

**NON-EXCLUSIVE SOLID WASTE COLLECTION**

**FRANCHISE AGREEMENT NO. \_\_\_\_\_**

**CITY OF PASADENA**

THIS AGREEMENT is made and entered into by and between the CITY OF PASADENA ("City"), a municipal corporation, and ("Franchisee"), a Solid Waste Collection Company with its principal place of business at \_\_\_\_\_.

WHEREAS, pursuant to Chapter 8.61 of the Pasadena Municipal Code, Franchisee has applied to City for a non-exclusive Solid Waste Collection Franchise ("Franchise"); and

WHEREAS, on \_\_\_\_\_, the City Council held a public hearing for the purpose of hearing persons in favor of or in opposition to the granting of such Franchise; and

WHEREAS, the City Council determined that Franchisee demonstrated compliance with Chapter 8.61 of the Pasadena Municipal Code and agreed to comply with all provisions of that Chapter; and

WHEREAS, it is required that City and Franchisee enter into a non-exclusive Solid Waste Collection Franchise Agreement in order that Franchisee may perform solid waste collection, transportation, disposal and recycling services in the City of Pasadena;

NOW, THEREFORE, City and Franchisee do hereby agree as follows:

1.0. GRANT OF FRANCHISE. By Ordinance No. \_\_\_\_\_, City has granted to Franchisee a non-exclusive Solid Waste Collection Franchise authorizing Franchisee to engage in the business of collecting, transporting, disposing and recycling of solid waste kept, accumulated or produced in the City of Pasadena and to use the public streets and rights of way for such purpose. This grant is pursuant to Franchisee's application for the Franchise, which application is incorporated by this reference. Franchisee is subject to the terms and conditions specified in Article XI of the Charter of the City of Pasadena, the provisions of Chapter 5.44 and Chapter 8.61 of the Pasadena Municipal Code, the terms and conditions specified in all related resolutions, and the terms and conditions of this Agreement and the representations and assurances in Franchisee's application for the Franchise.

2.0 TERM OF FRANCHISE. The term of the Franchise is from \_\_\_\_\_ through \_\_\_\_\_, inclusive. There may be up to four (4) additional renewal terms in the sole discretion of the City Manager, exercised in accordance with this section, for a maximum potential franchise length of five (5) years. The Franchisee has no vested or contract right in any such renewal term. As to any such renewal term, the City Manager may grant the renewal on a finding that the Franchisee is in compliance with the ordinance, the nonexclusive franchise agreement, and

all federal, state or local laws and regulations applicable to the operation of the nonexclusive franchise and that the public interest is served by a renewal, or (a) grant the renewal, conditionally, on a finding that the Franchisee is essentially in compliance with the ordinance, the nonexclusive franchise agreement, and all federal, state or local laws and regulations applicable to the operation of the nonexclusive franchise and that the public interest is served by a conditional renewal, or (b) may decline to grant any renewal term based on a finding either, (i) that the Franchisee is not in compliance with the ordinance, or with the nonexclusive franchise agreement, or with any federal, state or local law or regulation applicable to the operation of the nonexclusive franchise, or (ii) that the public interest is not served by a renewal because of a change in circumstances or policy related to solid waste collection or the nonexclusive franchise system. There shall be no other renewals of a nonexclusive franchise. On August 6, 2007, City Council approved an action to close the solid waste franchise system to any new franchisees. On December 6, 2010, the City Council reviewed the non-exclusive solid waste collection franchise system and approved the retention of the closed franchise system. On August 23, 2015 the solid waste collection franchise system was revisited and approved by City Council to remain a closed system.

3.0 FRANCHISE FEES.

3.1 During the term of the Franchise, Franchisee shall pay franchise fees to City, which fees shall be assessed from the date on which the ordinance granting this Franchise became effective. Such fees shall be in the amount and manner as set forth in the Resolution adopted by the City Council on June 4, 2012, a true and correct copy of which is attached hereto as Exhibit 1, and in such other amounts as are set forth in any subsequent resolutions that may be adopted by the City Council at any time during the term of the Agreement.

3.2 Franchisee shall timely pay and submit all required franchise fees to:

City of Pasadena-Public Works  
C/O Municipal Services  
P.O. Box 7138  
Pasadena, CA 91109-7138

Each payment shall be accompanied by a written statement, verified by the Franchisee or a duly authorized representative of the Franchisee, showing in such form and detail as the Director of the Department of Public Works may prescribe, the calculation of the franchise fee payable by the Franchisee and such other information as the Director of the Department of Public Works may require as material to a determination of the amount due.

3.3 The first payment of the franchise fees will be due on \_\_\_\_\_, and payments shall be due on the first day of every month thereafter. Specifically, fees on Franchisee's revenue shall be due and payable on the first day of the second month after the close of the month in which revenue was received. For example, the franchise fee for the month of July is due on September 1.

3.4 When Franchisee remits franchise fees to City, such franchise fees shall be deemed timely paid only if delivered or postmarked on or before the due date. If fees are not timely paid, Franchisee shall be subject to suspension or termination of the Franchise pursuant to Section 14 of this Agreement and/or to any other penalties which may be established and assessed by the City.

4.0 DISPOSAL OF SOLID WASTE. Franchisee shall dispose of solid waste at a permitted landfill, transfer station, recycling facility, materials recovery facility or other disposal or recycling facility, which is lawfully authorized to accept such solid waste.

5.0 RECYCLING SERVICES.

5.1 Each Franchisee shall be required to ensure that recycling services are provided for all of its customers either directly or by arrangement with another Franchisee.

5.2 Materials to be recycled shall be collected at a minimum of once per week.

5.3 Each Franchisee shall, at intervals of no greater than 6 months, provide education and informational literature to its customers and the City describing the recycling services to be provided, materials to be recycled, instructions on how to participate, and provide its customers the Franchisee's telephone number.

5.4 Each Franchisee shall provide public awareness to its customers in accordance with the provisions of the Pasadena Municipal Code and the Rules and Regulations adopted by the Director.

5.5 Each Franchisee shall select the type of recycling collection operation. When considering recycling collection methods, the Franchisee shall consider factors to assure maximum participation and waste diversion, including but not limited to convenience and cost.

5.6 Nothing in this chapter precludes a Franchisee from assessing reasonable fees for providing recycling services.

6.0 REQUIRED RECYCLING DIVERSION RATES.

6.1 Construction and Demolition Debris. Franchisee shall meet a minimum recycling diversion rate of 75%, on a monthly basis, and on an annual basis for construction and demolition debris. "Construction and Demolition debris" shall have the definition as set forth in Pasadena Municipal Code 8.61.

6.2 Other Solid Waste. Franchisee shall meet a minimum recycling diversion rate of 60%, on a monthly basis, and on an annual basis for all "other solid waste". "Other solid waste" shall have the definition as set forth in Public Resources Code Section 40191, Pasadena Municipal Code 8.61, and any successor provision, except that it shall not include construction and demolition debris.

6.3 Third Party Recycling. If Franchisee works with a third party to assist in recycling efforts, this third party diversion tonnage must be documented in a manner that conforms to the Rules and Regulations adopted by the Director, and may not exceed twenty five percent (25%) or total tons approved by City staff, which ever is lowest, of the total tonnage reported for the recycling diversion rates in any one calendar month.

6.4 Calculation of recycling rates. Recycling diversion rates shall be calculated in accord with the provisions of the Pasadena Municipal Code and any Rules and Regulations adopted by the Director.

7.0 LIQUIDATED DAMAGES.

7.1 Construction and Demolition Debris. Failure of Franchisee to meet the recycling diversion rates of 75% for construction and demolition debris, as defined above, for any month, will result in damages being sustained by the City. Such damages are, and will continue to be, impracticable and difficult to determine. For each month in which the recycling diversion rate is not met, Franchisee shall pay the City an amount of money to be calculated as follows: where the recycling diversion rate in a reported month is 40% or greater, but less than the required recycling diversion percentage of 75%, \$10 per ton of "recycling shortfall tonnage"; where the recycling diversion rate in a reported month is 30% or greater, but less than 40%, \$20 per ton of the "recycling shortfall tonnage"; where the recycling diversion rate in a reported month is 20% or greater, but less than 30%, then \$30 per ton of "recycling shortfall tonnage", and where the recycling diversion



rate is less than 20%, then \$40 per ton of the "recycling shortfall tonnage". "Recycling shortfall tonnage" means the number of additional tons of construction and demolition debris that a franchise would have to recycle in order to meet the recycling diversion of 75%. Execution of this Agreement shall constitute agreement by the Franchisee and City that the stated values are the minimum value of costs and actual damage caused the City by the failure of the Franchisee to meet the recycling diversion rate for construction and demolition debris. Such sum is liquidated damages and shall not be construed as a penalty. Liquidated damages shall be reported and paid to the City by Franchisee along with the monthly franchise fee payment.

7.2 Other Solid Waste. Failure of Franchisee to meet the recycling diversion rate of 60% for other solid waste, as defined above, for any month, will result in damages being sustained by the City. Such damages are, and will continue to be, impracticable and difficult to determine. For each month in which the recycling diversion rate is not met, Franchisee shall pay the City an amount of money to be calculated as follows: where the recycling diversion rate in a reported month is 40% or greater but less than the required recycling diversion

percentage of 60%, \$10 per ton of "recycling shortfall tonnage"; where the recycling diversion rate in a reported month is 30% or greater, but less than 40%, \$20 per ton of the "recycling shortfall tonnage"; where the recycling diversion rate in a reported month is 20% or greater, but less than 30%, then \$30 per ton of "recycling shortfall tonnage", and where the recycling diversion rate is less than 20%, then \$40 per ton of the "recycling shortfall tonnage". "Recycling shortfall tonnage" means the number of additional tons of other solid waste that a franchise would have to recycle in order to meet the 60%.

Execution of this Agreement shall constitute agreement by the Franchisee and City that the stated values are the minimum value of costs and actual damage caused the City by the failure of the Franchisee to meet the recycling diversion rate for other solid waste. Such sum is liquidated damages and shall not be construed as a penalty. Liquidated damages shall be reported and paid to the City by Franchisee along with the monthly franchise fee payment.

7.3 Continued failure or inability to meet the recycling diversion rates shall be considered a material breach of the franchise and of the franchise agreement and, notwithstanding

the payment of liquidated damages, shall be cause for termination, suspension or non-renewal of the Franchise in addition to other remedies provided or specified by Chapter 8.61 of the Pasadena Municipal Code.

8.0 EXEMPTION FROM REQUIRED RECYCLING DIVERSION RATES.

8.1 Basis for Exemption. If Franchisee wishes a partial exemption from the required recycling diversion rates then Franchisee must demonstrate to the satisfaction of the Director that the 75% diversion for construction and demolition debris and/or 60% diversion for other solid waste requirement cannot be met because the waste stream from specific accounts is not able to be recycled because either a) all recyclable materials have already been removed from specific accounts prior to collection by the Franchisee or a third party, or b) the composition of the material stream to be collected by the Franchisee from specific accounts is not made up of recyclable materials.

8.2 Exemption Request. The Franchisee seeking such an exemption shall submit a waste characterization analysis to the Director and conducted in compliance with any then current methodology of the California Integrated Waste Management Board,

or its successor, agency as acceptable sampling methodologies. As to each specific account for which the Franchisee wishes to obtain an exemption, the waste characterization analysis must also include: the customer name, address, tonnage, a detailed description of the composition of the waste stream, and a statement as to why specific materials are unable to be diverted.

8.3 An exemption report shall be approved or denied, or approved conditionally, by the Director .

8.4 If the exemption request is approved by the Director, it shall be effective from the date of approval, to and through the earlier of the following dates:  
June 30, 2018 (the end of one year-franchise term), or the date on which the facts supporting the waste characterization analysis change materially. If the exemption application is approved conditionally, it shall be effective as of the date all of the conditions are met, as determined by the Director.

8.5 An approved exemption shall state the total amount of solid waste, in tons, which is excepted from the recycling requirement, and this may be used by Franchisee in calculating the monthly recycling diversion rate. In claiming this

exception in any reporting period, Franchisee shall affirm that the facts upon which the waste characterization analysis and exemption are based have not changed materially during reporting period.

8.6 A new report, requesting an exemption must be submitted for every one year franchise term. If an exemption request is denied, prior to the beginning of the franchise term for which franchisee is applying, a Franchisee may not apply for an exemption until the following franchise term.

#### 9.0 REPORTS.

Franchisee shall file a monthly collection tonnage report for solid waste, organic material, other solid waste and/or construction and demolition debris, when applicable, with the Director of the Department of Public Works ("Director") on the first day of every month as follows: Specifically, a report is due on the first day of the second month after the close of the month being reported. For example, the report for the month of July is due on September 1.

The report shall be submitted to:

Department of Public Works/SMIWM Division  
Attn: Carmen Rubio-Program Coordinator II  
City of Pasadena  
P.O. Box 7115

Pasadena, California 91109

The report shall include the following information for Franchisee, brokers and its subcontractors, if any:

Franchisee shall file with the Director a monthly collection tonnage report no later than 30 days after the end of the month being reported.

The report shall include the following information certified as true and correct under penalty of perjury by a responsible owner or official of the Franchisee:

1. Total tonnage of other solid waste, as defined above, disposed, identified by source (residential, multi-family, commercial, industrial entities and large venues);

2. Total tonnage of other solid waste, as defined above, recycled, identified by source (residential, multi-family, commercial, industrial entities, large venues, and third party) and individual type of material designated to be recycled as well as recycling shortfall tonnage, if any;

3. Destination and disposal site locations of all solid waste, and organic material disposed and recycled;

4. Total number of accounts served, identified by source (residential, multi-family, commercial, industrial, large venues and third party);

5. The construction and demolition report shall include the following information certified as true and correct under

penalty of perjury by a responsible owner or official of the Franchisee:

6. Total tonnage of construction and demolition disposed, identified by source (residential, multi-family, commercial, and industrial entities);

7. Total tonnage of construction and demolition recycled, identified by source (residential, multi-family, commercial, and industrial entities) and individual type of material designated to be recycled as well as recycling shortfall tonnage, if any;

8. Destination and disposal site locations of all construction and demolition disposed and recycled;

9. Total number of accounts served, identified by source (residential, multi-family, commercial, industrial entities);

10. All other information required by the franchise agreement or requested by the Director pertaining to the operation of the franchise.

#### 10.0 Compliance Monitoring

A. Books and Accounts. Franchisee shall maintain accurate and complete books and accounts of all revenues and income arising out of its operations under the Franchise and in a manner which conforms to generally accepted accounting principles. Franchisee's books, accounts and records, arising out of or related to its operations under the Franchise granted pursuant to Chapter 8.61, shall at all times be open to inspection, examination and audit by authorized officers,

employees and agents of the City. Franchisee shall comply with all Rules and Regulations adopted by the Director pertaining to books, records, audits and inspections.

B. Regulatory Inspection. Franchisee shall maintain all records for the number of years in accordance with federal, state or local laws and regulations applicable to the operation of the non-exclusive franchise, but in no event less than five (5) years, in a secured area to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. Franchisee shall provide written technical or monitoring program reports which verify compliance with the regulatory aspects of the Franchise as may be specified and requested by the Director. Such reports shall be timely submitted to the Director under penalty of perjury by the responsible operating officer. Franchisee agrees to allow reasonable on-site inspection of vehicles and facilities, in accordance with any Rules and Regulations issued by the Director, to evaluate compliance with the Franchise. Franchisee shall comply with all Rules and Regulations adopted by the Director pertaining to regulatory compliance and proof of compliance.

C. Non-Compliance. In addition to other remedies and penalties specified under the Pasadena Municipal Code or under Rules and Regulations adopted by the Director, failure to provide documentation requested by a city auditor or inspector



within two weeks of a written request shall constitute failure to pass the audit and shall be grounds for suspension, termination or nonrenewal of the franchise.

11.0 VEHICLE REPORTING, COMPLIANCE, AND IDENTIFICATION.

11.1 Franchisee shall maintain on file with the City, a complete and accurate listing of every vehicle operated for collecting, transporting, disposing and/or recycling of solid waste, construction and demolition debris and organics in the City. Franchisee shall certify, in a form acceptable to City, that every such vehicle conforms with regional and State vehicle emission standards ("emission standards"), and shall provide documentation of compliance on written request of the City. Franchisee understands and agrees that failure to conform with emission standards may result in suspension, termination or non-renewal of a Franchise.

11.2 Vehicle Identification.

Every vehicle operated by Franchisee and for collecting, transporting, disposing and/or recycling of solid waste, construction and demolition debris and organics under this franchise shall display the identification required by section 8.61.097 of the Pasadena Municipal Code: Franchisee's trade name, monogram or insignia, the Franchise vehicle number, together with Franchisee's telephone number painted upon both

sides of the vehicle. All lettering mentioned in this paragraph shall be not less than 2-1/4" in height and not less than 5/6" stroke, except the Franchise vehicle number which shall be not less than 6" in height. The Franchisee agrees to remove the Franchise vehicle number and all other information within 15 calendar days after the Franchise is terminated or the vehicle is sold, transferred or taken out of service.

### 11.3. Emission Standards.

Every Franchisee shall operate its vehicles under the Franchise in conformance with Rule 1193 and all other Rules and Regulations adopted by the South Coast Air Quality Management District, and as interpreted and applied by the South Coast Air Quality and Management District as well as the Rules and Regulations adopted by the California Air Resources Board. The Director shall have the authority to require additional inspections deemed necessary to insure that the public health, safety and welfare are adequately protected. All costs of such inspections shall be the responsibility of the Franchisee. Inspections by the California Highway Patrol shall be required annually on all vehicles, and certificates of compliance for said inspections shall be filed with the Director in conformance with the rules and regulations adopted by the California Code of Regulations.

### 11.4 BINS-STANDARDS AND IDENTIFICATION

Every bin shall be manufactured specifically for its intended use and shall comply with the provisions of Rules and Regulations adopted by the Director pursuant to Section 8.61.035(B) of the Pasadena Municipal Code as to specifications, characteristics, maintenance, cleanliness and permanent labeling.

12.0 INDEMNIFICATION OF CITY.

12.1 Franchisee shall indemnify and hold the City harmless from and against any and all loss, damages, liability, claims, suits, costs and expenses, fines, charges or penalties whatsoever, including reasonable attorney's fees, regardless of the merit or outcome of any such claim or suit, arising from or in any manner related to the services provided or business conducted under Chapter 8.61 of the Pasadena Municipal Code or under any non-exclusive Franchise granted pursuant to Chapter 8.61 of said code or otherwise pursuant to this Agreement.

12.2 Franchisee shall indemnify the City, defend with counsel approved by the City, protect and hold harmless the City, its officers, employees, agents, assigns, and any successor or successors to the City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damage, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of

action, suits, legal or administrative proceedings, interest, fines and charges, penalties and expenses (including, but not limited to, attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the City or its officers, employees, agents or the Franchisee arising from or attributable to any repair, remediation, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, or closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous waste at any place where the Franchisee stores or disposes of solid or hazardous waste. The foregoing indemnity is intended to operate as an Agreement pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 United States Code Section 9607, and California Health and Safety Code Section 25364, and any successor provisions, to insure, protect, hold harmless, and indemnify the City from liability.

12.3 INSURANCE REQUIREMENTS. Franchisee shall obtain and shall maintain throughout the term of this Agreement, at Franchisee's sole cost and expense, the minimum levels and standards of liability insurance and claims reserve which must be maintained in order to apply for, to receive and to operate a

non-exclusive Franchise under Chapter 8.61 of the Pasadena Municipal Code, as established by Resolution of the City Council of the City, a true and correct copy of which is attached hereto as Exhibit 2, and as may be established in any subsequent resolutions that may be adopted by the City Council at any time during the term of this Agreement. Franchisee also agrees to demonstrate compliance with the minimum standards in the manner established by said Resolution of the City Council. The failure to maintain the minimum levels and standards of liability insurance and claims reserve for any period of time is a violation of Chapter 8.61 and shall be sufficient grounds for temporary suspension or termination of a non-exclusive Franchise.

13.0 SUSPENSION.

13.1 The Director of Public Works may suspend any non-exclusive Franchise pursuant to Chapter 8.61 without a hearing, whenever the continued operation by the Franchisee would constitute a danger to public health, safety, welfare or public morals, including without limitation, where there is a failure to maintain the minimum levels and standards of liability insurance or claims reserve or failure to keep in full force and effect any applicable licenses or permits required by federal, state law or regulation or failure to comply with any material term of this franchise. Continued failure or inability to meet

recycling requirements or failure to make timely payments or timely submittal of reports, or non-compliance with a request for documents, reports or inspections shall, among other material violations, constitute grounds for suspension, termination or non-renewal of a Franchise. Any suspension of a nonexclusive Franchise shall specify conditions upon which the nonexclusive franchise may be reinstated or terminated.

13.2 A notice of intent to terminate a non-exclusive Franchise shall be personally delivered or mailed, at the discretion of the Director, to the Franchisee at the Franchisee's notice address of record, shall state grounds for suspension or termination and shall give the Franchisee notice of the time, date and place of a hearing before the City Council thereon, which shall be convened no more than 60 days after the date of notice, subject to continuance with the consent of the parties. The notice shall advise the Franchisee that it may be represented by counsel and may contain any other information deemed proper.

13.3 The hearing shall be conducted and closed, and decision rendered thereon within 60 days after the date of the hearing.

13.4 The City Council shall have the right to terminate or suspend any non-exclusive Franchise Agreement

granted pursuant to Chapter 8.61 if the City Council finds, after a public hearing, that:

13.4.1 The Franchisee has failed to comply with, or to do anything required of the Franchisee by Chapter 8.61, or that Franchisee has violated any provision of the ordinance granting the non-exclusive Franchise, including, but without limitation, failure to timely pay all franchise fees, or has violated any provision of the non-exclusive Franchise Agreement or any federal, state or local law or regulation applicable to the operation of the non-exclusive Franchise; or

13.4.2 Any provision of Chapter 8.61 or of the Franchise Agreement is repealed or becomes or is declared to be invalid, and the City Council expressly finds that such provision constitutes a material consideration to the grant or continuation of such non-exclusive Franchise.

13.5 TERMINATION. The City Council shall have the right to terminate any nonexclusive Franchise pursuant to Chapter 8.61, whenever the continued operation by the Franchisee would constitute a danger to public health, safety, welfare or public morals, including without limitation, where there is a failure to maintain the minimum levels and standards of liability insurance or claims reserve or failure to keep in full force and effect any applicable licenses or permits required by federal, state law or regulation or failure to comply with any material term of this franchise agreement or any law, rule or regulation governing the operation of the franchise. Continued

failure or inability to meet recycling requirements or continued failure or inability to make timely payments or timely submittal of reports, or non-compliance with a request for documents, reports or inspections shall, among other material violations, constitute grounds for suspension, termination or non-renewal of a Franchise. The decision to terminate shall contain findings of fact; a determination of the issues presented and shall be final and conclusive.

14.0 TEMPORARY SUSPENSION. The Director of the Department of Public Works may temporarily suspend any non-exclusive Franchise without a hearing, whenever the continued operation by the Franchisee would constitute a danger to public health, safety, welfare or public morals, including, without limitation, where there is a failure to maintain the minimum levels and standards of liability insurance or claims reserve or failure to keep in full force and effect any applicable licenses or permits required by federal, state or local law or regulation. The notice of temporary suspension may be personally delivered to the party named and to the address given on the application pursuant to which such non-exclusive Franchise was issued and to the notice address stated herein, if different, or, mailed by registered or certified mail to the party named at the address given on the application pursuant to which such Franchise was issued and to the notice address stated herein, if different. Notwithstanding other notice provisions of this Agreement, the temporary suspension is effective upon the earlier of either



receipt or the expiration of 3 days from the date of mailing. The notice of temporary suspension shall include a notice of the date and time for termination hearing and all other information required by paragraph B of Section 8.61.130 of the Pasadena Municipal Code. The temporary suspension shall remain effective until the decision on suspension or termination by the City Council is made pursuant to Section 8.61.130 or unless the suspension is lifted by written notice of the Director.

#### 14.1 INFRACTIONS/VIOLATIONS.

Any franchisee that violates any provision of this franchise agreement and is convicted of an infraction shall be punished by a fine of an amount defined in General Fee Schedule. Each franchisee convicted may be deemed guilty of a separate offense for every day during any portion of which any violation is committed or permitted. In addition franchisee may be subject to the administrative proceedings set forth in Chapters 1.25 and 1.26 of the Pasadena Municipal Code, including, but without limitation, civil penalties, late payment penalties, administrative fees, general fee schedule penalties and other related charges.

#### 15.0 ACCEPTANCE, WAIVER.

Franchisee agrees to be bound by and comply with all the requirements of Chapter 8.61 and this Agreement. By entering into this Agreement, Franchisee waives, to the maximum extent permitted by law, Franchisee's right to challenge the terms of this Agreement and of Chapter 8.61 under federal, state or local

law, or under administrative regulation, as such laws and regulations exist as of the date of signing of this Agreement.

16.0 GENERAL TERMS AND CONDITIONS.

16.1 INDEPENDENT STATUS. It is understood that in the performance under this Agreement, Franchisee shall be, and is, an independent operator, and is not an agent, contractor, or employee of City and shall furnish services in its own manner and method. Further, Franchisee has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Franchisee in its business operations. Franchisee shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

16.2 FRANCHISEE NOT AGENT. Franchisee, its subcontractors and brokers shall have no authority, express or implied, to act on behalf of or bind the City in any capacity whatsoever as agents or otherwise.

16.2.1 SUBCONTRACTORS AND BROKERS.

Pursuant to Chapter 8.61, if a franchisee utilizes a subcontractor(s) or broker(s) to collect, transport, dispose, and or recycle solid waste, organics, or construction and demolition that is produced, kept, or accumulated within the

jurisdictional boundaries of the City, a written agreement must be developed. The agreement between the broker and/or subcontractor and franchisee must be pre-approved by the City in writing. Separate agreements must be in place for each entity that the franchisee utilizes as either a broker or subcontractor. Contract agreements between franchisees and subcontractors/brokers must indicate cost details, period of contract (start to finish date) and liability issues (if any). A list of Pasadena customers serviced by subcontractors/brokers must be provided to City staff at the time franchisee customer list is provided (January of every year). Subcontractors/brokers must provide proof of automobile, general liability and worker's compensation insurance required by City of Pasadena. Monthly tonnage and fee reports shall include tonnage and fees collected by franchisee and subcontractors/brokers. Franchisee shall NOT have any subcontractors/brokers pay the City such franchise fees. Diversion for material collected by subcontractors/brokers may only be reported by franchisee.

16.3 WAIVER. The City's waiver of any term, condition, breach or default of this Agreement shall not be considered to be a waiver of any other term, condition, default or breach, nor of a subsequent breach of the one waived.

16.4 NO ASSIGNMENT. No Franchise shall be sold, leased, transferred, assigned, or otherwise disposed of, either

in whole or in part, whether by forced sale, merger, consolidation, bankruptcy, reorganization under bankruptcy laws or otherwise, without the prior consent of the City Council expressed by ordinance; however, a change of name or a sale of accounts to a current City solid waste Franchisee, who is in good standing and in compliance with City ordinances does not require City Council approval.

16.5 COMPLIANCE WITH LAWS. Franchisee shall comply with all Federal, State, County and City laws, ordinances, resolutions, rules and regulations, which are, as amended from time to time, incorporated herein and applicable to the performance hereof.

16.6 ATTORNEY'S FEES. If any action at law or in equity is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

16.7 INTERPRETATION.

16.7.1 Applicable Law. This Agreement, and the rights and duties of the parties hereunder (both procedural and substantive), shall be governed by and construed according to the laws of the State of California.

16.7.2 Entire Agreement. This Agreement, including any Exhibits attached hereto and any documents explicitly referenced herein, constitutes the entire agreement

and understanding between the parties regarding its subject matter and supersedes all prior or contemporaneous negotiations, representations, understandings, correspondence, documentation and agreements (written or oral).

16.7.3 Written Amendment. This Agreement may only be changed by written amendment signed by Franchisee and the City Manager or other authorized representative of the City, subject to any requisite authorization by the City Council. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

16.7.4 Severability. If any provision in this Agreement is held by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining provisions shall nevertheless continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Agreement.

16.7.5 Choice of Forum. The parties hereby agree that this Agreement is to be enforced in accordance with the laws of the State of California, is entered into and is to be performed in the City of Pasadena and that all claims or controversies arising out of or related to performance under this Agreement shall be submitted to and resolved in a forum within the County of Los Angeles at a place to be determined by the rules of the forum.

16.7.6 Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an Exhibit or otherwise incorporated by reference, the order of precedence is as follows: Charter of the City of Pasadena, the Pasadena Municipal Code, the ordinance granting this Franchise, resolutions of the City of Pasadena, this Agreement, and Franchisee's application to the City for this Franchise.

16.7.7 Duplicate Originals. There shall be two (2) fully signed copies of this Agreement, each of which shall be deemed an original.

16.8 AUTHORITY OF FRANCHISEE. The Franchisee hereby represents and warrants to the City that the Franchisee has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, and its execution of this Agreement has been duly authorized.

17.0 ADDITIONAL ASSURANCES BY PASADENA FRANCHISEES.

17.1 EQUAL EMPLOYMENT OPPORTUNITY PRACTICES.

Franchisee agrees to comply with the City's Competitive Bidding and Purchasing Ordinance, Chapter 4.08 of the Pasadena Municipal Code, the rules and regulations promulgated thereunder, the California Fair Employment and Housing Act (Government Code Section 12900 et seq.) and to this end:

17.1.1 Franchisee certifies and represents that, during the performance of this Agreement, Franchisee and any other parties with whom it may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religion, color, national origin, ancestry, disability, sex, age, medical condition, marital status. Franchisee further certifies that it will not maintain any segregated facilities.

17.1.2 Franchisee shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of this Agreement, state that Franchisee is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, religious creed, color, national origin, ancestry, disability, sex, age, medical condition or marital status.

17.1.3 Franchisee shall, if requested to so do by the City, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, religious creed, color, national origin, ancestry, disability, sex, age, medical condition or marital status.

17.1.4 If requested to do so by the City, Franchisee shall provide the City with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such

records are confidential or privileged under state or federal law.

17.1.5 Franchisee agrees to recruit Pasadena residents initially and to give them preference, if all other factors are equal, for any new positions which result from the performance of this Agreement and which are performed within the City.

17.1.6 Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.

17.1.7 Franchisee shall include the provisions set forth in paragraphs numbered 18.1.1 through 18.1.6 of subsection 18.1 of this Agreement, inclusive, in each of its subcontracts under this Agreement.

17.2 BUSINESS LICENSES. Franchisee shall obtain, and pay any and all costs associated therewith, any Pasadena Business License, which may be required by the Pasadena Municipal Code and all permits, and licenses applicable to Franchisee's operations under this Franchise, which are required of Franchisee by any governmental agency.

17.3 MAINTENANCE AND INSPECTION OF RECORDS.

The City, or its authorized auditors or representatives, shall have access to and the right to audit and

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reproduce any of the Franchisee's records to the extent the City deems necessary to insure it is receiving all money to which it is entitled under the Agreement and/or is paying only the amounts to which Franchisee is properly entitled under the Agreement or for other purposes relating to the Agreement.

The Franchisee shall maintain and preserve all such records for a period of at least 3 years after termination of the Agreement.

The Franchisee shall maintain all such records in the City of Pasadena. If not, the Franchisee shall, upon request, promptly deliver the records to the City of Pasadena or reimburse the City for all reasonable and extra costs incurred in conducting the audit at a location other than the City of Pasadena, including, but not limited to, such additional (out of the City) expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.

17.4 CONFLICT. Franchisee hereby represents warrants and certifies that no member, officer or employee of the Franchisee is a director, officer or employee of the City of Pasadena, or a member of any of its boards, commissions or committees, except to the extent permitted by law.

18.0 NOTICES.

Except as otherwise provided in this Agreement, all notices required by this Agreement or by Chapter 8.61 of the Pasadena Municipal Code shall be given by personal service or by deposit in the United States mail, postage pre-paid and return receipt requested, addressed to the parties as follows:

To City: Department of Public Works/SMIWM Division  
Attn: Carmen Rubio-Program Coordinator II  
City of Pasadena  
P.O. Box 7115  
Pasadena, California 91109-9866

Franchisee: \_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall be deemed effective on the date personally served or, if mailed, three days after the date deposited in the mail.

19.0 Taxpayer Protection Amendment. Under the provisions of the City of Pasadena Taxpayer Amendment of 2000 ("Taxpayer Protection Act"), the Franchisee will be considered a "recipient of a public benefit." The full provisions of the Taxpayer Protection Act are set forth in Pasadena City Charter, Article XVII. Under the Taxpayer Protection Act, City public officials

who approve this Contract are prohibited from receiving gifts, campaign contributions or employment from Franchisee for a specified time. This prohibition extends to individuals and entities which are specified and identified in the Taxpayer Protection Act and includes Franchisee and its trustees, directors, partners, corporate officers and those with more than a 10% equity, participation, or revenue interest in Franchisee. Franchisee understands and agrees that: (A) Franchisee is aware of the Taxpayer Protection Act; (B) Franchisee will complete and return the forms provided by the City in order to identify all of the recipients of a public benefit specified by the City in order to identify all of the recipients of a public benefit specified in the Taxpayer Protection Act; and (C) Franchisee will not make any prohibited gift, campaign contribution or offer of employment to any public official who approved this Contract.

20.0 Administrative Rules and Regulations.

Franchisee agrees to conform with all administrative Rules and Regulations duly adopted by the Director, now or at any time during the term of the Franchise, pursuant to Chapter 8.61 of the Pasadena Municipal Code, for the purpose of administering and monitoring the operations of all franchises in the City of Pasadena.

21.0 Security Deposit.

Franchisee shall maintain a bond or other security with the City, in a form acceptable to the Director, in an amount required to secure payment of franchise fees projected for one month of the Franchise, or the amount of ten thousand dollars, whichever amount is greater. The bond or security must be submitted within seven days from the date the Franchise is granted and must be replenished within ten (10) days from any draw by the City. The City may draw upon the bond or security after five (5) days written notice to Franchisee. The remaining bond or security will be returned to the Franchisee by the City on termination of the Franchise.

/ / /

/ / /

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

DATED: CITY OF PASADENA

\_\_\_\_\_  
STEVE MERMELL  
City Manager

ATTEST:

\_\_\_\_\_  
Mark Jomsky, CMC  
City Clerk

DATED:

FRANCHISEE:

\_\_\_\_\_  
By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)

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

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Brad L. Fuller  
Assistant City Attorney

REVIEWED:

\_\_\_\_\_  
Erika Estrada  
Purchasing Administrator  
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BLF:drc 10-25-17