owned property.

461 Nothing in this Agreement shall prevent other Persons from Collecting, Transporting, Processing and/or
462 marketing materials that have been Source Separated (as defined in Article 1) by material type.

463 **4.3 CITY'S RIGHT TO GRANT MULTIPLE AGREEMENTS**

464 CITY may grant to any number of additional Persons similar non-exclusive franchise agreements for
465 Collection, Transportation, Processing, and Disposal of Construction and Demolition Debris.

466 **4.4 AGREEMENT CONSISTENT WITH APPLICABLE LAW**

467 This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law,
468 now and during the Term. If future judicial interpretations of current law or new laws, regulations, or
469 judicial interpretations limit the ability of CITY to lawfully provide for the scope of services as specifically
470 set forth herein, FRANCHISEE agrees that the scope of the Agreement will be limited to those services
471 and materials which may be lawfully provided and that CITY shall not be responsible for any lost profits
472 or losses claimed by FRANCHISEE to arise out of limitations of the scope of the Agreement set forth
473 herein. In such an event, it shall be the responsibility of FRANCHISEE to minimize the financial impact of
474 such future judicial interpretations or new laws.

475 **4.5 OWNERSHIP OF MATERIALS**

476 Once Construction and Demolition Debris is placed for Collection by FRANCHISEE, ownership and the
477 right to possession of such materials shall transfer directly from the Customer to FRANCHISEE.

478 On a short-term basis not to exceed more than five (5) calendar days per year, CITY may obtain
479 ownership or possession of Construction and Demolition Debris placed for Collection, for purposes of
480 waste characterization studies, upon written notice to FRANCHISEE of its intent to do so. However,
481 nothing in this Agreement shall be construed as giving rise to any inference that CITY has such
482 ownership or possession unless such written notice has been given to FRANCHISEE.

483 **4.6 NOTIFICATION TO CITY OF NON-FRANCHISED HAULERS**

484 If FRANCHISEE can produce evidence that other Persons are Collecting Construction and Demolition
485 Debris and do not have rights to do so as granted by an Agreement with CITY or otherwise, or in a
486 manner that is not consistent with the Oakland Municipal Code, FRANCHISEE shall notify CITY in writing,
487 within five (5) calendar days of FRANCHISEE witnessing such circumstances. FRANCHISEE's notice shall
488 include the name and telephone number of the Person or company Collecting Construction and
489 Demolition Debris (if known), the date FRANCHISEE witnessed the event, the location and/or service
490 address of the Container along with FRANCHISEE's evidence of the violation of the rights granted by this
491 Agreement. CITY may in its sole discretion take action in response to specific notification by
492 FRANCHISEE. Nothing in this Agreement shall prohibit FRANCHISEE from enforcing its rights under this
493 Agreement.

494 **ARTICLE 5**
495 **COLLECTION, TRANSPORT, PROCESSING, AND DISPOSAL**
496 **SERVICES**

497 **5.1 COLLECTION AND TRANSPORT**

498 FRANCHISEE is hereby authorized to Collect and Transport Construction and Demolition Debris from
499 Service Addresses in the Service Area. FRANCHISEE shall Collect Construction and Demolition Debris
500 from Customers that voluntarily subscribe to or request Construction and Demolition Debris Collection
501 services from FRANCHISEE. FRANCHISEE shall provide its Customers with one or more Containers for
502 Construction and Demolition Debris Collection or shall allow its Customers to provide Containers.
503 FRANCHISEE shall provide requested service to its Customers and shall charge Customers for service at
504 Rates mutually agreed in writing by Customer and FRANCHISEE.

505 FRANCHISEE shall Transport Construction and Demolition Debris Collected pursuant to this Agreement
506 to a Processing or Disposal Site that has been selected by FRANCHISEE or required by any Customer of
507 FRANCHISEE.

508 **5.2 PROCESSING**

509 A. **Processing Services.** FRANCHISEE agrees to Transport and deliver all Construction and Demolition
510 Debris that it: 1) Collects in the Service Area; and, 2) represents to a Customer will be Processed;
511 to a Processing Site. Residue from the Construction and Demolition Debris Processing and
512 Recycling activities shall be Disposed of by FRANCHISEE or its Processor at a Disposal Site in
513 accordance with Section 5.3.

514 FRANCHISEE or its Processor(s) shall possess all permits and approvals necessary to maintain the
515 Processing Site(s) in full regulatory compliance. FRANCHISEE shall, upon CITY request, provide or
516 request from its Processor(s) copies of notices of violation or permits to CITY.

517 B. **Processing Costs.** FRANCHISEE shall pay or ensure payment of all expenses related to Processing
518 and marketing and/or Disposal of Construction and Demolition Debris including, but not limited
519 to, fees, taxes, regulatory fees, Collection costs, Transportation costs, Processing costs, Disposal
520 costs, utilities, etc.

521 C. **Compliance with Regulations.** FRANCHISEE shall observe and comply with all regulations in effect
522 regarding the Processing of materials including, but not limited to, the Alameda County Waste
523 Management Authority Mandatory Recycling Ordinance 2012-01, the Alameda County Waste
524 Management Authority Plant Debris Landfill Ban Ordinance 2008-01 and Chapter 15.34 of the
525 OMC, as they apply to this Agreement. FRANCHISEE shall also observe and comply with all
526 regulations in effect at any Processing Site(s) and cooperate with the operator thereof including
527 directions to unload vehicles in designated areas, accommodating operations and maintenance
528 activities, and complying with Hazardous Waste exclusion programs.

529 **5.3 DISPOSAL**

530 A. **Disposal Services.** FRANCHISEE shall, or shall require its Processor(s) to, Dispose of Construction
531 and Demolition Debris and Residue Collected within the Service Area, that is not Diverted through
532 Processing activities, by Transporting the Construction and Demolition Debris and Residue to a
533 Disposal Site that is lawfully authorized to accept such material. FRANCHISEE, or its Processor,
534 shall not Dispose of materials by depositing on any public or private land, in any river, stream, or
535 other waterway, or in any sanitary sewer or storm drainage system or in any other manner which
536 violates Applicable Laws.

537 B. **Permitted Site.** FRANCHISEE or its Processor shall only Dispose of materials at a Disposal Site(s)
538 that is in full regulatory compliance. FRANCHISEE, or its Processor(s), shall keep or confirm all
539 existing permits and approvals necessary for use of a Disposal Site(s) in full regulatory compliance.
540 FRANCHISEE shall, upon request, provide copies of notices of violation or permits to CITY.

541 C. **Compliance with Regulations.** FRANCHISEE shall observe and comply with all regulations in effect
542 regarding the Disposal of materials including, but not limited to, the Alameda County Waste
543 Management Authority Mandatory Recycling Ordinance 2012-01, the Alameda County Waste
544 Management Authority Plant Debris Landfill Ban Ordinance 2008-01 and Chapter 15.34 of the
545 OMC, as they apply to this Agreement. FRANCHISEE shall also observe and comply with all
546 regulations in effect at any Disposal Site(s) and cooperate with the operator thereof including
547 directions to unload vehicles in designated areas, accommodating operations and maintenance
548 activities, and complying with Hazardous Waste exclusion programs.

549 **5.4 BILLING**

550 FRANCHISEE shall bill all Customers and collect billings in accordance with FRANCHISEE-established
551 Rates, which are set in a manner consistent with provisions of Section 9.3. FRANCHISEE shall prepare,
552 mail, and collect bills (or shall issue written receipts for cash payments) for Collection services provided
553 by FRANCHISEE. FRANCHISEE shall be responsible for collection of payment from Customers with past
554 due accounts.

555 FRANCHISEE shall maintain copies of all billings and receipts, each in chronological order, for five (5)
556 years after expiration or termination of this Agreement. FRANCHISEE shall retrieve and make available
557 to CITY copies of the billings and receipts within five (5) Work Days of the City C&D Contract Manager's
558 written request for the billings and receipts. FRANCHISEE may, at its option, maintain those records
559 electronically, on microfiche, or in any other manner, provided that the records can be preserved and
560 retrieved for inspection and verification in a timely manner.

561 **5.5 PUBLIC EDUCATION, OUTREACH AND TECHNICAL ASSISTANCE**

562 FRANCHISEE shall provide Customers with education, outreach and technical assistance to aid them in
563 complying with their obligations under the Construction and Demolition Debris Waste Reduction and
564 Recycling Requirements Ordinance of Chapter 15.34 of the Oakland Municipal Code, as provided by
565 CITY. FRANCHISEE must notify Customers of the services it provides, the services provided through
566 CITY's other franchises, through the Non-Exclusive Commercial Recycling Ordinance, and of services
567 available for Unpermitted Materials Collection and Processing, which are not acceptable in Collection
568 Containers under this Agreement. If FRANCHISEE fails to perform some or all of the requirements
569 described in this Section 5.5, FRANCHISEE shall pay CITY Liquidated Damages as described in Section
570 11.4 and Exhibit A.

571 **ARTICLE 6**
572 **STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT,**
573 **AND PERSONNEL**

574 **6.1 OPERATING DAYS, HOURS, AND SCHEDULES**

575 A. **Days and Hours of Collection.** FRANCHISEE shall conform days and hours of Collection and
576 Container delivery to the schedule and limitations specified in the Customer's building or
577 demolition permit issued by CITY, or as specified by the City C&D Contract Manager, and in
578 accordance with the Oakland Municipal Code.

579 B **Failure to Comply.** If FRANCHISEE fails to comply with the Collection hours described in this
580 Section, the FRANCHISEE shall pay CITY Liquidated Damages as described in Section 11.4 and
581 Exhibit A.

582 **6.2 COLLECTION STANDARDS**

583 **6.2.1 Instructions to Customer**

584 FRANCHISEE shall instruct Customers as to any preparation of Construction and Demolition Debris
585 necessary prior to placing for Collection. FRANCHISEE shall, in written form, inform all Customers as to
586 the Construction and Demolition Debris that can be placed for Collection and any Unpermitted Materials
587 not allowed for Collection.

588 **6.2.2 Care of Private Property**

589 FRANCHISEE shall not damage private property. CITY shall refer complaints about damage to private
590 property to FRANCHISEE. FRANCHISEE shall repair all damage to private and public property caused by
591 its employees to its previous condition.

592 **6.2.3 Litter Abatement**

593 A. **Minimization of Spills.** FRANCHISEE shall use due care to prevent vehicle oil, fuel, hydraulic fluid,
594 and other substances that may leak from vehicles from being spilled or scattered during
595 Collection and Transportation operations, in accordance with Applicable Law. If any Construction
596 and Demolition Debris is spilled or scattered during Collection or Transportation operations,
597 FRANCHISEE shall promptly clean up all spilled and scattered materials.

598 FRANCHISEE shall not transfer loads from one vehicle to another on any public street, unless it is
599 necessary to do so because of mechanical failure, hot load (combustion of material in the truck),
600 accidental damage to a vehicle, or unless approved by CITY.

601 If FRANCHISEE fails to perform some or all of the requirements described in this Section,
602 FRANCHISEE shall pay CITY Liquidated Damages as described in Section 11.4 and Exhibit A.

603 B. **Clean-Up.** Each Collection vehicle shall carry protective gloves, a broom, and shovel at all times
604 for cleaning up litter and absorbent material for cleaning up liquid spills. FRANCHISEE shall
605 discuss instances of repeated spillage not caused by FRANCHISEE with the Customer of the Service
606 Address where spillage occurs, and FRANCHISEE shall report such instances to CITY. If
607 FRANCHISEE has attempted to have a Customer stop creating spillage but is unsuccessful, CITY
608 may attempt, upon notice by FRANCHISEE, to rectify such situation with the Customer.

609 C. **Covering of Roll-Off Loads.** FRANCHISEE shall cover all Roll-Off Boxes at the pickup location
610 before Transporting Construction and Demolition Debris and until it is unloaded to prevent
611 Construction and Demolition Debris from escaping during Transportation.

612 **6.2.4 Noise**

613 All Collection operations shall be conducted as quietly as possible and must comply with U.S. EPA noise
614 emission regulations currently codified at 40 CFR Part 205, California Vehicle Code Section 27207, and
615 other applicable State, County, and CITY (OMC 8.18.010) noise control regulations. If FRANCHISEE fails
616 to comply with the noise requirements of this Section, FRANCHISEE shall pay CITY Liquidated Damages in
617 accordance with Section 11.4 and Exhibit A.

618 **6.3 VEHICLE REQUIREMENTS**

619 A. **General.** Vehicles used to provide services under this Agreement shall be kept in a safe, neat,
620 clean, and operable condition, and shall at all times be maintained and utilized in accordance with
621 Applicable Law. If FRANCHISEE fails to keep Collection vehicles in a safe and sanitary condition,
622 FRANCHISEE shall pay CITY Liquidated Damages as described in Section 11.4 and Exhibit A.

623 B. **Specifications.** FRANCHISEE shall register all vehicles with the California Department of Motor
624 Vehicles. All such vehicles shall comply with California Environmental Protection Agency (EPA)
625 noise emission and air quality regulations and other applicable noise control regulations.

626 C. **Vehicle Identification.** FRANCHISEE's name, local telephone number, and a unique identification
627 number for each vehicle used to provide services under this Agreement, shall be prominently
628 displayed on all vehicles, in letters and numbers that are a minimum of three (3) inches high. All
629 vehicles shall be uniformly painted. FRANCHISEE shall not place CITY's logo on its vehicles.

630 D. **Cleaning and Maintenance**

631 1. **Cleaning.** Collection vehicles shall be cleaned and painted as necessary to present a clean
632 appearance of the exterior and interior compartment of the vehicle at all times.

633 2. **Maintenance.** FRANCHISEE shall inspect each vehicle daily to ensure that all equipment is
634 operating properly. Vehicles that are not operating properly shall be taken out of service until
635 they are repaired and operating properly. FRANCHISEE shall perform all scheduled
636 maintenance functions in accordance with the manufacturer's specifications and schedule
637 and as required by Applicable Law. FRANCHISEE shall keep accurate records of all vehicle
638 maintenance, recorded according to date and mileage, and shall make such records available
639 to CITY upon request to the extent necessary to perform the inspections described in Sections
640 6.3.F and 6.7.B.

641 3. **Repairs.** FRANCHISEE shall repair, or arrange for the repair of, all of its vehicles and
642 equipment for which repairs are needed because of accident, breakdown, or any other cause,
643 so as to maintain all equipment in a safe and operable condition. FRANCHISEE shall maintain
644 accurate records of repair, which shall include the date/mileage, nature of repair and the
645 signature of a maintenance supervisor that the repair has been properly performed.

646 4. **Storage.** FRANCHISEE shall arrange to store all vehicles and other equipment in safe and
647 secure location(s) in accordance with CITY's applicable zoning regulations.

648 E. **Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all
649 applicable safety and local ordinances. FRANCHISEE shall not load vehicles in excess of the
650 manufacturer's recommendations or limitations imposed by State or local weight restrictions for
651 vehicles and roads.

652 F. **Vehicle Inspection.** CITY may inspect vehicles at any time to determine compliance with the
653 requirements of this Agreement. FRANCHISEE shall make vehicles available to CITY and/or
654 Alameda County Health Department for inspection, at any frequency CITY reasonably requests.
655 The FRANCHISEE may have such inspections conducted by the California Highway Patrol, or other
656 designated agency, and shall provide the results of such inspection to the City C&D Contract
657 Manager within ten (10) Work Days of receipt. FRANCHISEE shall maintain, at its local business
658 offices, a record of daily vehicle inspection reports for all Collection-related vehicles and shall
659 make such reports available to the City C&D Contract Manager for review at all times.

660 **6.4 CONTAINER REQUIREMENTS**

661 A. **General.** All Containers shall meet applicable federal, State, County and local regulations for
662 safety, and shall at all times be maintained and utilized in accordance with Applicable Law.

663 B. **Prevent Leakage.** If the type of materials placed in the Container may result in leakage of liquids,
664 FRANCHISEE shall take precautions to prevent the leakage of liquids.

665 C. **Container Identification.** All FRANCHISEE-provided Containers shall prominently display
666 FRANCHISEE's name, local telephone number, a unique Container identification number, the
667 volume of the container, and a list of acceptable materials.

668 D. **Cleaning, Painting, and Maintenance.** FRANCHISEE shall make reasonable business efforts to
669 maintain all Containers in a safe, fully serviceable and functional condition, and shall steam clean
670 and repaint Containers in a frequency adequate to present a clean, graffiti-free appearance.

671 E. **Container Inspections.** CITY may inspect Containers at any time to determine compliance with
672 sanitation requirements. FRANCHISEE shall make Containers available to CITY at any frequency it
673 requests. CITY shall have the right to prohibit the use of any Container that fails to comply with
674 the provisions in this Section 6.4.

675 F. **Abandoned Containers.** FRANCHISEE shall not abandon any Container used to provide
676 Construction and Demolition Debris Collection services under this Agreement. If FRANCHISEE
677 abandons a FRANCHISEE-owned Container, CITY or its agent may remove the Container and
678 Process and Dispose of the contents. If CITY or its agent removes a Container abandoned by
679 FRANCHISEE, CITY may charge FRANCHISEE for CITY's costs incurred by removing such Container,
680 Transporting, Processing, and Disposing of its contents, and/or the cost of storing such Container.
681 FRANCHISEE shall reimburse CITY for such costs within fourteen (14) calendar days of the date of
682 CITY's invoice to FRANCHISEE for such costs. If FRANCHISEE does not pay the invoice amount
683 within fourteen (14) calendar days, CITY may assume ownership of the Container.

684 For the purposes of this Section 6.4.F, "abandon" means the following:

- 685 1. FRANCHISEE's failure to remove a FRANCHISEE-owned Container within five (5) calendar days
686 of receiving a written request from a Customer or the CITY or within five (5) calendar days
687 after the termination of the customer service agreement between FRANCHISEE and the
688 Customer; or,
- 689 2. FRANCHISEE's failure to remove a FRANCHISEE-owned Container within ten (10) calendar
690 days upon expiration or termination of this Agreement, except in the case where FRANCHISEE
691 has been granted an extension of the Term of the Agreement or FRANCHISEE has been
692 granted a subsequent agreement authorizing FRANCHISEE to Collect and transport the type or
693 types of materials for which the Container was used pursuant to this Agreement.

694 **6.5 PERSONNEL**

695 A. **General.** FRANCHISEE shall furnish such qualified drivers, maintenance, supervisory, Customer
696 service, clerical and other personnel as may be necessary to provide the services required by this
697 Agreement in a safe and efficient manner.

698 B. **Driver Qualifications.** All drivers shall be trained and qualified in the operation of Collection
699 vehicles, and must have in effect a valid license, of the appropriate class, and with appropriate
700 endorsements, issued by the California Department of Motor Vehicles. All drivers must comply
701 with all regulations and requirements set forth by the California Department of
702 Motor Vehicles and the California Vehicle Code, as they apply to the services provided under this
703 Agreement.

704 C. **Safety Training.** FRANCHISEE shall provide suitable operational and safety training for all of its
705 employees who operate Collection vehicles or equipment or who are otherwise directly involved
706 in such Collection, Disposal, or Processing. FRANCHISEE shall train its employees involved in
707 Collection to identify, and not to collect, Hazardous Waste or Unpermitted Materials. Upon CITY's

708 request, FRANCHISEE shall provide a copy of its safety policy, using best industry practices, and
709 safety training program, the name of its safety officer, and the frequency of its trainings.

710 D. **Employee Conduct and Courtesy.** FRANCHISEE shall use its best efforts to ensure that all
711 employees present a neat appearance and conduct themselves in a courteous manner.
712 FRANCHISEE shall regularly train its employees in Customer courtesy, shall prohibit the use of
713 loud or profane language, and shall instruct Collection employees to perform the work as quietly
714 as possible. If any employee is found not to be courteous or not to be performing services in the
715 manner required by this Agreement, FRANCHISEE shall take all appropriate corrective measures
716 and shall pay CITY Liquidated Damages as described in Section 11.4 and Exhibit A.

717 E. **Employee Identification.** While performing services under this Agreement, all of FRANCHISEE's
718 employees performing field service shall be dressed in clean clothes and shall wear identification
719 that include the employee's name and/or employee number, and FRANCHISEE's name, as
720 approved by CITY.

721 F. **Non-Smoking.** While performing services under this Agreement, all of FRANCHISEE's employees
722 performing field service shall refrain from smoking, in accordance with Chapter 8.30.055 of the
723 OMC and in support of LEED IEQp2 standards.

724 **6.6 UNPERMITTED MATERIALS INSPECTION AND HANDLING**

725 A. **Response to Unpermitted Materials Identified during Collection.** If FRANCHISEE determines that
726 material placed in any Container for Collection is a Hazardous Waste and/or Unpermitted
727 Material that may not legally be Disposed of at a Disposal Site or handled at a Processing Site, or
728 presents a hazard to FRANCHISEE's employees, FRANCHISEE shall refuse to accept such material.
729 FRANCHISEE shall contact the Customer and request the Customer to arrange proper Disposal. If
730 the Customer cannot be reached immediately, FRANCHISEE shall, before leaving the Service
731 Address, leave a tag at least eight and one half inches by eleven inches (8.5" x 11") in size, which
732 indicates the reason for refusing to Collect the material and lists a phone number for obtaining
733 information on proper Disposal of the Hazardous Waste and/or Unpermitted Material. Under no
734 circumstances shall FRANCHISEE's employees knowingly Collect Hazardous Waste and/or
735 Unpermitted Material.

736 If Hazardous Wastes and/or Unpermitted Materials are found in a Container that could possibly
737 result in imminent danger to people or property, FRANCHISEE shall immediately notify CITY's Fire
738 Department using the 911 emergency number.

739 FRANCHISEE shall notify CITY of any Hazardous Waste and/or Unpermitted Materials identified in
740 Containers or left at any Service Address within twenty-four (24) hours of identification of such
741 material.

742 B. **Response to Hazardous Wastes Identified at Processing Site(s).** FRANCHISEE, or its Processor,
743 shall provide load checkers and equipment operators at the Processing Site(s) to identify
744 Hazardous Waste and/or Unpermitted Material for storage in approved, on-site, Hazardous
745 Waste and/or Unpermitted Material storage container(s). FRANCHISEE shall make reasonable
746 efforts to identify and notify the Customer. FRANCHISEE shall arrange for removal of the
747 Hazardous Waste and/or Unpermitted Material by permitted haulers in accordance with
748 Applicable Laws and regulatory requirements.

749 If the Hazardous Waste and/or Unpermitted Material is delivered to a Processing Site by
750 FRANCHISEE before its presence is detected, and the Customer cannot be identified or fails to
751 remove the material after being requested to do so, FRANCHISEE shall arrange for its proper
752 Disposal. FRANCHISEE may make a good faith effort to recover the cost of Disposal from the
753 Customer, and the cost of this effort, as well as the cost of Disposal shall be chargeable to the
754 Customer.

755 C. **Regulations and Record Keeping.** FRANCHISEE shall comply with emergency notification
756 procedures required by Applicable Laws and regulatory requirements. All records required by
757 regulations shall be maintained at FRANCHISEE's facility. These records shall include: waste
758 manifests, waste inventories, waste characterization records, inspection records, incident reports,
759 and training records.

760 **6.7 COMMUNICATION AND COOPERATION WITH CITY**

761 A. **Communications.** When requested, FRANCHISEE shall meet with CITY or its agent to discuss
762 service issues.

763 B. **Inspection by CITY.** CITY, or its designated representatives, shall have the right to observe and
764 review FRANCHISEE operations and Processing Site(s) used by FRANCHISEE and enter
765 FRANCHISEE's premises for the purposes of such observation and review during reasonable hours
766 without advance notice.

767 C. **Cooperate with CITY-Initiated Studies.** FRANCHISEE shall cooperate with and assist CITY or its
768 agent with the performance of CITY-initiated studies of Construction and Demolition Debris such
769 as, but not limited to, waste characterization and composition studies.

770 **ARTICLE 7**
771 **RECORD KEEPING AND REPORTING**

772 **7.1 GENERAL**

773 **7.1.1 Maintenance of Records**

774 FRANCHISEE shall maintain full and complete financial and accounting records, pertaining to cash,
775 billing, Processing and Disposal transactions for this Agreement, prepared in accordance with generally
776 accepted accounting principles. Such records shall be made available by FRANCHISEE at a location within
777 Alameda County. Such records shall be subject to audit and inspection, for the primary purpose of
778 reviewing billing operations, accounts receivable, Disposal and Processing fee charges, Diversion
779 reporting, and compliance with service classifications by CITY and its authorized officers, agents or
780 employees, at any reasonable time at FRANCHISEE's principal office.

781 The gross receipts derived from the services provided for under this Agreement, whether such services
782 are performed by FRANCHISEE or by a Subcontractor or Subcontractors, shall be recorded as revenues in
783 the accounts of FRANCHISEE. FRANCHISEE shall maintain and preserve all cash, billing and disposal
784 records for a period of not less than three (3) years following the expiration or termination of the
785 Agreement. At the request of CITY, reports submitted by FRANCHISEE shall be audited and certified by
786 an independent third party selected by CITY, at CITY's expense. This audit may include a Customer billing

787 audit in order to verify that each Customer is receiving the level of service for which they are being
788 billed.

789 To the extent such requirements are set out in this and other Articles of this Agreement, they shall not
790 be considered limiting or necessarily complete.

791 **7.1.2 Retention of Records**

792 Unless otherwise required in this Article, FRANCHISEE shall retain all records and data required to be
793 maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or
794 earlier termination. Records and data shall be in chronological order and readily and easily interpreted.

795 **7.1.3 Inspection of Records**

796 All records required to be maintained by this Agreement (including, but not limited to cash receipts,
797 billing and disposal records) shall be made available by FRANCHISEE at a location within Alameda County
798 for inspection and audit by the City C&D Contract Manager or their designee during the Term of this
799 Agreement and for a period of three (3) years following the expiration or termination of the Agreement.

800 **7.1.4 Record Security**

801 FRANCHISEE shall maintain adequate record security to preserve records from events that can be
802 reasonably anticipated such as fire, theft, and earthquake. Electronically maintained data and records
803 shall be protected and backed-up.

804 **7.2 RECORDS**

805 **7.2.1 Financial and Operational Records**

806 At a minimum, the following operational records shall be maintained by FRANCHISEE for CITY relating to
807 provision of services to Customers as defined in this Agreement:

- 808 A. Customer account information by building or demolition permit, and billing records;
- 809 B. Tonnage of Construction and Demolition Debris Collected, listed by the Processing or Disposal Site
810 where such materials were delivered.
- 811 C. Tonnage of Construction and Demolition Debris Diverted from Disposal by building or demolition
812 permit, project, and generator and supporting documentation.
- 813 D. Weight tickets from each Processing and Disposal Site, documenting the Tonnages delivered from
814 the CITY for Processing or Disposal by material type and disposition. All weight tickets shall be
815 provided listing a unique vehicle number, date, and time.

816 FRANCHISEE shall make records available to CITY upon request.

817 **7.2.2 Customer Records**

818 FRANCHISEE shall maintain accurate and complete records containing the number and types of accounts
819 served by FRANCHISEE. The records shall contain, at a minimum, the Customer's name, building or
820 demolition permit number, project number, type of business or identification that the service is
821 provided to a residential Service Address, phone number, address of Container delivery and Collection

822 location, date of delivery and Collection, itemized listing of services performed, type of Construction and
823 Demolition Debris Collected, tonnage Collected, and the amount charged to provide services. The
824 information shall be provided to CITY upon request.

825 **7.2.3 CERCLA Defense Records**

826 CITY views its ability to defend itself against Comprehensive Environmental Response, Compensation
827 and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, CITY
828 regards its ability to prove where Construction and Demolition Debris Collected by FRANCHISEE are
829 taken for Processing, Recycling, Transfer, or Disposal, as well as where they are not taken, to be matters
830 of concern. FRANCHISEE shall maintain, retain and preserve records which can establish where
831 Construction and Demolition Debris Collected were Processed, Recycled and Disposed (and therefore
832 establish where they were not). This provision shall survive the expiration or earlier termination of this
833 Agreement. FRANCHISEE shall maintain these records for a minimum of ten (10) years beyond
834 expiration or earlier termination of the Agreement. FRANCHISEE shall provide these records to CITY
835 (upon request or at the end of the record retention period) in an organized and indexed manner rather
836 than destroying or disposing of them.

837 **7.3 GENERAL REPORTING REQUIREMENTS**

838 The format of each report shall be designated by CITY. FRANCHISEE may propose alternative report
839 formats if FRANCHISEE can demonstrate to the satisfaction of the City C&D Contract Manager that the
840 alternative report formats will achieve CITY's objectives and reduce the effort for both FRANCHISEE and
841 CITY. FRANCHISEE agrees to submit all reports electronically, in a format prescribed by CITY, at no
842 additional charge to CITY. FRANCHISEE will provide a certification statement, under penalty of perjury,
843 by the responsible FRANCHISEE official, that the report being submitted is true and correct to the best
844 knowledge of such official after their reasonable inquiry.

845 FRANCHISEE shall submit reports within thirty (30) calendar days of the end of each month. The City
846 C&D Contract Manager may, at their sole discretion and noticed in writing, allow FRANCHISEE to reduce
847 the frequency of reporting to once per calendar quarter at any time during the Term of this Agreement.
848 If FRANCHISEE does not submit the reports by the dates required in this Article, FRANCHISEE shall pay
849 the CITY Liquidated Damages as described in Section 11.4 and Exhibit A.

850 FRANCHISEE shall submit all reports to:

851 City C&D Contract Manager
852 Email: C&DRecycling@oaklandnet.com
853 Environmental Services Division, OPW
854 (510) 238 SAVE (7283)

855 **7.4 REPORTS**

856 The report shall be specific to provision of services to Customers as defined in this Agreement, and shall
857 present the following information.

- 858 A. Tonnage as detailed in Exhibit A, Standard Reporting Template.
- 859 B. Disposal and Processing Locations as detailed in Exhibit A, Standard Reporting Template..

- 860 C. **Customer Billings and Revenues.** as detailed in Exhibit A, Standard Reporting Template.
- 861 D. **Insurance.** Updated insurance certificates, if changes occurred in reporting period . Refer to
862 Section 10.2.6 for additional details on Insurance Requirements
- 863
- 864 E. **Account Information.** Using the form supplied by CITY, FRANCHISEE shall provide a monthly
865 listing of each service provided to each CITY building or demolition permit number including the
866 customer name, service address, number and sizes of Containers, tonnage of Construction and
867 Demolition Debris Collected, Processing or Disposal Site where Construction and Demolition
868 Debris were delivered, and other information required by CITY.
- 869 F. **FRANCHISEE Officers and Board Members.** Provide a list of FRANCHISEE's officers and members
870 of its board of directors (only required with the December monthly report, or in the event of a
871 change in the officers or board members).

872 CITY reserves the right to request additional reports from FRANCHISEE, and upon CITY's request,
873 FRANCHISEE shall provide information required above for the time period requested by the CITY. It is
874 the desire of CITY to track the above required information on an ongoing basis throughout the Term of
875 this Agreement.

876 **7.5 CITY C&D CONTRACT MANAGER**

877 CITY has designated staff, the City C&D Contract Manager, to be responsible for the monitoring and
878 administration of this Agreement.

879 City C&D Contract Manager
880 Environmental Services Division, OPW
881 City of Oakland
882 250 Frank Ogawa Plaza, Suite 5301
883 Oakland, CA 94612
884 Email: C&DRecycling@oaklandnet.com
885 (510) 238-SAVE (7283)

886 FRANCHISEE shall meet and confer with the City C&D Contract Manager to resolve differences of
887 interpretation and to implement and execute the requirements of this Agreement in an efficient and
888 effective manner that is consistent with the stated objectives of this Agreement.

889 From time to time the City C&D Contract Manager may designate other agents of CITY to work with
890 FRANCHISEE on specific matters. In such cases, those individuals should be considered designees of the
891 City C&D Contract Manager for those matters to which they have been engaged. Such designees shall be
892 afforded all of the rights and access granted thereto. In the event of a dispute between the City C&D
893 Contract Manager's designee and FRANCHISEE, the City C&D Contract Manager's determination shall be
894 conclusive.

895 In the event of dispute between the City C&D Contract Manager and FRANCHISEE regarding the
896 interpretation of or the performance of Services under this Agreement, the City C&D Contract
897 Manager's determination shall be conclusive except where such determination results in a material
898 impact to FRANCHISEE's revenue and/or cost of operations. In the event of a dispute between the City

899 C&D Contract Manager and FRANCHISEE results in such material impact to FRANCHISEE, FRANCHISEE
900 may appeal the determination of the City C&D Contract Manager to the City Administrator, or City
901 Administrator's designee, whose determination shall be conclusive. For the purposes of this section,
902 "material impact" is an amount equal to or greater than one-quarter (1/4) of one percent (1%) of
903 FRANCHISEE's annual gross receipts under this Agreement.

904 City C&D Contract Manager or their designate shall have the right to observe and review FRANCHISEE
905 operations and Processing Facilities and enter premises for the purposes of such observation and
906 review, including review of FRANCHISEE's records, during reasonable hours with reasonable notice. In
907 no event shall FRANCHISEE prevent access to such premises for a period of more than three (3) calendar
908 days after receiving such a request.

909 **ARTICLE 8**
910 **FRANCHISE FEES AND OTHER FEES**

911 **8.1 GENERAL**

912 FRANCHISEE shall collect the fees described in this Section from Customers through FRANCHISEE's
913 regular billings and remit collected amounts to CITY on a monthly basis as described in Section 8.7.

914 **8.2 APPLICATION FEE**

915 FRANCHISEE shall submit to CITY, along with its application for this Agreement, an Application Fee of
916 five hundred dollars (\$500). CITY shall use the Application Fee to offset its expenses in reviewing
917 FRANCHISEE's application for this Agreement and all supporting documentation required therewith.

918 **8.3 FRANCHISE FEE**

919 **Effective January 1, 2016**, FRANCHISEE shall pay CITY a Franchise Fee equal to one percent (1%) of the
920 sum of the total amount billed to Customers of FRANCHISEE and the gross revenues generated by the
921 sale of Collected materials Diverted from Disposal, for all non-exclusive services provided for under this
922 Agreement herein and for any other services performed under this Agreement. Franchise Fees shall be
923 paid within thirty (30) days of the end of each month for the total amount billed and sold in that month.

924 **8.4 ADMINISTRATIVE FEE**

925 **Effective January 1, 2016**, FRANCHISEE shall pay an Administrative Fee to CITY each month. The amount
926 of the Administrative Fee shall be ten dollars (\$10.00) per load of Construction and Demolition Debris
927 Collected from Customer Service Addresses and shall be paid within thirty (30) days of the end of each
928 month. CITY shall use the Administrative Fee to offset expenses including staffing costs related to
929 contract management, compliance, and monitoring, and to enforce the Agreement with respect to any
930 violations by third parties, including initiating and/or assisting in prosecuting enforcement actions. CITY
931 shall retain the sole right to set priorities for its contract monitoring and enforcement among CITY
932 personnel. This fee shall be a pass-through cost.

933 **8.5 OTHER FEES**

934 CITY may set other fees or adjust the fees established in this Section from time-to-time during the Term
935 of this Agreement.

936 **8.6 ADJUSTMENT TO FEES**

937 CITY may adjust the fees established in this Article at any time during the Term of this Agreement.

938 **8.7 PAYMENT SCHEDULE AND LATE FEES**

939 On or before the thirtieth (30th) day following the end of the month of January 2016 and each month
940 thereafter during the Term of this Agreement, FRANCHISEE shall remit to CITY all fees as described in
941 this Article. If such remittance is not paid to CITY on or before the thirtieth (30th) day following each
942 month, FRANCHISEE shall pay, in addition to the amount owed to CITY, two percent (2%) of the amount
943 owing for that month; plus an additional two percent (2%) owing on any unpaid balance for each
944 following thirty (30) calendar day period the fee remains unpaid.

945 Each monthly remittance to CITY shall be accompanied by a statement itemizing each fee paid; detailing
946 calculation of all fees; stating actual gross revenues (e.g., cash receipts) for the monthly period collected
947 from all operations conducted or permitted by this Agreement, and stating the number and size of
948 Containers serviced by FRANCHISEE for the monthly period. Each remittance including all supporting
949 documentation shall be provided to:

950 City C&D Contract Manager
951 Environmental Services Division, OPW
952 City of Oakland
953 250 Frank Ogawa Plaza, Suite 5301
954 Oakland, CA 94612
955 Email: C&DRecycling@oaklandnet.com

956 **8.8 OVERPAYMENT OF FEES**

957 If FRANCHISEE believes it has paid fees described in this Article in excess of the fees due to CITY,
958 FRANCHISEE may submit a request for refund to the CITY C&D Contract Manager. If proof of
959 overpayment is satisfactory to the CITY C&D Contract Manager, the City C&D Contract Manager shall
960 authorize CITY to refund the overpayment to FRANCHISEE. FRANCHISEE shall not apply any
961 overpayment as a credit against any fee or other amounts payable to CITY, unless specifically authorized
962 to do so by the City C&D Contract Manager in writing.

963 **ARTICLE 9**
964 **FRANCHISEE'S COMPENSATION AND RATES**

965 **9.1 FRANCHISEE'S COMPENSATION**

966 FRANCHISEE's compensation for performance of all its obligations under this Agreement shall be: (i)
967 cash receipts paid by Customers that obtained FRANCHISEE's Collection services less fees dues to CITY in
968 accordance with Article 8; and, (ii) revenues generated by the sale of Collected materials Diverted from
969 Disposal.

970 FRANCHISEE's compensation provided for in this Article shall be the full, entire, and complete
971 compensation due to FRANCHISEE pursuant to this Agreement for all labor, equipment, materials and
972 supplies, Processing, Recycling and Disposal fees, regulatory fees, CITY fees, taxes, insurance, bonds,

973 overhead, operations, profit and all other things necessary to perform all the services in the manner
974 required by this Agreement.

975 If FRANCHISEE's costs are more than FRANCHISEE's compensation, FRANCHISEE shall not be
976 compensated for the difference in costs and revenues. If FRANCHISEE's costs are less than
977 FRANCHISEE's compensation, FRANCHISEE shall retain the difference.

978 **9.2 CITY'S RIGHT TO SET MAXIMUM RATES**

979 CITY reserves the right to establish maximum Rates for Construction and Demolition Debris Collection
980 services provided under this Agreement in the event that: (a) there are four (4) or fewer companies
981 holding non-exclusive franchise agreements for Collection of Construction and Demolition Debris, or (b)
982 the Rates charged by the companies holding non-exclusive franchise agreements for Collection of
983 Construction and Demolition Debris are no longer comparable to those of other jurisdictions, as
984 reasonably determined by CITY. If CITY chooses to exercise its right to set maximum Rates, CITY shall
985 notify FRANCHISEE at least one hundred eighty (180) calendar days prior to the date that maximum
986 Rates become effective. In such case, CITY will set maximum Rates with consideration of reasonable and
987 necessary costs for Collection, Processing, and Disposal and with the intention of setting maximum
988 Rates that will enable parties, including FRANCHISEE, that have executed non-exclusive franchise
989 agreements with the CITY for Collection of Construction and Demolition Debris the ability to recover
990 reasonable and necessary costs and a reasonable profit.

991 **9.3 FRANCHISEE'S RATES**

992 FRANCHISEE shall set the Rates it charges its Customers for Collection services by mutual written
993 agreement between the FRANCHISEE and Customer. FRANCHISEE's Rates shall not exceed CITY-
994 established maximum Rates, if CITY exercises its rights under Section 9.2.

995 **ARTICLE 10**
996 **INDEMNITY AND INSURANCE**

997 **10.1 INDEMNIFICATION**

998 FRANCHISEE shall indemnify, defend with counsel acceptable to CITY, protect and hold harmless CITY
999 and each of its officers, officials, employees, volunteers, and agents (collectively, indemnitees) from and
1000 against all claims, damages (including but not limited to special, consequential, natural resources and
1001 punitive damages), injuries, costs, (including without limit any and all response, remediation and
1002 removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative
1003 proceedings, interest, fines, charges, penalties, and expenses (including without limit attorneys' expert
1004 witness fees and costs incurred in connection with defending against any of the foregoing or in
1005 enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered
1006 by, or asserted against, indemnitees arising from or attributable to the acts or omissions of FRANCHISEE
1007 whether or not negligent or otherwise culpable, in connection with or related to the performance of this
1008 Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct
1009 of CITY.

1010 FRANCHISEE's duty to defend and indemnify herein shall include Damages arising from or attributable to
1011 any operations, repairs, clean-up or detoxification, or other plan (regardless of whether undertaken due
1012 to governmental action) concerning any Hazardous Waste Collected in the Service Area. FRANCHISEE

1013 shall be required to indemnify CITY for the costs for any claims arising from the Processing, Recycling, or
1014 Disposal of Construction and Demolition Debris, including, but not limited to, claims arising under the
1015 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The foregoing is
1016 intended to operate as an agreement to defend and indemnify and hold harmless indemnitees to the
1017 full extent permitted for liability pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and
1018 California Health and Safety Code Section 25364.

1019 In addition, FRANCHISEE's duty to defend and indemnify herein includes all fines and/or penalties
1020 imposed by the California Department of Resources Recycling and Recovery, subject to the restrictions
1021 set forth in Public Resources Code Section 40059.1, if the requirements of the AB 939 or AB 341 are not
1022 met by the FRANCHISEE with respect to the Construction and Demolition Debris Collected under this
1023 Agreement, and such failure is due to FRANCHISEE delays in providing information that prevents
1024 FRANCHISEE or CITY from submitting reports required by the AB 939 or AB 341 in a timely manner.

1025 This provision will survive the expiration or earlier termination of this Agreement and shall not be
1026 construed as a waiver of rights by CITY to contribution or indemnity from third parties.

1027 **10.2 INSURANCE**

1028 **10.2.1 Minimum Scope of Insurance**

1029 Coverage shall be at least as broad as:

- 1030 A. Insurance Services Office Commercial General Liability coverage.
 - 1031 1. Personal injury
 - 1032 2. Contractual liability
- 1033 B. Insurance Services Office covering Automobile Liability, code I "any auto".
- 1034 C. Worker's Compensation insurance as required by the Labor Code of the State of California and
1035 Employers Liability insurance.
- 1036 D. Such other insurance coverages and limits as may be required by CITY.

1037 **10.2.2 Minimum Limits of Insurance**

1038 FRANCHISEE shall maintain limits no less than:

- 1039 A. General Liability: \$1,000,000 each occurrence for bodily injury and property damage; \$1,000,000
1040 for personal and advertising injury; \$2,000,000 products and completed operations aggregate,
1041 and \$2,000,000 general aggregate. If Commercial General Liability insurance or other form with a
1042 general aggregate liability is used, either the general aggregate limit shall apply separately to this
1043 project/location or the general aggregate limit shall be twice the required occurrence limit.
- 1044 B. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- 1045 C. Workers' Compensation: Workers' compensation limits as required by the Labor Code of the
1046 State of California.

1047 D. Employer's Liability: \$1,000,000 each accident for bodily injury.

1048 \$1,000,000 disease each employee.

1049 \$1,000,000 disease policy limit.

1050 E. Pollution Legal Liability: \$1,000,000 per claim/occurrence and \$2,000,000 aggregate for bodily
1051 injury, property damage, and remediation of contaminated site. **This Section 10.2.2.E shall only**
1052 **apply in the event that FRANCHISEE is the owner of a Processing or Disposal Site which will be**
1053 **used for the Processing or Disposal of any Construction and Demolition Debris Collected under**
1054 **this Agreement.**

1055 **10.2.3 Deductibles and Self-Insured Retentions**

1056 Any deductibles or self-insured retention shall be for the account of FRANCHISEE and shall be paid
1057 entirely by FRANCHISEE without any contribution from CITY.

1058 **10.2.4 Other Insurance Provisions**

1059 The policies are to contain, or be endorsed to contain, the following provisions:

1060 A. General Liability and Automobile Liability Coverages

1061 1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional
1062 insureds as respects: liability arising out of activities performed by or on behalf of
1063 FRANCHISEE; products and completed operations of FRANCHISEE; premises owned, leased or
1064 used by FRANCHISEE; or automobiles owned, leased, hired or borrowed by FRANCHISEE. The
1065 coverage shall contain no special limitations on the scope of protection afforded to CITY, its
1066 officials, employees, or volunteers. The automobile liability is endorsed to contain MCA-90
1067 coverage.

1068 2. FRANCHISEE's insurance coverage shall be primary insurance as respects CITY, its officials,
1069 employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officials,
1070 employees, or volunteers shall be excess of FRANCHISEE's insurance and shall not contribute
1071 with it.

1072 3. Any failure to comply with reporting provisions of the policies shall not affect coverage
1073 provided to CITY, its officials, employees, or volunteers.

1074 4. Coverage shall state that FRANCHISEE's insurance shall apply separately to each insured
1075 against whom claim is made or suit is brought, except with respect to the limits of the
1076 insurer's liability.

1077 B. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all
1078 rights of subrogation against CITY, its officers, employees, and volunteers for losses arising from
1079 work performed by FRANCHISEE for CITY.

1080 C. All Coverages. Each insurance policy required by this Article shall be occurrence-based except
1081 Pollution Legal Liability (Section 10.2.E) which may be written on a claims made basis, and each
1082 insurance policy, except Workers' Compensation (Section 10.2.C), shall be endorsed to state that

1083 coverage shall not be cancelled by either party, except after sixty (60) days' prior written notice
1084 has been given to CITY. FRANCHISEE shall provide at least sixty (60) days' written notice to CITY,
1085 by certified mail, return receipt requested, of any insurance policy required hereunder being
1086 suspended, voided, or reduced in coverage or limits. Any failure to comply with reporting
1087 provisions of the policies shall not affect FRANCHISEE'S obligations to CITY, its officers, officials,
1088 employees, agents or volunteers.

1089 **10.2.5 Acceptability of Insurers**

1090 The insurance policies required by this Section shall be issued by an insurance company or companies
1091 authorized to do business in the State of California and with a rating in the most recent edition of Best's
1092 Insurance Reports of size category VII or larger and a rating classification of A or better.

1093 **10.2.6 Verification of Coverage**

1094 FRANCHISEE shall furnish FRANCHISEE's insurance agent a copy of these specifications, and direct the
1095 agent to provide CITY with certificates of insurance and with original endorsements affecting coverage
1096 required by this clause. Issuance of documentation indicates FRANCHISEE's insurance complies with
1097 these provisions. The certificates and endorsements for each insurance policy are to be signed by a
1098 Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are
1099 to be received and approved by CITY before work commences. CITY may require complete, certified
1100 copies of all required insurance policies, at any time. Franchisee shall provide CITY thirty calendar days'
1101 prior written notice in the event of cancellation, changes in coverage, or non-renewal of any required
1102 policy.

1103 **10.2.7 Required Endorsements**

1104 A. The Workers' Compensation policy shall contain an endorsement in substantially the following
1105 form:

1106 "Thirty calendar days' prior written notice shall be given to the City of Oakland in the event of
1107 cancellation, changes in coverage, or non-renewal of this policy."

1108 City C&D Contract Manager
1109 Environmental Services Division, OPW
1110 City of Oakland
1111 250 Frank Ogawa Plaza, Suite 5301
1112 Oakland, CA 94612

1113 B. The Commercial General Liability, Business and Automobile Liability, and Pollution Legal Liability
1114 policies shall contain endorsements in substantially the following form:
1115

1116 1. "Thirty calendar days' prior written notice shall be given to the City of Oakland in the event of
1117 cancellation, reduction in coverage, or non-renewal of this policy."

1118 City C&D Contract Manager
1119 Environmental Services Division, OPW
1120 City of Oakland
1121 250 Frank Ogawa Plaza, Suite 5301
1122 Oakland, CA 94612

- 1123
1124 2. "The City of Oakland, its officers, employees, and agents are additional insureds on this
1125 policy."
- 1126 3. "This policy shall be considered primary insurance as respects any other valid and collectible
1127 insurance maintained by the City of Oakland, including any self-insured retention or program
1128 of self-insurance, and any other such insurance shall be considered excess insurance only."
- 1129 4. "Inclusion of the City of Oakland as an insured shall not affect the CITY's rights as respects any
1130 claim, demand, suit or judgment brought or recovered against the FRANCHISEE. This policy
1131 shall protect FRANCHISEE and the CITY in the same manner as though a separate policy had
1132 been issued to each, but this shall not operate to increase the FRANCHISEE's liability as set
1133 forth in the policy beyond the amount shown or to which the FRANCHISEE would have been
1134 liable if only one party had been named as an insured."

1135 **10.2.8 Delivery of Proof of Coverage**

1136 Simultaneously with the execution of this Agreement, FRANCHISEE shall furnish CITY certificates of each
1137 policy of insurance required hereunder, in form and substance satisfactory to CITY. Such certificates
1138 shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall
1139 have all required endorsements. If CITY requests, copies of each policy, together with all endorsements,
1140 shall also be promptly delivered to CITY.

1141 Renewal certificates will be furnished annually to CITY to demonstrate maintenance of the required
1142 coverages throughout the Term.

1143 **10.2.9 Other Insurance Requirements**

1144 A. If any services are delegated to a Subcontractor, FRANCHISEE shall require such Subcontractor to
1145 provide statutory Workers' Compensation insurance and employer's liability insurance for all of
1146 the Subcontractor's employees engaged in the work in accordance with Sections 10.2.2.C and
1147 10.2.2.D and 10.2.4.B. The liability insurance required by Section 10.2.2.A shall cover all
1148 Subcontractors or the Subcontractor must furnish evidence of insurance provided by it meeting all
1149 of the requirements of this Section 10.2.

1150 B. If at any time during the life of the Agreement or any extension, FRANCHISEE or any of its
1151 Subcontractors fail to maintain any required insurance in full force and effect, FRANCHISEE shall
1152 be in breach of the Agreement until notice is received by CITY that the required insurance has
1153 been restored to full force and effect and that the premiums therefore have been paid for a
1154 period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient
1155 cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this Section shall
1156 in any way relieve FRANCHISEE of its responsibilities under this Agreement.

1157 C. FRANCHISEE shall comply with all requirements of the insurers issuing policies. The carrying of
1158 insurance shall not relieve FRANCHISEE from any obligation under this Agreement. If any claim
1159 exceeding the amount of any deductibles or self-insured reserves is made by any third person
1160 against FRANCHISEE or any Subcontractor because of any occurrence related to this Agreement,
1161 FRANCHISEE shall promptly report the facts in writing to the insurance carrier and to CITY.

- 1162 D. The Commercial General Liability, Automobile Liability, and Pollution Legal Liability insurance
1163 policies shall be written on an "occurrence," rather than a "claims made" basis. If FRANCHISEE is
1164 unable to purchase Pollution Legal Liability insurance on an occurrence form and must purchase
1165 such insurance on a claims-made form:
- 1166 1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or
1167 the commencement of work by FRANCHISEE.
- 1168 2. The policy shall be endorsed to provide not less than a five (5) year discovery period. This
1169 requirement shall survive expiration or termination of the Agreement.
- 1170 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy
1171 form with a "Retro Date" prior to the effective date of the Agreement, FRANCHISEE must
1172 purchase "extended reporting" coverage for a minimum of five (5) years following the
1173 expiration or termination of the Agreement.
- 1174 4. A copy of the claims reporting requirements must be submitted to CITY for review.
- 1175 5. These requirements shall survive expiration or termination of this Agreement.

1176 **ARTICLE 11**
1177 **DEFAULT AND REMEDIES**

1178 **11.1 EVENTS OF DEFAULT**

1179 Each of the following shall constitute an event of default ("Event of Default") hereunder:

- 1180 A. FRANCHISEE fails to perform its obligations under this Agreement, or future amendment to this
1181 Agreement, including, but not limited to, FRANCHISEE's failure to pay CITY fees in accordance
1182 with Article 8 of this Agreement, and/or use fully permitted Processing and Disposal Sites, and the
1183 breach continues for or repeats after more than ten (10) Work Days after written notice from the
1184 CITY for the correction thereof;
- 1185 B. Any representation, warranty, or disclosure made to CITY by FRANCHISEE in connection with or as
1186 an inducement to entering into this Agreement or any future amendment to this Agreement,
1187 which proves to be false or misleading in any material respect as of the time such representation
1188 or disclosure is made, whether or not any such representation, warranty, or disclosure appears as
1189 part of this Agreement;
- 1190 C. There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting
1191 possession on, the operating equipment of FRANCHISEE, including without limit its vehicles,
1192 maintenance or office facilities, or any part thereof of such proportion as to substantially impair
1193 FRANCHISEE's ability to perform under this Agreement and which cannot be released, bonded, or
1194 otherwise lifted within two (2) Work Days;
- 1195 D. FRANCHISEE files a voluntary petition for debt relief under any applicable bankruptcy, insolvency,
1196 debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment
1197 of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of

1198 equipment no longer useful to FRANCHISEE or necessary for this Agreement), trustee (other than
1199 as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of
1200 FRANCHISEE for any part of FRANCHISEE's operating assets or any substantial part of
1201 FRANCHISEE's property, or shall make any general assignment for the benefit of FRANCHISEE's
1202 creditors, or shall fail generally to pay FRANCHISEE's debts as they become due or shall take any
1203 action in furtherance of any of the foregoing;

1204 E. A court having jurisdiction shall enter a decree or order for relief in respect of FRANCHISEE, in any
1205 involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or
1206 hereafter in effect, or FRANCHISEE shall consent to or shall fail to oppose any such proceeding, or
1207 any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian,
1208 trustee, sequestrator (or similar official) of FRANCHISEE or for any part of FRANCHISEE's operating
1209 equipment or assets, or orders the winding up or liquidation of the affairs of FRANCHISEE;

1210 F. FRANCHISEE performance under the Agreement evidences a repeated pattern of inadequate or
1211 untimely compliance and/or noncompliance with the terms of the Agreement, including but not
1212 limited to repeated CITY assessment, or consideration of assessment of Liquidated Damages as
1213 provided in Section 11.4.

1214 **11.2 RIGHT TO TERMINATE UPON DEFAULT**

1215 Upon a default by FRANCHISEE, CITY may terminate this Agreement within ten (10) calendar days of the
1216 default but no later than one hundred eighty (180) calendar days after the default. Such termination
1217 shall be effective ten (10) calendar days following CITY's written notice to FRANCHISEE, and such
1218 termination shall be effective without the need for any hearing, suit, or legal action.

1219 **11.3 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

1220 CITY's right to terminate the Agreement under Section 11.2 is not exclusive, and CITY's termination of
1221 the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of
1222 remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and
1223 remedies which CITY may have.

1224 By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the
1225 lead time required to effect alternative service, and the rights granted by CITY to FRANCHISEE, the
1226 remedy of damages for a breach hereof by FRANCHISEE is inadequate and CITY shall be entitled to
1227 injunctive relief.

1228 **11.4 LIQUIDATED DAMAGES**

1229 A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical,
1230 if not impossible, to reasonably ascertain the extent of damages which shall be incurred by CITY
1231 as a result of a breach by FRANCHISEE of its obligations under this Agreement. The factors
1232 relating to the impracticability of ascertaining damages include, but are not limited to, the fact
1233 that: (i) substantial damage results to members of the public who are denied services or denied
1234 quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and
1235 deprivation of the benefits of the Agreement to individual members of the general public for
1236 whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which
1237 are incapable of measurement in precise monetary terms; (iii) that services might be available at
1238 substantially lower costs than alternative services and the monetary loss resulting from denial of

1239 services or denial of quality or reliable services is impossible to calculate in precise monetary
1240 terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at
1241 best, a means of future correction and not remedies which make the public whole for past
1242 breaches.

1243 B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties
1244 further acknowledge that consistent, reliable Collection, Processing, and Disposal service is of
1245 utmost importance to CITY and that CITY has considered and relied on FRANCHISEE's
1246 representations as to its quality of service commitment in executing this Agreement. The Parties
1247 recognize that some quantified standards of performance are necessary and appropriate to
1248 ensure consistent and reliable service and performance. The Parties further recognize that if
1249 FRANCHISEE fails to achieve the performance standards, or fails to submit required documents in
1250 a timely manner, CITY and its residents and businesses will suffer damages, and that it is, and will
1251 be, impractical and extremely difficult to ascertain and determine the exact amount of damages
1252 that CITY will suffer. Therefore, without prejudice to CITY's right to treat such non-performance
1253 as an event of default under this Article, the Parties agree that the Liquidated Damages amounts
1254 established in Exhibit A of this Agreement and the following Liquidated Damage amounts
1255 represent a reasonable estimate of the amount of such damages considering all of the
1256 circumstances existing on the Effective Date of this Agreement, including the relationship of the
1257 sums to the range of harm to CITY that reasonably could be anticipated and the anticipation that
1258 proof of actual damages would be costly or impractical.

1259 FRANCHISEE agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in
1260 the Schedule of Liquidated Damages, Exhibit A.

1261 CITY may determine the occurrence of events giving rise to Liquidated Damages through the
1262 observation of its own employees or representative or investigation of complaints by Customers
1263 or occupants.

1264 Before assessing Liquidated Damages, CITY shall give FRANCHISEE notice of its intention to do so.
1265 The notice will include a brief description of the incident(s) and/or non-performance. CITY may
1266 review (and make copies at its own expense) all information in the possession of FRANCHISEE
1267 relating to incident(s) and non-performance. CITY may, within ten (10) calendar days after issuing
1268 the notice, request a meeting with FRANCHISEE. CITY may present evidence of non-performance
1269 in writing and through testimony of its employees and others relevant to the incident(s) and non-
1270 performance. CITY will provide FRANCHISEE with a written explanation of its determination on
1271 each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages
1272 under this Section 11.4. The decision of CITY shall be final and CITY shall not be subject to, or
1273 required to exhaust, any further administrative remedies.

1274 C. **Amount.** CITY may assess Liquidated Damages for each calendar day or event, as appropriate,
1275 that FRANCHISEE is determined to be liable in accordance with this Agreement in the amounts
1276 specified in Exhibit A.

1277 D. **Timing of Payment.** FRANCHISEE shall pay any Liquidated Damages assessed by CITY within ten
1278 (10) calendar days of the date the Liquidated Damages are assessed. If they are not paid within
1279 the ten (10) day period, CITY may order the termination of the rights or "franchise" granted by
1280 this Agreement.

1281

1282 **11.5 CONDITIONS UPON TERMINATION**

1283 In the event this Agreement is terminated under the provisions of this Article, the following conditions
1284 shall be effective:

1285 A. **Prohibit Collection Services.** FRANCHISEE shall have no right or authority to engage in
1286 Construction and Demolition Debris Collection services in the Service Area for a period of five (5)
1287 years from the date of termination, unless otherwise waived by CITY. After five (5) years, should
1288 FRANCHISEE provide proof that the event causing FRANCHISEE to default under this Agreement
1289 has been corrected, FRANCHISEE may reapply for a non-exclusive Construction and Demolition
1290 Debris Collection service franchise, and CITY, at the sole and complete discretion of CITY, may
1291 reinstate FRANCHISEE based on review of its reapplication.

1292 B. **Continuing Liabilities.** FRANCHISEE shall remain liable to CITY for:

- 1293 1. Fees due in accordance with Article 8 that would otherwise be payable by FRANCHISEE.
1294 2. Liquidated Damages assessed pursuant to Section 11.4.
1295 3. Reports required by Article 7 for Collection activities performed by FRANCHISEE up to and
1296 including the date of termination.
1297 4. Indemnity obligations under Section 10.1.
1298 5. Record keeping and retention obligations under Sections 7.1 and 7.2.

1299 C. **Release Customers from Obligations.** FRANCHISEE shall allow Construction and Demolition
1300 Debris Customers served by FRANCHISEE to arrange for Construction and Demolition Debris
1301 Collection services with a hauler authorized to perform such services, without penalty or liability
1302 for breach of any contract between FRANCHISEE and its Customers.

1303 D. **Remove Containers.** FRANCHISEE shall remove all of FRANCHISEE's Containers from all of
1304 FRANCHISEE's Collection locations and shall properly Recycle, Process, or Dispose of Construction
1305 and Demolition Debris in such Containers.

1306

1307

ARTICLE 12
OTHER AGREEMENTS OF THE PARTIES

1308 **12.1 RELATIONSHIP OF PARTIES**

1309 The Parties intend that FRANCHISEE shall perform the services required by this Agreement as an
1310 independent FRANCHISEE engaged by CITY and neither as an officer nor employee of CITY, nor as a
1311 partner of, or joint venture with, CITY. No employee or agent of FRANCHISEE shall be, or shall be
1312 deemed to be, an employee or agent of CITY. Except as expressly provided herein, FRANCHISEE shall
1313 have control over the manner and means of conducting the Collection, Transportation, Processing,
1314 Recycling, and Disposal services performed under this Agreement. FRANCHISEE shall be solely responsible
1315 for the acts and omissions of its officers, employees, Subcontractors, and agents. Neither FRANCHISEE

1316 nor its officers, employees, Subcontractors and agents shall obtain any rights to retirement benefits,
1317 workers' compensation benefits, or any other benefits which accrue to CITY employees by virtue of their
1318 employment with CITY.

1319 **12.2 PERMITS AND LICENSES**

1320 FRANCHISEE shall obtain and maintain, at FRANCHISEE's sole cost and expense, all permits and licenses
1321 applicable to FRANCHISEE's operations under this Agreement which are required by any governmental
1322 agency.

1323 **12.3 COMPLIANCE WITH LAW**

1324 In the performance of this Agreement, FRANCHISEE shall comply with all Applicable Law, regulations,
1325 ordinances and codes of the federal, state and local governments, including without limitation the
1326 Municipal Code of the City of Oakland. CITY shall provide written notice to FRANCHISEE of any planned
1327 amendment of CITY ordinances that would affect the performance of FRANCHISEE's services or
1328 obligations pursuant to this Agreement, Such notice shall be provided at least thirty (30) calendar days
1329 prior to the Council's consideration of such an amendment.

1330 **12.4 GOVERNING LAW**

1331 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the
1332 State of California.

1333 **12.5 JURISDICTION**

1334 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the
1335 courts of Alameda County in the State of California, which shall have exclusive jurisdiction over such
1336 lawsuits.

1337 With respect to venue, the Parties agree that this Agreement is made in and will be performed in
1338 Alameda County.

1339 **12.6 BINDING ON SUCCESSORS**

1340 The provisions of this Agreement shall inure to the benefit to, and be binding on, the successors and
1341 permitted assigns of the Parties.

1342 **12.7 ASSIGNMENT**

1343 Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this
1344 Agreement to any other Person without the prior written consent of the other Party. Any such
1345 assignment made without the consent of the other Party shall be void and the attempted assignment
1346 shall constitute a material breach of this Agreement. Under no circumstances shall any assignment be
1347 considered by CITY if FRANCHISEE is in default at any time during the period of consideration.

1348 **12.8 PARTIES IN INTEREST**

1349 Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons
1350 other than the Parties to it and their representatives, successors and permitted assigns.

1351 **12.9 WAIVER**

1352 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be
1353 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach
1354 of violation of the same or any other provision. The subsequent acceptance by either Party of any
1355 monies which become due hereunder, shall not be deemed to be a waiver of any pre-existing or
1356 concurrent breach or violation by the other Party of any provision of this Agreement.

1357 **12.10 NOTICE PROCEDURES**

1358 All notices, demands, requests, proposals, approvals, consents, and other communications which this
1359 Agreement requires, authorizes or contemplates, shall be in writing and shall either be personally
1360 delivered to a representative of the Parties at the address below or deposited in the United States
1361 mail, first class postage prepaid, addressed as follows:

1362 A. If to CITY:

1363 City C&D Contract Manager
1364 Environmental Services Division, OPW
1365 City of Oakland
1366 250 Frank Ogawa Plaza, Suite 5301
1367 Oakland, CA 94612

1368 B. If to FRANCHISEE:

1369 _____
1370 _____
1371 _____
1372 _____
1373 _____

1374
1375 The address to which communications may be delivered may be changed from time to time by a notice
1376 given in accordance with this Section.

1377 Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) calendar days
1378 from the date it is deposited in the mail.

1379 **12.11 REPRESENTATIVES OF THE PARTIES**

1380 References in this Agreement to "CITY" shall mean the City Council and all actions to be taken by CITY
1381 shall be taken by the City Council except as provided below. The City Council may delegate, in writing,
1382 authority to the City C&D Contract Manager and/or to other CITY officials and may permit such officials,
1383 in turn, to delegate in writing some or all of such authority to subordinate officers. FRANCHISEE may
1384 rely upon actions taken by such delegates if they are within the scope of the authority properly
1385 delegated to them.

1386 FRANCHISEE shall, by the Effective Date, designate in writing a responsible officer who shall serve as the
1387 representative of FRANCHISEE in all matters related to the Agreement and shall inform CITY in writing of
1388 such designation and of any limitations upon his or her authority to bind FRANCHISEE. CITY may rely

1389 upon action taken by such designated representative as actions of FRANCHISEE unless they are outside
1390 the scope of the authority delegated to him/her by FRANCHISEE as communicated to CITY.

1391 **12.12 PUBLIC RESOURCES CODE SECTION 49523 NOTICE**

1392 Nothing in this Agreement shall be construed as providing FRANCHISEE with the five (5) year noticing
1393 rights required under PRC 49520. The parties agree that the provisions of PRC 49523 apply instead.

1394 **ARTICLE 13**
1395 **MISCELLANEOUS AGREEMENTS**

1396 **13.1 ENTIRE AGREEMENT**

1397 This Agreement, including the exhibits, represents the full and entire Agreement between the Parties
1398 with respect to the matters covered herein.

1399 **13.2 SECTION HEADINGS**

1400 The article headings and section headings in this Agreement are for convenience of reference only and
1401 are not intended to be used in the construction of this Agreement nor to alter or affect any of its
1402 provisions.

1403 **13.3 REFERENCES TO LAWS**

1404 All references in this Agreement to laws shall be understood to include such laws as they may be
1405 subsequently amended or recodified, unless otherwise specifically provided.

1406 **13.4 INTERPRETATION**

1407 This Agreement shall be interpreted and construed reasonably and neither for nor against either Party,
1408 regardless of the degree to which either Party participated in its drafting.

1409 **13.5 PRONOUNS AND PLURALS; TENSE**

1410 When not inconsistent with the context, words and phrases used in the present tense include the
1411 future, and words and phrases used in the singular number include the plural number. Whenever the
1412 context may require, any pronoun used in this Agreement shall include the corresponding masculine,
1413 feminine and neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural
1414 and vice versa.

1415 **13.6 TEXT TO CONTROL**

1416 The captions of the Articles or Sections in this Agreement are for convenience only and in no way define,
1417 limit, extend or describe the scope or intent of any of the provisions hereof, shall not be deemed part of
1418 this Agreement and shall not be used in construing or interpreting this Agreement.

1419 **13.7 AMENDMENT**

1420 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

1421 **13.8 SEVERABILITY**

1422 If any non-material provision of this Agreement is for any reason deemed to be invalid and
1423 unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining
1424 provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had
1425 not been contained herein.

1426 **13.9 COUNTERPARTS**

1427 This Agreement may be executed in counterparts, each of which shall be considered an original.

1428 **13.10 EXHIBITS**

1429 Each of the exhibits identified as Exhibit "A" through "E" is attached hereto and incorporated herein and
1430 made a part hereof by this reference.

1431 **IN WITNESS WHEREOF**, the Parties have caused the Agreement to be executed on the day and year first
1432 above written.

1433

1434 **CITY OF OAKLAND**

FRANCHISEE

1435

1436 _____
City C&D Contract Manager

Name

1437

1438 APPROVED AS TO FORM:

Title

1439

1440

Address

1441

1442 _____
City Attorney

1443

City

1444

1445

Business License

1446 _____
Risk Manager

1447

1448

1449 ATTEST:

1450

1451 _____
City Clerk



EXHIBIT A (FIX) SCHEDULE FOR LIQUIDATED DAMAGES

1452 **TITLE- EXHIBIT A STANDARD REPORTING TEMPLATE**

| | | |
|-----|--|--|
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| 10. | | |
| 11. | | |

1453

EXHIBIT A (FIX)

SCHEDULE FOR LIQUIDATED DAMAGES

1454 FRANCHISEE may be assessed Liquidated Damages if FRANCHISEE fails to fulfill its obligations with
 1455 regards to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement
 1456 with regards to the time frame for accomplishing each event and nature of the responsibility associated
 1457 with the event unless otherwise stated in this Exhibit.

| | | |
|-----|--|---|
| 1. | Leaks, Litter, or Spills. For each occurrence over five during a calendar year of leaks, litter, or spills of Construction and Demolition Debris within ten feet of the public right of way and failure to pick up or clean up such material prior to FRANCHISEE's vehicle leaving such location. | \$300/ event |
| 2. | Unauthorized Collection Hours. For each occurrence over five during a calendar year of Collecting Construction and Demolition Debris during unauthorized hours. | \$300/ event |
| 3. | Excessive Noise. For each occurrence over 10 during a calendar year of excessive noise, as defined by the requirements of Chapter 8.18.010 of the OMC. | \$300/ event |
| 4. | Cleaning Collection Vehicles. For each occurrence over five during a calendar year for failure to keep Collection vehicles in a safe and sanitary condition (in accordance with Section 6.3.E). | \$150/ event |
| 5. | Labeling of Containers. For each occurrence of FRANCHISEE's failure to correctly label FRANCHISEE-owned Containers (in accordance with Section 6.4.C). | \$500/ event |
| 6. | Reports. Failure to submit reports in the timeframe specified in this Agreement. | \$300/ day* |
| 7. | Report Unpermitted Material. For each failure to notify the appropriate authorities of reportable quantities of Unpermitted Material. | \$500/ event |
| 8. | Failure to Divert Material. For each failure to deliver Construction and Demolition Debris for Processing and Diversion consistent with the FRANCHISEE's agreement with a Customer. | \$500/ event |
| 9. | Failure to Perform Public Education and Outreach. For each failure to perform public education and outreach activities as required by Section 5.5 of this Agreement. | \$300/ event |
| 10. | Failure of Other Obligations. Failure to perform any of the obligations set forth in this Agreement not specifically stated above and not corrected or proceeding in good faith to correct within 24 hours upon notification by CITY. | \$150/ for each obligation per day until obligation is performed |
| 11. | Repeated Failure. Repeated failure to perform any required activity, obligation, or service described herein. | \$50/ occurrence, in addition to any other applicable Liquidated Damage amounts |

1458
 1459 * Monthly reports shall be considered late until such time as a correct and complete
 1460 monthly report is received by CITY. For each calendar day a report is late, the daily
 1461 Liquidated Damage shall be as indicated in the monthly reports section above.

EXHIBIT A (FIX)
SCHEDULE FOR LIQUIDATED DAMAGES

1462
1463 In placing Designee's initials at the places provided, each Party specifically confirms the accuracy of the
1464 statements made above and the fact that each Party has had ample opportunity to consult with legal
1465 counsel and obtain an explanation of Liquidated Damage provisions of the time that the Agreement was
1466 made.

1467 FRANCHISEE

CITY

1468

1469 Initial Here: _____

Initial Here: _____

NOTICE AND DIGEST

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 15.34 ("CONSTRUCTION AND DEMOLITION DEBRIS WASTE REDUCTION AND RECYCLING REQUIREMENTS") TO ESTABLISH A NON-EXCLUSIVE FRANCHISE AGREEMENT SYSTEM FOR THE HAULING OF SUCH DEBRIS TO BECOME EFFECTIVE JULY 1, 2015; AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE SUCH NON-EXCLUSIVE FRANCHISE AGREEMENTS

The Ordinance amends the Oakland Municipal Code to create a non-exclusive franchise system for the hauling of construction and demolition debris, authorizes the City Administrator to execute such agreements, and makes appropriate findings required by the California Environmental Quality Act.

NOTICE AND DIGEST AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 15.34 ("CONSTRUCTION AND DEMOLITION DEBRIS WASTE REDUCTION AND RECYCLING REQUIREMENTS") TO ESTABLISH A NON-EXCLUSIVE FRANCHISE AGREEMENT SYSTEM FOR THE HAULING OF SUCH DEBRIS TO BECOME EFFECTIVE JULY 1, 2015; AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE SUCH NON-EXCLUSIVE FRANCHISE AGREEMENTS

The Ordinance amends the Oakland Municipal Code to create a non-exclusive franchise system for the hauling of construction and demolition debris, authorizes the City Administrator to execute such agreements, and makes appropriate findings required by the California Environmental Quality Act.

Notice of Publication

This Ordinance was introduced at the City Council meeting, Tuesday evening **June 2, 2015**, and passed to print **7 Ayes, 1 Absent - Gibson-McElhaney**. Final adoption has been scheduled for the City Council meeting Monday evening **June 22, 2015, 5:00 p.m.**, at One Frank H. Ogawa Plaza, Council Chambers, 3rd floor, Oakland, California.

Three full copies are available for use and examination by the public in the Office of the City Clerk at One Frank H. Ogawa Plaza, 1st floor, Oakland, California.

LATONDA SIMMONS, City Clerk
OT #5508216; Jun. 19, 2015