



# **CITY OF CLOVIS**

**NON-EXCLUSIVE FRANCHISE AGREEMENT**

**BETWEEN**

**THE CITY OF CLOVIS**

**AND**

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**FOR**

**C&D DEBRIS COLLECTION SERVICES**

\_\_\_\_\_, 20\_\_\_\_

This non-exclusive franchise agreement (Agreement) is entered into \_\_\_\_\_ (“Effective Date”), between the City of Clovis, a California municipal corporation (City) and \_\_\_\_\_ (insert corporation, sole proprietorship, partnership as appropriate) organized and operating under the laws of the State of California (Contractor), with respect to the following Recitals, which are a substantive part of this Agreement:

### **RECITALS**

- A. City has a Construction and Demolition Debris (“C&D Debris”) Recycling and Diversion Ordinance (“C&D Ordinance”) for the purposes of assisting City in meeting mandated solid waste diversion requirements as set forth in the California Integrated Waste Management Act of 1989 (Public Resources Code § 40000 et seq.) (“Act”). The Act requires local agencies to divert 87% of discarded materials from landfills.
- B. City has determined that the public health, safety, and well being require that a franchise agreement defining non-exclusive rights be awarded to qualified companies to provide for C&D Debris collection services.
- C. City requires all haulers providing C&D Debris collection services in the City to obtain a non-exclusive franchise in order to ensure that the business will achieve the City’s diversion requirements, meet certain standards, and operate according to applicable federal, State, and local laws.
- D. Contractor desires to provide C&D Debris collection services in the City.
- E. The City Council has determined through an application process that Contractor, by demonstrated experience, reputation, and capacity, is qualified to provide the C&D Debris collection services within the City and the transportation of such material to appropriate places for recycling, processing, and/or disposal, and can provide insurance consistent with the City’s requirements.

NOW, THEREFORE, for the consideration set forth herein, the Parties agree as follows:

1. Definitions. For purposes of this Agreement, the following definitions shall apply unless a different meaning is clearly required:

“AB 939 MOU”: means the Memorandum of Understanding with the County of Fresno and various other jurisdictions dated October 6, 2008.

“Approved Processing Site” means a facility permitted by the California Department of Resources Recycling and Recovery for processing construction and demolition debris and specified in **Exhibit A**, selected by Contractor and approved by City. Processing site(s) include C&D Debris, organics, and recyclables processing. The Approved Processing Site(s) must be able to demonstrate diversion rates required by this Agreement.

“Approved Disposal Site” means a facility permitted by the California Department of Resources Recycling and Recovery for refuse disposal selected by the Contractor or its subcontractor(s) and approved by the City for disposal of residue from Approved Processing Site(s). Approved disposal site(s) are listed in **Exhibit A**.

“Bin” means a container with capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels, that is typically serviced by a front end-loading collection vehicle.

“C&D Debris Container” means a Drop Box, Bin or Compactor used for Collection of C&D Debris.

“Commercial” shall mean of, from or pertaining to non-residential premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

“Compactor” means a mechanical apparatus that compresses materials into a container, which container may be detachable. For the purposes of this Agreement, Compactors shall include only Compactors with container capacities of ten (10) to fifty (50) cubic yard that are serviced by Roll-Off Collection Trucks.

“Composting” includes a controlled biological decomposition of organic materials yielding a safe and nuisance free compost product.

“Compost Product” means the product resulting from the controlled biological decomposition of organic materials that are source separated from the solid waste stream, or which are separated at a centralized facility.

“Construction and Demolition Debris or C&D Debris” means discarded materials from the construction, renovation, or demolition of a building or structure, generally considered to be not water soluble and non-hazardous in nature, including but not limited to cardboard, plastic, wood, steel, copper, aluminum, glass, brick, concrete, asphalt material, pipe, gypsum, wallboard, metal scraps and lumber. C&D Debris also includes rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing, landscaping and development operations for a construction project.

“Contractor” means Contractor and its officers, directors, employees, agents, companies, and Subcontractors.

“Customer” means the person whom Contractor submits billing invoice to and collects payment from for collection services provided.

“Director” shall mean the City of Clovis Public Utilities Director or an authorized representative of the Public Utilities Director.

“Diversion” means to use material for any purpose other than disposal in a landfill or transformation facility. Methods to divert materials from landfills include reuse, salvage, and recycling.

“Drop Box” means an open-top container with capacity from six (6) to fifty (50) cubic yards that is used for collection of permitted materials.

“Generator” means any person whose act or process produces C&D Debris, or whose act first causes C&D Debris to become subject to regulation.

“Green Waste Material” means any materials generated from the maintenance or alteration of public, commercial, or residential landscapes that will decompose and/or putrefy including, but not limited to, yard clippings, grass, leaves, shrub/tree trimmings or prunings (less than 4" in diameter), brush, flowers, weeds, dead plants, small pieces of unpainted and untreated wood, and other types of organic waste. For the purposes of this Agreement, such materials shall be source separated and placed by a Generator in a receptacle and/or at a location that is designated for Collection. Green Waste Material is a subset of Organic Materials.

“Hazardous Waste” means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code §§ 25110.02, 25115, and 25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

“Organic Materials” means those discarded materials that will decompose and/or putrefy including green waste material and food scraps such as, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with food scraps, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No discarded material shall be considered to be organic materials, unless such material is source separated from solid waste, recyclable materials, C&D Debris, or other materials.

“Putrescible Waste” means solid wastes originated from living organisms and their metabolic waste products and from petroleum, which contains naturally produced organic compounds and which are biologically decomposable by microbial and fungal action into the constituent compounds of water, carbon dioxide and other simpler organic compounds.

“Recyclable Materials” means those discarded materials that the City Code permits, directs and/or requires generators to set out in recyclables materials containers for collection for the purpose of recycling. No discarded materials shall be considered recyclable materials unless such material is separated from solid waste and organic materials. Recyclable materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, soap boxes, cereal and other similar food boxes); chipboard; cardboard; paper milk cartons; glass containers of any color (including glass bottles and jars all colors); aluminum cans; fabric softener containers; steel, tin or bi-metal cans; plastic containers (clear or green plastic soda and water bottles, plastic containers and bottles and plastic bags with no. 1, 2 or 3 on the bottom); and food containers from potato salad, pasta salad, whipped cream, etc.

“Recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling does not include burning, incinerating, or thermally destroying solid waste.

“Residential” shall mean of, from, or pertaining to a single-family Premises, multi-plex, or multi-family premises including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, and cooperative apartments.

“Roll-Off Collection Truck” means a collection vehicle with a mechanical device such as a winch that pulls or loads a C&D Debris Container onto the truck bed or attached trailer and transports the C&D Debris Container to a processing site.

“Source Separated” means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Processing, Composting, recovery, or reuse.

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

“Tonnage” means the total weight in tons collected recycled, composted, diverted, or disposed of, as the context requires.

2. Representations and Warranties. Contractor, by execution of this Agreement, represents and warrants the following to City for the purpose of inducing City to enter into this Agreement:

a. Business Status. Contractor is duly organized, validly existing and in good standing under the laws of the State. It is qualified to transact business in the City and State and has the power to own its property and to carry on its business as now owned and operated and as required by this Agreement.

b. Authorization. Contractor has the authority to enter this Agreement and the person signing this Agreement has the authority to bind Contractor to the terms of this Agreement. Evidence of this authority is attached as **Exhibit B**. This Agreement constitutes the legal, valid, and binding obligation of Contractor.

c. Agreement Will Not Cause Breach. To the best of Contractor's knowledge after reasonable investigation, the execution of this Agreement or the performance by Contractor of its obligations hereunder does not conflict with, violate, or result in a breach:

- (i) Of any law or governmental regulation applicable to Contractor;
- (ii) Any term or condition of any judgment, order, or decree of any court, administrative agency or other governmental authority; or,
- (iii) Any Agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitute a default thereunder.

d. No Litigation. To the best of Contractor's knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, would:

- (i) Materially adversely affect the performance by Contractor of its obligations hereunder;
- (ii) Adversely affect the validity or enforceability of this Agreement; or
- (iii) Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

e. No Adverse Judicial Decisions. To the best of Contractor's knowledge after reasonable investigation, there is no judicial decision that would prohibit this Agreement or subject this Agreement to legal challenge.

f. No Legal Prohibition. To the best of Contractor's knowledge after reasonable investigation, there is no applicable law in effect on the date Contractor signed this Agreement that would prohibit the Contractor's performance of its obligations under this Agreement and the transactions contemplated hereby.

g. Contractor's Statements. Contractor's application and any other supplementary information submitted to the City, which the City has relied on in entering this Agreement, do not:

- (i) Contain any untrue statement of a material fact, or
- (ii) Omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

h. Ability to Perform. Contractor possesses the business, professional, and technical expertise, as well as the necessary equipment, facilities and employees to collect, transport, recycle, process, and dispose of C&D Debris generated in the City and to perform its obligations under this Agreement.

3. Term of Agreement. The term of this Agreement ("Franchise Term") shall be for a period of two (2) years commencing on the Effective Date. Contractor may apply for additional Franchise Terms between March 1 and April 30 as set forth in the Ordinance. The Franchise Term may be terminated sooner in accordance with Section 14.

4. Franchise Fee. Contractor shall pay to City a franchise fee ("Franchise Fee") in the amount of one thousand dollars (\$1000.00) for the privilege of obtaining a non-exclusive franchise under this Agreement. The Franchise Fee shall be paid concurrently with execution by Contractor of this Agreement. If this Agreement is terminated before expiration of the Franchise Term, as allowed by Section 14, no full or partial refund of the Franchise Fee shall be due Contractor.

5. Scope of Services.

a. Collection. Contractor is hereby authorized to collect C&D Debris from residents and businesses in the City using C&D Debris Containers. Contractor shall collect C&D Debris from customers that voluntarily subscribe to or request C&D Debris container collection services from Contractor. Contractor shall provide its customers with a C&D Debris Container for collection or shall allow its customers to provide a C&D Debris Container. Contractor shall collect C&D Debris from premises as frequently as scheduled by Contractor or as mutually agreed with customer, but not less than once a week for organic materials. Contractor shall provide requested service to its customers and shall charge customers for service at rates mutually agreed by customer and Contractor. Contractor may enter into contracts with customers for collection services provided that in no case shall the term of such contracts extend beyond the Term of this Agreement, and provided that in the event the City terminates this Agreement the contracts with any and all Customers shall terminate on the termination date of this Agreement.

b. Transportation, Processing and Disposal. Contractor shall transport C&D Debris to an Approved Processing Site. Residue from C&D Debris that is not diverted through processing activities shall be disposed of at an Approved Disposal Site. Contractor shall permit or arrange for City to inspect Approved Processing and Disposal

Site(s) and observe operations at any time during the Term. Approved Processing and Disposal Site(s) shall at all times be in full regulatory compliance. Contractor shall, upon City request, provide or request from its Approved Processor(s) or the Approved Disposal Site copies of required permits, approvals and any notices of violation, if any. Upon request of City, Contractor shall also provide a certified statement from its Approved Processor(s) documenting its diversion rate.

Contractor shall observe and comply with all regulations in effect at the Designated Disposal Site (s) and cooperate with the operator thereof with respect to delivery of solid waste, including directions to unload collection vehicles in designated areas, accommodating operations and maintenance activities, and complying with hazardous waste exclusion programs. Contractor, or its Approved Processor, shall not dispose of such residue by depositing it on any public or private land, in any river, stream, or other waterway, or in any sanitary sewer or storm drainage system or in any other manner which violates applicable laws.

If Contractor elects to use a Processing or Disposal Site(s) that is different than the approved Processing or Disposal Site(s) specified in **Exhibit A**, it shall request written approval from City sixty (60) calendar days prior to use of the site and obtain the City's written approval no later than ten (10) calendar days prior to use of the site. If Contractor is unable to use an Approved Processing or Disposal Site due to an emergency or sudden unforeseen closure of the Approved Processing or Disposal Site, Contractor may use an alternative processing or disposal site provided that (i) Contractor provides verbal and written notice to the City within twenty four (24) hours of use of an alternative processing or disposal site, and (ii) the alternative processing or disposal site is fully permitted and in compliance with all applicable laws. The written notice shall include a description of the reasons the Approved Processing or Disposal Site is not feasible and the period of time Contractor proposes to use the alternative processing or disposal site. Contractor shall use the alternative processing or disposal site for no more than twenty four (24) hours without obtaining City's written approval.

c. Marketing. Contractor or its Approved Processor shall be responsible for marketing C&D Debris recyclable materials and organic materials collected in the City and diverted. Contractor and/or its Approved Processor may retain all revenues generated from the sale of C&D Debris that is diverted.

Upon request by City, Contractor or its Approved Processor shall provide proof (in the form of sales receipts showing end-user) to the City that all C&D recyclable materials and organic materials diverted are marketed for recycling or reuse in such a manner that materials shall be considered as diverted in accordance with State regulations established by the Act. All residual material from the processing activities that is not marketed for use shall be accounted for as disposal tonnage at a permitted Disposal Site. No C&D Debris shall be transported to any Approved Processing Site if disposal of such material is its intended use.



Contractor or its approved processor shall provide the City, upon written request, with a list of broker/buyers it uses to market C&D Debris diverted Recyclable Materials and Organic Materials. City may audit brokers or buyers to confirm that materials are being recycled and diverted from disposal. If Contractor becomes aware that a broker or buyer has illegally handled or disposed of material generated by the City or elsewhere, Contractor shall immediately inform the City and terminate its contract or working relationship with such party.

d. Costs. Contractor shall pay all costs associated with transporting, processing, disposal, and marketing of C&D Debris including payment of any fees charged at the Approved Processing and Disposal Sites including AB 939 fees, if applicable.

e. Diversion Requirement. Contractor shall divert not less than ~~at least~~ 87 percent (87%) by weight of all C&D Debris it collects within the City. If Contractor fails to meet the diversion requirements during the reportable period, the City may terminate this Agreement in accordance with Section 14.

6. Standards For Services, Equipment, and Personnel.

a. Operating Schedule. Delivery or collection of a container to or from any premises shall only occur between the hours of 7:00 a.m. and 6:00 p.m., any day of the week.

b. Instructions to Customer. Contractor shall instruct customers in writing as to acceptable materials that can be included in the container and any unacceptable materials to be excluded from collection, as well as any preparation of materials necessary prior to placing in the container.

c. Care of Private Property. Contractor shall not damage private property. City shall refer complaints about damage to private property to Contractor. Contractor shall repair all damage to private and public property caused by its employees to its previous condition.

d. Litter Abatement. Contractor shall use due care to prevent vehicle oil and vehicle fuel from being spilled or scattered during collection and transportation operations. If any C&D Debris is spilled or scattered during collection or transportation operations, Contractor shall promptly clean up all spilled and scattered materials.

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

Each collection vehicle shall carry protective gloves, a broom, and shovel at all times for cleaning up litter and absorbent material for cleaning up liquid spills. Contractor

shall discuss instances of repeated spillage not caused by its operation with the customer of the premises where spillage occurs, and Contractor shall report such instances to City.

Contractor shall cover all containers at the pickup location before transporting materials to prevent permitted materials from escaping during transportation.

e. Noise. All collection operations shall be conducted as quietly as possible and shall conform to applicable law. Contractor will promptly resolve any complaints of noise during the morning or evening hours of the day to the satisfaction of the City.

f. Container Requirements.

(i) General. All C&D Debris Containers shall meet applicable federal, State, City and local regulations for safety.

(ii) Capacity. Containers for C&D Debris should be of an adequate size and in sufficient numbers to contain without overflowing, all the C&D Debris that an establishment generates within the designated removal period.

(iii) Leakage. If the type of materials placed in the Container may result in leakage of liquids, Contractor shall take precautions to prevent the leakage of liquids. Containers used shall be non-absorbent, water-tight, vector-resistant, durable, easily cleanable, and shall be designed for safe handling and the containment of refuse.

(iv) Container Identification. All Contractor provided C&D Debris Containers shall prominently display the Contractor's name, local telephone number, a unique C&D Debris container identification number, and a list of acceptable materials. As appropriate, C&D Debris Containers shall be labeled for: Solid Waste, Recyclable Materials, Organic Materials, or C&D Debris. Such labeling may be temporary labeling in the form of magnetic or detachable signs.

(v) Cleaning, Painting, and Maintenance. All C&D Debris Containers shall be maintained in a safe, serviceable, and functional condition. Contractor shall steam clean and repaint all roll-off containers at least every two (2) years, or more frequently, to present a clean appearance.

(vi) Container Inspections. City may inspect C&D Debris Containers at any time to determine compliance with sanitation requirements. Contractor shall make containers available to City at any frequency it requests. City shall have the right to prohibit the use of any roll-off container that fails to comply with the provisions of this Section.

(vii) Abandoned Containers. Contractor shall not abandon any C&D Debris container used to provide collection services under this Agreement. If Contractor abandons a container, City may remove the container, process and dispose of the contents. If City removes a container abandoned by Contractor, City may charge

Contractor for the City's costs incurred removing such container, transporting, processing, and disposing of its contents, and/or the cost of storing such container. Contractor shall reimburse City for such costs within fourteen (14) calendar days of the date of City's invoice to Contractor for such costs. If the Contractor does not pay the invoice within fourteen (14) days, interest shall accrue at 10% per annum and City may, at its election, keep the container. City's election to keep the container shall not relieve Contractor of its costs obligations.

For the purposes of this Section, "abandon" means the following: Contractor's failure to remove a Contractor owned container within five (5) calendar days of receiving a written request from a customer or City or within five (5) calendar days after the termination of the customer service agreement between Contractor and the customer; or Contractor's failure to remove a Contractor owned container within ten (10) calendar days upon expiration or termination of this Agreement, except in the case where Contractor has been granted an extension of the Franchise Term.

g. Hazardous Waste Hauling and Inspection.

(i) Response to Hazardous Waste Identified During Collection. If Contractor determines that material placed in any container for collection is a hazardous waste that may not legally be disposed of at a Disposal Site or handled at the Processing Site, or presents a hazard to Contractor's employees, the Contractor shall refuse to accept such material. Contractor shall contact the generator and request them to arrange proper disposal. If the generator cannot be reached immediately, Contractor shall, before leaving the premises, leave a tag at least two inches by six inches (2" x 6") in size, which indicates the reason for refusing to collect the material and lists a phone number for obtaining information on proper disposal of the hazardous waste. Under no circumstances shall Contractor's employees knowingly collect hazardous waste. If hazardous waste is found in a container that could possibly result in imminent danger to people or property, Contractor shall immediately notify the Fire Department using 911. Contractor shall notify the City of any hazardous waste identified in containers or left at any premises within twenty four (24) hours of identification of such material.

(ii) Response to Hazardous Wastes Identified at Disposal Site or Processing Site. Contractor, or its Approved Processor, or Disposal Site operator shall provide load checkers and equipment operators at the Processing or Disposal Site(s) to identify hazardous wastes for storage in approved, on-site, hazardous materials storage container(s). Contractor shall arrange for removal of the hazardous waste by permitted haulers in accordance with applicable laws and regulatory requirements. If the hazardous waste is delivered to a Processing or Disposal Site by Contractor before its presence is detected, and the generator cannot be identified or fails to remove the material after being requested to do so, Contractor shall arrange for its proper disposal. Contractor may make a good faith effort to recover the cost of disposal from the generator, and the cost of this effort, as well as the cost of disposal shall be chargeable to the generator.

(iii) Regulations and Record Keeping. Contractor shall comply with emergency notification procedures required by applicable laws and regulatory requirements. All records required by regulations shall be maintained at Contractor's facility. These records shall include: waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

h. Non-Discrimination. Contractor shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on the basis of any protected class under federal or State law, including race, color, natural origin, ancestry, religion, gender, marital status, sexual orientation, age, physical or mental disability.

i. Communication and Cooperation with City. If requested, Contractor shall meet with the City or its agent to discuss service issues. City, and its designated representatives, shall have the right to observe and review Contractor operations, processing sites and disposal sites used by Contractor, and enter Contractor's premises for the purposes of such observation and review during normal business hours without advance notice. Contractor shall cooperate with and assist City and its agents with the performance of any City initiated studies of C&D Debris materials such as, but not limited to, waste characterization and composition studies.

8. Ownership Of Materials. Once C&D Debris materials are placed in a C&D Debris container for collection by generator, ownership and the right to possession of such materials shall transfer directly from the generator to Contractor. On a short-term basis not to exceed more than five (5) calendar days per year, City may obtain ownership or possession of permitted materials placed in the C&D debris container for collection, for purposes of waste characterization studies, upon written notice to Contractor of its intent to do so. However, nothing in this Agreement shall be construed as giving rise to any inference that City has such ownership or possession unless such written notice has been given to Contractor.

9. Notification to City of Non-Franchised Haulers. If Contractor can produce evidence that any individual, firm, limited liability company, partnership, public or private corporation, or any other entity whatsoever are collecting permitted materials and do not have rights to do so as granted by non-exclusive franchise agreement with the City or otherwise, or in a manner that is not consistent with City's Municipal Code, Contractor shall notify City in writing, within ten (10) calendar days of Contractor witnessing such circumstances. Contractor's notice shall include the name and telephone number of the person or company collecting C&D Debris materials (if known), the date Contractor witnessed the event, the location of the C&D Debris container along with Contractor's evidence of the violation of the rights granted by this non-exclusive franchise.

10. Record Keeping and Reporting.

a. Maintenance of Records. Contractor agrees to conduct data collection, record keeping, and reporting activities necessary to meet the reporting obligations and

needs of City, the Act, and other applicable laws. These records include, but are not limited to, financial, operating, and customer records. The format of each report shall be approved by City. City may request that Contractor adjust the records in number, format, or frequency to reflect City's obligations and current record keeping and reporting requirements. Contractor may propose report formats that are responsive to the objectives. The specific reporting requirements set forth in this Section are not meant to comprehensively define all required records and reports.

Contractor agrees to mail a copy of all reports and submit all reports on computer discs, by e-mail, or by modem in a format compatible with City's software and computers. Contractor will provide a certification statement, under penalty of perjury, by the responsible Contractor official, that the report being submitted is true and correct to the best knowledge of such official after their reasonable inquiry.

b. Retention of Records. Unless otherwise required by law, Contractor shall retain all records and data required to be maintained by this Agreement for the Franchise Term plus five (5) years after its expiration or earlier termination. Records and data shall be in chronological order and readily and easily interpreted. Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as fire, theft, and earthquake. Electronically maintained data and records shall be protected and backed up.

c. Inspection of Records. The City, its auditors and other agents, shall have the right, during regular business hours, to inspect specific documents or records required by this Agreement or any other similar records or reports of Contractor that the City shall deem, at its sole discretion, necessary to evaluate Contractor's performance provided for in this Agreement. City may make copies of any documents it deems relevant to this Agreement. City shall provide Contractor written notice at least three (3) business days prior to any inspection of these records, and Contractor shall retrieve and make available to the City the requested documents and records at that time. City reserves the right to inspect records for the purposes of auditing Contractor's reports and reported diversion level. If an audit conducted by the City, or its representatives, finds that the diversion level is 5% different than the diversion level reported by Contractor, then in addition to any other remedies available to City, Contractor shall reimburse City for City's costs incurred in the performance of the audit. Such reimbursement shall be paid by Contractor, within thirty (30) calendar days of the date City notifies Contractor of the amount due.

d. CERCLA Defense Records. City views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, City regards its ability to prove where permitted materials collected by the Contractor are taken for processing, recycling, composting, transfer, or disposal, as well as where they are not taken, to be matters of concern. Contractor shall maintain, retain and preserve records which can establish where permitted materials collected were processed, composted, and disposed (and therefore establish where they were not). This provision shall survive the

expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of this Agreement. Contractor shall provide these records to City (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.

e. Quarterly Reports. Contractor shall submit quarterly reports within fifteen (15) calendar days of the end of each quarter via mail and e-mail to

Solid Waste Manager  
City of Clovis  
155 N Sunnyside Ave  
Clovis, CA 93611

The quarterly report shall present the following information.

(i) Total Tonnage. Total C&D Debris materials tonnage collected by Contractor within the City during the previous quarter, listed separately by material type and by month. Contractor shall also include for each construction or demolition site the construction or demolition permit number, the site address, the tonnage hauled from that site, the date hauled, and the facilities to which the material was hauled.

(ii) Diverted Tonnage. C&D Debris materials tonnage collected by Contractor within the City that was diverted during the previous quarter, listed separately by material type and by month.

(iii) Disposed Tonnage. C&D Debris materials tonnage collected by Contractor within the City that was disposed during the previous quarter including residual waste disposed from Approved Processing Site, listed separately by month.

(iv) Diversion Level. Tonnage diverted by Contractor divided by the tonnage collected by contractor, listed separately by month for the previous quarter. Tonnage diverted shall reflect C&D Debris materials processed less residue disposed.

(v) Disposal and Processing Locations. Contractor shall provide a list of the names and addresses of where permitted materials collected within the City during the previous quarter were diverted and disposed. Such list shall include the amount of C&D Debris materials tonnage diverted and/or disposed at each location during the previous quarter, listed separately by material type and by month.

(vi) Insurance. Updated insurance certificates (only required with the December quarterly report each year, or in the event of any change).

(vii) Account Information. In table format, the number of customers within the City limits served and number of containers serviced per month listed by container type,

container size, and listed separately by material type, and regularly schedule service and unscheduled (on-call) service.

(viii) Contractor Officers and Board Members. Provide a list of Contractor's officers and members of its board of directors (only required with the December quarterly report each year, or in the event of a change in the officers or board members).

f. Other Reports. City reserves the right to require additional and more frequent reports, including monthly reports instead of quarterly reports.

g. AB 939 County Surcharge Reporting. Contractor acknowledges that City is a party to that certain AB 939 Memorandum of Understanding with the County of Fresno and various other jurisdictions dated October 6, 2008 (the "AB 939 MOU"), and further acknowledges having reviewed a copy of the AB 939 MOU. The Parties agree that Contractor is a "Jurisdiction's Hauler", as that term is used in Part IV, Section H of the AB 939 MOU.

Contractor shall comply with all requirements of Part IV, Section H of the AB 939 MOU that are applicable to a Jurisdiction's Hauler, including but not limited to submittal of reports and payment of the AB 939 Surcharge (as that term is defined in the AB 939 MOU).

Contractor shall remit the AB 939 fee to the City of Clovis included in the quarterly report for any material disposed outside of Fresno County including any residual waste from Approved Processor Site disposed outside of Fresno County. Any waste disposed by the Contractor and Approved Processor at American Avenue Landfill will not require the Contractor to remit the AB 939 fee to the City of Clovis.

11. Business License. Contractor shall at all times during the Franchise Term maintain an active business license with the City of Clovis.

12. Contractor Compensation. Contractor compensation for the performance of its obligations under this Agreement shall be rates paid to Contractor by its customers plus revenues generated by the sale of collected materials diverted from disposal. Contractor's compensation provided for in this Section shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, processing, composting, and disposal fees, regulatory fees, City fees, taxes, insurance, bonds, overhead, operations, profit and all other things necessary to perform all the services in the manner required by this Agreement. Contractor shall not receive any compensation from the City of Clovis for services provided under this Agreement.

13. Indemnity and Insurance.

a. Indemnity.

(i) General Liability. Contractor shall indemnify, defend, and save harmless City, its officers, agents and employees (the "Indemnitees"), for and from any and all loss, liability, claim, demand, action or suit, of any and every kind and description, arising or resulting from or in any way connected with any operations of Contractor in performing the obligations required by this Agreement, or arising or resulting from the failure of Contractor to comply in all respects with the provisions and requirements of this Agreement, or arising or resulting from the failure of Contractor to comply with applicable law, except to the extent of the sole negligence, willful misconduct, or violation of applicable law by the indemnitees. Subject to the scope of this indemnification and upon demand of City, Contractor shall appear in and defend City and its officers, employees and agents in any claims or actions, whether judicial, administrative or otherwise arising out of the above. The obligations of Contractor to the Indemnitees which arise under this Section shall not be restricted to any insurance proceeds, and shall survive the expiration or termination of this Agreement.

(ii) CERCLA Liability. Contractor shall indemnify, defend and hold harmless the indemnitees for all claims, actual damages, natural resources damages, injuries, costs, response, remediation and removal costs, losses, liabilities, cause of action, interest and expenses (including but not limited to reasonable attorneys' and experts' fees) of any kind whatsoever paid, incurred, or suffered by or against the Indemnitees arising from or attributable to any repair, clean up, removal action or response action undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (CERCLA), the California Health and Safety Code ("H&S Code") or other similar federal, state or local law or regulations, with respect to Contractor's collection, handling, or transportation of solid waste collected by Contractor from accounts pursuant to this Agreement. The indemnity contained in this Section is intended to operate as an agreement of Contractor pursuant to Section 107(e) of CERCLA and the H&S Code Section 25364 to defend, protect, hold harmless and indemnify the Indemnitees. Subject to the scope of this indemnification and upon demand of any of the Indemnitees, Contractor shall appear in and defend the Indemnitees in any claims or actions, whether judicial, administrative or otherwise arising out of the above. The obligations of Contractor to the Indemnitees which arise under this Section shall not be restricted to any insurance proceeds, and shall survive the expiration or termination of this Agreement.

(iii) Road Surface Damage. Contractor shall be responsible for any extraordinary damage to City's driving surfaces, whether or not paved, resulting from and directly attributable to the illegally excessive weight of vehicles providing C&D Debris collection or the improper placement and removal of containers on public or private property, but shall not be responsible for normal wear and tear.

b. Insurance. Contractor shall obtain and keep in force during the term of this Agreement, public liability and property damage insurance issued by a company to be approved by the City in an amount of not less than \$5,000,000.00 public liability, and \$5,000,000.00 property damage, said policy or policies shall (1) provide that the City, its elected and appointed officials, officers, agents and employees are additional insureds



with respect to the subject matter and performance of this Agreement, and (2) provide that the policy or policies shall not expire, terminate, or be cancelled, or the coverage reduced, unless and until after thirty (30) days written notice is given to the City (10-days notice for cancellation due to failure to pay premium). Sufficient Workers' Compensation Insurance, as required by State Law, and Employer's Liability Insurance in an amount of not less than \$1,000,000.00, shall be carried by Contractor. Contractor shall cause a certificate of insurance to be filed with the City evidencing such coverages.

14. Default.

a. Events of Default. Each of the following shall constitute an event of default:

(i) Breach of Agreement. Contractor fails to perform its obligations under this Agreement and the breach continues for more than ten (10) calendar days after written notice from City for the correction thereof.

(ii) Failure to Meet Diversion Requirement. Contractor fails to divert 87% of the C&D Debris collected in the City as required by this Agreement, except that before declaring a default, the provisions of subsection (c) shall apply..

(iii) Misrepresentation. Any representation, warranty, or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation, warranty, or disclosure appears as part of this Agreement.

(iv) Seizure of Equipment. There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to substantially impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and holidays.

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

(vi) Involuntary Bankruptcy. A court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor.

b. Remedies. City shall have the following remedies in the event of a default:

(i) Termination. City may terminate this Agreement. City's right to terminate is not exclusive, and City's termination of this Agreement shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which City may have.

(ii) Specific Performance. By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the lead time required to effect alternative service, and the rights granted by City to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive relief.

c. Diversion Non-Performance. If Contractor's diversion level is less than 65% for C&D Debris collected in the City for a reporting period, prior to declaring a default the following steps shall be followed by City and Contractor:

(i) Warning. City shall issue a written warning to Contractor. The warning notice shall specify the amount of time (i.e. "correction period") the City grants the Contractor to improve its performance and meet the diversion requirements.

(ii) Opportunity to Improve Performance. Contractor shall modify its collection, processing, diversion, and public education and outreach programs (subject to City's approval) to improve the diversion level. At the end of the correction period, Contractor shall submit a written report to City identifying the diversion level and providing the supporting documentation. If City determines that the diversion level equals or exceeds diversion requirements, Contractor shall continue to perform services in such a manner as to maintain or improve the diversion level and City shall waive its rights to declare a default during the remainder of then current reporting period.

d. Conditions Upon Termination. In the event this Agreement is terminated under the provisions of this Section, the following conditions shall be effective:

(i) Prohibit C&D Debris Collection Services. Contractor shall have no right or authority to engage in C&D Debris collection services in the City for a period of five (5) years from the date of termination. After five years, should the Contractor provide

proof that the event causing the Contractor to default under this Agreement has been corrected, the Contractor may reapply for a nonexclusive C&D Debris Collection service franchise, and the City, at the sole and complete discretion of the City, may reinstate the Contractor based on review of its reapplication.

(ii) Continuing Liabilities. Contractor shall remain liable to the City for reports required by this Agreement for C&D Debris collection activities performed by Contractor up to and including the date of termination; indemnity obligations under Section 13, and record keeping and retention obligations under Section 10.

(iii) Release Customers and Generators from Obligations. Contractor shall allow C&D Debris materials generators served by Contractor to arrange for C&D Debris collection services with a hauler authorized to perform such services, without penalty or liability for breach of any contract between Contractor and its customers or generators.

(iv) Remove C&D Debris Containers. Contractor shall remove all of Contractor's C&D debris containers from all of Contractor's collection locations and shall properly recycle, process, compost, or dispose of permitted materials in such C&D debris containers.

15. Miscellaneous.

a. Relationship of Parties. The parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor authorized by City and not as an officer nor employee of the City, nor as a partner of, or joint venture with, the City. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of the City. Except as expressly provided herein, Contractor shall have control over the manner and means of conducting the C&D debris container collection, transportation, processing, recycling, composting, and disposal services performed under this Agreement, and all persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors, and agents. Neither Contractor nor its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with the City.

b. Permits and Licenses. Contractor shall obtain and maintain, at Contractor's sole cost and expense, all permits and licenses applicable to Contractor's operations under this Agreement which are required by any governmental agency. A City of Clovis business license shall be required during the entire term of this Agreement.

c. Compliance with Law. Contractor shall, at all times, at its sole cost, comply with all applicable laws.

d. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

e. Jurisdiction. Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of Fresno County in the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Agreement is made in and will be performed in Fresno County.

f. Binding on Successors. The provisions of this Agreement shall inure to the benefit to, and be binding on, the successors and permitted assigns of the parties.

g. Assignment. Neither party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement. Under no circumstances shall any assignment be considered by City if Contractor is in default at any time during the period of consideration.

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

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

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

If to City:

Public Utilities Director  
City of Clovis  
155 N Sunnyside Ave  
Clovis, CA 93611

If to Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section. Notice shall be deemed given on the day it is personally delivered or, if mailed, three calendar days from the date it is deposited in the mail.

k. Entire Agreement. This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

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

k. Amendment. This Agreement may not be modified or amended in any respect except in writing signed by the parties.

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

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

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

**CITY OF CLOVIS**

**CONTRACTOR**

\_\_\_\_\_  
Robert Woolley  
City Manager

\_\_\_\_\_  
[name]  
[title]

ATTEST:

SECOND SIGNATORY:

\_\_\_\_\_  
John Holt  
City Clerk

\_\_\_\_\_  
[name]  
[title]

APPROVED AS TO FORM:

\_\_\_\_\_  
David Wolfe  
City Attorney

## EXHIBIT A

### APPROVED PROCESSING AND RESIDUE DISPOSAL FACILITIES

The following facilities were selected by the Contractor and approved by the City.

	Approved C&D Processing Site	Approved Organics Processing Site
Facility name		
Facility address		
SWIS number		
Owner		
Operator		
	Approved Recyclables Processing Site	Approved Disposal Site (Applicable for Residue Only)*
Facility name		
Facility address		
SWIS number		
Owner		
Operator		
	Approved Recyclables Processing Site	Approved Disposal Site (Applicable for Residue Only)*
Facility name		
Facility address		
SWIS number		
Owner		
Operator		

\* All Solid Waste shall be disposed of at the Designated Disposal Facility.

Contractor  
 \_\_\_\_\_  
 Initial Here:

City  
 \_\_\_\_\_  
 Initial Here:

## **EXHIBIT B**

EVIDENCE OF CONTRACTOR AUTHORITY TO  
ENTER THIS AGREEMENT AND FOR SIGNATORY TO BIND CONTRACTOR

INCLUDE RESOLUTIONS, MINUTES, OR SIMILAR