

**NON-EXCLUSIVE FRANCHISE AGREEMENT**  
**BETWEEN**  
**THE CITY OF OAKLAND**  
**AND**  
  
**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   \_\_\_\_\_

6   **FOR CONSTRUCTION AND DEMOLITION DEBRIS**  
7   **COLLECTION SERVICES**

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

12   **RECITALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

64 **ARTICLE 1**  
65 **DEFINITIONS**

---

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

237 (4) Hazardous Materials;

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

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

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

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

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

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

262 **ARTICLE 2**  
263 **REPRESENTATIONS AND WARRANTIES OF THE FRANCHISEE**

---

264 **2.1 REPRESENTATIONS AND WARRANTIES**

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

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

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

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

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

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

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

315 **ARTICLE 3**  
316 **TERM OF AGREEMENT**

---

317 **3.1 EFFECTIVE DATE**

318 FRANCHISEE may provide the Collection, Transportation, Processing, and Disposal services authorized by  
319 this Agreement commencing on the Effective Date of                     .

320 **3.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

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

- 324 A. **Accuracy of Representations.** The representations and warranties made in Article 2 of this  
325 Agreement are true and correct on and as of the Effective Date.
- 326 B. **Absence of Litigation.** There is no litigation pending on the Effective Date in any court challenging  
327 the award or execution of this Agreement or seeking to restrain or enjoin its performance.
- 328 C. **Furnishings of Insurance.** FRANCHISEE has furnished evidence of the insurance required by Article  
329 10 that is satisfactory to CITY.

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

### 334 **3.3 TERM**

335 The Term of this Agreement shall commence on the Effective Date and continue in full force until  
336 [date TBD] unless terminated earlier as set forth in Section 3.5 hereof, or the Term may be  
337 extended pursuant to Section 3.4 or terminated early for default in accordance with Section 11.2.

### 338 **3.4 CITY OPTION TO EXTEND**

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

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

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

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

371 **3.5 CITY EARLY TERMINATION OPTION**

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

377 **ARTICLE 4**  
378 **SCOPE OF AGREEMENT**

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379 **4.1 SCOPE OF AGREEMENT**

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

384 FRANCHISEE shall be responsible for the following services:

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

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

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

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

## 420 **4.2 LIMITATIONS TO SCOPE**

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

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

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

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

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

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

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

458 D. **State Government Facilities.** Construction and Demolition Debris generated by public schools,  
459 cities, the County, or federal facilities (with the exception of facilities subject to 42 U.S.C. Section  
460 6961(a)).

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

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

### 466 **4.3 CITY’S RIGHT TO GRANT MULTIPLE AGREEMENTS**

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

### 469 **4.4 AGREEMENT CONSISTENT WITH APPLICABLE LAW**

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

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

#### 478 **4.5 OWNERSHIP OF MATERIALS**

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

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

#### 486 **4.6 NOTIFICATION TO CITY OF NON-FRANCHISED HAULERS**

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

## 496 **ARTICLE 5**

### 497 **COLLECTION, TRANSPORT, PROCESSING, AND DISPOSAL**

### 498 **SERVICES**

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#### 499 **5.1 COLLECTION AND TRANSPORT**

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

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

#### 510 **5.2 PROCESSING**

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

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

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

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

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

### 531 **5.3 DISPOSAL**

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

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

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

### 551 **5.4 BILLING**

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

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

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

## 563 **5.5 PUBLIC EDUCATION, OUTREACH AND TECHNICAL ASSISTANCE**

564 FRANCHISEE shall provide Customers with education, outreach and technical assistance to aid them in  
565 complying with their obligations under the Construction and Demolition Debris Waste Reduction and  
566 Recycling Requirements Ordinance of Chapter 15.34 of the Oakland Municipal Code, as provided by CITY.  
567 FRANCHISEE must notify Customers of the services it provides, the services provided through CITY's other  
568 franchises, through the Non-Exclusive Commercial Recycling Ordinance, and of services available for  
569 Unpermitted Materials Collection and Processing, which are not acceptable in Collection Containers under  
570 this Agreement. If FRANCHISEE fails to perform some or all of the requirements described in this Section  
571 5.5, FRANCHISEE shall pay CITY Liquidated Damages as described in Section 11.4 and Exhibit A.

## 572 **5.6 PUBLIC ACCESS BY EMAIL AND TELEPHONE**

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

575

# 576 **ARTICLE 6**

## 577 **STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT,**

## 578 **AND PERSONNEL**

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### 579 **6.1 OPERATING DAYS, HOURS, AND SCHEDULES**

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

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

588 **6.2 COLLECTION STANDARDS**

589 **6.2.1 Instructions to Customer**

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

594 **6.2.2 Care of Private Property**

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

598 **6.2.3 Litter Abatement**

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

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

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

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

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

618 **6.2.4 Noise**

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

624 **6.3 VEHICLE REQUIREMENTS**

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

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

#### 666 **6.4 CONTAINER REQUIREMENTS**

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

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

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

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

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

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

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

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

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

700 **6.5 PERSONNEL**

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

730 **6.6 UNPERMITTED MATERIALS INSPECTION AND HANDLING**

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

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

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

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

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

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

## 765 **6.7 COMMUNICATION AND COOPERATION WITH CITY**

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

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

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

776  
777

## **ARTICLE 7**

### **RECORD KEEPING AND REPORTING**

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778 **7.1 GENERAL**

779 **7.1.1 Maintenance of Records**

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

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

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

796 **7.1.2 Retention of Records**

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

800 **7.1.3 Inspection of Records**

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

805 **7.1.4 Record Security**

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

809 **7.2 RECORDS**

810 **7.2.1 Financial and Operational Records**

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

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

### 823 **7.2.2 Customer Records**

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

### 831 **7.2.3 CERCLA Defense Records**

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

## 843 **7.3 GENERAL REPORTING REQUIREMENTS**

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

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

855 FRANCHISEE shall submit all reports to:

856 City C&D Contract Manager  
857 **Email: C&DNEF@oaklandnet.com**  
858 Environmental Services Division, OPW  
859 **(510) 238-SAVE (7283)**

## 860 **7.4 REPORTS**

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

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

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

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

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

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

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

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

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

## 893 **7.5 CITY C&D CONTRACT MANAGER**

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

896 City C&D Contract Manager  
897 Environmental Services Division, OPW  
898 City of Oakland  
899 250 Frank Ogawa Plaza, Suite 5301  
900 Oakland, CA 94612  
901 Email: C&DNEF@oaklandnet.com  
902 (510) 238-SAVE (7283)

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

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

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

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

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

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928 **8.1 GENERAL**

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

931 **8.2 APPLICATION FEE**

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

935 **8.3 FRANCHISE FEE**

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

942 **8.4 ADMINISTRATIVE FEE**

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

951 **8.5 OTHER FEES**

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

954 **8.6 ADJUSTMENT TO FEES**

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

956 **8.7 PAYMENT SCHEDULE AND LATE FEES**

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

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

968 City C&D Contract Manager  
969 Environmental Services Division, OPW  
970 City of Oakland  
971 250 Frank Ogawa Plaza, Suite 5301  
972 Oakland, CA 94612  
973 Email: C&DNEF@oaklandnet.com

974 **8.8 OVERPAYMENT OF FEES**

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

981 **ARTICLE 9**  
982 **FRANCHISEE’S COMPENSATION AND RATES**

---

983 **9.1 FRANCHISEE’S COMPENSATION**

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

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

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

996 **9.2 CITY’S RIGHT TO SET MAXIMUM RATES**

997 CITY reserves the right to establish maximum Rates for Construction and Demolition Debris Collection  
998 services provided under this Agreement in the event that: (a) there are four (4) or fewer companies  
999 holding non-exclusive franchise agreements for Collection of Construction and Demolition Debris, or (b)  
1000 the Rates charged by the companies holding non-exclusive franchise agreements for Collection of  
1001 Construction and Demolition Debris are no longer comparable to those of other jurisdictions, as

1002 reasonably determined by CITY. If CITY chooses to exercise its right to set maximum Rates, CITY shall  
1003 notify FRANCHISEE at least one hundred eighty (180) calendar days prior to the date that maximum Rates  
1004 become effective. In such case, CITY will set maximum Rates with consideration of reasonable and  
1005 necessary costs for Collection, Processing, and Disposal and with the intention of setting maximum Rates  
1006 that will enable parties, including FRANCHISEE, that have executed non-exclusive franchise agreements  
1007 with the CITY for Collection of Construction and Demolition Debris the ability to recover reasonable and  
1008 necessary costs and a reasonable profit.

1009 **9.3 FRANCHISEE’S RATES**

1010 FRANCHISEE shall set the Rates it charges its Customers for Collection services by mutual written  
1011 agreement between the FRANCHISEE and Customer. FRANCHISEE’s Rates shall not exceed CITY-  
1012 established maximum Rates, if CITY exercises its rights under Section 9.2.

1013 **ARTICLE 10**  
1014 **INDEMNITY AND INSURANCE**

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1015 **10.1 INDEMNIFICATION**

1016 FRANCHISEE shall indemnify, defend with counsel acceptable to CITY, protect and hold harmless CITY and  
1017 each of its officers, officials, employees, volunteers, and agents (collectively, indemnitees) from and  
1018 against all claims, damages (including but not limited to special, consequential, natural resources and  
1019 punitive damages), injuries, costs, (including without limit any and all response, remediation and removal  
1020 costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings,  
1021 interest, fines, charges, penalties, and expenses (including without limit attorneys’ expert witness fees  
1022 and costs incurred in connection with defending against any of the foregoing or in enforcing this  
1023 indemnity), (collectively, “Damages”) of any kind whatsoever paid, incurred or suffered by, or asserted  
1024 against, indemnitees arising from or attributable to the acts or omissions of FRANCHISEE whether or not  
1025 negligent or otherwise culpable, in connection with or related to the performance of this Agreement,  
1026 except such loss or damage which was caused by the sole negligence or willful misconduct of CITY.

1027 FRANCHISEE’s duty to defend and indemnify herein shall include Damages arising from or attributable to  
1028 any operations, repairs, clean-up or detoxification, or other plan (regardless of whether undertaken due  
1029 to governmental action) concerning any Hazardous Waste Collected in the Service Area. FRANCHISEE  
1030 shall be required to indemnify CITY for the costs for any claims arising from the Processing, Recycling, or  
1031 Disposal of Construction and Demolition Debris, including, but not limited to, claims arising under the  
1032 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The foregoing is  
1033 intended to operate as an agreement to defend and indemnify and hold harmless indemnitees to the full  
1034 extent permitted for liability pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and  
1035 California Health and Safety Code Section 25364.

1036 In addition, FRANCHISEE’s duty to defend and indemnify herein includes all fines and/or penalties imposed  
1037 by the California Department of Resources Recycling and Recovery, subject to the restrictions set forth in  
1038 Public Resources Code Section 40059.1, if the requirements of the AB 939 or AB 341 are not met by the  
1039 FRANCHISEE with respect to the Construction and Demolition Debris Collected under this Agreement, and  
1040 such failure is due to FRANCHISEE delays in providing information that prevents FRANCHISEE or CITY from  
1041 submitting reports required by the AB 939 or AB 341 in a timely manner.

1042 This provision will survive the expiration or earlier termination of this Agreement and shall not be  
1043 construed as a waiver of rights by CITY to contribution or indemnity from third parties.

1044 **10.2 INSURANCE**

1045 Unless a waiver is obtained from the City’s Risk Manager, FRANCHISEE must provide the insurance listed  
1046 in Schedule Q Insurance Requirements. Schedule Q is attached and incorporated herein by reference.

1047 **ARTICLE 11**  
1048 **DEFAULT AND REMEDIES**

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1049 **11.1 EVENTS OF DEFAULT**

1050 Each of the following shall constitute an event of default (“Event of Default”) hereunder:

1051 A. FRANCHISEE fails to perform its obligations under this Agreement, or future amendment to this  
1052 Agreement, including, but not limited to, FRANCHISEE’s failure to pay CITY fees in accordance with  
1053 Article 8 of this Agreement, and/or use fully permitted Processing and Disposal Sites, and the  
1054 breach continues for or repeats after more than ten (10) Work Days after written notice from the  
1055 CITY for the correction thereof;

1056 B. Any representation, warranty, or disclosure made to CITY by FRANCHISEE in connection with or as  
1057 an inducement to entering into this Agreement or any future amendment to this Agreement, which  
1058 proves to be false or misleading in any material respect as of the time such representation or  
1059 disclosure is made, whether or not any such representation, warranty, or disclosure appears as part  
1060 of this Agreement;

1061 C. There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting  
1062 possession on, the operating equipment of FRANCHISEE, including without limit its vehicles,  
1063 maintenance or office facilities, or any part thereof of such proportion as to substantially impair  
1064 FRANCHISEE’s ability to perform under this Agreement and which cannot be released, bonded, or  
1065 otherwise lifted within two (2) Work Days;

1066 D. FRANCHISEE files a voluntary petition for debt relief under any applicable bankruptcy, insolvency,  
1067 debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment  
1068 of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of  
1069 equipment no longer useful to FRANCHISEE or necessary for this Agreement), trustee (other than  
1070 as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of  
1071 FRANCHISEE for any part of FRANCHISEE’s operating assets or any substantial part of FRANCHISEE’s  
1072 property, or shall make any general assignment for the benefit of FRANCHISEE’s creditors, or shall  
1073 fail generally to pay FRANCHISEE’s debts as they become due or shall take any action in furtherance  
1074 of any of the foregoing;

1075 E. A court having jurisdiction shall enter a decree or order for relief in respect of FRANCHISEE, in any  
1076 involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or  
1077 hereafter in effect, or FRANCHISEE shall consent to or shall fail to oppose any such proceeding, or  
1078 any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian,

1079 trustee, sequestrator (or similar official) of FRANCHISEE or for any part of FRANCHISEE’s operating  
1080 equipment or assets, or orders the winding up or liquidation of the affairs of FRANCHISEE;

1081 F. FRANCHISEE performance under the Agreement evidences a repeated pattern of inadequate or  
1082 untimely compliance and/or noncompliance with the terms of the Agreement, including but not  
1083 limited to repeated CITY assessment, or consideration of assessment of Liquidated Damages as  
1084 provided in Section 11.4.

1085 **11.2 RIGHT TO TERMINATE UPON DEFAULT**

1086 Upon a default by FRANCHISEE, CITY may terminate this Agreement within ten (10) calendar days of the  
1087 default but no later than one hundred eighty (180) calendar days after the default. Such termination shall  
1088 be effective ten (10) calendar days following CITY’s written notice to FRANCHISEE, and such termination  
1089 shall be effective without the need for any hearing, suit, or legal action.

1090 **11.3 CITY’S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

1091 CITY’s right to terminate the Agreement under Section 11.2 is not exclusive, and CITY’s termination of the  
1092 Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies.  
1093 Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which  
1094 CITY may have.

1095 By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the  
1096 lead time required to effect alternative service, and the rights granted by CITY to FRANCHISEE, the remedy  
1097 of damages for a breach hereof by FRANCHISEE is inadequate and CITY shall be entitled to injunctive relief.

1098 **11.4 LIQUIDATED DAMAGES**

1099 A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if  
1100 not impossible, to reasonably ascertain the extent of damages which shall be incurred by CITY as a  
1101 result of a breach by FRANCHISEE of its obligations under this Agreement. The factors relating to  
1102 the impracticability of ascertaining damages include, but are not limited to, the fact that: (i)  
1103 substantial damage results to members of the public who are denied services or denied quality or  
1104 reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the  
1105 benefits of the Agreement to individual members of the general public for whose benefit this  
1106 Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of  
1107 measurement in precise monetary terms; (iii) that services might be available at substantially lower  
1108 costs than alternative services and the monetary loss resulting from denial of services or denial of  
1109 quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the  
1110 termination of this Agreement for such breaches, and other remedies are, at best, a means of future  
1111 correction and not remedies which make the public whole for past breaches.

1112 B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties  
1113 further acknowledge that consistent, reliable Collection, Processing, and Disposal service is of  
1114 utmost importance to CITY and that CITY has considered and relied on FRANCHISEE’s  
1115 representations as to its quality of service commitment in executing this Agreement. The Parties  
1116 recognize that some quantified standards of performance are necessary and appropriate to ensure  
1117 consistent and reliable service and performance. The Parties further recognize that if FRANCHISEE  
1118 fails to achieve the performance standards, or fails to submit required documents in a timely  
1119 manner, CITY and its residents and businesses will suffer damages, and that it is, and will be,

1120 impractical and extremely difficult to ascertain and determine the exact amount of damages that  
1121 CITY will suffer. Therefore, without prejudice to CITY’s right to treat such non-performance as an  
1122 event of default under this Article, the Parties agree that the Liquidated Damages amounts  
1123 established in Exhibit A of this Agreement and the following Liquidated Damage amounts represent  
1124 a reasonable estimate of the amount of such damages considering all of the circumstances existing  
1125 on the Effective Date of this Agreement, including the relationship of the sums to the range of harm  
1126 to CITY that reasonably could be anticipated and the anticipation that proof of actual damages  
1127 would be costly or impractical.

1128 FRANCHISEE agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in  
1129 the Schedule of Liquidated Damages, Exhibit A.

1130 CITY may determine the occurrence of events giving rise to Liquidated Damages through the  
1131 observation of its own employees or representative or investigation of complaints by Customers or  
1132 occupants.

1133 Before assessing Liquidated Damages, CITY shall give FRANCHISEE notice of its intention to do so.  
1134 The notice will include a brief description of the incident(s) and/or non-performance. CITY may  
1135 review (and make copies at its own expense) all information in the possession of FRANCHISEE  
1136 relating to incident(s) and non-performance. CITY may, within ten (10) calendar days after issuing  
1137 the notice, request a meeting with FRANCHISEE. CITY may present evidence of non-performance  
1138 in writing and through testimony of its employees and others relevant to the incident(s) and non-  
1139 performance. CITY will provide FRANCHISEE with a written explanation of its determination on  
1140 each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages  
1141 under this Section 11.4. The decision of CITY shall be final and CITY shall not be subject to, or  
1142 required to exhaust, any further administrative remedies.

1143 C. **Amount.** CITY may assess Liquidated Damages for each calendar day or event, as appropriate, that  
1144 FRANCHISEE is determined to be liable in accordance with this Agreement in the amounts specified  
1145 in Exhibit A.

1146 D. **Timing of Payment.** FRANCHISEE shall pay any Liquidated Damages assessed by CITY within ten  
1147 (10) calendar days of the date the Liquidated Damages are assessed. If they are not paid within the  
1148 ten (10) day period, CITY may order the termination of the rights or “franchise” granted by this  
1149 Agreement.

1150

## 1151 **11.5 CONDITIONS UPON TERMINATION**

1152 In the event this Agreement is terminated under the provisions of this Article, the following conditions  
1153 shall be effective:

1154 A. **Prohibit Collection Services.** FRANCHISEE shall have no right or authority to engage in Construction  
1155 and Demolition Debris Collection services in the Service Area for a period of five (5) years from the  
1156 date of termination, unless otherwise waived by CITY. After five (5) years, should FRANCHISEE  
1157 provide proof that the event causing FRANCHISEE to default under this Agreement has been  
1158 corrected, FRANCHISEE may reapply for a non-exclusive Construction and Demolition Debris

1159 Collection service franchise, and CITY, at the sole and complete discretion of CITY, may reinstate  
1160 FRANCHISEE based on review of its reapplication.

1161 B. **Continuing Liabilities.** FRANCHISEE shall remain liable to CITY for:

1162 1. Fees due in accordance with Article 8 that would otherwise be payable by FRANCHISEE.

1163 2. Liquidated Damages assessed pursuant to Section 11.4.

1164 3. Reports required by Article 7 for Collection activities performed by FRANCHISEE up to and  
1165 including the date of termination.

1166 4. Indemnity obligations under Section 10.1.

1167 5. Record keeping and retention obligations under Sections 7.1 and 7.2.

1168 C. **Release Customers from Obligations.** FRANCHISEE shall allow Construction and Demolition Debris  
1169 Customers served by FRANCHISEE to arrange for Construction and Demolition Debris Collection  
1170 services with a hauler authorized to perform such services, without penalty or liability for breach  
1171 of any contract between FRANCHISEE and its Customers.

1172 D. **Remove Containers.** FRANCHISEE shall remove all of FRANCHISEE's Containers from all of  
1173 FRANCHISEE's Collection locations and shall properly Recycle, Process, or Dispose of Construction  
1174 and Demolition Debris in such Containers.

1175 **ARTICLE 12**  
1176 **OTHER AGREEMENTS OF THE PARTIES**

---

1177 **12.1 RELATIONSHIP OF PARTIES**

1178 The Parties intend that FRANCHISEE shall perform the services required by this Agreement as an  
1179 independent FRANCHISEE engaged by CITY and neither as an officer nor employee of CITY, nor as a partner  
1180 of, or joint venture with, CITY. No employee or agent of FRANCHISEE shall be, or shall be deemed to be,  
1181 an employee or agent of CITY. Except as expressly provided herein, FRANCHISEE shall have control over  
1182 the manner and means of conducting the Collection, and Transportation services performed under this  
1183 Agreement. FRANCHISEE shall be solely responsible for the acts and omissions of its officers, employees,  
1184 Subcontractors, and agents. Neither FRANCHISEE nor its officers, employees, Subcontractors and agents  
1185 shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits  
1186 which accrue to CITY employees by virtue of their employment with CITY.

1187 **12.2 PERMITS AND LICENSES**

1188 FRANCHISEE shall obtain and maintain, at FRANCHISEE's sole cost and expense, all permits and licenses  
1189 applicable to FRANCHISEE's operations under this Agreement which are required by any governmental  
1190 agency.

1191 **12.3 COMPLIANCE WITH LAW**

1192 In the performance of this Agreement, FRANCHISEE shall comply with all Applicable Law, regulations,  
1193 ordinances and codes of the federal, state and local governments, including without limitation the  
1194 Municipal Code of the City of Oakland. CITY shall provide written notice to FRANCHISEE of any planned  
1195 amendment of CITY ordinances that would affect the performance of FRANCHISEE’s services or  
1196 obligations pursuant to this Agreement, Such notice shall be provided at least thirty (30) calendar days  
1197 prior to the Council’s consideration of such an amendment.

1198 **12.4 GOVERNING LAW**

1199 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the  
1200 State of California.

1201 **12.5 JURISDICTION**

1202 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the  
1203 courts of Alameda County in the State of California, which shall have exclusive jurisdiction over such  
1204 lawsuits.

1205 With respect to venue, the Parties agree that this Agreement is made in and will be performed in Alameda  
1206 County.

1207 **12.6 BINDING ON SUCCESSORS**

1208 The provisions of this Agreement shall inure to the benefit to, and be binding on, the successors and  
1209 permitted assigns of the Parties.

1210 **12.7 ASSIGNMENT**

1211 Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement  
1212 to any other Person without the prior written consent of the other Party. Any such assignment made  
1213 without the consent of the other Party shall be void and the attempted assignment shall constitute a  
1214 material breach of this Agreement. Under no circumstances shall any assignment be considered by CITY  
1215 if FRANCHISEE is in default at any time during the period of consideration.

1216 **12.8 PARTIES IN INTEREST**

1217 Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons  
1218 other than the Parties to it and their representatives, successors and permitted assigns.

1219 **12.9 WAIVER**

1220 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be  
1221 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of  
1222 violation of the same or any other provision. The subsequent acceptance by either Party of any monies  
1223 which become due hereunder, shall not be deemed to be a waiver of any pre-existing or concurrent  
1224 breach or violation by the other Party of any provision of this Agreement.

1225 **12.10 NOTICE PROCEDURES**

1226 All notices, demands, requests, proposals, approvals, consents, and other communications which this  
1227 Agreement requires, authorizes or contemplates, shall be in writing and shall either be personally  
1228 delivered to a representative of the Parties at the address below or deposited in the United States mail,  
1229 first class postage prepaid, addressed as follows:

1230 A. If to CITY:

1231 City C&D Contract Manager  
1232 Environmental Services Division, OPW  
1233 City of Oakland  
1234 250 Frank Ogawa Plaza, Suite 5301  
1235 Oakland, CA 94612

1236  
1237 B. If to FRANCHISEE:

1238  
1239 \_\_\_\_\_  
1240 \_\_\_\_\_  
1241 \_\_\_\_\_  
1242 \_\_\_\_\_

1243  
1244 The address to which communications may be delivered may be changed from time to time by a notice  
1245 given in accordance with this Section.

1246 Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) calendar days  
1247 from the date it is deposited in the mail.

1248 **12.11 REPRESENTATIVES OF THE PARTIES**

1249 References in this Agreement to "CITY" shall mean the City Council and all actions to be taken by CITY  
1250 shall be taken by the City Council except as provided below. The City Council may delegate, in writing,  
1251 authority to the City C&D Contract Manager and/or to other CITY officials and may permit such officials,  
1252 in turn, to delegate in writing some or all of such authority to subordinate officers. FRANCHISEE may rely  
1253 upon actions taken by such delegates if they are within the scope of the authority properly delegated to  
1254 them.

1255 FRANCHISEE shall, by the Effective Date, designate in writing a responsible officer who shall serve as the  
1256 representative of FRANCHISEE in all matters related to the Agreement and shall inform CITY in writing of  
1257 such designation and of any limitations upon his or her authority to bind FRANCHISEE. CITY may rely upon  
1258 action taken by such designated representative as actions of FRANCHISEE unless they are outside the  
1259 scope of the authority delegated to him/her by FRANCHISEE as communicated to CITY.

1260 **12.12 PUBLIC RESOURCES CODE SECTION 49523 NOTICE**

1261 Nothing in this Agreement shall be construed as providing FRANCHISEE with the five (5) year noticing  
1262 rights required under PRC 49520. The parties agree that the provisions of PRC 49523 apply instead.

1263 **ARTICLE 13**  
1264 **MISCELLANEOUS AGREEMENTS**

---

1265 **13.1 ENTIRE AGREEMENT**

1266 This Agreement, including the exhibits, represents the full and entire Agreement between the Parties with  
1267 respect to the matters covered herein.

1268 **13.2 SECTION HEADINGS**

1269 The article headings and section headings in this Agreement are for convenience of reference only and  
1270 are not intended to be used in the construction of this Agreement nor to alter or affect any of its  
1271 provisions.

1272 **13.3 REFERENCES TO LAWS**

1273 All references in this Agreement to laws shall be understood to include such laws as they may be  
1274 subsequently amended or recodified, unless otherwise specifically provided.

1275 **13.4 INTERPRETATION**

1276 This Agreement shall be interpreted and construed reasonably and neither for nor against either Party,  
1277 regardless of the degree to which either Party participated in its drafting.

1278 **13.5 PRONOUNS AND PLURALS; TENSE**

1279 When not inconsistent with the context, words and phrases used in the present tense include the future,  
1280 and words and phrases used in the singular number include the plural number. Whenever the context  
1281 may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine  
1282 and neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice  
1283 versa.

1284 **13.6 TEXT TO CONTROL**

1285 The captions of the Articles or Sections in this Agreement are for convenience only and in no way define,  
1286 limit, extend or describe the scope or intent of any of the provisions hereof, shall not be deemed part of  
1287 this Agreement and shall not be used in construing or interpreting this Agreement.

1288 **13.7 AMENDMENT**

1289 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

1290 **13.8 SEVERABILITY**

1291 If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable,  
1292 the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this  
1293 Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained  
1294 herein.

1295 **13.9 COUNTERPARTS**

1296 This Agreement may be executed in counterparts, each of which shall be considered an original.

1297 **13.10 EXHIBITS**

1298 Each of the exhibits identified as Exhibit "A" through "E" is attached hereto and incorporated herein and  
1299 made a part hereof by this reference.

1300 **IN WITNESS WHEREOF**, the Parties have caused the Agreement to be executed on the day and year first  
1301 above written.

1302

1303 **CITY OF OAKLAND**

**FRANCHISEE**

1304 \_\_\_\_\_

\_\_\_\_\_

1305 City Administrator

Name

1306

1307 APPROVED AS TO FORM:

\_\_\_\_\_

Title

1308

1309

\_\_\_\_\_

Address

1310

1311 \_\_\_\_\_

City Attorney

\_\_\_\_\_

1312

City

1313

1314 \_\_\_\_\_

\_\_\_\_\_

Business License

1315 Risk Manager

1316

1317

1318 ATTEST:

1319 \_\_\_\_\_

1320 City Clerk

## EXHIBIT A

# SCHEDULE FOR LIQUIDATED DAMAGES

---

1321 FRANCHISEE may be assessed Liquidated Damages if FRANCHISEE fails to fulfill its obligations with regards  
 1322 to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement with  
 1323 regards to the time frame for accomplishing each event and nature of the responsibility associated with  
 1324 the event unless otherwise stated in this Exhibit.

1.	<b>Leaks, Litter, or Spills.</b> 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.	<b>Unauthorized Collection Hours.</b> For each occurrence over five during a calendar year of Collecting Construction and Demolition Debris during unauthorized hours.	\$300/ event
3.	<b>Excessive Noise.</b> 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.	<b>Cleaning Collection Vehicles.</b> 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.	<b>Labeling of Containers.</b> For each occurrence of FRANCHISEE’s failure to correctly label FRANCHISEE-owned Containers (in accordance with Section 6.4.C).	\$500/ event
6.	<b>Reports.</b> Failure to submit reports in the timeframe specified in this Agreement.	\$300/ day*
7.	<b>Report Unpermitted Material.</b> For each failure to notify the appropriate authorities of reportable quantities of Unpermitted Material.	\$500/ event
8.	<b>Failure to Divert Material.</b> 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.	<b>Failure to Perform Public Education and Outreach.</b> For each failure to perform public education and outreach activities as required by Section 5.5 of this Agreement.	\$300/ event
10.	<b>Failure of Other Obligations.</b> 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.	<b>Repeated Failure.</b> Repeated failure to perform any required activity, obligation, or service described herein.	\$50/ occurrence, in addition to any other applicable Liquidated Damage amounts

1325  
 1326 \* Quarterly reports shall be considered late until such time as a correct and complete  
 1327 quarterly report is received by CITY. For each calendar day a report is late, the daily  
 1328 Liquidated Damage shall be as indicated in the quarterly reports section above.

**EXHIBIT A**  
**SCHEDULE FOR LIQUIDATED DAMAGES**

---

1329  
1330 In placing Designee’s initials at the places provided, each Party specifically confirms the accuracy of the  
1331 statements made above and the fact that each Party has had ample opportunity to consult with legal  
1332 counsel and obtain an explanation of Liquidated Damage provisions of the time that the Agreement was  
1333 made.

1334 FRANCHISEE CITY  
1335  
1336 Initial Here: \_\_\_\_\_ Initial Here: \_\_\_\_\_



**EXHIBIT C**  
**STATEMENT OF APPLICANT'S UNDERSTANDING**  
**AND REPRESENTATIONS**

---

1356 The undersigned (who is duly authorized to bind the company submitting this application) has reviewed  
1357 the requirements of the non-exclusive franchise agreement for Collection services for Construction and  
1358 Demolition Debris, its exhibits, and reference documents. In addition, the undersigned attests that this  
1359 application and any other supplementary information submitted with this application do not: (i) contain  
1360 any untrue statement of a material fact, (ii) contain inaccurate or misleading information, or (iii) omit to  
1361 state a material fact that is necessary to make the statements made, in light of the circumstances in which  
1362 they were made, not misleading.

1363 \_\_\_\_\_  
1364 Print Name \_\_\_\_\_  
Date

1365 \_\_\_\_\_  
1366 Title

1367 \_\_\_\_\_  
1368 Company Name

1369 \_\_\_\_\_  
1370 Signature

# EXHIBIT D

## BUSINESS TAX CERTIFICATE

---

1371  
1372

*{To be inserted by Franchisee}*

## **EXHIBIT E**

### **INSURANCE DOCUMENTS**

---

1373

1374

1375

*{To be inserted by Franchisee}*

# **EXHIBIT F**

## **STANDARD REPORTING TEMPLATE**

---

1376

*To be provided separately by the City electronically*

## Schedule Q

### INSURANCE REQUIREMENTS Construction & Demolition Debris Collection

*(Revised 01/13/17)*

a. General Liability, Automobile, Workers' Compensation and Pollution Liability

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:

- i. **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.

- ii. **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.

- iii. **Worker's Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not 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.

- iv. **Pollution Liability:** \$1,000,000 per claim/occurrence and \$2,000,000 aggregate for bodily injury, property damage, and remediation of contaminated site. This coverage shall only apply in the event that Contractor is the owner of a Processing or Disposal Site which will be used for the Processing or Disposal of any Construction and Demolition Debris Collected under this Agreement. Additionally:
- I. For Contractors engaged in: environmental remediation, emergency response, hazmat cleanup or pickup, liquid waste remediation, tank and pump cleaning, repair or installation, fire or water restoration or fuel storage dispensing, the Contractor must maintain Contractor's Pollution Liability Insurance of at least \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
  - II. For Contractor engaged in transporting waste, then transportation (1<sup>st</sup> and 3<sup>rd</sup> Party) must be included with the pollution liability.
  - III. Regardless of the coverage limits in v.a. through v.b. above, contractors coverage must be compliant with the Motor Carrier Act of 1980, California Vehicle Code Sections **34630-34634** and California Health and Safety Code Section 25169.

b. Terms Conditions and Endorsements

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

- i. 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
- ii. 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
- iii. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity; and

- iv. 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
- v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better. c. Replacement of Coverage

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.

c. 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.

d. 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.

e. 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.

f. 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.

g. 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.

h. 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.

i. 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.

j. 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.