

**SACRAMENTO REGIONAL SOLID WASTE AUTHORITY**

**COMMERCIAL SOLID WASTE  
COLLECTION FRANCHISE AGREEMENT**

This AGREEMENT is made and entered into on \_\_\_\_\_, by and between the SACRAMENTO REGIONAL SOLID WASTE AUTHORITY, a joint powers authority organized under the laws of the State of California, hereinafter referred to as "SWA", and \_\_\_\_\_ hereinafter referred to as "FRANCHISEE".

**RECITALS**

**WHEREAS**, SWA requires all haulers providing commercial solid waste services in the SWA region to obtain a non-exclusive franchise in order to regulate and ensure the orderly operation of commercial hauling and to minimize the potential for adverse effects it may have on the local environment; and

**WHEREAS**, the SWA and FRANCHISEE have previously entered into franchise agreement(s) to grant FRANCHISEE a franchise so that FRANCHISEE may perform commercial solid waste collection, transportation and disposal services in the SWA Region ("AGREEMENT"); and

**WHEREAS**, all the prior franchise agreement(s) between the SWA and FRANCHISEE have expired and have no force and effect; and

**WHEREAS**, SWA and FRANCHISEE desire to execute a new AGREEMENT for up to one year, to change references to SWA Ordinance and Code as applicable, and to make other changes to the Agreement, and;

**WHEREAS**, the SWA and FRANCHISEE now wish to memorialize and reduce to writing their understanding and agreements as to such modifications by incorporating them into a new document memorializing the complete terms of the AGREEMENT which will now constitute, and be referred to as, the AGREEMENT between the SWA and FRANCHISEE, and;

**WHEREAS**, SWA Resolution No. SWA-08-002 authorizes SWA General Manager/Engineer to negotiate, execute and administer annual franchise agreements, franchise agreement amendments, and franchise agreement extensions for up to one year in accordance with SWA code,

**NOW THEREFORE**, based on the mutual promises contained herein, the parties agree as follows:

**1. DEFINITIONS**

For the purposes of this AGREEMENT, all terms used shall have the same meaning as those defined in Title I of the SWA Code.

**2. GRANT OF FRANCHISE**

A. SWA hereby grants to FRANCHISEE a Non-Exclusive Commercial Solid Waste Collection Franchise ("Franchise") authorizing FRANCHISEE to engage in the business of collecting, transporting and disposing of Commercial Solid Waste kept, accumulated or generated in the SWA Region and to use the public streets and rights of way for such purpose.

- B. Under the terms of this Franchise, the Franchisee has the authority to collect only Multi-family Residential, Commercial and Industrial Solid Waste and to provide drop-box service to all generators.
- C. This grant is pursuant to FRANCHISEE's Application for Franchise, which application is incorporated herein by this reference.

**3. OWNERSHIP OF SOLID WASTE**

SWA does not gain any ownership or right to possess solid waste collected by FRANCHISEE pursuant to this AGREEMENT. Subject to the provisions of this AGREEMENT, FRANCHISEE shall have the right to retain any benefit resulting from its right to retain, recycle, process, dispose of, or use the Commercial Solid Waste that it collects.

**4. DISPOSAL OF COMMERCIAL SOLID WASTE**

FRANCHISEE shall dispose of Commercial Solid Waste collected or transported by FRANCHISEE only by taking such Commercial Solid Waste to a landfill, transfer station, recycling facility or materials recovery facility, which is lawfully authorized to accept such solid waste. FRANCHISEE shall not dispose of such Commercial Solid Waste by depositing it on any land, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system.

**5. DIVERSION PROGRAMS**

Franchisee is required to divert recyclable material from all solid waste collected and removed by it within the SWA region, in accordance with SWA Code and Board Resolution. Failure to meet the diversion requirement will subject FRANCHISEE to the Recycling Incentive Fee provided for in Title II.

A. Construction and demolition debris

- 1. When FRANCHISEE provides solid waste or recyclable collection services for a project subject to SWA or SWA member agencies' Construction and Demolition ("C&D") Debris Ordinances, FRANCHISEE shall assist their customers in complying with said C&D Debris Ordinances.
- 2. Diversion credit from mixed construction and demolition debris for compliance with mandates will only be recognized if FRANCHISEE delivers mixed C&D debris to a SWA-Certified C&D Sorting facility.

B. Putrescible Organic Material

Diversion credit for putrescible organic material will only be recognized if FRANCHISEE delivers putrescible organic material to a SWA-Certified Putrescible Organic Material Facility. Additionally, only Putrescible Organic Material delivered to a SWA-Certified Facility is eligible for participation in the Financial Incentive Program 2016-01.

**6. COLLECTION EQUIPMENT**

- A. Any and all vehicles used by FRANCHISEE to perform Commercial Solid Waste collection services shall meet the vehicle inspection, tag and covered load requirements of Title II, SWA Code.
- B. When requested by SWA, FRANCHISEE shall submit special reports on the franchisee's vehicles fleets, including but not limited to, vehicle make and model, mileages travelled per quarter, fuel type, vehicle capacity, and vehicle storage location. Franchisee is required to complete and submit information requested on Section 2 of Exhibit A, attached hereto and incorporated herein.

**7. FRANCHISEE PROVIDED SOLID WASTE CONTAINERS**

- A. Containers used for storage of solid waste shall:
  - 1. Be clearly identified with the name, or recognizable corporate or company logo, and phone number of the Franchisee that is legible from a distance of fifty (50) feet.
  - 2. Identify the type or types of solid waste or recyclable material for which the container is intended to be used.
  - 3. Be adequately sized and serviced with adequate frequency to meet the solid waste and/or recyclable material generation needs of the business.
  - 4. Be designed and constructed to be watertight to prevent the leakage of liquids.
  - 5. Be equipped with lids which are to be kept closed, and shall be placed in a way that does not prevent the lid from being closed.
  - 6. Provide sufficient capacity to contain all waste and recyclable material, with the exception of recyclable corrugated boxes that are bundled for collection.
  - 7. Be kept free of graffiti.
  - 8. Be replaced, cleaned or repainted as needed so as to present a clean appearance.
- B. Additional container requirements apply to the area delineated in Section 3 of Exhibit A, attached hereto and incorporated herein, including:
  - 1. Containers shall be equipped with functioning locking bars or a locking mechanism, and must be locked when not being accessed.
  - 2. Containers must identify the customer and address to which the container is assigned.
- C. The General Manager/Engineer or designee, may require special container equipment, and/or container labeling with customer identifying information, in other designated areas.
- D. FRANCHISEE shall adhere to the requirements prescribed in SWA Administrative Rules, which include, but are not limited to, (1) requiring functioning locking mechanisms, and (2) requiring increased container

size and/or collection frequency.

- E. Violations of the conditions of this section may become the basis for enforcement actions. In addition, violations of the conditions of this section may be determined to be a material breach of this AGREEMENT and will subject the FRANCHISEE to payment of liquidated damages, pursuant to Section 8 of this AGREEMENT.

**8. LIQUIDATED DAMAGES**

Failure of FRANCHISEE to provide solid waste collection containers and services that conform to Section 7 of this Agreement will be subject to liquidated damages as required by the Board by Resolution, and as listed in Section 4 of Exhibit A, attached hereto and incorporated herein.

- A. If any deficiencies identified in Section 7 are brought to the attention of the SWA, the SWA shall contact the FRANCHISEE who shall be given 48 hours to provide proof of corrective action. Proof of corrective action must be provided by the FRANCHISEE, including date stamped digital images.
- B. If proof of corrective action is not provided by the FRANCHISEE within the 48 hour grace period, the SWA may take enforcement action. Furthermore, continued failure to take corrective action shall be deemed a breach of this AGREEMENT and constitutes grounds for the termination of this AGREEMENT by SWA.
- C. Any Liquidated Damage fees shall be assessed to the FRANCHISEE and are due as part of FRANCHISEE's quarterly payment to the SWA.

**9. ABANDONED CONTAINERS**

- A. If FRANCHISEE abandons any container used to provide solid waste services under the Franchise, SWA may remove the container and/or dispose of the contents of the container.
- B. If SWA removes a container abandoned by FRANCHISEE and/or disposes of the contents of any container abandoned by FRANCHISEE, SWA may charge FRANCHISEE for SWA's costs incurred in such removal/disposal and for SWA's costs of storage of the container. FRANCHISEE shall reimburse SWA for such costs within ten (10) days of the date of SWA's invoice for such costs.
- C. For the purposes of this section, "abandoned" includes:
  - 1. FRANCHISEE's failure to remove the container within the time period specified by the SWA Board upon termination of the Commercial Solid Waste Collection Franchise pursuant to Title II, SWA Code;
  - 2. FRANCHISEE's failure to remove the container within a reasonable period after the expiration of the Franchise granted to FRANCHISEE, except in the case where FRANCHISEE has been granted an extension of the term of said Franchise or FRANCHISEE has been granted a subsequent Commercial Solid

Waste Collection Franchise authorizing FRANCHISEE to collect and transport the type or types of solid waste for which the container was used pursuant to this AGREEMENT.

3. FRANCHISEE's failure to dispose of the contents of the container within five (5) days after the SWA issues written notice to FRANCHISEE to dispose of the contents.

**10. PERSONNEL**

- A. Driver Qualifications. FRANCHISEE agrees that all drivers shall be trained and qualified in the operation of collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.
- B. Safety Training. FRANCHISEE shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of solid waste, or who are otherwise directly involved in such collection.

**11. EDUCATION AND OUTREACH**

- A. FRANCHISEE shall assist SWA in educational and outreach activities to promote waste diversion and recycling for commercial solid waste.
- B. FRANCHISEE shall distribute outreach and educational materials provided by SWA to their commercial customers.

**12. ACCEPTANCE OF FRANCHISE**

FRANCHISEE hereby accepts the Franchise on the terms and conditions set forth in this AGREEMENT, SWA Code, and all related ordinances and resolutions as may be amended from time to time by the SWA Board.

**13. TERM OF FRANCHISE**

Subject to Section 20, the term of the Franchise granted to FRANCHISEE shall be from the date indicated above to up to December 31 of the year granted.

**14. CONDITIONS FOR EFFECTIVENESS**

The effectiveness of this AGREEMENT is subject to FRANCHISEE's satisfaction of each and all of the conditions set forth below, each of which may be waived in whole or in part by SWA.

1. Accuracy of Representations. The representation and warranties made by FRANCHISEE in its Application for Franchise are true and correct on and as of the effective date.
2. Absence of Litigation. There is no litigation pending on the effective date in any court challenging the award or execution of this AGREEMENT or seeking to restrain or enjoin its performance.
3. Furnishing of Insurance. FRANCHISEE has furnished evidence of the Insurance required by this AGREEMENT.

**15. FRANCHISE FEES**

- A. During the term of the Franchise, FRANCHISEE shall pay to SWA Franchise Fees. Such fees shall be in the amount established for commercial solid waste services as set forth by Resolution of the SWA Board.
- B. The Franchise Fees shall not be owed by FRANCHISEE for revenues received from federal, state and local governments, including school districts. In the event that all other franchised haulers agree to pay franchise fees, through agreement amendments or other mechanisms, on revenues received from federal, and state, FRANCHISEE agrees to pay the franchise fee for such revenues. The FRANCHISEE will not enter into service agreements, at any time, that provide a fee exemption for Federal and State public agencies.
- C. FRANCHISEE shall pay Franchise Fees on all Solid Waste collected pursuant to the Franchise and this AGREEMENT regardless of the method of disposal or handling.
- D. In order to claim waiver or credit for Franchise Fees, FRANCHISEE shall adhere to the terms of the applicable Financial Incentive Program established per SWA Code Section 2.01.165.

**16. FRANCHISE FEE PAYMENT**

- A. Franchise shall pay Franchise Fees to SWA pursuant to Title II, SWA Code.
- B. FRANCHISEE shall pay all required Franchise fees to:
  - Department of Waste Management & Recycling
  - County of Sacramento
  - Attention: Administration & Finance
  - 9850 Goethe Road
  - Sacramento, CA 95827
- C. If FRANCHISEE remits Franchise Fees by personal delivery to SWA, such Franchise Fees shall be deemed timely paid only if delivered on or before the due date. If FRANCHISEE remits Franchise Fees by mail or other delivery service, such Franchise Fees shall be deemed timely only if:
  - (1) the envelope containing the Franchise Fee payment bears a postmark or receipt showing that the payment was mailed or sent on or before the due date or
  - (2) FRANCHISEE submits proof satisfactory to the SWA General Manager/Engineer that the Franchise Fee payment was in fact deposited in the mail or sent on or before said due date.
- D. In the event FRANCHISEE believes that it has paid Franchise Fees in excess of the amounts due to SWA, FRANCHISEE may submit a request for refund to the SWA General Manager/Engineer on a form provided by said SWA General Manager/Engineer. If proof of overpayment is satisfactory to the SWA General Manager/Engineer, the SWA General Manager/Engineer shall refund to FRANCHISEE any overpayment. FRANCHISEE shall not apply any overpayment as a credit against any

Recycling Incentive Fees, Franchise Fees or other amounts payable to SWA unless specifically so authorized by the SWA General Manager/Engineer in writing.

**17. REPORTS**

- A. FRANCHISEE shall submit reports as required by SWA Code and Administrative Rules promulgated by the SWA General Manager/Engineer.
- B. Quarterly reports shall be submitted on or before the first day of the second calendar month immediately following the reportable quarter and shall be submitted as provided in Title II, SWA Code.

**18. INSPECTION AUTHORITY**

- A. FRANCHISEES shall provide access to the General Manager/Engineer of all records, accounts or other information pertinent to conduct of the business and/or requirements of this Franchise as provided for in SWA Code.
- B. FRANCHISEE shall certify that any response provided to the General Manager/Engineer or his/her designee, pursuant to this section, is true, complete and correct.
- C. In addition to the requirements in A and B above, FRANCHISEE shall be responsible for reimbursement of audit costs for SWA staff, and any other FRANCHISEE related services provided by SWA Staff or its Contractors, including but not limited to, detailed follow-up audits when staff determines that documentation reported by FRANCHISEE is inadequate. Where necessary, SWA staff will retain the services of an independent auditor to verify performance and conduct an audit of FRANCHISEE records.

**19. DEFAULT, TERMINATION**

- A. Default. Except for the occurrence of Force Majeure as described in paragraph D of this Section, in the event of any material failure or refusal of FRANCHISEE to comply with any obligation or duty imposed on FRANCHISEE under this AGREEMENT or SWA Ordinances, SWA General Manager/Engineer and FRANCHISEE shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the parties are unable to agree on the informal resolution or cure of the breach within ten (10) business days, the SWA Board shall have the right to terminate this AGREEMENT if:
  - 1. Following the ten (10) day meeting period described above, the SWA General Manager/Engineer shall have given written notice to FRANCHISEE specifying that a particular default or defaults exists which will, unless corrected, constitute a material breach of this AGREEMENT on the part of FRANCHISEE; and
  - 2. FRANCHISEE fails to correct such default or fails to take reasonable steps to commence to correct such default within thirty (30) days from the date of the notice given by the SWA General Manager/Engineer under Section (1) above and FRANCHISEE

thereafter fails to diligently continue to take reasonable steps to correct such default.

- B. The following events shall also constitute a material breach and default under this AGREEMENT:
1. *Misrepresentation.* Any misrepresentation or disclosure made to SWA by FRANCHISEE in connection with or as an inducement to entering this AGREEMENT or any future amendment to this AGREEMENT, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this AGREEMENT.
  2. *Fraud or Deceit.* If FRANCHISEE practices, or attempts to practice, any fraud or deceit upon SWA.
  3. *Failure to Maintain Insurance Coverage.* If FRANCHISEE fails to provide or maintain in full force and effect the Worker's Compensation, liability, or insurance coverage as required by this AGREEMENT.
  4. *Violations of Regulation.* If FRANCHISEE violates any permits, orders or filing of any regulatory body having jurisdiction over FRANCHISEE which violation or non-compliance materially affects FRANCHISEE'S ability to perform under this AGREEMENT, provided that FRANCHISEE may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise shall be deemed to have occurred during the pendency of the contestation or appeal, to the extent FRANCHISEE is able to adequately perform during that period.
  5. *Acts or Omissions.* Any other act or omission by FRANCHISEE which materially violates the terms, conditions, or requirements of this AGREEMENT, SWA Ordinances or Codes, AB 939, as it may be amended from time to time, or any order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if FRANCHISEE cannot reasonably correct or remedy the breach within the time set forth in such notices, if FRANCHISEE should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

*Termination of Service.* In the case of a breach related to the above sections, and the breach continues for more than thirty (30) calendar days after written notice from the SWA General Manager/Engineer for the correction thereof, provided that where such breach cannot be cured within such thirty (30) day period, FRANCHISEE shall not be in default of this AGREEMENT if FRANCHISEE shall have commenced such action required to cure



the particular breach within ten (10) calendar days after such notice, and it continues such performance diligently until completed.

- C. Termination. Upon the occurrence of a material breach, the SWA Board shall have the right to terminate this AGREEMENT pursuant to the provisions in Title I, SWA Code. In the event the FRANCHISEE fails to cure the material breach specified in a written notice from the SWA General Manager/Engineer, then failure to cure may result in a declaration of termination of this AGREEMENT by SWA as provided in SWA Code.
- D. Force Majeure. The performance of this AGREEMENT may be discontinued or temporarily suspended in the event of Force Majeure. FRANCHISEE shall not be deemed to be in default and shall not be liable for failure to perform under this AGREEMENT if FRANCHISEE'S performance is prevented or delayed by Force Majeure. Force Majeure means acts of God including landslides, lightening, forest fires, storms, floods, freezing and earthquakes, civil disturbances, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, or government restraint. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances, and litigation, including appeals, shall be entirely within the discretion of FRANCHISEE and FRANCHISEE may make settlement thereof at such time and on any such terms and conditions as it may deem to be advisable, and no delay in making such settlement shall deprive FRANCHISEE of the benefit of this Section.
- E. Notice of Termination SWA General Manager/Engineer shall serve written notice, either personally or by registered or certified mail, postage prepaid of the termination of a Franchise under this AGREEMENT to the last place of business of FRANCHISEE and FRANCHISEE shall cease operation under its Franchise within ten (10) calendar days.

**20. CONDITIONS UPON TERMINATION**

- A. In the event the Commercial Solid Waste Collection Franchise is terminated:
  - 1. FRANCHISEE shall have no right or authority to engage in commercial solid waste collection, transportation or disposal operations in the SWA Region.
  - 2. FRANCHISEE shall, however, remain liable to SWA for any and all Franchise Fees that would otherwise be payable by FRANCHISEE, for any and all late payment charges and interest assessed, for any liquidated damages assessed pursuant to Section 7 of this AGREEMENT and for any and all delinquent report charges assessed pursuant to SWA Code.
  - 3. FRANCHISEE shall have a continuing obligation to submit to SWA all reports required by Section 11 of this AGREEMENT that relate

to Commercial Solid Waste or recycling activities performed by FRANCHISEE up to and including the date of termination.

- B. In the event the Franchise is terminated, then within the time period specified by the SWA Board and if directed by the SWA General Manager/Engineer, FRANCHISEE shall remove all of FRANCHISEE's Commercial Solid Waste containers and recyclables containers from all of FRANCHISEE's collection service locations and shall properly dispose of all solid waste or recyclables in such containers.

**21. NOTICES AND COMMUNICATIONS**

Except as otherwise provided in this AGREEMENT, all notices required by this AGREEMENT or by the Commercial Solid Waste Collection Franchise 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 SWA: Department of Waste Management & Recycling  
SWA of Sacramento  
9850 Goethe Road  
Sacramento, CA 85827  
Attn: Paul Philleo, SWA General Manager/Engineer

To FRANCHISEE: As listed in Section 1 of Exhibit A, attached hereto and incorporated herein.

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

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

- A. FRANCHISEE shall maintain functional Electronic Mail (Email) during the entire duration of the FRANCHISE and provide SWA Electronic Mail (Email) address for SWA communication to FRANCHISEE.
- B. FRANCHISEE shall notify SWA of any change in its functional Electronic Mail (Email) address in writing via US Mail or Email communication to the SWA.

**22. RELATIONSHIP OF PARTIES**

The parties intend that the FRANCHISEE shall perform the services required by this AGREEMENT as an independent contractor and not as an officer or employee of the SWA or its member jurisdictions nor as a partner of or joint venturer with SWA or its member jurisdictions. No employee or agent of the FRANCHISEE shall be deemed to be an employee or agent of SWA or its member jurisdictions and shall not obtain any rights to retirement benefits, worker's compensation benefits, or any other benefits which accrue to the employees of SWA or any of its member jurisdictions by virtue of their employment with said agency. Except as expressly provided herein, the

FRANCHISEE shall have the exclusive control over the manner and means of conducting the solid waste collection services performed under this AGREEMENT and all persons performing such services. FRANCHISEE shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents.

FRANCHISEE agrees that this AGREEMENT is not made in the interest of, or on behalf of, any undisclosed person, partnership, franchisee, association, organization, or corporation. FRANCHISEE has not directly or indirectly colluded, conspired, connived or agreed with any person, partnership, FRANCHISEE, association, organization, or corporation to secure any advantage against the SWA.

**23. COMPLIANCE WITH LAW**

In providing the services required under this AGREEMENT, FRANCHISEE shall at all times, at its sole cost, comply with all applicable laws of the United States, the State of California, SWA, and other states, cities or counties which may have jurisdiction over any service provided in this AGREEMENT and with all applicable regulations promulgated by any federal, state, regional or local administrative and regulatory agency, now in force and as they may be enacted, issued or amended during the term of this AGREEMENT.

**24. LICENSES AND PERMITS**

FRANCHISEE shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by SWA. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this AGREEMENT and constitutes grounds for the termination of this AGREEMENT by SWA.

**25. JURISDICTION**

Any lawsuits between the parties arising out of this AGREEMENT shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this AGREEMENT is made in and will be performed in the SWA Region, which includes the unincorporated area of the County of Sacramento and the City of Sacramento, , as well as any other jurisdiction that may join the SWA. Federal courts may have jurisdiction over certain lawsuits arising from this AGREEMENT and these should be brought and concluded within the federal system.

**26. INSURANCE REQUIREMENTS**

FRANCHISEE shall obtain and shall maintain throughout the term of this AGREEMENT, at FRANCHISEE's sole cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of work pursuant to this AGREEMENT by FRANCHISEE, its agents, representatives, employees or contractors.

A. Minimum Scope and Limits of Insurance.

FRANCHISEE shall maintain at least the following minimum insurance coverages:

1. *Comprehensive General Liability*: \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this AGREEMENT or the general aggregate limit shall be twice the required occurrence limit.
2. *Automobile Liability*: \$2,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall include hired autos and non-owned autos.
3. *Workers' Compensation and Employers Liability*: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

B. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be described in FRANCHISEE'S application for this Franchise. If FRANCHISEE desires to change its deductible or self-insured retention after the effective date of this AGREEMENT, it shall first obtain approval of SWA's Risk Manager for these increases. FRANCHISEE shall be responsible for payment of all deductibles or self-insured retentions.

C. Other Insurance Provisions.

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

1. *General Liability and Automobile Liability Coverages.*
  - a. SWA, its officers, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of FRANCHISEE; products and completed operations of FRANCHISEE; premises owned, leased or used by FRANCHISEE; and automobiles owned, leased, hired or borrowed by FRANCHISEE. The coverage shall contain no special limitations on the scope of protection afforded to SWA, its officers, employees and agents and contractors.
  - b. FRANCHISEE's insurance coverage shall be primary insurance as respects SWA, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by SWA, its officers, employees, agents or contractors shall be excess of FRANCHISEE's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to SWA, its officers, employees, agents or contractors.

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

2. *All Coverages.*

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to SWA.

D. Placement of Insurance.

Insurance shall be placed with insurers acceptable to SWA's Risk Manager. FRANCHISEE must place insurance with a current A.M. Best rating of no less than A: VII. The SWA Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of SWA and the general public are adequately protected.

E. Proof of Insurance.

FRANCHISEE shall furnish SWA with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Proof of insurance shall be mailed or personally delivered to the address provided in Section 26 of this AGREEMENT.

F. Acknowledgement

FRANCHISEE acknowledges that under SWA Code the Commercial Solid Waste Collection Franchise granted to FRANCHISEE will not become effective, and FRANCHISEE will have no authority to perform Commercial Solid Waste collection in the SWA Region, unless FRANCHISEE provides satisfactory proof of insurance prior to beginning operations as a FRANCHISEE.

G. Modification of Insurance Requirements

SWA shall retain the right at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the SWA's Risk Manager, the insurance provisions in this AGREEMENT do not provide adequate protection for SWA and for members of the public, SWA may require FRANCHISEE to obtain insurance sufficient in coverage, form and amount to provide adequate protection. SWA's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required. The SWA's Risk Manager may modify these insurance requirements only upon approval of the SWA Board.

**27. INDEMNITY**

FRANCHISEE agrees to defend, with counsel agreed upon by both parties, indemnify, and hold harmless the SWA and its member jurisdictions, and each of

their agents, officers, servants, and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the SWA or member jurisdiction employees, agents or officers which arise from, or are connected with, or are caused by willful or negligent acts or omissions of FRANCHISEE, or its agents, officers or employees, in the performance of the non-exclusive Franchise or this AGREEMENT, or in performing the work or services therein, and all costs and expenses of investigating and defending against same.

**28. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

- A. FRANCHISEE agrees and assures SWA that FRANCHISEE and any subcontractors shall comply with all applicable federal, state, and local anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of SWA, or recipient of services contemplated to be provided or provided under this AGREEMENT, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. FRANCHISEE shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of SWA employees and agents, and recipients of services are free from such discrimination and harassment.
- B. FRANCHISEE represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code § 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. FRANCHISEE agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.
- D. FRANCHISEE shall include this nondiscrimination provision in all subcontracts related to this AGREEMENT.

**29. ASSIGNMENT**

- A. FRANCHISEE acknowledges that this AGREEMENT involves rendering a vital service to the businesses within the SWA Region, and that the SWA has franchised FRANCHISEE to perform the services specified herein based on: (1) FRANCHISEE'S experience, skill and reputation for conducting its solid waste collection in a safe, effective and responsible fashion, at all times in keeping with applicable waste management laws, regulations and good solid waste management practices, and (2) FRANCHISEE's financial resources to maintain the required equipment and to support its indemnity obligations to the SWA under this AGREEMENT. SWA has relied on each of these factors, among others,

in choosing the FRANCHISEE to perform the services to be rendered by the FRANCHISEE under this AGREEMENT.

- B. Any franchise granted is a privilege to be held in trust by the original FRANCHISEE. A Franchise issued by SWA shall not be transferred, sold, leased, assigned, or relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the prior approval of the SWA Board. This restriction includes the transfer of ownership of the Franchise, or a majority of the ownership or control of the FRANCHISEE, or the conveyance of a majority of the FRANCHISEE's stock to a new controlling interest. Franchises shall become void upon the abandonment of same by the FRANCHISEE. The SWA Board shall not unreasonably withhold approval of a Franchise assignment, provided that such assignment does not unreasonably impact competition and the assignee is qualified to perform its obligations as required by this Franchise AGREEMENT and any implementing SWA ordinance.
- C. FRANCHISEE shall promptly notify the SWA General Manager/Engineer in writing in advance of any proposed assignment, sale, or transfer. In the event the SWA Board approves of any assignment, sale, or transfer, said approval shall not relieve FRANCHISEE of any of its obligations or duties under this AGREEMENT unless this AGREEMENT is modified in writing to that effect.

**30. BINDING ON SUCCESSORS**

The provisions of this AGREEMENT shall inure to the benefit to and be binding on the successors and permitted assigns of the parties.

**31. WAIVER**

The waiver by either party of any breach or violation of any provisions of this AGREEMENT shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies, which become due hereunder, shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this AGREEMENT.

**32. FRANCHISEE'S INVESTIGATION**

FRANCHISEE has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the AGREEMENT and the work to be performed by it.

**33. ENTIRE AGREEMENT**

This AGREEMENT, as amended, including the completed Exhibits, represents the full and entire AGREEMENT between the parties with respect to the matters covered herein. Any prior agreements, whether oral or written, between SWA and FRANCHISEE regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

**34. INTERPRETATION**

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

**35. AMENDMENT**

This AGREEMENT may not be modified or amended in any respect except by a written amendment duly approved and signed by both parties. This AGREEMENT shall be deemed effective as of the date first written above.

**36. SEVERABILITY**

If any nonmaterial provision of this AGREEMENT is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this AGREEMENT, which shall be enforced as if such invalid or unenforceable provision had not been herein.

**37. AUTHORITY TO EXECUTE**

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

**38. COUNTERPARTS**

This Agreement may be executed in counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

**(SIGNATURE PAGE FOLLOWS)**



**IN WITNESS WHEREOF**, the parties hereto have caused this Franchise AGREEMENT to be duly executed as of the day and year first written above.

**SACRAMENTO REGIONAL SOLID WASTE AUTHORITY**, joint powers authority organized under the laws of the State of California

**FRANCHISEE**

By \_\_\_\_\_  
Paul Philleo,  
General Manager/Engineer  
Sacramento Regional Solid  
Waste Authority

By \_\_\_\_\_  
Title \_\_\_\_\_

“SWA”

“FRANCHISEE”

Approved as to Form:

\_\_\_\_\_  
Diane E. McElhern  
Deputy County Counsel

Prepared by: \_\_\_\_\_  
Mike Miller, Administrative Services Officer II  
Contract Services Section / Accounting & Fiscal Services  
Sacramento County Municipal Services Agency  
Phone: (916) 874-7034