

NON-EXCLUSIVE FRANCHISE AGREEMENT
BETWEEN
THE CITY OF OAKLAND
AND
«BUSINESS_NAME» FOR
CONSTRUCTION AND DEMOLITION DEBRIS
COLLECTION SERVICES

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List of Exhibits

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

Schedule Q – Insurance Requirements

1 **NON-EXCLUSIVE FRANCHISE AGREEMENT**

2 **BETWEEN**

3 **THE CITY OF OAKLAND**

4 **AND**

5 **«BUSINESS_NAME» FOR CONSTRUCTION AND**
6 **DEMOLITION DEBRIS COLLECTION SERVICES**

7 This non-exclusive franchise agreement (Agreement) is made and entered into this
8 «Agreement_Start_Date» day of «Agreement_Start_Date», 20«Agreement_Start_Date», by and between
9 the City of Oakland, (CITY) and «Business_Name» (hereinafter referred to as the FRANCHISEE).

10 **RECITALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

62 **ARTICLE 1**
63 **DEFINITIONS**

64 For purposes of this Agreement, unless a different meaning is clearly required, the following words and
65 phrases shall have the following meanings respectively ascribed to them by this Article and shall be
66 capitalized throughout this Agreement. It is the CITY's intent that the terms as defined by this Article will,
67 wherever possible, align and correspond with terms defined and used in Sections 8.28 and 15.34 of the

68 OMC. In the event of a conflict between the definition of a term in the OMC, as it may be amended from
69 time to time, and in this Agreement, the definition in the OMC shall prevail.

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

75 **“AB 939”** means the California Integrated Waste Management Act (Public Resources Code section 40000
76 et seq.), as amended from time to time.

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

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

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

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

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

101 **“CITY”** means the City of Oakland, California, a municipal corporation.

102 **“City C&D Contract Manager”** means the City representative specified in Section 7.5, who is the main
103 point of contact for this Agreement.

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

106 **“Compactor”** means any Roll-Off Box or Bin which has a compaction mechanism, whether stationary or
107 mobile, contingent upon confirmation of compatibility from FRANCHISEE.

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

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

117 **“County”** means the County of Alameda, California.

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

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

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

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

137 **“Effective Date”** means the date set forth in the introductory paragraph of this Agreement.

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

140 **“FRANCHISEE”** means «Business Name»

141 **“Hazardous Waste”** for purposes of this Agreement, Hazardous Waste shall include those wastes defined
142 as Hazardous Waste in Oakland Municipal Code section 8.28.010 or as subsequently amended. Section
143 8.28.010 currently defines Hazardous Waste as any hazardous waste, material, substance or combination

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

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

176 **“Oakland Municipal Code (OMC)”** means the City of Oakland Municipal Code, as the same may be
177 amended, supplemented, or modified from time to time.

178 **“Party or Parties”** refers to CITY and FRANCHISEE, individually or together.

179 **“Person(s)”** means an individual, association, partnership, corporation, joint venture, school, the United
180 States, the State of California, any municipality or other political subdivision thereof or any other entity
181 whatsoever.

182 **“Process, Processed or Processing (or any variation thereof)”** means an operation or series of operations,
183 whether involving equipment, manual labor, or mechanical or biological processes that sorts, enhances,
184 upgrades, concentrates, decontaminates, packages or otherwise prepares Construction and Demolition
185 Debris and returns marketable elements thereof to the economic mainstream in the form of raw material
186 for new, reused or reconstituted products. Processing begins at the time the Construction and Demolition

187 Debris is delivered to the Processing Site and ends when the finished Processed materials are sold or
188 reused and the Residual material is properly Disposed.

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

192 **“Processor”** means the operator of a Processing Site.

193 **“Rates”** means the charges and fees FRANCHISEE bills and collects from each Customer receiving service
194 pursuant to this Agreement.

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

199 **“Residual or Residue”** means materials remaining after the Processing of Construction and Demolition
200 Debris that cannot reasonably be Diverted.

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

205 **“Roll-Off Collection Truck”** means a Collection vehicle with a mechanical device such as a winch that pulls
206 or loads a Roll-Off Box onto the truck bed or attached trailer and separately transports each Roll-Off Box
207 to a Processing Site.

208 **“Service Address”** means the physical location of the property receiving Collection services.

209 **“Service Area”** means that area within the corporate limits of the City of Oakland.

210 **“Source Separated”** means materials that have been segregated from Construction and Demolition
211 Debris, for the purpose of Diversion, by or for the Customer at the Service Address at which the materials
212 were generated.

213 **“State”** means the State of California.

214 **“Subcontractor”** means a party who has entered into a contract, express or implied, with the FRANCHISEE
215 for the performance of an act that is necessary for the FRANCHISEE’s fulfillment of its obligations under
216 this Agreement.

217 **“Term”** means the Term of this Agreement, including extension periods if granted, as provided for in
218 Article 3.

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

221 **“Trailer”** means any unpowered vehicle that is designed to be detached from another, powered, vehicle
222 and is used for the purposes of holding and/or transporting Construction and Demolition Debris.

223 **“Transport or Transportation (or any variation thereof)”** means the act of moving materials from one
224 place to another by means of a vehicle.

225 **“Unpermitted Materials”** means wastes or other materials that the Disposal Site(s) may not receive under
226 their permits, including:

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

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

233 (3) Auto shredder “fluff” consisting of upholstery, paint, plastics, and other non-metallic substances,
234 which remain after the shredding of automobiles;

235 (4) Hazardous Materials;

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

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

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

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

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

258 “Work Day” means any day, Monday through Saturday excluding New Year’s Day, Thanksgiving Day, and
259 Christmas Day.

260 **ARTICLE 2**
261 **REPRESENTATIONS AND WARRANTIES OF THE FRANCHISEE**

262 **2.1 REPRESENTATIONS AND WARRANTIES**

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

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

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

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

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

- 289 1. Materially adversely affect the performance by FRANCHISEE of its obligations hereunder;
290 2. Adversely affect the validity or enforceability of this Agreement; or,
291 3. Have a material adverse effect on the financial condition of FRANCHISEE, or any surety or entity
292 guaranteeing FRANCHISEE's performance under this Agreement.

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

ARTICLE 3 TERM OF AGREEMENT

3.1 EFFECTIVE DATE

315 FRANCHISEE may provide the Collection, Transportation, Processing, and Disposal services authorized by
316 this Agreement commencing on the Effective Date of «Agreement_Start_Date».

3.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

318 The obligation of CITY to permit this Agreement to become effective and to perform its undertakings
319 provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which may
320 be waived, in written form, in whole or in part by CITY.

- 322 A. **Accuracy of Representations.** The representations and warranties made in Article 2 of this
323 Agreement are true and correct on and as of the Effective Date.
- 324 B. **Absence of Litigation.** There is no litigation pending on the Effective Date in any court challenging
325 the award or execution of this Agreement or seeking to restrain or enjoin its performance.
- 326 C. **Furnishings of Insurance.** FRANCHISEE has furnished evidence of the insurance required by Article
327 10 that is satisfactory to CITY.

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

332 **3.3 TERM**

333 The Term of this Agreement shall commence on the Effective Date and continue in full force until
334 «**Agreement_End_Date_»** unless terminated earlier as set forth in Section 3.5 hereof, or the Term
335 may be extended pursuant to Section 3.4 or terminated early for default in accordance with
336 Section 11.2.

337 **3.4 CITY OPTION TO EXTEND**

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

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

- 353 1. Changes to the definition of Construction and Demolition Debris or to related definitions.
- 354 2. Changes to minimum requirements related to vehicles, Containers, signage, reporting,
355 outreach and education, insurance, Liquidated Damages, etc.
- 356 3. Requiring that FRANCHISEE designate and CITY approve of Processing and/or Disposal Sites to
357 be utilized for Construction and Demolition Debris. CITY may require that FRANCHISEE choose
358 its designated facilities from a list of “certified” or otherwise pre-selected approved facilities.
- 359 4. Requiring Processing of all Construction and Demolition Debris Collected by FRANCHISEE,
360 unless demonstrated by FRANCHISEE that Processing will not result in Diversion.
- 361 5. Placing requirements on the marketing of materials recovered through Processing.
- 362 6. Changes to the limitations defined in Section 4.2.
- 363 7. New or modified fees as provided in Section 8.5.
- 364 8. Establishment of maximum rates FRANCHISEE may bill Customers as provided in Section 9.2.

- 365 9. Any changes that are required or deemed necessary by CITY due to a Change in Law.
- 366 10. Modifying Customer permit requirements under Chapter 15.34 of the OMC, or other relevant
367 portions of the OMC.
- 368 11. Any other changes for management of Construction and Demolition Debris in support of the
369 Zero Waste Strategic Plan or other CITY policies or programs.

370 **3.5 CITY EARLY TERMINATION OPTION**

371 CITY shall have the option to terminate this Agreement prior to the term date established in Section 3.3
372 provided that this Agreement may be replaced with a subsequent agreement of no less than two years or
373 to a term agreed to by the parties hereto and contingent on the purposes, goals, and requirements of
374 CITY's Non Exclusive Franchise system for Construction and Demolition Debris Collection being met by
375 Franchisee during the franchise period, to be determined by CITY in its sole discretion.

376 **ARTICLE 4** 377 **SCOPE OF AGREEMENT**

378 **4.1 SCOPE OF AGREEMENT**

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

383 FRANCHISEE shall be responsible for the following services:

- 384 A. Collecting Construction and Demolition Debris placed by Customers for temporary or ongoing
385 Collection of Construction and Demolition Debris as requested by Customer, consistent with
386 Customer's obligations under Chapter 15.34 of the OMC, as applicable.
- 387 B. Providing each Customer, upon delivery of requested Container(s), a printed list that specifies the
388 Construction and Demolition Debris allowed in the Container and Unpermitted Materials that
389 cannot be placed in the Container (e.g., Hazardous Wastes). Such list shall be reviewed and
390 approved by the City C&D Contract Manager.
- 391 C. Transporting Collected Construction and Demolition Debris to the appropriate Processing or
392 Disposal Site(s).
- 393 D. Furnishing all labor, supervision, vehicles, Containers (except as Customer may provide its own
394 Containers), other equipment, materials, supplies, and all other items and services necessary to
395 perform its obligations under this Agreement.
- 396 E. Paying or ensuring payment of all expenses related to provision of services required by this
397 Agreement including, but not limited to, fees, taxes, regulatory fees, Collection costs,
398 Transportation costs, Processing costs, Disposal costs, utilities, etc..

- 399 F. Providing all services required by this Agreement in a thorough and professional manner so that
400 Customers are provided timely, reliable, courteous and high-quality service at all times.
- 401 G. Performing all services in substantial accordance with this Agreement and with the requirements
402 of Chapter 15.34 of the OMC, as applicable, at all times using best industry practice for comparable
403 operations.
- 404 H. Complying with Applicable Law.
- 405 I. Performing or providing all other services necessary to fulfill its obligations under this Agreement.

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

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

419 **4.2 LIMITATIONS TO SCOPE**

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

- 423 A. **Construction and Demolition Debris Collected by Other Approved Parties.** Construction and
424 Demolition Debris Collected by any other party that has executed an Agreement with the CITY for
425 Construction and Demolition Debris Collection Services.
- 426 B. **Donated Materials.** Construction and Demolition Debris generated in the Service Area that are
427 donated by the Customer.
- 428 C. **Materials Hauled by Owner or its Contractor.** Construction and Demolition Debris that is removed
429 from any Service Address and Transported to a Processing Site or Disposal Site by:
- 430 1. The owner of such Service Address;
- 431 2. The full-time employee of the owner that uses the owner's equipment to transport materials;
432 or,
- 433 3. A construction contractor performing construction work at the Service Address, whose
434 Collection and Transport of the Construction and Demolition Debris is incidental to the service
435 being performed, provided that such contractor uses a Fixed-Body Vehicle for the Collection

436 and Transportation of the Construction and Demolition Debris, and such contractor Collects
437 and Transports the materials at no additional or separate fee using contractor’s employees and
438 contractor’s equipment. For the purposes of this section, except as set forth below, the term
439 “incidental to the service being performed” shall mean that the material requiring Collection
440 and Transport is generated by the activity of the contractor performing the hauling.

441 i. For example, a construction contractor who remodels a kitchen can Collect and
442 transport those materials related to such construction in a Fixed Body Vehicle for no
443 additional fee without infringing on the scope of this Agreement.

444 ii. As an additional example, a contractor whose sole responsibility with relation to the
445 project is to clean up a site and remove materials generated by other contractors or
446 the owner/occupant is subject to the requirements of this Agreement, and the
447 Collection and Transport of such materials from the site by such contractor is not
448 considered as “incidental to the service being performed”.

449 iii. Nothing in this agreement shall authorize a demolition contractor performing
450 demolition services in relation to a City-approved building or demolition permit to
451 Collect and Transport Construction and Demolition Debris without an executed non-
452 exclusive franchise agreement with CITY for Construction and Demolition Debris
453 Collection Services.

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

457 D. **State Government Facilities.** Construction and Demolition Debris generated by public schools,
458 cities, the County, or federal facilities (with the exception of facilities subject to 42 U.S.C. Section
459 6961(a)).

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

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

465 **4.3 CITY’S RIGHT TO GRANT MULTIPLE AGREEMENTS**

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

468 **4.4 AGREEMENT CONSISTENT WITH APPLICABLE LAW**

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

475 event, it shall be the responsibility of FRANCHISEE to minimize the financial impact of such future judicial
476 interpretations or new laws.

477 **4.5 OWNERSHIP OF MATERIALS**

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

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

485 **4.6 NOTIFICATION TO CITY OF NON-FRANCHISED HAULERS**

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

495 **ARTICLE 5**

496 **COLLECTION, TRANSPORT, PROCESSING, AND DISPOSAL**

497 **SERVICES**

498 **5.1 COLLECTION AND TRANSPORT**

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

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

509 **5.2 PROCESSING**

510 A. **Processing Services.** FRANCHISEE agrees to Transport and deliver all Construction and Demolition
511 Debris that it: 1) Collects in the Service Area; and, 2) represents to a Customer will be Processed; to
512 a Processing Site. Residue from the Construction and Demolition Debris Processing and Recycling

513 activities shall be Disposed of by FRANCHISEE or its Processor at a Disposal Site in accordance with
514 Section 5.3.

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

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

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

530 **5.3 DISPOSAL**

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

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

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

550 **5.4 BILLING**

551 FRANCHISEE shall bill all Customers and collect billings in accordance with FRANCHISEE-established Rates,
552 which are set in a manner consistent with provisions of Section 9.3. FRANCHISEE shall prepare, issue, and

553 collect bills (or shall issue written receipts for cash payments) for Collection services provided by
554 FRANCHISEE. FRANCHISEE shall be responsible for collection of payment from Customers with past due
555 accounts.

556 FRANCHISEE shall maintain copies of all billings and receipts, each in chronological order, for five (5) years
557 after expiration or termination of this Agreement. FRANCHISEE shall retrieve and make available to CITY
558 copies of the billings and receipts within thirty (30) Work Days of the City C&D Contract Manager’s written
559 request for the billings and receipts. FRANCHISEE may, at its option, maintain those records electronically,
560 on microfiche, or in any other manner, provided that the records can be preserved and retrieved for
561 inspection and verification in a timely manner.

562 **5.5 PUBLIC EDUCATION, OUTREACH AND TECHNICAL ASSISTANCE**

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

571 **5.6 PUBLIC ACCESS BY EMAIL AND TELEPHONE**

572 FRANCHISEE shall maintain an active email address and a 24-hour telephone service with recording
573 capability, where the public may report issues with FRANCHISEE’S trucks, Containers, and services.

574

575 **ARTICLE 6**

576 **STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT,**

577 **AND PERSONNEL**

578 **6.1 OPERATING DAYS, HOURS, AND SCHEDULES**

579 **A. Days and Hours of Collection.** Except as expressly authorized by the C&D Contract Manager,
580 FRANCHISEE shall not Collect or deliver Containers between 7:00 p.m. and 7:00 a.m. on weekdays,
581 and between 6:00 p.m. and 10:00 a.m. on weekends. In addition, FRANCHISEE shall conform days
582 and hours of Collection and Container delivery to the schedule and limitations specified in the
583 Customer’s building or demolition permit issued by CITY, or as specified by the City C&D Contract
584 Manager, and in accordance with the Oakland Municipal Code.

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

587 **6.2 COLLECTION STANDARDS**

588 **6.2.1 Instructions to Customer**

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

593 **6.2.2 Care of Private Property**

594 FRANCHISEE shall not damage private property. CITY shall refer complaints about damage to private
595 property to FRANCHISEE. FRANCHISEE shall repair all damage to private and public property caused by
596 its employees to its previous condition.

597 **6.2.3 Litter Abatement**

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

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

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

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

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

617 **6.2.4 Noise**

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

623 **6.3 VEHICLE REQUIREMENTS**

- 624 A. **General.** Vehicles used to provide services under this Agreement shall be kept in a safe, neat, clean,
625 and operable condition, and shall at all times be maintained and utilized in accordance with
626 Applicable Law. If FRANCHISEE fails to keep Collection vehicles in a safe and sanitary condition,
627 FRANCHISEE shall pay CITY Liquidated Damages as described in Section 11.4 and Exhibit A.
- 628 B. **Specifications.** FRANCHISEE shall register all vehicles with the California Department of Motor
629 Vehicles. All such vehicles shall comply with California Environmental Protection Agency (EPA)
630 noise emission and air quality regulations and other applicable noise control regulations.
- 631 C. **Vehicle Identification.** FRANCHISEE's name, local telephone number, and a unique identification
632 number for each vehicle used to provide services under this Agreement, shall be prominently
633 displayed on all vehicles, in letters and numbers that are a minimum of three (3) inches high. All
634 vehicles shall be uniformly painted. FRANCHISEE shall not place CITY's logo on its vehicles.
- 635 D. **Cleaning and Maintenance**
- 636 1. **Cleaning.** Collection vehicles shall be cleaned and painted as necessary to present a clean
637 appearance of the exterior and interior compartment of the vehicle at all times.
- 638 2. **Maintenance.** FRANCHISEE shall inspect each vehicle daily to ensure that all equipment is
639 operating properly. Vehicles that are not operating properly shall be taken out of service until
640 they are repaired and operating properly. FRANCHISEE shall perform all scheduled
641 maintenance functions in accordance with the manufacturer's specifications and schedule and
642 as required by Applicable Law. FRANCHISEE shall keep accurate records of all vehicle
643 maintenance, recorded according to date and mileage, and shall make such records available
644 to CITY upon request to the extent necessary to perform the inspections described in Sections
645 6.3.F and 6.7.B.
- 646 3. **Repairs.** FRANCHISEE shall repair, or arrange for the repair of, all of its vehicles and equipment
647 for which repairs are needed because of accident, breakdown, or any other cause, so as to
648 maintain all equipment in a safe and operable condition. FRANCHISEE shall maintain accurate
649 records of repair, which shall include the date/mileage, nature of repair and the signature of a
650 maintenance supervisor that the repair has been properly performed.
- 651 4. **Storage.** FRANCHISEE shall arrange to store all vehicles and other equipment in safe and secure
652 location(s) in accordance with CITY's applicable zoning regulations.
- 653 E. **Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all
654 applicable safety and local ordinances. FRANCHISEE shall not load vehicles in excess of the
655 manufacturer's recommendations or limitations imposed by State or local weight restrictions for
656 vehicles and roads.
- 657 F. **Vehicle Inspection.** CITY may inspect vehicles at any time to determine compliance with the
658 requirements of this Agreement. FRANCHISEE shall make vehicles available to CITY and/or Alameda
659 County Health Department for inspection, at any frequency CITY reasonably requests. The
660 FRANCHISEE may have such inspections conducted by the California Highway Patrol, or other
661 designated agency, and shall provide the results of such inspection to the City C&D Contract

662 Manager within ten (10) Work Days of receipt. FRANCHISEE shall maintain, at its local business
663 offices, a record of daily vehicle inspection reports for all Collection-related vehicles and shall make
664 such reports available to the City C&D Contract Manager for review at all times.

665 **6.4 CONTAINER REQUIREMENTS**

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

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

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

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

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

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

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

690 1. FRANCHISEE's failure to remove a FRANCHISEE-owned Container within five (5) calendar days
691 of receiving a written request from a Customer or the CITY or within five (5) calendar days after
692 the termination of the customer service agreement between FRANCHISEE and the Customer;
693 or,

694 2. FRANCHISEE's failure to remove a FRANCHISEE-owned Container within ten (10) calendar days
695 upon expiration or termination of this Agreement, except in the case where FRANCHISEE has
696 been granted an extension of the Term of the Agreement or FRANCHISEE has been granted a
697 subsequent agreement authorizing FRANCHISEE to Collect and transport the type or types of
698 materials for which the Container was used pursuant to this Agreement.

699 **6.5 PERSONNEL**

- 700 A. **General.** FRANCHISEE shall furnish such qualified drivers, maintenance, supervisory, Customer
701 service, clerical and other personnel as may be necessary to provide the services required by this
702 Agreement in a safe and efficient manner.
- 703 B. **Driver Qualifications.** All drivers shall be trained and qualified in the operation of Collection
704 vehicles, and must have in effect a valid license, of the appropriate class, and with appropriate
705 endorsements, issued by the California Department of Motor Vehicles. All drivers must comply with
706 all regulations and requirements set forth by the California Department of
707 Motor Vehicles and the California Vehicle Code, as they apply to the services provided under this
708 Agreement.
- 709 C. **Safety Training.** FRANCHISEE shall provide suitable operational and safety training for all of its
710 employees who operate Collection vehicles or equipment or who are otherwise directly involved in
711 such Collection, Disposal, or Processing. FRANCHISEE shall train its employees involved in
712 Collection to identify, and not to collect, Hazardous Waste or Unpermitted Materials. Upon CITY's
713 request, FRANCHISEE shall provide a copy of its safety policy, using best industry practices, and
714 safety training program, the name of its safety officer, and the frequency of its trainings.
- 715 D. **Employee Conduct and Courtesy.** FRANCHISEE shall use its best efforts to ensure that all
716 employees present a neat appearance and conduct themselves in a courteous manner.
717 FRANCHISEE shall regularly train its employees in Customer courtesy, shall prohibit the use of loud
718 or profane language, and shall instruct Collection employees to perform the work as quietly as
719 possible. If any employee is found not to be courteous or not to be performing services in the
720 manner required by this Agreement, FRANCHISEE shall take all appropriate corrective measures
721 and shall pay CITY Liquidated Damages as described in Section 11.4 and Exhibit A.
- 722 E. **Employee Identification.** While performing services under this Agreement, all of FRANCHISEE's
723 employees performing field service shall be dressed in clean clothes and shall wear identification
724 that include the employee's name and/or employee number, and FRANCHISEE's name, as approved
725 by CITY.
- 726 F. **Non-Smoking.** While performing services under this Agreement, all of FRANCHISEE's employees
727 performing field service shall refrain from smoking, in accordance with Chapter 8.30.055 of the
728 OMC and in support of LEED IEQp2 standards.

729 **6.6 UNPERMITTED MATERIALS INSPECTION AND HANDLING**

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

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

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

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

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

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

764 **6.7 COMMUNICATION AND COOPERATION WITH CITY**

765 A. **Communications.** When requested, FRANCHISEE shall meet with CITY or its agent to discuss service
766 issues. FRANCHISEE will make available for such meetings a representative with the authority and
767 knowledge to direct FRANCHISEE resources as needed to resolve matters of concern to the CITY.

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

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

775
776

ARTICLE 7 RECORD KEEPING AND REPORTING

777 **7.1 GENERAL**

778 **7.1.1 Maintenance of Records**

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

786 The gross receipts derived from the services provided for under this Agreement, whether such services
787 are performed by FRANCHISEE or by a Subcontractor or Subcontractors, shall be recorded as revenues in
788 the accounts of FRANCHISEE. FRANCHISEE shall maintain and preserve all cash, billing and disposal records
789 for a period of not less than three (3) years following the expiration or termination of the Agreement. At
790 the request of CITY, reports submitted by FRANCHISEE shall be audited and certified by an independent
791 third party selected by CITY, at CITY's expense. This audit may include a Customer billing audit in order to
792 verify that each Customer is receiving the level of service for which they are being billed.

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

795 **7.1.2 Retention of Records**

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

799 **7.1.3 Inspection of Records**

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

804 **7.1.4 Record Security**

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

808 **7.2 RECORDS**

809 **7.2.1 Financial and Operational Records**

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

- 812 A. Customer account information and loads hauled information by building or demolition permit, and
813 billing records;
- 814 B. Tonnage of Construction and Demolition Debris Collected, listed by the Processing or Disposal Site
815 where such materials were delivered.
- 816 C. Tonnage of Construction and Demolition Debris Diverted from Disposal by building or demolition
817 permit, project, and generator and supporting documentation.
- 818 D. Weight tickets from each Processing and Disposal Site, documenting the Tonnages delivered from
819 the CITY for Processing or Disposal by material type and disposition. All weight tickets shall be
820 provided listing a unique vehicle number, date, and time.
- 821 FRANCHISEE shall make records available to CITY upon request.

822 **7.2.2 Customer Records**

823 FRANCHISEE shall maintain accurate and complete records containing the number and types of accounts
824 served by FRANCHISEE. The records shall contain, at a minimum, the Customer's name, building or
825 demolition permit number, project number, type of business or identification that the service is provided
826 to a residential Service Address, phone number, address of Container delivery and Collection location,
827 date of delivery and Collection, itemized listing of services performed, type of Construction and
828 Demolition Debris Collected, tonnage Collected, and the amount charged to provide services. The
829 information shall be provided to CITY upon request.

830 **7.2.3 CERCLA Defense Records**

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

842 **7.3 GENERAL REPORTING REQUIREMENTS**

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

850 FRANCHISEE shall submit reports within thirty (30) calendar days of the end of each calendar quarter
851 (January-March, April-June, July-September, October-December). If FRANCHISEE does not submit the
852 reports by the dates required in this Article, FRANCHISEE shall pay the CITY Liquidated Damages as
853 described in Section 11.4 and Exhibit A.

854 FRANCHISEE shall submit all reports to:

855 City C&D Contract Manager
856 **Email: C&DNEF@oaklandca.gov**
857 Environmental Services Division, OPW
858 **(510) 238-SAVE (7283)**

859 **7.4 REPORTS**

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

862 A. **Tonnage.** Using the form supplied by CITY in Exhibit F (Standard Reporting Template), FRANCHISEE
863 shall report the Total Construction and Demolition Debris tonnage Collected by FRANCHISEE within
864 the Service Area during the previous quarter.

865 B. **Collection Locations and identification as Construction and Demolition Materials.** Using the form
866 supplied by CITY in Exhibit F (Standard Reporting Template), FRANCHISEE shall report the collection
867 address for each load Collected by FRANCHISEE within the Service Area during the previous quarter.
868 For each load Collected, FRANCHISEE shall report the construction or demolition permit number
869 provided by the Customer.

870 C. **Disposal and Processing Locations.** Using the form supplied by CITY in Exhibit F (Standard Reporting
871 Template), FRANCHISEE shall provide a list of the names and addresses of Processing and Disposal
872 Sites where Construction and Demolition Debris Collected within the Service Area during the
873 previous quarter was delivered.

874 D. **Customer Billings and Revenues.** Using the form supplied by CITY in Exhibit F (Standard Reporting
875 Template), FRANCHISEE shall report the total billed amounts and gross revenues (e.g., cash
876 receipts) resulting from Collection, Transportation, Processing, Recycling, and/or Disposal services
877 provided to Customers by FRANCHISEE within the Service Area under this Agreement during the
878 previous month.

879 E. **Account Information.** Using the form supplied by CITY in Exhibit F (Standard Reporting Template),
880 FRANCHISEE shall provide a quarterly listing of the services provided to each Customer within the
881 Service Area under this Agreement during the previous quarter.

882 F. **Insurance.** FRANCHISEE shall provide updated insurance certificates, in the event that any of
883 FRANCHISEE's insurance required by this Agreement has changed during the previous quarter (refer
884 to Section 10.2.6 for additional details on insurance requirements).

885 G. **FRANCHISEE Officers and Board Members.** FRANCHISEE shall provide a list of FRANCHISEE's
886 officers and members of its board of directors (only required with the January-March quarterly
887 report, or in the event of a change in the officers or board members).

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

892 **7.5 CITY C&D CONTRACT MANAGER**

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

895 City C&D Contract Manager
896 Environmental Services Division, OPW
897 City of Oakland
898 250 Frank Ogawa Plaza, Suite 5301
899 Oakland, CA 94612
900 Email: C&DNEF@oaklandca.gov
901 (510) 238-SAVE (7283)

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

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

911 In the event of dispute between the City C&D Contract Manager and FRANCHISEE regarding the
912 interpretation of or the performance of Services under this Agreement, the City C&D Contract Manager's
913 determination shall be conclusive except where such determination results in a material impact to
914 FRANCHISEE's revenue and/or cost of operations. In the event of a dispute between the City C&D Contract
915 Manager and FRANCHISEE results in such material impact to FRANCHISEE, FRANCHISEE may appeal the
916 determination of the City C&D Contract Manager to the City Administrator, or City Administrator's
917 designee, whose determination shall be conclusive. For the purposes of this section, "material impact" is
918 an amount equal to or greater than one-quarter (1/4) of one percent (1%) of FRANCHISEE's annual gross
919 receipts under this Agreement.

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

925 **ARTICLE 8**
926 **FRANCHISE FEES AND OTHER FEES**

927 **8.1 GENERAL**

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

930 **8.2 APPLICATION FEE**

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

934 **8.3 FRANCHISE FEE**

935 FRANCHISEE shall pay CITY a Franchise Fee equal to one percent (1%) of the sum of the total amount billed
936 to Customers of FRANCHISEE for all non-exclusive services provided for under this Agreement herein and
937 for any other services performed under this Agreement. Franchise Fees shall be paid within thirty (30)
938 days of the end of each calendar quarter (January-March, April-June, July-September, October-December)
939 for the total amount billed and sold in that quarter.

940 **8.4 ADMINISTRATIVE FEE**

941 FRANCHISEE shall pay an Administrative Fee to CITY each quarter. The amount of the Administrative Fee
942 shall be ten dollars (\$10.00) per load of Construction and Demolition Debris Collected from Customer
943 Service Addresses and shall be paid within thirty (30) days of the end of each calendar quarter (January-
944 March, April-June, July-September, October-December). CITY shall use the Administrative Fee to offset
945 expenses including staffing costs related to contract management, compliance, and monitoring, and to
946 enforce the Agreement with respect to any violations by third parties, including initiating and/or assisting
947 in prosecuting enforcement actions. CITY shall retain the sole right to set priorities for its contract
948 monitoring and enforcement among CITY personnel. This fee shall be a pass-through cost.

949 **8.5 OTHER FEES**

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

952 **8.6 ADJUSTMENT TO FEES**

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

954 **8.7 PAYMENT SCHEDULE AND LATE FEES**

955 On or before the thirtieth (30th) day following the end of the quarter of January-March 2017 and each
956 quarter thereafter during the Term of this Agreement, FRANCHISEE shall remit to CITY all fees as described
957 in this Article. If such remittance is not paid to CITY on or before the thirtieth (30th) day following each
958 quarter, FRANCHISEE shall pay, in addition to the amount owed to CITY, two percent (2%) of the amount
959 owing for that quarter; plus an additional two percent (2%) owing on any unpaid balance for each
960 following thirty (30) calendar day period the fee remains unpaid.

961 Each quarterly remittance to CITY shall be accompanied by a statement itemizing each fee paid; detailing
962 calculation of all fees consistent with FRANCHISEE’S submittal of Exhibit F (Standard Reporting Template);
963 and stating actual gross revenues (e.g., cash receipts) for the quarterly period collected from all operations
964 conducted or permitted by this Agreement. Each remittance including all supporting documentation shall
965 be provided to:

966 City C&D Contract Manager
967 Environmental Services Division, OPW
968 City of Oakland
969 250 Frank Ogawa Plaza, Suite 5301
970 Oakland, CA 94612
971 Email: C&DNEF@oaklandca.gov

972 **8.8 OVERPAYMENT OF FEES**

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

979 **ARTICLE 9**

980 **FRANCHISEE’S COMPENSATION AND RATES**

981 **9.1 FRANCHISEE’S COMPENSATION**

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

986 FRANCHISEE’S compensation provided for in this Article shall be the full, entire, and complete
987 compensation due to FRANCHISEE pursuant to this Agreement for all labor, equipment, materials and
988 supplies, Processing, Recycling and Disposal fees, regulatory fees, CITY fees, taxes, insurance, bonds,
989 overhead, operations, profit and all other things necessary to perform all the services in the manner
990 required by this Agreement.

991 If FRANCHISEE’S costs are more than FRANCHISEE’S compensation, FRANCHISEE shall not be compensated
992 for the difference in costs and revenues. If FRANCHISEE’S costs are less than FRANCHISEE’S compensation,
993 FRANCHISEE shall retain the difference.

994 **9.2 CITY’S RIGHT TO SET MAXIMUM RATES**

995 CITY reserves the right to establish maximum Rates for Construction and Demolition Debris Collection
996 services provided under this Agreement in the event that: (a) there are four (4) or fewer companies
997 holding non-exclusive franchise agreements for Collection of Construction and Demolition Debris, or (b)
998 the Rates charged by the companies holding non-exclusive franchise agreements for Collection of
999 Construction and Demolition Debris are no longer comparable to those of other jurisdictions, as

1000 reasonably determined by CITY. If CITY chooses to exercise its right to set maximum Rates, CITY shall
1001 notify FRANCHISEE at least one hundred eighty (180) calendar days prior to the date that maximum Rates
1002 become effective. In such case, CITY will set maximum Rates with consideration of reasonable and
1003 necessary costs for Collection, Processing, and Disposal and with the intention of setting maximum Rates
1004 that will enable parties, including FRANCHISEE, that have executed non-exclusive franchise agreements
1005 with the CITY for Collection of Construction and Demolition Debris the ability to recover reasonable and
1006 necessary costs and a reasonable profit.

1007 **9.3 FRANCHISEE'S RATES**

1008 FRANCHISEE shall set the Rates it charges its Customers for Collection services by mutual written
1009 agreement between the FRANCHISEE and Customer. FRANCHISEE's Rates shall not exceed CITY-
1010 established maximum Rates, if CITY exercises its rights under Section 9.2.

1011 **ARTICLE 10**
1012 **INDEMNITY AND INSURANCE**

1013 **10.1 INDEMNIFICATION**

1014 FRANCHISEE shall indemnify, defend with counsel acceptable to CITY, protect and hold harmless CITY and
1015 each of its officers, officials, employees, volunteers, and agents (collectively, indemnitees) from and
1016 against all claims, damages (including but not limited to special, consequential, natural resources and
1017 punitive damages), injuries, costs, (including without limit any and all response, remediation and removal
1018 costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings,
1019 interest, fines, charges, penalties, and expenses (including without limit attorneys' expert witness fees
1020 and costs incurred in connection with defending against any of the foregoing or in enforcing this
1021 indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted
1022 against, indemnitees arising from or attributable to the acts or omissions of FRANCHISEE whether or not
1023 negligent or otherwise culpable, in connection with or related to the performance of this Agreement,
1024 except such loss or damage which was caused by the sole negligence or willful misconduct of CITY.

1025 FRANCHISEE's duty to defend and indemnify herein shall include Damages arising from or attributable to
1026 any operations, repairs, clean-up or detoxification, or other plan (regardless of whether undertaken due
1027 to governmental action) concerning any Hazardous Waste Collected in the Service Area. FRANCHISEE
1028 shall be required to indemnify CITY for the costs for any claims arising from the Processing, Recycling, or
1029 Disposal of Construction and Demolition Debris, including, but not limited to, claims arising under the
1030 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The foregoing is
1031 intended to operate as an agreement to defend and indemnify and hold harmless indemnitees to the full
1032 extent permitted for liability pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and
1033 California Health and Safety Code Section 25364.

1034 In addition, FRANCHISEE's duty to defend and indemnify herein includes all fines and/or penalties imposed
1035 by the California Department of Resources Recycling and Recovery, subject to the restrictions set forth in
1036 Public Resources Code Section 40059.1, if the requirements of the AB 939 or AB 341 are not met by the
1037 FRANCHISEE with respect to the Construction and Demolition Debris Collected under this Agreement, and
1038 such failure is due to FRANCHISEE delays in providing information that prevents FRANCHISEE or CITY from
1039 submitting reports required by the AB 939 or AB 341 in a timely manner.

1040 This provision will survive the expiration or earlier termination of this Agreement and shall not be
1041 construed as a waiver of rights by CITY to contribution or indemnity from third parties.

1042 **10.2 INSURANCE**

1043 Unless a waiver is obtained from the City’s Risk Manager, FRANCHISEE must provide the insurance listed
1044 in Schedule Q Insurance Requirements. Schedule Q is attached and incorporated herein by reference.

1045 **ARTICLE 11**
1046 **DEFAULT AND REMEDIES**

1047 **11.1 EVENTS OF DEFAULT**

1048 Each of the following shall constitute an event of default (“Event of Default”) hereunder:

1049 A. FRANCHISEE fails to perform its obligations under this Agreement, or future amendment to this
1050 Agreement, including, but not limited to, FRANCHISEE’s failure to pay CITY fees in accordance with
1051 Article 8 of this Agreement, and/or use fully permitted Processing and Disposal Sites, and the
1052 breach continues for or repeats after more than ten (10) Work Days after written notice from the
1053 CITY for the correction thereof;

1054 B. Any representation, warranty, or disclosure made to CITY by FRANCHISEE in connection with or as
1055 an inducement to entering into this Agreement or any future amendment to this Agreement, which
1056 proves to be false or misleading in any material respect as of the time such representation or
1057 disclosure is made, whether or not any such representation, warranty, or disclosure appears as part
1058 of this Agreement;

1059 C. There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting
1060 possession on, the operating equipment of FRANCHISEE, including without limit its vehicles,
1061 maintenance or office facilities, or any part thereof of such proportion as to substantially impair
1062 FRANCHISEE’s ability to perform under this Agreement and which cannot be released, bonded, or
1063 otherwise lifted within two (2) Work Days;

1064 D. FRANCHISEE files a voluntary petition for debt relief under any applicable bankruptcy, insolvency,
1065 debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment
1066 of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of
1067 equipment no longer useful to FRANCHISEE or necessary for this Agreement), trustee (other than
1068 as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of
1069 FRANCHISEE for any part of FRANCHISEE’s operating assets or any substantial part of FRANCHISEE’s
1070 property, or shall make any general assignment for the benefit of FRANCHISEE’s creditors, or shall
1071 fail generally to pay FRANCHISEE’s debts as they become due or shall take any action in furtherance
1072 of any of the foregoing;

1073 E. A court having jurisdiction shall enter a decree or order for relief in respect of FRANCHISEE, in any
1074 involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or
1075 hereafter in effect, or FRANCHISEE shall consent to or shall fail to oppose any such proceeding, or
1076 any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian,

1077 trustee, sequestrator (or similar official) of FRANCHISEE or for any part of FRANCHISEE’s operating
1078 equipment or assets, or orders the winding up or liquidation of the affairs of FRANCHISEE;

1079 F. FRANCHISEE performance under the Agreement evidences a repeated pattern of inadequate or
1080 untimely compliance and/or noncompliance with the terms of the Agreement, including but not
1081 limited to repeated CITY assessment, or consideration of assessment of Liquidated Damages as
1082 provided in Section 11.4.

1083 **11.2 RIGHT TO TERMINATE UPON DEFAULT**

1084 Upon a default by FRANCHISEE, CITY may terminate this Agreement within ten (10) calendar days of the
1085 default but no later than one hundred eighty (180) calendar days after the default. Such termination shall
1086 be effective ten (10) calendar days following CITY’s written notice to FRANCHISEE, and such termination
1087 shall be effective without the need for any hearing, suit, or legal action.

1088 **11.3 CITY’S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

1089 CITY’s right to terminate the Agreement under Section 11.2 is not exclusive, and CITY’s termination of the
1090 Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies.
1091 Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which
1092 CITY may have.

1093 By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the
1094 lead time required to effect alternative service, and the rights granted by CITY to FRANCHISEE, the remedy
1095 of damages for a breach hereof by FRANCHISEE is inadequate and CITY shall be entitled to injunctive relief.

1096 **11.4 LIQUIDATED DAMAGES**

1097 A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if
1098 not impossible, to reasonably ascertain the extent of damages which shall be incurred by CITY as a
1099 result of a breach by FRANCHISEE of its obligations under this Agreement. The factors relating to
1100 the impracticability of ascertaining damages include, but are not limited to, the fact that: (i)
1101 substantial damage results to members of the public who are denied services or denied quality or
1102 reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the
1103 benefits of the Agreement to individual members of the general public for whose benefit this
1104 Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of
1105 measurement in precise monetary terms; (iii) that services might be available at substantially lower
1106 costs than alternative services and the monetary loss resulting from denial of services or denial of
1107 quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the
1108 termination of this Agreement for such breaches, and other remedies are, at best, a means of future
1109 correction and not remedies which make the public whole for past breaches.

1110 B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties
1111 further acknowledge that consistent, reliable Collection, Processing, and Disposal service is of
1112 utmost importance to CITY and that CITY has considered and relied on FRANCHISEE’s
1113 representations as to its quality of service commitment in executing this Agreement. The Parties
1114 recognize that some quantified standards of performance are necessary and appropriate to ensure
1115 consistent and reliable service and performance. The Parties further recognize that if FRANCHISEE
1116 fails to achieve the performance standards, or fails to submit required documents in a timely
1117 manner, CITY and its residents and businesses will suffer damages, and that it is, and will be,

1118 impractical and extremely difficult to ascertain and determine the exact amount of damages that
1119 CITY will suffer. Therefore, without prejudice to CITY’s right to treat such non-performance as an
1120 event of default under this Article, the Parties agree that the Liquidated Damages amounts
1121 established in Exhibit A of this Agreement and the following Liquidated Damage amounts represent
1122 a reasonable estimate of the amount of such damages considering all of the circumstances existing
1123 on the Effective Date of this Agreement, including the relationship of the sums to the range of harm
1124 to CITY that reasonably could be anticipated and the anticipation that proof of actual damages
1125 would be costly or impractical.

1126 FRANCHISEE agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in
1127 the Schedule of Liquidated Damages, Exhibit A.

1128 CITY may determine the occurrence of events giving rise to Liquidated Damages through the
1129 observation of its own employees or representative or investigation of complaints by Customers or
1130 occupants.

1131 Before assessing Liquidated Damages, CITY shall give FRANCHISEE notice of its intention to do so.
1132 The notice will include a brief description of the incident(s) and/or non-performance. CITY may
1133 review (and make copies at its own expense) all information in the possession of FRANCHISEE
1134 relating to incident(s) and non-performance. CITY may, within ten (10) calendar days after issuing
1135 the notice, request a meeting with FRANCHISEE. CITY may present evidence of non-performance
1136 in writing and through testimony of its employees and others relevant to the incident(s) and non-
1137 performance. CITY will provide FRANCHISEE with a written explanation of its determination on
1138 each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages
1139 under this Section 11.4. The decision of CITY shall be final and CITY shall not be subject to, or
1140 required to exhaust, any further administrative remedies.

1141 C. **Amount.** CITY may assess Liquidated Damages for each calendar day or event, as appropriate, that
1142 FRANCHISEE is determined to be liable in accordance with this Agreement in the amounts specified
1143 in Exhibit A.

1144 D. **Timing of Payment.** FRANCHISEE shall pay any Liquidated Damages assessed by CITY within ten
1145 (10) calendar days of the date the Liquidated Damages are assessed. If they are not paid within the
1146 ten (10) day period, CITY may order the termination of the rights or “franchise” granted by this
1147 Agreement.

1148

1149 **11.5 CONDITIONS UPON TERMINATION**

1150 In the event this Agreement is terminated under the provisions of this Article, the following conditions
1151 shall be effective:

1152 A. **Prohibit Collection Services.** FRANCHISEE shall have no right or authority to engage in Construction
1153 and Demolition Debris Collection services in the Service Area for a period of five (5) years from the
1154 date of termination, unless otherwise waived by CITY. After five (5) years, should FRANCHISEE
1155 provide proof that the event causing FRANCHISEE to default under this Agreement has been
1156 corrected, FRANCHISEE may reapply for a non-exclusive Construction and Demolition Debris

1157 Collection service franchise, and CITY, at the sole and complete discretion of CITY, may reinstate
1158 FRANCHISEE based on review of its reapplication.

1159 B. **Continuing Liabilities.** FRANCHISEE shall remain liable to CITY for:

1160 1. Fees due in accordance with Article 8 that would otherwise be payable by FRANCHISEE.

1161 2. Liquidated Damages assessed pursuant to Section 11.4.

1162 3. Reports required by Article 7 for Collection activities performed by FRANCHISEE up to and
1163 including the date of termination.

1164 4. Indemnity obligations under Section 10.1.

1165 5. Record keeping and retention obligations under Sections 7.1 and 7.2.

1166 C. **Release Customers from Obligations.** FRANCHISEE shall allow Construction and Demolition Debris
1167 Customers served by FRANCHISEE to arrange for Construction and Demolition Debris Collection
1168 services with a hauler authorized to perform such services, without penalty or liability for breach
1169 of any contract between FRANCHISEE and its Customers.

1170 D. **Remove Containers.** FRANCHISEE shall remove all of FRANCHISEE's Containers from all of
1171 FRANCHISEE's Collection locations and shall properly Recycle, Process, or Dispose of Construction
1172 and Demolition Debris in such Containers.

1173

1174

ARTICLE 12 OTHER AGREEMENTS OF THE PARTIES

1175 **12.1 RELATIONSHIP OF PARTIES**

1176 The Parties intend that FRANCHISEE shall perform the services required by this Agreement as an
1177 independent FRANCHISEE engaged by CITY and neither as an officer nor employee of CITY, nor as a partner
1178 of, or joint venture with, CITY. No employee or agent of FRANCHISEE shall be, or shall be deemed to be,
1179 an employee or agent of CITY. Except as expressly provided herein, FRANCHISEE shall have control over
1180 the manner and means of conducting the Collection, and Transportation services performed under this
1181 Agreement. FRANCHISEE shall be solely responsible for the acts and omissions of its officers, employees,
1182 Subcontractors, and agents. Neither FRANCHISEE nor its officers, employees, Subcontractors and agents
1183 shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits
1184 which accrue to CITY employees by virtue of their employment with CITY.

1185 **12.2 PERMITS AND LICENSES**

1186 FRANCHISEE shall obtain and maintain, at FRANCHISEE's sole cost and expense, all permits and licenses
1187 applicable to FRANCHISEE's operations under this Agreement which are required by any governmental
1188 agency.

1189 **12.3 COMPLIANCE WITH LAW**

1190 In the performance of this Agreement, FRANCHISEE shall comply with all Applicable Law, regulations,
1191 ordinances and codes of the federal, state and local governments, including without limitation the
1192 Municipal Code of the City of Oakland. CITY shall provide written notice to FRANCHISEE of any planned
1193 amendment of CITY ordinances that would affect the performance of FRANCHISEE’s services or
1194 obligations pursuant to this Agreement, Such notice shall be provided at least thirty (30) calendar days
1195 prior to the Council’s consideration of such an amendment.

1196 **12.4 GOVERNING LAW**

1197 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the
1198 State of California.

1199 **12.5 JURISDICTION**

1200 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the
1201 courts of Alameda County in the State of California, which shall have exclusive jurisdiction over such
1202 lawsuits.

1203 With respect to venue, the Parties agree that this Agreement is made in and will be performed in Alameda
1204 County.

1205 **12.6 BINDING ON SUCCESSORS**

1206 The provisions of this Agreement shall inure to the benefit to, and be binding on, the successors and
1207 permitted assigns of the Parties.

1208 **12.7 ASSIGNMENT**

1209 Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement
1210 to any other Person without the prior written consent of the other Party. Any such assignment made
1211 without the consent of the other Party shall be void and the attempted assignment shall constitute a
1212 material breach of this Agreement. Under no circumstances shall any assignment be considered by CITY
1213 if FRANCHISEE is in default at any time during the period of consideration.

1214 **12.8 PARTIES IN INTEREST**

1215 Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons
1216 other than the Parties to it and their representatives, successors and permitted assigns.

1217 **12.9 WAIVER**

1218 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be
1219 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of
1220 violation of the same or any other provision. The subsequent acceptance by either Party of any monies
1221 which become due hereunder, shall not be deemed to be a waiver of any pre-existing or concurrent
1222 breach or violation by the other Party of any provision of this Agreement.

1223 **12.10 NOTICE PROCEDURES**

1224 All notices, demands, requests, proposals, approvals, consents, and other communications which this
1225 Agreement requires, authorizes or contemplates, shall be in writing and shall either be personally
1226 delivered to a representative of the Parties at the address below or deposited in the United States mail,
1227 first class postage prepaid, addressed as follows:

1228 A. If to CITY:

1229 City C&D Contract Manager
1230 Environmental Services Division, OPW
1231 City of Oakland
1232 250 Frank Ogawa Plaza, Suite 5301
1233 Oakland, CA 94612
1234

1235 B. If to FRANCHISEE:

1236

1237 «Designated Representative»

1238 «Business Name»

1239 «Address for Section 1210 »

1240 «City for Section 1210», «State for Section 1210» «ZIP for Section 1210»

1241 **Initial:** _____

1242

1243 The address to which communications may be delivered may be changed from time to time by a notice
1244 given in accordance with this Section.

1245 Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) calendar days
1246 from the date it is deposited in the mail.

1247 **12.11 REPRESENTATIVES OF THE PARTIES**

1248 References in this Agreement to “CITY” shall mean the City Council and all actions to be taken by CITY
1249 shall be taken by the City Council except as provided below. The City Council may delegate, in writing,
1250 authority to the City C&D Contract Manager and/or to other CITY officials and may permit such officials,
1251 in turn, to delegate in writing some or all of such authority to subordinate officers. FRANCHISEE may rely
1252 upon actions taken by such delegates if they are within the scope of the authority properly delegated to
1253 them.

1254 FRANCHISEE shall, by the Effective Date, designate in writing a responsible officer who shall serve as the
1255 representative of FRANCHISEE in all matters related to the Agreement and shall inform CITY in writing of
1256 such designation and of any limitations upon his or her authority to bind FRANCHISEE. CITY may rely upon
1257 action taken by such designated representative as actions of FRANCHISEE unless they are outside the
1258 scope of the authority delegated to him/her by FRANCHISEE as communicated to CITY.

1259 **12.12 PUBLIC RESOURCES CODE SECTION 49523 NOTICE**

1260 Nothing in this Agreement shall be construed as providing FRANCHISEE with the five (5) year noticing
1261 rights required under PRC 49520. The parties agree that the provisions of PRC 49523 apply instead.

1262 **ARTICLE 13**
1263 **MISCELLANEOUS AGREEMENTS**

1264 **13.1 ENTIRE AGREEMENT**

1265 This Agreement, including the exhibits, represents the full and entire Agreement between the Parties with
1266 respect to the matters covered herein.

1267 **13.2 SECTION HEADINGS**

1268 The article headings and section headings in this Agreement are for convenience of reference only and
1269 are not intended to be used in the construction of this Agreement nor to alter or affect any of its
1270 provisions.

1271 **13.3 REFERENCES TO LAWS**

1272 All references in this Agreement to laws shall be understood to include such laws as they may be
1273 subsequently amended or recodified, unless otherwise specifically provided.

1274 **13.4 INTERPRETATION**

1275 This Agreement shall be interpreted and construed reasonably and neither for nor against either Party,
1276 regardless of the degree to which either Party participated in its drafting.

1277 **13.5 PRONOUNS AND PLURALS; TENSE**

1278 When not inconsistent with the context, words and phrases used in the present tense include the future,
1279 and words and phrases used in the singular number include the plural number. Whenever the context
1280 may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine
1281 and neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice
1282 versa.

1283 **13.6 TEXT TO CONTROL**

1284 The captions of the Articles or Sections in this Agreement are for convenience only and in no way define,
1285 limit, extend or describe the scope or intent of any of the provisions hereof, shall not be deemed part of
1286 this Agreement and shall not be used in construing or interpreting this Agreement.

1287 **13.7 AMENDMENT**

1288 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

1289 **13.8 SEVERABILITY**

1290 If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable,
1291 the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this

1292 Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained
1293 herein.

1294 **13.9 COUNTERPARTS**

1295 This Agreement may be executed in counterparts, each of which shall be considered an original.

1296 **13.10 EXHIBITS**

1297 Each of the exhibits identified as Exhibit "A" through "E" is attached hereto and incorporated herein and
1298 made a part hereof by this reference.

1299 **IN WITNESS WHEREOF**, the Parties have caused the Agreement to be executed on the day and year first
1300 above written.

1301

1302 **CITY OF OAKLAND**

FRANCHISEE

1303 APPROVED AS TO FORM:

1304

Signature

1305

City Attorney

«Designated Representative»

Name

1307

1308

OPW Director

«Designated Rep Title»

Title

1310

1311

1312

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EXHIBIT A

SCHEDULE FOR LIQUIDATED DAMAGES

1319 FRANCHISEE may be assessed Liquidated Damages if FRANCHISEE fails to fulfill its obligations with regards
 1320 to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement with
 1321 regards to the time frame for accomplishing each event and nature of the responsibility associated with
 1322 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

1323
 1324 * Quarterly reports shall be considered late until such time as a correct and complete
 1325 quarterly report is received by CITY. For each calendar day a report is late, the daily
 1326 Liquidated Damage shall be as indicated in the quarterly reports section above.

EXHIBIT A
SCHEDULE FOR LIQUIDATED DAMAGES

1327
1328 In placing Designee’s initials at the places provided, each Party specifically confirms the accuracy of the
1329 statements made above and the fact that each Party has had ample opportunity to consult with legal
1330 counsel and obtain an explanation of Liquidated Damage provisions of the time that the Agreement was
1331 made.

1332 FRANCHISEE CITY
1333
1334 *Initial Here:* _____ *Initial Here:* _____

EXHIBIT C

STATEMENT OF APPLICANT'S UNDERSTANDING AND REPRESENTATIONS

1358 The undersigned (who is duly authorized to bind the company submitting this application) has reviewed
1359 the requirements of the non-exclusive franchise agreement for Collection services for Construction and
1360 Demolition Debris, its exhibits, and reference documents. In addition, the undersigned attests that this
1361 application and any other supplementary information submitted with this application do not: (i) contain
1362 any untrue statement of a material fact, (ii) contain inaccurate or misleading information, or (iii) omit to
1363 state a material fact that is necessary to make the statements made, in light of the circumstances in which
1364 they were made, not misleading.

1365 «Designated Representative» _____
1366 _____
1367 **Print Name** **Date**

1368 «Designated Rep Title» _____
1369 **Title**

1370 «Business Name» _____
1371 **Company Name**

1372 _____
1373 **Signature**

EXHIBIT D

BUSINESS TAX CERTIFICATE

1374
1375

{To be inserted by Franchisee}

EXHIBIT E

INSURANCE DOCUMENTS

1376
1377
1378

{To be inserted by Franchisee}

EXHIBIT E

INSURANCE DOCUMENTS

To be provided separately by the City electronically

EXHIBIT F STANDARD REPORTING TEMPLATE

Total Loads of C&D Collected	-
Administrative Fee Per Load	\$ 34.50
Administrative Fee Payment Due	
C. Total Tons	
Total Tons of C&D Collected	-
D. Total Fees (per "A" and "B" above)	
Franchise Fees	
Administrative Fees	
Total Fee Payments Due to City*	

Spreadsheet Users

To submit your quarterly REPORT - please EMAIL this Excel spreadsheet to C&DNEF@oaklandca.gov

To submit your quarterly PAYMENT - please print this page and mail it with a certified or cashier's check, or money order payable to "City of Oakland" to this address:

City of Oakland
 OPW Fiscal Services Division
 250 Frank H. Ogawa Plaza, Ste. 3341
 Oakland, CA 94612

Recycling Hotline: (510) 238 SAVE (7283)
C&DNEF@oaklandca.gov
<https://www.oaklandca.gov/topics/construction-and-demolition-recycling>

SCHEDULE Q – INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS Construction & Demolition Debris Collection

(Revised 8/8/19, removes Pollution Liability requirement)

1. Required Insurance Coverage

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- A. **Commercial General Liability insurance** shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).

Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

- B. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.
- C. **Worker's Compensation insurance** as required by the laws of the State of California, with not statutory limits, and statutory coverage may include Employers' Liability coverage, with limits less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

SCHEDULE Q – INSURANCE REQUIREMENTS

2. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- A. Insured Status (Additional Insured): Contractor shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as insured's under the Commercial General Liability Policy. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- B. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance. Any other insurance available to the City Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement); and
- C. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity; and
- D. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the contractor, its employees, agents and subcontractors; and
- E.
- F. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- G. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

SCHEDULE Q – INSURANCE REQUIREMENTS

3. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Contract, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Contract, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Contract.

5. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

6. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

7. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insured's under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

SCHEDULE Q – INSURANCE REQUIREMENTS

8. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

9. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

10. Higher Limits of Insurance

If the contractor maintains higher limits than the minimums shown above, the City shall be entitled to coverage for the higher limits maintained by the contractor.

<< END OF INSURANCE REQUIREMENTS >>