

Contract #

C-23-100

**CITY OF ELK GROVE
FRANCHISE AGREEMENT FOR COMMERCIAL SOLID WASTE COLLECTION**

This Franchise Agreement (“Agreement”) is made and entered into on February, 27, 2023 by and between the City of Elk Grove, a municipal corporation (“City”), and Atlas Disposal Industries, LLC, a limited partnership (“Franchisee”); City and Franchisee are collectively referred to herein as “Parties.”

RECITALS

WHEREAS, Public Resources Code section 40059 authorizes the City to determine aspects of solid waste handling, which are of local concern, including the means of collection and transportation of solid waste and the nature, location, and extent of providing solid waste handling services; and

WHEREAS, the City has determined that it is in its best interest to provide for commercial solid waste collection, transportation, and disposal services by means of non-exclusive franchises in order to regulate and ensure the orderly operation of commercial hauling and to minimize the potential for adverse effects on the local environment; and

WHEREAS, section 30.50.010 (A) of the Elk Grove Municipal Code (“EGMC”) authorizes the City to grant franchises for such services and EGMC Section 30.50.030 (A) authorizes such agreements to be approved by the City Manager; and

WHEREAS, the City wishes to grant a non-exclusive franchise agreement to Franchisee subject to all terms and conditions herein so that Franchisee may perform commercial solid waste collection, transportation and disposal services for commercial Generators in the City; and

WHEREAS, in September 2016 Senate Bill 1383 (SB 1383) was signed into law establishing methane emissions reduction targets representing the next step in California’s environmental protection strategy; and

WHEREAS, SB 1383 sets forth organics and recycling compliance mandates which are designed to progressively achieve California’s goal of 75% recycling, composting or source reduction of solid waste by 2025; and

WHEREAS, Franchisee shall pay the City the Commercial Hauler Fee in the amount prescribed by resolution of the City Council to compensate the City for the value of administering solid waste management in the City to ensure all franchised haulers are held to the same standard and provided with equity and fairness with regard to solid waste operations. The City’s administration includes, but is not limited to, general administrative costs to oversee compliance with all applicable laws and regulations; performing State-mandated recordkeeping and reporting; performing inspection and enforcement; costs associated with public outreach and education; contributions to the cost of an edible food recovery program; costs associated with the proper disposal of hazardous waste; and other general administrative and overhead costs as required. This administration shall be completed to protect the interests of the industry and commercial Generators with regard to solid waste collection, and;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, City and Franchisee agree as follows:

1. DEFINITIONS

For the purposes of this Agreement, all terms used shall have the same meaning as those defined in Title 30 of the EGMC.

2. GRANT OF FRANCHISE

- A. By this Agreement, City 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 solid waste kept, accumulated or generated by commercial Generators within the City 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 solid waste from commercial Generators only and to provide drop-box service to all Generators.
- C. By entering into this Agreement, Franchisee agrees to act as the City’s designee for purposes of carrying out certain requirements of Chapter 12 of Division 7 of Title 14 of the California Code of Regulations as specified within this Agreement.
- D. This grant is made pursuant to Franchisee's Application for Franchise, which application is incorporated herein by this reference and included as Exhibit G.

3. CONDITIONS OF EFFECTIVENESS

The effectiveness and validity 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 City.

- A. 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 of this Agreement.
- B. Absence of Litigation. There is no litigation pending, as of the effective date of this Agreement, in any court challenging the award or execution of this Franchise or seeking to restrain or enjoin performance thereunder.
- C. Furnishing of Insurance. Franchisee has furnished evidence of the Insurance required by this Agreement.

4. SCOPE OF SERVICES

Franchisee shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

5. **TERM**

This Agreement shall be effective as of the date executed by the Parties and approved as to form by the City Attorney and shall terminate on December 31 of the year granted. The Agreement shall automatically renew annually on January 1 of each year, for a period of one year, unless either party provides prior written notification to the other party by no later than October 31 that the Agreement will not be renewed in the subsequent year.

6. **NOTICES AND COMMUNICATION**

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, with a copy to the City Attorney, addressed as follows:

To City:

City of Elk Grove
Attention: Recycling & Waste Division
8401 Laguna Palms Way
Elk Grove, CA 95758

City of Elk Grove
Attention: City Attorney's Office
8401 Laguna Palms Way
Elk Grove, CA 95758

To Franchisee:

Atlas Disposal Industries, LLC
Attn: Grant Scruggs
3035 Prospect Park Drive, Suite 40
Rancho Cordova, CA 95670

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.

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

Franchisee shall maintain functional electronic mail (E-mail) during the entire duration of the Agreement and provide City with such E-mail address for City communication to Franchisee. Franchisee shall notify City of any change in its functional E-mail address in writing via US Mail or Email communication to the City.

7. **NOTICE TO PROCEED**

Prior to commencing work under this Agreement, Franchisee shall receive a written "Notice to Proceed" from City. A Notice to Proceed shall not be issued until all necessary bonds and insurances have been received. Franchisee shall not provide any services pursuant to this Agreement to commercial Generators in the City prior to issuance of the Notice to Proceed, unless such services are authorized by a separate and valid written agreement signed by the Parties.

8. COMPLIANCE WITH LAWS

Franchisee shall, at all times and at its sole cost and expense, observe and comply with all applicable Federal, State, regional, and City laws, regulations, rules, and ordinances, including those of other states, cities, or counties which may have jurisdiction over any service provided by Franchisee under this Agreement. Franchisee shall commit no trespass on any public or private property in performing any of the services authorized by this Agreement.

9. LICENSES, PERMITS, AND OTHER APPROVALS

A. Franchisee shall possess and maintain all necessary licenses, permits, certificates, qualifications, credentials, and approvals required by the laws of the United States, the State of California, the City of Elk Grove, and all other appropriate governmental agencies, including any certification and credentials required by City, required to engage in its profession and perform the work described herein. Franchisee represents and warrants to City that Franchisee shall, at its sole cost and expense, obtain and maintain in effect at all times during the term of this Agreement any licenses, permits, certificates, qualifications, credential, and other approvals which are legally required for Franchisee to perform the work described herein. Failure to maintain the licenses, permits, certificates, qualifications, credentials, and approvals shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by City.

B. Franchisee further certifies to City that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or City government contracts. Franchisee certifies that it shall not contract with a subcontractor that is so debarred or suspended.

10. PERFORMANCE STANDARDS

Franchisee shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to Franchisee's services.

11. OWNERSHIP OF WORK PRODUCT

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by Franchisee provided hereunder, in accordance with Elk Grove Municipal Code Chapter 30.50, shall be the exclusive property of City and shall be delivered to City upon completion of the services authorized hereunder. Franchisee may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by City. City recognizes that all technical data, evaluations, plans, specifications, reports, and other work products are instruments of Franchisee's services and are not designed for use other than what is intended by this Agreement.

12. INDEPENDENT CONTRACTOR

- A. It is understood and agreed that Franchisee (including Franchisee's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Franchisee's assigned personnel shall not be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Franchisee under the provisions of this Agreement; and as an independent contractor, Franchisee hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties hereto that Franchisee in the performance of its obligation hereunder is subject to the control or direction of City as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by Franchisee for accomplishing the results.
- B. If, in the performance of this Agreement, any third persons are employed by Franchisee, such person shall be entirely and exclusively under the direction, supervision, and control of Franchisee. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Franchisee, and the City shall have no right or authority over such persons or the terms of such employment.
- C. It is further understood and agreed that as an independent contractor and not an employee of City, neither the Franchisee nor Franchisee's personnel shall have any entitlement as a City employee, right to act on behalf of City in any capacity whatsoever as agent, nor to bind City to any obligation whatsoever. Franchisee shall not be covered by worker's compensation; nor shall Franchisee be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the City to employees of the City.
- D. It is further understood and agreed that Franchisee must issue W-2 and 941 Forms for income and employment tax purposes, for all of Franchisee's assigned personnel under the terms and conditions of this Agreement.

13. FRANCHISEE IDENTIFICATION

Franchisee shall provide the City with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8: Franchisee's name, address, telephone number, social security number or federal tax identification number, and whether dependent health insurance coverage is available to Franchisee.

14. CONFLICT OF INTEREST

Franchisee certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Contract. Franchisee agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Contract. Franchisee further agrees to complete any statements of economic interest if required by either City ordinance or State law.

15. LOBBYING AND UNION ORGANIZATION ACTIVITIES

- A. Franchisee shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.
- B. If services under this Agreement are funded or partially funded with State funds granted to City, Franchisee shall not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and shall comply with the provisions of Government Code sections 16645 through 16649.

16. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

- A. Franchisee agrees and assures City that Franchisee and any sub-Contractors 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 City, 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 City 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.

17. UNAUTHORIZED ALIENS

Franchisee hereby promises and agrees to comply with all of the provisions of the federal Immigration and Nationality Act (8 U.S.C.A. § 1101 et seq.), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Franchisee so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the federal government impose sanctions against City for such use of unauthorized aliens, Franchisee hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City in connection therewith.

18. INDEMNIFICATION

To the fullest extent permitted by law, Franchisee shall indemnify, defend, and hold harmless City, its officers, directors, officials, employees, and authorized volunteers and agents (collectively "Indemnified Parties"), from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively "Claims"), including cost of defense, settlement, arbitration, expert fees, and reasonable attorneys' fees, arising from any failure to comply with applicable law, any injuries to or death of any person, including employees of either party hereto, and damage to or destruction of any property, or loss of use or a reduction in value thereof, including the property of either party hereto, arising out of, pertaining to, or resulting from the acts or omissions of Franchisee, its officers, employees, or agents, or the acts or omissions of anyone else directly or indirectly acting on behalf of the Franchisee, or for which Franchisee is legally liable under law. Franchisee understands and agrees that this indemnity obligation shall apply regardless of whether any loss, damage or cost arises from, whether in whole or in part, any acts or omissions, or any other negligence, concurrent or otherwise, on the part of City, or any other party indemnified hereunder, except only those Claims caused by the sole negligence or willful misconduct of an Indemnified Party as determined by a Court of competent jurisdiction. Unless and until such judicial determination is made, or as otherwise agreed by the parties, Franchisee shall remain obligated to defend, indemnify, and hold harmless the Indemnified Parties pursuant to this Agreement.

The right to defense and indemnity under this Section arises upon occurrence of an event giving rise to a Claim and, thereafter, upon tender in writing to Franchisee. Franchisee shall defend Indemnified Parties with counsel reasonably acceptable to City. Notwithstanding the foregoing, City shall be entitled, on its own behalf, and at the expense of Franchisee, to assume control of its defense or the defense of any Indemnified Party in any legal action, with counsel reasonably selected by it. Should City elect to initially assume control of its defense, or the defense of any Indemnified Party, it does so without prejudice to its right to subsequently request that Franchisee thereafter assume control of the defense and pay all reasonable attorneys' fees and costs incurred thereby.

In any contract that Franchisee enters into with any subcontractors in any capacity related to any and all duties under this Agreement, there must be an indemnification provision identical to the one provided in this section applicable to the subcontractor

requiring subcontractor to assume the defense, indemnify and hold harmless City to the same extent as Franchisee. Franchisee's failure to include such an indemnification provision in any contract with a subcontractor shall constitute a material breach of this Agreement. In the event Franchisee fails to obtain such indemnity obligations from others as required herein, Franchisee agrees to be fully responsible and indemnify, and hold harmless City as prescribed under this section.

This indemnity obligation shall not be limited by the types and amounts of insurance or self-insurance maintained by Franchisee or Franchisee's subcontractors at any tier.

Nothing in this indemnity obligation shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this indemnity obligation shall survive the expiration or termination of the Agreement.

19. INSURANCE

- A. Without limiting Franchisee's indemnification, prior to the commencement of any work under this Agreement, Franchisee shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance as specified in Exhibit B and provide evidence thereof to City.
- B. It is the responsibility of Franchisee to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in Exhibit B. Failure to maintain insurance as required in this Agreement may be grounds for material breach of contract.
- C. Franchisee shall certify its compliance with Labor Code section 3700 in the form attached hereto and incorporated by reference, in Exhibit B.
- D. Franchisee or its insurance broker shall deliver the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage to City. City may designate an insurance certificate processor ("Processor") to accept and process Franchisee's proof of insurance. Franchisee shall deliver copies of the actual insurance policies, renewals, or replacements directly to City or Processor upon their request.

20. INFORMATION TECHNOLOGY ASSURANCES

Franchisee shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by Franchisee in the performance of services under this Agreement, other than those owned or provided by City, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to City under this Agreement.

21. COMPENSATION

- A. Commercial Hauler Fees paid to City under this Agreement shall be in accordance with Exhibit C, or Exhibit C as modified by City in accordance with express provisions in this Agreement.
- B. Franchisee shall maintain, for five years following termination of this Agreement, full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include, but is not limited to: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.

22. REPRESENTATIONS

- A. Franchisee agrees and represents that it is qualified to properly provide the services set forth herein, in a manner which is consistent with the generally accepted standards of Franchisee's profession.
- B. Franchisee agrees and represents that the work performed under this Agreement shall be in accordance with applicable federal, State and local laws, rules, policies, and regulations.
- C. Franchisee shall designate a project manager who at all times shall represent Franchisee before City on all matters relating to this Agreement. The project manager shall continue in such capacity unless and until they are removed at the request of City, are no longer employed by Franchisee, or are replaced with the written approval of City, which approval shall not be unreasonably withheld.
- D. Franchisee shall provide corrective services without charge to City for services which fail to meet the above professional and legal standards. Should Franchisee fail or refuse to perform promptly its obligations, City may render or undertake performance thereof and Franchisee shall be liable for any expenses thereby incurred.

23. ASSIGNMENT AND SUBCONTRACTING

- A. Franchisee acknowledges that this Agreement involves rendering a vital service to commercial solid waste Generators within the City, and that the City has franchised Franchisee to perform the services specified herein based on: (1) Franchisee's representation that it will conduct its solid waste collection in a safe, effective and responsible manner, at all times in keeping with applicable waste management laws, regulations and good solid waste management practices, and (2) Franchisee's representation that it has the financial ability to maintain the required equipment and to support its obligations to City under this Agreement. City has relied on each of these representations, among others, in choosing the

Franchisee to perform the services to be rendered under this Agreement.

- B. The franchise granted by City under this Agreement 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 written approval of the City. This restriction includes, but is not limited to, the transfer of ownership of the Agreement, 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. This Agreement shall become void upon the abandonment of Franchisee, or other violation of this Agreement. The City 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 Agreement and any implementing City law, regulation, rule, or ordinance. Franchisee shall promptly notify the City Manager in writing in advance of any proposed assignment, sale, or transfer. In the event the City approves 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.
- C. Franchisee shall not subcontract any work, without the prior written approval of City. Notwithstanding the foregoing, Franchisee may contract with third-party trucking/transportation companies to transport the materials described under this Agreement without the need to obtain City's prior written approval. However, claims for money due or which become due to Franchisee from City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to City.
- D. Franchisee shall be as fully responsible to City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by Franchisee.

24. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both Parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon City unless agreed to in advance and in writing by the City Manager and the City Attorney.

25. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the Parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, Franchisee shall continue without delay to carry

out all its responsibilities under this Agreement unless the Agreement is otherwise terminated in accordance with the Termination provisions herein. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claimfiling requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, State and federal law.

26. **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 the EGMC or related ordinances, resolutions, or administrative rules, the City Manager, or the City Manager's designee, 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 City shall have the right to terminate this Agreement if:
- 1) Following the ten (10) day meeting period described above, the City Manager shall have given written notice to Franchisee specifying that a particular default or defaults exist, 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 City Manager under Subsection 1 above and Franchisee thereafter fails to diligently continue to take reasonable steps to correct such default.
- B. In addition, the following events shall constitute a material breach and default under this Agreement:
- 1) *Misrepresentation*. Any misrepresentation or disclosure made to City 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 City.
 - 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 Agreement 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 violates:
 - a) The terms, conditions, or requirements of this Agreement;
 - b) City ordinances, resolutions, administrative rules or regulations;
 - c) AB 939, the California Integrated Waste Management Act of 1989 (as codified in Public Resources Code section 40000 et seq.), as it may be amended from time to time, including, but not limited to:
 - SB 1383 (Short-Lived Climate Pollutants: Organic Waste Methane Emissions Reductions), as it may be amended from time to time;
 - AB 341 (Mandatory Commercial Recycling), as it may be amended from time to time;
 - AB 1826 (Mandatory Commercial Organic Recycling), as it may be amended from time to time; and
 - AB 1594 (Green Material Used as Alternative Daily Cover), as it may be amended from time to time;
 - d) 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.

- 6) *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 City Manager, or the City Manager's

designee, 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.

- 7) *Landfilling of Source-Separated Recyclable Material or Organic Waste.* Franchisee submits for deposit into a landfill Recyclable Material or Organic Waste that was source-separated by a generator pursuant to EGMC Section 30.50.040 (G) without City's written permission.

C. Termination.

- 1) Upon the occurrence of a material breach, the City Manager shall have the right to terminate this Agreement. In the event the Franchisee fails to cure the breach specified in a written notice from the City Manager, then failure to cure may result in a declaration of termination of this Agreement by City pursuant to the conditions in Section 26 of the Agreement.
- 2) This Agreement may be terminated by City, provided that City gives not less than thirty (30) calendar days' written notice to Franchisee (delivered by certified mail, return receipt requested) of intent to terminate. This Agreement may be terminated by Franchisee, provided that Franchisee gives not less than ninety (90) calendar days' written notice to City and to any commercial Generators currently being serviced by Franchisee (delivered by certified mail, return receipt requested) of intent to terminate.
- 3) *Notice of Termination.* In the event of Termination pursuant to Subsection 1 or 2 above, the City Manager, or the City Manager's designee, shall serve written notice of termination, as set forth in Section 6 of this Agreement, and Franchisee shall cease operation under this Agreement within ten (10) calendar days of the date of the notice.

- D. Force Majeure. Neither party shall be in default by reason of any failure in the performance of this Agreement if such failure arises out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God, acts of the public enemy, acts of government in either its sovereign or contractual capacity, acts of the party whose performance is not sought to be excused, fires, flood, weather, epidemics, quarantine restrictions, strikes, freight embargoes, failure of transmission or power supply, mechanical difficulties with equipment which could not have been reasonably forecasted or provided for, or other causes beyond its sole control. The party so affected will resume performance as soon as practicable after the force majeure event terminates.

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.

27. CONDITIONS UPON TERMINATION

- A. In the event this Agreement is terminated by either party:
- 1) Franchisee shall have no right or authority to engage in commercial solid waste collection, transportation or disposal operations in the City. Franchisee acknowledges that this Agreement does not grant any continuation of service rights under Public Resources Code section 49520, and that Franchisee must cease providing the services authorized by this Agreement upon termination, even if such termination occurs before the end of the unexpired term of the contract or five years, whichever is less, as provided in PRC Section 49520.
 - 2) Franchisee shall, however, remain liable to City for any and all Commercial Hauler Fees that would otherwise be payable to City by Franchisee; for any and all Late Payment Fees, Delinquent Report Charges, and interest assessed pursuant to Exhibit E; and for any liquidated damages assessed pursuant to Exhibit C of this Agreement.
 - 3) Franchisee shall have a continuing obligation to submit to City all reports required by Section 28 of this Agreement that relate to commercial solid waste collection activities performed by Franchisee up to and including the date of termination.
- B. In the event this Agreement is terminated, then, within the time period specified by the City and if directed by the City, Franchisee shall promptly remove all of Franchisee's commercial solid waste containers from all of Franchisee's collection service locations and shall properly dispose of all solid waste in such containers.
- C. Notwithstanding any provisions of this Agreement, Franchisee shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this Agreement by Franchisee, and City may assess administrative charges against Franchisee in the amounts set forth in Exhibit C.

28. REPORTS

The following reports shall be submitted by Franchisee pursuant to the Franchise Agreement Reporting Schedule included in Exhibit D:

- A. Monthly Reports. Franchisee shall submit monthly revenue reports as required in EGMC section 30.50.190 (A) in a format approved by the City.
- B. Quarterly Reports. Franchisee shall submit quarterly tonnage reports as provided in EGMC section 30.50.190 (D) in a format approved by the City

C. Annual Reports.

- 1) Franchisee shall submit annual customer data for all commercial Generators serviced by Franchisee in the City and annual information on disposal facilities used as required by EGMC section 30.50.190 (E) in a format approved by the City. The City may require Franchisee to submit its annual customer report more frequently to meet State requirements. The report shall include, but is not limited to:
 - a) A list of all Generators serviced in the City including the following information for each:
 - i. Customer Account number;
 - ii. Account type (business or multi-family);
 - iii. Name of generator or business receiving service;
 - iv. Address and phone number of service location;
 - v. Name, Mailing/billing address, and phone number of generator if different than service location; and
 - vi. Weekly service volume for each waste type.
 - b) A list of all solid waste disposal, materials recovery, organic waste processing, or other facilities to which the hauler delivered materials directly or to which materials collected in the City were ultimately delivered for processing, recovery or disposal in the prior calendar year including the following information for each facility:
 - i. Facility name and location;
 - ii. The Recycling and Disposal Reporting System (RDRS) number of each facility;
 - iii. Written notice from each facility that accepts organic waste collected in plastic bags indicating that the facility can process and remove plastic bags when recovering organic waste; and,
 - iv. Written notice from each organic waste processing facility that accepts compostable plastic material for processing indicating that the facility can process and recover that material.
- 2) Franchisee shall submit an annual generator compliance report as required by EGMC section 30.50.190 (F) in a format as required by the

City. The City may require Franchisee to submit the annual compliance report more frequently to meet State requirements. Franchisee shall include Alternative Compliance information pursuant to Section 12 of Exhibit A. The report shall include, but is not limited to:

- a) The total number of generator accounts in the City;
- b) The number of Generators that:
 - i. Subscribe to recycling service (report shall indicate whether service is provided by Franchisee or by another hauler or service);
 - ii. Do not subscribe to a recycling service;
 - iii. Subscribe to organic waste recycling service (report shall indicate whether service is provided by Franchisee or by another hauler or service);
 - iv. Do not subscribe to organic waste recycling service; and
 - v. Have an approved waiver for either recycling or organic waste recycling service.
- c) The total weekly yardage of solid waste collection service for each service type (garbage, recyclable materials, and organic waste) provided to covered Generators during the reporting period.

3) The annual reports described in Subsections 1 and 2 may be combined into a single report provided that all required data is included.

D. Franchisee shall submit annual progress reports on the implementation of Franchisee's Diversion Plan.

E. Franchisee shall submit an annual (or more frequent as requested by City) report on its Contamination Monitoring Program pursuant to Exhibit A, Section 7. The report shall include:

- 1) A description of each hauler route reviewed, including Franchisee's route number and a description of the hauler route area, and the results of such reviews;
- 2) The number of reviews conducted for contamination monitoring, or the number of waste evaluations conducted, including the date, amount sampled, and the resulting ratio of contamination;
- 3) The number of notices, violations, or targeted education materials that

were issued to Generators for prohibited container contaminants; and

- 4) The amount of Recyclable Material or Organic Waste that was disposed of due to observation of prohibited container contaminants.
- F. Franchisee shall submit any other reports or data to City at the time, in the manner, and in the form satisfactory to the City as may be necessary to verify City's State-mandated diversion or compliance requirements, and to comply with EGMC Title 30.

29. AUDITS, RECORDS, AND INSPECTION AUTHORITY

- A. Franchisee shall maintain records, books, documents and other evidence directly pertinent to the performance of work under this Agreement in accordance with generally accepted accounting principles and practices.
- B. Upon City's request, without charge to the City, Franchisee shall promptly provide to the City, or its designee, access to all records, accounts, or other financial or program information pertinent to conduct the business and/or requirements of this Franchise as City deems necessary to determine Franchisee's compliance with legal and contractual requirements, including, but not limited to, the correctness and accuracy of claims submitted by Franchisee.
- C. Franchisee shall certify that any response provided to the City, pursuant to this section, is true, complete, and correct.
- D. As necessary, the City will retain the services of an independent auditor to verify Franchisee's performance, and/or to conduct an audit of Franchisee's records. Franchisee shall provide access to City's independent auditor to all records in accordance with subsections A and B above.
- E. In addition to the requirements in Subsections A and B above, Franchisee shall reimburse audit costs incurred by City, and any other costs for Franchisee-related services provided by City staff or its contractors, in the event of significant audit findings including but not limited to, detailed follow-up audits when staff determines that documentation reported by Franchisee is inadequate or incomplete.

30. PRIOR AGREEMENTS

This instrument and any attachments hereto constitute the entire agreement between City and Franchisee concerning the subject matter hereof and supersedes any and all prior oral and written communications between the Parties regarding the subject matter hereof.

31. MISCELLANEOUS PROVISIONS

- A. Attorneys' Fees: In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Agreement, the prevailing

party shall be entitled to reasonable attorneys' fees and all litigation expenses, including, but not limited to expert's fees and disbursements.

- B. Venue: This Agreement shall be deemed to be made in, and the rights and liabilities of the Parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Sacramento, State of California.
- C. Severability and Enforceability: If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is found to be void, voidable, invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.
- D. Time: All times stated herein or in any other Agreement documents are of the essence.
- E. Binding: This Agreement shall bind and inure to the heirs, devisees, assignees and successors in interest of Franchisee and to the successors in interest of City in the same manner as if such parties had been expressly named herein.
- F. Survivorship: Any responsibility of Franchisee for warranties, insurance, indemnity, record-keeping or compliance with laws with respect to this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement. All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.
- G. Construction and Interpretation: Franchisee and City agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, 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. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Agreement.
- H. No Third-Party Beneficiary: It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to City and Franchisee. Nothing contained in the Agreement shall give or allow any claim or

right of action whatsoever by any third party. It is the express intent of City and Franchisee that any such person or entity, other than City or Franchisee, receiving benefits or services under this agreement shall be deemed as incidental beneficiary

32. AUTHORITY TO EXECUTE

Each person executing this Agreement represents and warrants that they are duly authorized and have 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.

33. DUPLICATE COUNTERPARTS

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

Signatures scanned and transmitted electronically shall be deemed original signatures for purposes of this Agreement, with such scanned signatures having the same legal effect as original signatures. This Agreement may be executed through the use of an electronic signature and will be binding on each party as if it were physically executed.

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

Approved as to form:

FRANCHISEE

By: _____
Attorney for Franchisee

By: Dave Sikich
Dave Sikich, President

Approved as to form:

CITY OF ELK GROVE

By: Jonathan P. Hobbs
Jonathan P. Hobbs, City Attorney

By: Jason Behrmann
Jason Behrmann, City Manager

Attest to:

By: Jason Lindgren
Jason Lindgren, City Clerk

Dated: 2/27/2023 | 11:18 AM PST

EXHIBIT A **SCOPE OF SERVICES**

1. CUSTOMER SERVICE AGREEMENTS

Franchisee shall enter into customer service agreements with commercial Generators in compliance with EGMC Section 30.50.041.

Franchisee must provide collection of Garbage, Recycling and Organic Waste with each commercial generator in order to ensure compliance with the AB 939, EGMC Title 30, and other applicable laws and regulations. If all three (3) services are not provided to a commercial generator, the service agreement must require the commercial generator to provide evidence of an approved alternative form pursuant to EGMC Section 30.50.040(A).

2. OWNERSHIP OF WASTE MATERIAL

City does not gain any ownership, control, 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 solid waste that it collects. All solid waste shall become the property of Franchisee upon its deposit in containers provided by Franchisee.

3. DISPOSAL AND DIVERSION OF COMMERCIALY GENERATED WASTE MATERIAL

A. Franchisee shall dispose of garbage collected or transported by Franchisee only by taking such garbage to a landfill or transfer station lawfully authorized to accept such solid waste. Franchisee shall dispose of recyclables collected or transported by Franchisee only by taking such recyclables to a recycling or materials recovery facility legally permitted to process recyclable material. Franchisee shall dispose of organic waste collected or transported by Franchisee only by taking such organic waste to an organic waste processing facility legally permitted to process organic waste such that it constitutes a reduction in landfill disposal pursuant to 14 CCR 18983.1 (b). Franchisee shall not dispose of any solid waste by depositing it on any land, whether public or private, or in any river, stream or other waterway, in any sanitary sewer or storm drainage system, or in any other manner not authorized by law.

4. DIVERSION PROGRAMS

A. Source Separated Recyclable Material: Franchisee is required to divert from landfilling source separated recyclable material collected and removed by it within the City, in accordance with EGMC Chapter 30.50. Franchisee shall not landfill recyclable material without prior written authorization from City.

B. Source Separated Organic Waste: Franchisee is required to divert from landfilling source separated organic waste collected and removed by it within the

City, in accordance with EGMC Chapter 30.50. Franchisee shall not landfill organic waste without prior written authorization from the City.

- C. Construction and Demolition Debris: When Franchisee provides solid waste collection services for a project pursuant to EGMC Chapter 30.70, Franchisee shall assist their Generators in complying with EGMC Chapter 30.70 and ensure that C&D debris is kept separate from any source separated or mixed organic waste stream.

Mixed C&D debris shall only be considered to be diverted if Franchisee delivers mixed C&D debris to a Sacramento County Certified C&D Sorting Facility.

5. **COLLECTION EQUIPMENT**

- A. Any and all vehicles used by Franchisee to perform solid waste collection services shall be inspected annually and meet all requirements related to health and safety, specifications, vehicle inspections, certification and covered load requirements of EGMC Title 30, Sections 30.50.060, 070, and 080.
- B. Franchisee shall submit a vehicle inventory of Franchisee's vehicles triennially, as required by EGMC Section 30.50.070 (B), which shall include but not be limited to, vehicle number, year, make, model, capacity, and vehicle identification number (VIN). Franchisee's vehicle inventory shall be submitted in a form and manner approved by the City.
- C. Franchisee shall maintain a current list of its vehicles and shall submit to City an amended vehicle inventory upon request of the City or upon any changes in the inventory, such as new or replacement vehicles, as required by EGMC Section 30.50.070 (D).
- D. **Collection Vehicle Size Limitations / Overweight Vehicle Charge.** Franchisee may not use any Collection vehicle for Collection Service in violation of weight limitations set forth in Applicable Law. Franchisee may be assessed liquidated damages as set forth in Exhibit C as a result of exceeding the total overweight vehicle rate of ten percent (10%) annually, during the term of the Contract. The overweight vehicle rate will be calculated as the total number of overweight collection vehicle instances during each month, divided by the total number of collection vehicle loads transported during the same corresponding month. Prior to collecting administrative charges for overweight vehicles, the City shall afford Franchisee a reasonable opportunity to provide the Contract Administrator documentation of the extraordinary circumstance that caused the overweight vehicles. Extraordinary circumstances in this particular case include, but may be limited to, heavy rains or high winds that caused excess Organic Recyclable Material to be generated, rain to accumulate in open Collection Containers, or normal Collection routes to be delayed or shortened to extreme weather conditions. The City shall have authority to consider Franchisee's documentation and uphold and collect the assessed charge, to reduce the

charge, or waive and dismiss the charge. The CITY shall also have the authority to waive charges in advance of an anticipated, or in response to and actual, emergency event.

6. FRANCHISEE PROVIDED SOLID WASTE CONTAINERS

- A. General. Each Generator shall be provided garbage, recyclable material, and organic waste collection and disposal services. For these services, each Generator shall be provided with a minimum of three (3) containers to be used for the storage of solid waste as described below unless the Generator has been granted a City-approved Alternative Compliance Waiver pursuant to Section 12 of this Exhibit A. This provision of three or more containers shall comply with the collection container requirements specified in EGMC Section 30.50.090. Franchisee is responsible for ensuring Generator compliance with this requirement. This requirement does not apply to a Generator's temporary service.

- B. Source Separated Recyclable Materials Collection: Franchisee shall provide blue recycling containers to Generators for the collection of source-separated recyclable materials and shall provide recyclable materials collection service, as described below. Franchisee shall transport the recyclable materials pursuant to EGMC Section 30.50.040(G)(1) and 30.50.080.

- C. Source Separated Organic Waste: Franchisee shall provide green organic waste containers to Generators for the collection of organic waste and shall provide organic waste collection service. Franchisee shall transport organic waste pursuant to EGMC Section 30.50.040(G)(2) and 30.50.080.

- D. Organic Materials that are mandatory to be accepted for collection in the commercial collection program include, but are not limited to the following:
 - 1) Food waste;
 - 2) Food Soiled Paper;
 - 3) Paper and Paper Products;
 - 4) Green Waste
 - 5) Lumber and untreated wood
 - 6) Compostable Plastic Bags

Green waste and wood may be collected separately or excluded from collection if the Generator demonstrates that such waste is otherwise diverted from landfill disposal. Compostable plastic bag material must meet the American Society for Testing and Materials (ASTM) D6400 sections 5.1 through 6.4.2 standard for composability.

- E. Garbage Collection: Franchisee shall provide black or gray garbage containers to Generators for the collection of garbage and shall provide garbage collection service. Franchisee shall transport the garbage to a disposal facility or a transfer

facility for transfer and transport to a disposal facility.

- F. All solid waste containers shall be sized and serviced by the Franchisee with adequate frequency to meet the solid waste generation needs of the Generator.
- G. No later than January 1, 2036, Franchisee shall provide all Generators with collection containers that comply with the container color and labeling requirements specified in 14 CCR 18984.7 and 18984.8. If an existing container breaks or is otherwise rendered non-functional, Franchisee shall replace the non-functional container with a container that complies with the color and labeling requirements.

All Containers shall prominently display the type of designated material for Source Separation allowed to be placed in each Container. Labels must represent acceptable versus unacceptable items in written or graphic form as approved by Operations Manager.

- H. Violations of the conditions of this section may become the basis for enforcement actions and may be deemed by City to be a material breach of this Agreement, which shall subject the Franchisee to payment of liquidated damages pursuant to Exhibit C of this Agreement.

7. CONTAMINATION MONITORING, RECORDKEEPING, AND REPORTING

- A. By entering into this Agreement, Franchisee hereby agrees to act as the City's designee for purposes of monitoring contamination pursuant to 14 CCR section 18981.2(b). Franchisee shall implement a contamination monitoring, record keeping, and reporting program using one of the follow methods:
 - 1) Route reviews following the requirements of 14 CCR section 18984.5(b); or
 - 2) Waste evaluations following the requirements of 14 CCR section 18984.5(c).

This requirement does not apply to a Generator's temporary service.

- B. If utilizing route reviews pursuant to Subsection A(1) of this Section, when issuing notices to Generators as required by 14 CCR Section 18984.5(b)(1), Franchisee may also assess a Contamination Fee to the Generator. The Contamination Fee shall be an amount that is consistent with industry standards and no more than what is reasonably sufficient to recover additional costs such as processing costs or additional collection services that are attributable to the contamination. At the request of the City, Franchisee shall demonstrate that any Contamination Fees assessed are not punitive or excess.

- C. If utilizing waste evaluations pursuant to Subsection A(2), Franchisee shall not issue any notices or assess any Contamination fees unless a targeted route review is completed pursuant to 14 CCR Section 18984.5(c)(2)(B) to determine the source of the contamination. Following this determination, any Contamination Fee assessed shall be an amount that is consistent with industry standards and no more than what is reasonably sufficient to recover additional costs such as processing costs or additional collection services that are attributable to the contamination. At the request of the City, Franchisee shall demonstrate that any Contamination Fees assessed are not punitive or excessive.
- D. Contamination Recordkeeping. Franchisee shall maintain the following documents related to its contamination monitoring program for a minimum of five (5) years:
- 1) A description of which method in Subsection A is used for determining the level of solid waste container contamination;
 - 2) Documentation of all route reviews or waste evaluations conducted;
 - 3) Copies of all notices issued to Generators found to have prohibited container contaminants; and
 - 4) Documentation of the number of Recyclable Material or Organic Waste containers where the contents were disposed of due to observation of prohibited container contaminants.
- E. Contamination Reporting. Franchisee shall report the following, relative to its implementation of the contamination monitoring requirements:
- 1) The number of route reviews conducted for prohibited container contaminants, or the number of waste evaluations conducted, including the date, amount sampled, and the resulting ratio of contamination;
 - 2) The number of notices, violations, or targeted education materials that were issued to Generators for prohibited container contaminants; and
 - 3) The amount of Recyclable Material or Organic Waste that was disposed of due to observation of prohibited container contaminants.

All contamination monitoring documentation shall be submitted to City annually pursuant to Exhibit D unless requested more frequently by City. Documentation shall be in a format as directed by City and shall be made part of City's SB 1383 implementation record.

8. ABANDONED CONTAINERS

- A. If Franchisee, or one of its Generators, abandons any solid waste container owned by or labeled with Franchisee's company name or logo within City limits, the City may remove the container and/or dispose of the contents of the container.
- B. If the City removes a container and/or disposes of the contents of any container abandoned pursuant to Subsection A, the City may charge Franchisee for the City's costs incurred in such removal/disposal and for the City's costs of storage of the container. Franchisee shall reimburse City for such costs within thirty (30) days of the date of City's invoice for such costs.
- C. For the purposes of this section, "abandoned" includes:
 - 1) Franchisee's failure to remove the container within thirty (30) days of termination of services to a Generator;
 - 2) Franchisee's failure to remove the container within a reasonable time period as specified by the City after the expiration or termination of this Agreement, except in the case where Franchisee has been granted a subsequent franchise authorizing Franchisee to collect and transport the type or types of solid waste for which the container was used pursuant to this Agreement; or
 - 3) Franchisee's failure to dispose of the contents of the container within five (5) days after City issues written notice to Franchisee to dispose of the contents.

9. 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.

10. EDUCATION AND OUTREACH

- A. Franchisee shall assist City in educational and outreach activities to promote diversion of recyclable material and organic waste.
- B. Annually, by February 1 of each year, Franchisee shall submit to City in writing a plan detailing all of the educational and outreach programs, campaigns, and

services that will be carried out during the current year to assist its customers in achieving State-mandated diversion goals and requirements. At a minimum, Franchisee's outreach plan shall include:

- 1) At least one annual campaign targeting all Generators and including information about the State Mandatory Commercial Recycling Law (Assembly Bill 341, Chapter 476, Statutes of 2011), the State Mandatory Commercial Organics Recycling Law (Assembly Bill 1826, Chapter 727, Statutes of 2014), the State Mandatory Short-Lived Climate Pollutants: Organic Waste Reduction Law (Senate Bill 1383, Chapter 395, Statutes of 2016), applicable implementing regulations promulgated by CalRecycle, applicable City requirements, and how to comply with each Law. Information distributed shall include all requirements in 14 CCR Section 18985.1(a) including, but not limited to:
 - a. The requirement to properly separate waste;
 - b. Information on methods to prevent organic waste;
 - c. The methane reduction benefits of preventing landfill disposal or organic waste;
 - d. How to recover organic waste; and
 - e. Information regarding the City's edible food recovery program.

Outreach material produced pursuant to this section shall be developed to reflect appropriate information for the target audience (e.g. outreach information for multifamily Generators may vary from that developed for commercial Generators). At its option, the City may create a standardized flyer that includes all of the outreach requirements specified in 14 CCR Section 18985.1(a). If available, Franchisee may use this flyer (either an electronic version or hard copy) to fulfill the requirements of this subsection, provided that such information is distributed to all of its customers within the City.

- 1) At least one campaign specifically directed at Generators that are not in compliance with either AB 341, AB 1826, and/or SB 1383 informing them of their requirements, how they can comply with these laws, and the consequences of noncompliance (Contamination Fees assessed by Franchisee and possible enforcement action by the City).
- 2) For Generators that are determined to be Tier One or Tier Two commercial edible food Generators pursuant to EGMC section 30.10.010(T)(3) and (4), annual notification of information regarding the requirement to recover edible food, actions that Generators can take to reduce food waste, and a referral to or information about the City's Edible

Food Recovery Program.

- 3) Any other campaigns as deemed appropriate by Franchisee.
- C. Outreach completed in accordance with Subsection B of this Section shall be in a minimum of two languages: English and Spanish.
- D. Franchisee shall distribute the outreach and educational materials specified in Subsection B of this Section to all customers. Such materials may be in hard copy or electronic format. A copy of any outreach item shall be made available to the City upon request.

11. DIVERSION PLAN

Franchisee shall submit a Diversion Plan to City as part of its Application for a Franchise and annually thereafter. The initial Diversion Plan shall be approved by the City and incorporated into this Agreement as Exhibit F. The Diversion Plan shall contain, at a minimum:

- A. A methodology for how Franchisee will meet the maximum possible diversion rate.
- B. A compliance plan that describes the proposed methodology for identifying Generators required to have Source Separated Recycling and Organic Waste services, proposed methodology for tracking compliant/noncompliant Generators, and proposed efforts for increasing subscription levels for required services.
- C. A description of Franchisee's contamination reduction program, as described in Exhibit A, Section 7 of this Agreement.
- D. A general description of how the outreach and education campaigns required by Exhibit A, Section 10 of this Agreement will be fulfilled.
- E. A description of Franchisee's recordkeeping and reporting systems and how it will accurately meet CalRecycle mandatory reporting requirements under the laws identified of this Section above.

12. GENERATOR ALTERNATIVE COMPLIANCE PROGRAM

- A. Generators may also fulfill the requirements of the laws identified in Exhibit A, Section 10(B), by receiving an approved waiver from the City or by subscribing to one or more of the required services through a third-party hauler. In all cases, the Franchisee shall be responsible for tracking the compliance of all Generators to which it provides garbage collection service.
- B. Waivers.

- 1) City shall grant all generator recycling and organic recycling waivers; Franchisee shall not grant any waivers.
- 2) Waiver applications must be submitted to City by the generator on an Alternative Compliance form provided by City.
- 3) City shall provide Franchisee with an updated listing of waivers approved by City, including the Generators' names, mailing address, service address, and type of waiver.

C. Third-party haulers.

- 1) The City's non-exclusive commercial hauling program allows Generators to select the hauler of their choice for each of the required services: garbage, recycling, and organic waste. Franchisee shall track compliance for all Generators to which it provides garbage service as follows:
 - a. Generators that are existing customers as of January 1, 2022 and all new customers after that date that have not subscribed to recycling or organic waste collection service shall be referred to the City to complete an Alternative Compliance Form. Franchisee shall also submit a monthly report of all new customers after January 1, 2022 that have not subscribed to recycling or organic waste service.
 - b. City will review the Alternative Compliance Form and notify the generator within 30 days of whether the form has been approved or disapproved. City and/or generator will forward the approval to Franchisee.
- 2) Reporting. Franchisee shall document the method of compliance for each generator to which it provides garbage service whether it is a subscription for service, an approved waiver, or service provided by a third-party hauler. The method of compliance for each generator shall be included in Franchisee's annual report.

EXHIBIT B

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Contract, Contractor shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Contract, at its sole cost and expense, policies of insurance as set forth herein. Contractor shall comply with all reporting and other provisions of the policies of insurance as set forth herein including, but not limited to, timely reporting of claims and suits. Further, should Contractor maintain any programs of self-insurance, Contractor shall comply with the applicable fulfillment of any self-insured retentions.

1. General Liability:

- a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall not be less than:

Each occurrence:	One Million Dollars (\$1,000,000)
Products & Completed Operations:	One Million Dollars (\$1,000,000)
Aggregate:	Two Million Dollars (\$2,000,000)
- e. The City, its officials, employees, agents and authorized volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the Contractor, products and completed operations of the Contractor, premises owned, occupied, or used by the Contractor, or automobiles leased, hired, or borrowed by the Contractor on a separate endorsement acceptable to the City.
- f. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents, and authorized volunteers for losses arising from work performed by the Contractor.
- g. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents, or authorized volunteers.
- h. Provision or endorsement stating that for any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents, and authorized volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officials, employees, agents, or authorized volunteers shall be in excess of the Contractor's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.

2. Automobile Liability:

- a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of operation, maintenance, or use of any automobile.
 - b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbol 1 (any auto).
 - c. The limits of liability per accident shall not be less than:

Combined Single Limit	One Million Dollars (\$1,000,000)
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 - d. The City, its officials, employees, agents and authorized volunteers shall be covered and specifically named as additional insured.
3. Worker's Compensation
- a. Worker's Compensation Insurance, with coverage as required by the State of California (unless the Contractor is a qualified self-insurer with the State of California), and Employers Liability coverage. The Contractor shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit E.
 - b. Employer's Liability Coverage shall not be less than One Million Dollars (\$1,000,000).
4. Pollution Liability
- a. Pollution liability coverage for losses caused by sudden and accidental pollution conditions resulting in, but not limited to, bodily injury, personal injury, property damage, cleanup and remediation costs of property regardless of ownership, emergency response cost coverage, and fines and levies.
 - b. The limits of liability per occurrence shall not be less than One Million Dollars (\$1,000,000).
 - c. The insurance shall include a provision or endorsement naming the City, its officials, employees, agents, and volunteers, each as additional insureds with respect to any potential liability arising out of the performance of any work under the Contract.
5. **Acceptability of Insurers:** Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII.**
6. Any deductibles, aggregate limits, pending claims or lawsuits that may diminish the aggregate limits, or self-insured retention(s), must be declared to, and approved by, the City.
7. The Contractor shall furnish the City with certificates of insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Agreement. At the written request of the City, Contractor agrees to furnish a duplicate original or

certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.

8. The City, due to unforeseen risk or exhaustion, failure, or dilution of Contractor's insurance coverage, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of this Agreement by giving 30 days written notice.
9. The Contractor shall serve the City notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
10. If the Contractor fails to procure or maintain insurance as required by this section, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Contractor under this Agreement.
11. Failure of the City to obtain such insurance shall in no way relieve the Contractor from any of its responsibilities under this Agreement.
12. The making of progress payments to the Contractor shall not be construed as relieving the Contractor or its Sub-contractors or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
13. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of this Agreement.
14. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Contractor are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Contractor under this Agreement.

EXHIBIT C
COMPENSATION AND METHOD
OF PAYMENT

1. COMMERCIAL HAULER FEE

A. During the term of the Agreement, Franchisee shall pay to City the Commercial Hauler Fee. Such fees shall be based on gross receipts in the amount established for commercial solid waste services as set forth by resolution of the City Council. Current Commercial Hauler Fee approved by the City Council is included in Exhibit E. Gross receipts shall be determined as prescribed in EGMC Section 30.50.100(B) and (C) and shall include all of the following:

- 1) Base/Standard charges for services;
- 2) Disposal charges;
- 3) Disposal charges for Recyclable Material or Organic Waste that was landfilled;
- 4) Trash hauling charges;
- 5) Bin/container rental charges;
- 6) Fuel charges;
- 7) Environmental fees;
- 8) Labor charges;
- 9) Dry run charges;
- 10) Bin overload/relocation charges;
- 11) Administrative fees/charges;
- 12) Contamination charges;
- 13) Late payment charges; and
- 14) Any other fees or charges collected from Generators excluding the Commercial Hauler Fee due to City.

Gross receipts for Franchisees that provide only drop box service (otherwise known as clean-up companies) shall be set by resolution of the City Council.

- B. Franchisee shall pay the Commercial Hauler Fee on gross receipts for all garbage collected within the City pursuant to this Agreement regardless of the method of disposal or handling. For calculation of gross receipts and calculation of the Commercial Hauler Fee, Franchisee may deduct collection revenues for Source-Separated Recyclable Material and Organic Waste, provided those materials are diverted from disposal.
- C. Commercial Hauler Fees shall be paid monthly pursuant to EGMC Section 30.50.140.
- D. Franchisee shall provide payment security as required by EGMC Section 30.50.150.

2. OTHER FEES

- A. Late Payment Fees. If Franchisee does not pay the Commercial Hauler Fee due in full in accordance with this Agreement and EGMC Section 30.50.140, Franchisee shall be subject to, and shall pay, a Late Payment Fee pursuant to EGMC Section 30.50.160 and as set by Resolution of the City Council. Current applicable Late Payment Fees are included in Exhibit E.
- B. Delinquent Report Charge. If Franchisee does not submit any of the required reports pursuant to Section 29 of this Agreement, Franchisee shall be subject to and shall pay a Delinquent Report Charge pursuant to EGMC Section 30.50.190(G) and as set by Resolution of the City Council. Current applicable Delinquent Report Charges are included in Exhibit E.
- C. Late Fees Resulting from an Audit. If it is determined that Franchisee did not fully and timely pay its Commercial Hauler Fee as determined by an audit of Franchisee's records as specified in Section 29 of this Agreement, Franchisee shall pay the outstanding balance of the Commercial Hauler Fee due, a Late Payment Fee, and interest on the outstanding balance, including late fees, as set by Resolution of the City Council. The schedule of current Late Payment Fees and Interest is included in Exhibit E.

3. METHOD OF PAYMENT

- A. Franchisee shall pay the Commercial Hauler Fees via electronic funds transfer (EFT) whenever feasible; electronic payment instructions can be obtained by contacting the City's Finance Department. All other payments shall be directed to the following address with a memorandum stating "Commercial Hauler Fees":

City of Elk Grove
Attention: Finance Department: Revenue Division
8401 Laguna Palms Way
Elk Grove, CA 95758

- B. If Franchisee remits fees due by personal delivery to City, such fees shall be deemed timely paid only if delivered on or before the due date. If Franchisee remits fees due by EFT, mail, or other delivery service, such fees shall be deemed timely only if:
 - 1) The envelope containing the 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 City that the fee payment

was in fact deposited in the mail or sent on or before said due date.

- C. In the event Franchisee believes that it has paid the Commercial Hauler Fee in excess of the amounts due to City, Franchisee shall submit a request for refund to City in a form and manner satisfactory to the City within six months of the payment being made. If proof of overpayment is satisfactory and City determines that an overpayment has occurred, City may refund the excess amount or credit it against future payments of the Commercial Hauler Fee. Franchisee shall not apply any overpayment as a credit against any fees due without prior written authorization from the City.

4. LIQUIDATED DAMAGES

- A. City and Franchisee acknowledge that consistent, reliable collection services are of utmost importance to City and that City has considered and, in granting this franchise Agreement, the City has relied on Franchisee's representations as to its quality of service. City and Franchisee recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. City and Franchisee further recognize that if Franchisee fails to perform as required by this Agreement, City, its residents, and commercial Generators will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Agreement, City and Franchisee agree that the Liquidated Damages amounts established in this Exhibit represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. The liquidated damages provided for herein may be cumulative, and in addition to any other remedies available at law and in equity.
- B. Failure of Franchisee to perform as required by this Agreement will be subject to the assessment of liquidated damages pursuant to the following schedule:

Item	FAILURE(s)	Amount	Cure Period	EGMC section
A	Provide lockable containers at generator request	\$150/service address/failure	2 Business Days	30.50.040(E)
B	Containers with broken or missing lid	\$150/service address/failure	2 Business Days	30.50.090(A)(6)
C	Containers with graffiti	\$150/service address/failure	2 Business Days	30.50.090(C)(2)

Item	FAILURE(s)	Amount	Cure Period	EGMC section
D	Containers not properly colored or labeled	\$150/service address/failure	2 Business Days	30.50.090(A)(9)
E	Containers not sized or serviced with sufficient regularity resulting in overflowing, leaking, spilling, and/or material is placed outside container	\$250/service address/failure	48 hours	30.50.040(D)
F	Generator has not been provided with a minimum of three (3) containers (one (1) for each waste type) as required, and no waiver or exemption approved	\$250/service address/failure	2 Business Days	30.50.040(A) 30.50.040(D)
G	Use of collection vehicle(s) without required inspection	\$150/vehicle	None; liquidated damage may be immediately assessed.	30.50.070
H	Failure to transport organic waste to a facility, operation, activity, or property that recovers organic waste First violation Second violation Third and subsequent violations	\$50 - \$100 \$100 - \$200 \$250 - \$500	None; liquidated damage may be immediately assessed.	30.50.040(G)(2)
I	Landfilling of Recyclable Material or Organic Waste without prior written approval from City First violation Second violation Third and subsequent violations	\$50 - \$100 \$100 - \$200 \$250 - \$500	None; liquidated damage may be immediately assessed.	30.50.040(G)(1)
J	Verified collection outside of restricted collection hours	\$150/incident	None; liquidated damage may be immediately assessed.	30.50.060(G) 30.50.060(H)
K	Unsecured or uncovered materials in collection vehicles	\$150/incident	None; liquidated damage may be immediately assessed.	30.50.080
L	Provision of non-compliant service	\$5/day/account	None; liquidated damage may be immediately assessed.	30.50.040
M	Failure to comply with the requirements of this Agreement or EGMC not specified in items A through L following written notice from City to Franchisee of deficiency.	\$250 per occurrence	None; liquidated damage may be immediately assessed.	Chapter 30.50
N	Overweight collection vehicle	\$500.00 per day/per load	None; liquidated damage may be	

Item	FAILURE(s)	Amount	Cure Period	EGMC section
			immediately assessed.	

- C. If any of the performance failures identified above are brought to the attention of City, City shall notify Franchisee in writing of such failure, including the associated liquidated damages amount and the EGMC section being violated, and provide Franchisee with an opportunity to correct said failure within the cure period specified above. Proof of corrective action must be provided to City in writing by Franchisee within the time period specified in the notice.
- D. If proof of corrective action is not provided by Franchisee within the time period specified in the notice, City shall immediately assess the liquidated damage amount according to the schedule above by preparing an invoice to Franchisee for such amounts, which invoice Franchisee shall promptly pay as part of Franchisee's next monthly payment to City.
- E. Continued failure to take any corrective action stated in the notice shall be deemed a material breach of this Agreement, and may constitute grounds for termination pursuant to Section 26. B.5.d of this Agreement.
- F. Any disputes arising from this section shall be resolved pursuant to Section 25

EXHIBIT D
FRANCHISE AGREEMENT REPORTING SCHEDULE

REPORT NAME	REFERENCE	FREQUENCY	DUE DATE(S)
Monthly Revenue Report	Section 29 (A)	Monthly	On or before the first day of the second month immediately following the month in which services were provided EXAMPLE: January report due March 1
Tonnage Report	Section 29 (B)	Quarterly	May 1, August 1, November 1, February 1
Customer/Generator Data	Section 29 (C) (1) (a)	Annually; or more often as requested	February 1
Disposal Facilities Used	Section 29 (C) (1) (b)	Annually; or more often as requested	February 1
Customer/Generator Compliance Data	Section 29 (C) (2)	Annually; or more often as requested	February 1
Annual Diversion Plan Progress	Section 29 (D)	Annually; or more often as requested	February 1
Contamination Monitoring Program	Section 29 (E)	Annually; or more often as requested	February 1
Other reports or data as requested	Section 29 (F)	Within 10 business days (Mon-Fri) of City's Request	Varies

EXHIBIT E
FEE SCHEDULES

Approved by the City Council on October 13, 2021, Resolution No. 2021-301

COMMERCIAL HAULER FEES

Percentage of Commercial/Industrial/Multi-family Solid Waste Diverted from Landfills	Commercial Hauler Fee as a Percentage of Gross Receipts
30% or greater	10%
25% or greater but less than 30%	12%
20% or greater but less than 25%	14%
15% or greater but less than 20%	16%
10% or greater but less than 15%	18%
Less than 10%	20%

LATE PAYMENT FEES

Fee Type	Amount	EGMC Reference
Late Payment	10% of commercial hauler fee due	30.50.160(A) 30.50.160(B)
Outstanding Balance Fee	1.5% compounded monthly, including any late fees due	30.50.160(A)
Interest on Outstanding Balance from an Audit	1.5% compounded monthly for each month in which the fees were not paid	30.50.160(B)

DELINQUENT REPORT FEES

Fee Type	Amount	EGMC Reference
Delinquent/Inaccurate Report Charge	\$50 per business day (Mon-Fri) for the first 15 days the report is late following the due date	30.50.190(G)
	\$100 per business day (Mon-Fri) for the 16 th and each subsequent day the report is late following the due date	30.50.190(G)

CONSTRUCTION & DEMOLITION (C&D) PROCESSING FEES

Project Valuation	Fee Amount	EGMC Reference
\$250,000 or less	\$0	30.70.020
\$250,001 or more	0.04% of project valuation	30.70.020
	\$100.00 minimum fee	
	\$800.00 maximum fee	
Demolition Projects (any value)	0.04% of project valuation	30.70.020
	\$40.00 minimum fee	
	no maximum fee	

EXHIBIT F
ANNUAL DIVERSION PLAN

To be completed and submitted by Applicant as part of the Franchise Application process and attached hereto as Exhibit F to this Agreement

OFFICE
8401 Laguna Palms Way
Elk Grove, California 95758
elkgrovecity.org/recycle

SPECIAL WASTE COLLECTION CENTER
9255 Disposal Lane
Elk Grove, CA 95624
916.478.2228



COMMERCIAL REFUSE HAULER ANNUAL DIVERSION PLAN

I - GENERAL HAULER INFORMATION

Applicant shall provide the City of Elk Grove ("City") with information regarding the company and the type of services that will be provided.

II- HAULING INFORMATION

A. Table 1 - Refuse Collection and Landfills

Applicant shall provide the City with the following tonnages:

- (1) Estimated tonnage of refuse that will be collected in the City and delivered to identified Class II and Class III landfills, respectively, for disposal during the current calendar year, and
- (2) Projection of tonnage for the next calendar year.

B. Table 2 - Refuse/Recyclables Collection and Transfer/Materials Recovery Facilities ("MRF")

Applicant shall provide the city with the following tonnages:

- (1) Estimated tonnage of refuse and recyclables your company will collect in the City and deliver to identified transfer stations/MRFs during the current calendar year, and
- (2) Projection of tonnage for the next calendar year.

Confirm with Transfer/Materials Recovery Facilities X ("MRF") operators the ultimate disposal destination of residue remaining after processing recyclables.

C. Table 3 - Total Tonnage Diverted

Applicant shall provide the city with the following tonnages:

- (1) Estimated tons of each material type that will be collected in the City and diverted from disposal during the current calendar year, and
- (2) Projection of tonnage for the next calendar year.

Itemize the following materials:

- (1) Recyclables by commodity;
- (2) Soil and dirt delivered to Class II landfills (including non-hazardous designated wastes such as contaminated soil);
- (3) Soil and dirt delivered to Class III landfills; and
- (4) Other materials not listed but recovered, recycled or otherwise diverted from disposal.

D. Table 4 - Collected/Diverted and Disposed Tonnage Summary

Applicant shall provide the City with the following tonnages:

- (1) Estimated tonnage of materials that will be collected in the City and disposed or diverted from disposal during the current calendar year, and
- (2) Projection of those tons for next calendar year.

The total collected should equal the total disposed plus the total diverted:

Total Collected = Total Disposed + Total Diverted

Calculate the diversion rate by dividing the total collected by the total diverted and multiplying by 100:

Diversion Rate = (Total Diverted / Total Collected) X 100

III - PLANNED EFFORTS TO ASSIST IN MEETING THE STATEWIDE 75% DIVERSION GOAL

Table 5 - Summary of Programs to be Implemented to Meet 75% Diversion

Program Summary

Identify and describe the recycling and diversion programs proposed in order to assist the State, the community, and your customers in achieving the Statewide 75% diversion goal.

Collection Methods. Describe methods used to collect solid waste that will increase recycling. Attach additional pages if necessary.

Construction and Demolition (C&D) Waste. Describe methods used to collect Construction and Demolition ("C&D") waste that will increase recycling. Identify the facilities to be used and describe the processing occurring at those facilities. Attach additional pages if necessary.

Table 6, Facilities Used for Mixed Waste Processing or Sorting

Identify the facilities to be used for mixed waste processing or sorting.

Program Details

Provide details of the following programs and facilities:

B3. Processing or Recycling Facilities. Describe any processing facilities or recycling facilities that will be used to increase recycling. Identify the facilities to be used and describe the processing occurring at that facility. Attach additional pages if necessary.

IV - CERTIFICATION

Complete and sign the form listed on page 12

ANNUAL DIVERSION PLAN

1. Please fill in the following general hauler information

Applicant Name:

Atlas Disposal

Authorized Agent or Employee Representing Business:

Grant Scruggs

Title: Sustainability Coordinator

Phone: (916) 288-2784 **Email:** grant@atlasdisposal.com

Type of hauling services that will be provided (check all that apply):

- Commercial/Industrial waste collection
- Multifamily waste collection
- Construction and demolition waste collection (roll-off service)
- Commercial organic/food waste collection
- Other solid waste service as described below:

2. Describe the methodology that will be used to maximize waste diversion and minimize contamination in each waste stream.

Atlas Disposal staffs a full-time Sustainability Coordinator to work with the City of Elk Grove on diversion reporting, compliance with state and local laws, and public outreach in the pursuit of increasing diversion and minimizing contamination. We run, at a minimum, monthly generator reports to assess compliance and ensure that all customers required to divert recyclable and organic materials are doing so. We also have developed a contamination monitoring program to identify contamination in our containers and reach out to customers to educate them and reduce their contamination.

The Atlas Disposal team is well versed in State recycling mandates. When adding new customers, the Atlas Disposal Sales team will ensure that customers are in compliance and direct them to exemption/alternative service verification forms when appropriate. We will continue to reach out to any generators that are non-compliant under AB 321, AB 1826, or SB 1383 to sign customers up with required services or direct them to complete a City of Elk Grove exemption form when appropriate.

3. Describe the methodology that will be used to track each generator's compliance with SB 1383 recycling and organic waste requirements.

To identify covered generators, Atlas Disposal has developed a report that generates a dataset of all Atlas customers in the City of Elk Grove and the average cubic yards per week that is hauled of each waste stream: trash, recycling, and organics.

To identify covered generators under SB 1383, all multi-family accounts and all commercial customers are now identified as covered generators. Accounts that are non-compliant for recycling are identified as customers that don't have recycling service and don't have an exemption or alternate service with the City of Elk Grove. To identify customers non-compliant with organics, we look at customers that don't have organics service and don't have an exemption or alternate service with the City of Elk Grove. Accounts with less than 2yds of weekly service have been deemed as 'non-generators' under instruction by the City of Elk Grove and are not presently subject to these requirements.

To track complaint and non-compliant covered generators, these reports are run at least once a month by Atlas Disposal's sustainability coordinator to identify any non-compliant accounts. We also receive feedback from City of Elk Grove staff whenever they identify any non-compliant accounts that may have been overlooked. These cases of non-compliance are addressed in a timely manner with direct outreach and forced container deliveries if the customer does not get in compliance themselves.

4. Describe efforts that will be used, in coordination with the City, to bring noncompliant generators into compliance.

We will use our Sustainability Coordinator, our Sales Team, and our drivers as our best information source to prevent contamination and monitor customers that are in non-compliance. Whenever we notice any compliance issues, our well-versed customer service and sales team will contact the customer, offering education or more service if needed. Partnering with the City of Elk Grove to increase awareness and outreach in the community is key to preventing non-compliance. Our Sustainability Coordinator works closely with City staff and Code Enforcement to take questions, reach out to non-compliant accounts, and ensure that exemptions are properly tracked.

5. Describe the Contamination Monitoring program that will be used pursuant to Section 7 of Exhibit A.

Atlas Disposal drivers are equipped with tablets that allow them to log which containers are contaminated and take photos when contamination is present on-site. These photos are uploaded directly into our customer database and allow us to visually assess the contamination. Each time contamination is reported, the reported customer will be sent an email notice notifying them which container is contaminated, what materials go in each container, and the consequences of contaminating containers. Customers with repeated contamination will be called directly by Atlas Disposal's customer service staff to work out a solution to reduce their contamination. Customers will also be offered training and additional signage as needed. Each instance of reported contamination will be reported to the City of Elk Grove through our route review reporting under SB 1383.

6. Describe how your firm will fulfill the education and outreach requirements in Section 10 of Exhibit A. Please include details describing each of the campaigns required by Subsection 10 (B). Include a description of any material that will be developed specifically for multifamily generators. Attach examples of any material to be distributed including electronic messages, flyers, notices, etc.
(Attach additional pages as needed to include all information regarding education and outreach plans)

We provide flyers, indoor signage, and pamphlets that are distributed both digitally and printed. Our indoor posters are printed on adhesive paper and can be affixed to indoor bins, walls, boards, etc. Our flyers are printed on thick non-adhesive paper that can be distributed to multi-family tenants or staff at commercial businesses. We don't keep track of every time members of our team send these out but our team typically sends out a couple of these a day to customers that request educational materials, customers that contact us with questions, or customers that are being set up with a new service or account. We also have PDF copies available for download on our website.

In addition, we also will periodically mail out outreach materials to all Atlas Disposal customers to broaden our educational outreach. We have developed a Service Guide with information on what belongs in each waste stream, items prohibited in each container, contact information for our customer service team, and a QR code containing a link to a Spanish language version of the flyer. This flyer will be mailed to all Atlas Disposal customers annually at minimum.

We also have developed targeted emails and mailers that are sent to non-compliant customers to get them into compliance. These are typically followed up with direct outreach and, if necessary, bin drops to force compliance. We also have contamination letters that are emailed to customers each time contamination is reported by our drivers. These have information on what container was contaminated, what materials belong in each container, and a notification to the customer that their contamination will be reported to their local jurisdiction where they may face enforcement action.

7. Attach examples of signage Applicant will provide to generators for outdoor solid waste containers. Explain how these signs will be affixed to containers.

In order to properly educate customers on what is allowable in their containers, Atlas Disposal has updated our container signage to provide sorting information in an easily interpretable format. All outdoor signage is printed on waterproof, durable, vinyl stickers that adhere to our containers. These signs are continually being added to new and existing containers, and are also available as digital PDFs upon request. In the case of the acceptability of materials changing, we are able to work with our designer to quickly update our educational materials.

II - HAULING INFORMATION

TABLE 1
Refuse Collection and Landfills

DISPOSAL FACILITY	WASTE TYPE (Class II or III)	Estimated Disposal for Current Calendar Year	Projected Disposal for Next Calendar Year
Disposal Facilities (please list)			
L and D Landfill	Class II	669.56 tons	669.56 tons
Kiefer Landfill	Class III	5393.28 tons	5393.28 tons
Yolo County Central Landfill	Class II	872.2 tons	872.2 tons
		tons	tons
		tons	tons
		tons	tons
		tons	tons
Total Disposal		6935.04 tons	6935.04 tons

TABLE 2
Refuse/Recyclables Collection and
Transfer/Materials Recovery Facilities

FACILITY USED	Waste and Residuals Transferred to Landfill(s)	Diverted
Current Calendar Year, estimated		
North Area Transfer Station	580.6 tons	0 tons
WM Sacramento Recycling & Transfer Station	32.75 tons	904.75 tons
Florin Perkins	115.43 tons	403.31 tons
Recycling Industries	1.9 tons	183.5 tons
Green Evolution Recycling	0 tons	33.76 tons
International Paper	0 tons	730.08 tons
Sierra Waste	3.31 tons	171.03 tons
Universal Services	0 tons	81.65 tons
Yolo County Central Landfill (Organics)	0 tons	297.87 tons
L and D Landfill (C&D and Recycling)	137.41 tons	1309.18 tons
Smitty's Pig Farm	0 tons	70.1 tons
Current Year Totals	871.4 tons	4185.23 tons
Next Calendar Year, projected		
North Area Transfer Station	580.6 tons	0 tons
WM Sacramento Recycling & Transfer Station	32.75 tons	904.75 tons
Florin Perkins	115.43 tons	403.31 tons
Recycling Industries	1.9 tons	183.5 tons
Green Evolution Recycling	0 tons	33.76 tons
International Paper	0 tons	730.08 tons
Sierra Waste	3.31 tons	171.03 tons
Universal Services	0 tons	81.65 tons
Yolo County Central Landfill (Organics)	0 tons	297.87 tons
L and D Landfill (C&D and Recycling)	137.41 tons	1309.18 tons
Smitty's Pig Farm	0 tons	70.1 tons
Next Year Totals	871.4 tons	4185.23 tons

TABLE 3
Total Tonnage Diverted

MATERIAL	Estimated Tonnage, Current Calendar Year	Projected Tonnage, Next Calendar Year
C & D	1013.73 tons	1013.73 tons
Cardboard (OCC)	875.38 tons	875.38 tons
Commingled Recyclables	1197.51 tons	1197.51 tons
Dirt - Uncontaminated (Class II)	9.07 tons	9.07 tons
Dirt - Contaminated (Class III)	54.04 tons	54.04 tons
Glass	0 tons	0 tons
Green Waste	1.95 tons	1.95 tons
Inerts (Asphalt, Concrete, or Gravel)	433.83 tons	433.83 tons
Metals	81.65 tons	81.65 tons
Mixed Commercial Waste	0 tons	0 tons
Mixed Dry Waste	0 tons	0 tons
Mixed Paper	0 tons	0 tons
Newspaper	0 tons	0 tons
Other Papers: _____	0 tons	0 tons
Organics/ Food waste	367.97 tons	367.97 tons
Plastics	0.5 tons	0.5 tons
White Goods	8 tons	8 tons
Wood Waste	174.72 tons	174.72 tons
Other (please list & briefly describe):		
Propane tanks	3 tons	3 tons
Tires	27 tons	27 tons
Totals	4247.35 tons	4247.35 tons

TABLE 4
Collected/Diverted and Disposed Tonnage Summary

	Total Collected*	Total Disposed	Total Diverted	Diversion Rate**
Current Year	12,054.78 tons	7869.54 tons	4185.24 tons	34.72 %
Next Year (Projected)	12,054.78 tons	7869.54 tons	4185.24 tons	34.72 %

***Total Collected** = Total Disposed + Total Diverted
 ****Diversion Rate** = (Total Diverted / Total Collected) X 100

III - PLANNED EFFORTS TO MEET 75% DIVERSION REQUIREMENT

TABLE 5
Summary of Programs
to be Implemented to Meet 75% Diversion

Waste Stream	Summary of Programs
Commercial/Industrial Collections	Atlas Disposal continues to make efforts to increase the diversion of materials. We are expanding our contamination monitoring program, which will encourage customers to use the correct containers and gives customers the opportunity to remedy containers that are contaminated so they can be diverted. We are also encouraging customers to make sure they have sufficient capacity for all of their recycling and organic waste. Our educational outreach will also help to drive up diversion with increased customer awareness to better separate materials.
Construction and Demolition Collections	For construction and demolition collections, we drive up diversion by utilizing three C&D facilities with high diversion rates: L&D Landfill, Florin Perkins, and Sierra Waste. If any of these facility rates were to experience a major decline in diversion, we would take our business elsewhere. We also make sure that customers with C&D materials haul their materials as C&D and not as trash.
Other Collections	

TABLE 6
Facilities Used for Mixed Waste Processing or Sorting

Atlas Disposal does not collect 'mixed waste'. All of our materials that are hauled are either single-stream (trash, commercial comingle, and organics) or they are material specific (metals, wood, C&D, etc.).

FACILITY	LOCATION (address & city)	Description of Waste or Recyclables to be Processed	Expected Recovery Rate (%)	Start Date to Use Facility (month & year)	Tons to be Processed (per day)

Program Details

B1. Collection Methods

Atlas Disposal utilizes 64-gallon carts, 96-gallon carts, 2-yard, 3-yard, 4-yard, 6-yard, and 8-yard front-load containers. Front-load trash containers are primarily taken to Kiefer Landfill, North Area Transfer Station, and Yolo County Central Landfill. Front-load recycling containers are taken to L and D Landfill, WM Sacramento Recycling and Transfer Station, and Recycling Industries. Front-load organics containers are taken to Yolo County Central Landfill.

For roll-off, we utilize roll-off dumpsters ranging from 10 to 40 yards as well as customer owned containers and compactors. Roll-off containers can be used for a variety of purposes such as trash, C&D, and various types of recycling. The facility that the roll-off containers are hauled to depend on their materials and location. For trash, roll-off containers are typically taken to L and D Landfill or Kiefer Landfill. The facilities used for C&D and recyclable materials are listed below.

B2. Construction and Demolition (C&D) Waste

Atlas Disposal hauls to three facilities for C&D waste; L and D Landfill, Florin Perkins, and Sierra Waste. C&D materials are only hauled using roll-off containers.

B3. Processing or Recycling Facilities

For front-load containers, recycling containers are taken to L and D Landfill, WM Sacramento Recycling and Transfer Station, and Recycling Industries. Front-load organics containers are taken to Yolo County Central Landfill.

For roll-off recyclables, the facilities being utilized are all subject to change depending on day to day conditions and pricing. The facilities typically used for roll-off recyclables in Elk Grove are listed as follows: Commercial Comingle roll-off containers generally go to WM Sacramento Recycling & Transfer Station, Cardboard typically goes to International Paper, Green Evolution Recycling, or WM Recycling and Transfer Station, Food Waste typically goes to Smitty's Pig Farm or Yolo County Central Landfill, Wood and Green Waste typically goes to Sierra Waste, Metals typically go to Universal Services, and Concrete and White Goods typically go to L and D landfill.

OFFICE
8401 Laguna Palms Way
Elk Grove, California 95758
elkgrovecity.org/recycle

SPECIAL WASTE COLLECTION CENTER
9255 Disposal Lane
Elk Grove, CA 95624
916.478.2228



IV - CERTIFICATION, REPRESENTATION AND WARRANTY, UNDERSTANDING AND ACKNOWLEDGEMENT

On behalf of the Applicant, as the authorized representative of the Applicant, I certify that the information in parts I, II, and III of this Diversion Plan (including identified facilities) is true, correct and complete.

I represent and warrant that the estimates and projections in Tables 1 and 2 are reasonable after conducting investigations and exercising due diligence, such as reviewing Applicant's review of:

(1) customer account subscription records, (2) collection routes, (3) tipping fee receipts, and (4) other information necessary to make fair and accurate estimates and projections.

I represent and warrant that the Applicant named below will use best efforts to implement the proposed Diversion Plan and will keep records documenting the information, estimates, and projections provided in the Diversion Plan, for 3 years from the submission date of the Diversion Plan.

I understand and acknowledge that failure to implement the Diversion Plan may result in revocation and/or termination of the Applicant's ability to conduct business and haul waste in the City of Elk Grove. I also understand that I may modify this Diversion Plan at a later date by submitting a subsequent revision to this Diversion Plan.

Name of Applicant: Atlas Disposal

Authorized Signatory: Grant Scruggs

Signed: 

Title: Sustainability Coordinator

Date: 1/24/23

EXHIBIT G

APPLICATION FOR A FRANCHISE AGREEMENT

To be completed and submitted by Applicant as part of the Franchise Application process and attached hereto as Exhibit G to this Agreement

OFFICE
8401 Laguna Palms Way
Elk Grove, California 95758
elkgrovecity.org/recycle

SPECIAL WASTE COLLECTION CENTER
9255 Disposal Lane
Elk Grove, CA 95624
916.478.2228



CITY OF ELK GROVE APPLICATION FOR A FRANCHISE AGREEMENT

SECTION 1: REGISTRANT APPLICANT IDENTIFICATION

APPLICANT NAME (and any DBA)

ATLAS DISPOSAL INDUSTRIES, LLC

Address (Street, City, State, Zip)

3035 PROSPECT PARK DR STE 40, RANCHO CORDOVA, CA, 95670

Business Phone

(916) 455-2800

Business Fax

E-mail and/or Website

www.atlasdisposal.com

Are you currently registered with the Secretary of State?

X Yes No

Robin Stuhr

(916) 288-2780

PRIMARY CONTACT PERSON (for all correspondence regarding Registration)

Phone

robin@atlasdisposal.com

Email

Dave Sikich

(916) 288-2797

Partner OR Corporate Officer (Last, First, Title)

Contact Phone

Partner OR Corporate Officer (Last, First, Title)

Contact Phone

TYPE OF ORGANIZATION (check one)

- Individual (Owner/Operator)
- Husband and Wife
- Corporation
- X Limited Partnership
- Business Trust
- Co-Partners
- Unincorporated Association – Other than a Partnership
- Public Agency
- Joint Venture
- General Partnership

SECTION 2: BUSINESS OPERATIONS

A. Employees

Company Executive Officer Dave Sikich

Years of Experience in Solid Waste _____ Phone (916) 288-2797

Email dave@atlasdisposal.com

Financial Officer Robin Stuhr

Years of Experience in Solid Waste _____ Phone (916) 288-2780

Email robin@atlasdisposal.com

Operations Manager Brian Waters

Years of Experience in Solid Waste _____ Phone (916) 603-3442

Email brian@atlasdisposal.com

Total Number of Employees: 125

Note: Applicants having employees must provide evidence of Worker's Compensation Insurance in accordance with the law and pursuant to the Franchise Agreement. Applicants having no employees must provide written representation and warranty to City that Applicant has no employees and therefore is not required to secure Worker's Compensation Insurance. Should Applicant subsequently hire employee(s), they must timely secure Worker's Compensation Insurance in accordance with the law and provide evidence thereof to the City pursuant to the Franchise Agreement.

B. Contact Information

Local Business Office Address 3035 PROSPECT PARK DR STE 40, RANCHO CORDOVA, CA, 95670
Address City Zip

Local Business Office Phone 916-455-2800 Email ap@atlasdisposal.com

Business License No. _____ City or County _____

C. Estimated Gross Receipts in Elk Grove

Estimate of Gross Receipts, as defined in Section 30.50.100(B) of the EGMC, in the next calendar year.

_____ \$45 Millions
(Estimated gross receipts)

D. Ownership (e.g. Parent Corporation)

Enter the following information for any parent corporation (or other business entity) of Applicant.

_____ **COMPANY NAME** (and any DBA)

_____ Address (Street, City, State, Zip)

_____ Business Phone Email Website

_____ Nature of Ownership (e.g. percentage stock interest, etc.)

_____ **OTHER AFFILIATED COMPANY NAME** (Attach additional sheets if needed)

_____ Address (Street, City, State, Zip)

_____ Business Phone Email Website

_____ Nature of Ownership (e.g. percentage stock interest, etc.)

SECTION 3: EQUIPMENT, FACILITIES & SERVICES

A. Vehicles:

Please enter the total number of collection vehicles that Applicant plans to operate within the City of Elk Grove.

Type & Number

- Front Loaders, Number 43 Rear Loaders, Number _____
- Side Loaders, Number _____ Roll-Off, Number 34
- Other _____, Number _____ Other _____, Number _____

B. Waste Types:

Please indicate the waste types to be hauled by your company within the City of Elk Grove.

- | | | |
|---|--|--|
| <input type="checkbox"/> Agricultural | <input type="checkbox"/> Special Waste (describe) | <input type="checkbox"/> Sludge |
| <input type="checkbox"/> Asbestos (non-friable) | <input type="checkbox"/> Deceased Animals | <input type="checkbox"/> Tires |
| <input type="checkbox"/> Asbestos (friable) | <input type="checkbox"/> Industrial | <input type="checkbox"/> Wood Mill |
| <input type="checkbox"/> Ash | <input type="checkbox"/> Liquids | <input checked="" type="checkbox"/> Inerts |
| <input type="checkbox"/> Auto Shredder | <input checked="" type="checkbox"/> Mixed Commercial | <input type="checkbox"/> Medical Waste |
| <input checked="" type="checkbox"/> Construction/Demolition | <input checked="" type="checkbox"/> Organic Waste* | <input type="checkbox"/> Other (describe) |

***Organic Waste Processing Facility.** Applicant shall deliver all Collected Organic Waste to a fully permitted Organic Waste Processing Facility or a full permitted transfer station. All expenses related to Organic Waste processing and marketing will be the sole responsibility of the Applicant.

If Special Waste/Other were selected please describe here: _____

If you checked Asbestos (non-friable), Asbestos (friable), Tires, Medical Waste, Special Waste or Other in the table above, please complete the following:

Asbestos (non-friable) DTSC Hazardous Waste Transporter Registration No.

Asbestos (friable) DTSC Hazardous Waste Transporter Registration No.

Tires CIWMB Waste Tire Hauler Registration No.

Medical Waste DTSC Hazardous Waste Transporter Registration No.

Special Waste

DTSC Hazardous Waste Transporter Registration No.

Other

DTSC Hazardous Waste Transporter Registration No.

C. Service Type

Please indicate the type of commercial service Applicant intends to provide in the City of Elk Grove:

Temporary Drop Box

Compactor

Front Load Bin

Roll-Off Service

Cart Service (e.g. organics)

Other (describe below)
