

Proposed Form of Franchise

FRANCHISE AGREEMENT FOR COLLECTION AND DISPOSAL OF COMMERCIAL RECYCLING AND COMMERCIAL SOLID WASTE

This Franchise is made on _____ between the City of Seguin, Texas (the “City”), 205 N. River St., Seguin, Texas 78155 and _____ (the “Franchisee”), for the provision of commercial solid waste collection and disposal services.

The City and the Franchisee agree as follows:

ARTICLE 1 FRANCHISEE'S SERVICES AND RESPONSIBILITIES

Section 1.1 Standards of Performance

1.1.1 The Franchisee is responsible for providing comprehensive commercial waste collection and disposal services within the City of Seguin, including but not limited to Recyclable Waste and Commercial Solid Waste collection and disposal in accordance with the terms and conditions of this Franchise in a good and workmanlike manner. These services will include furnishing all labor, equipment, tools, materials, insurance, supervision, and all other items necessary to complete the work as specified. No work under this Franchise will be subcontracted by the Franchisee without prior written approval from the City. Any subcontracts will be in writing and will be subject to each provision of this Franchise.

1.1.2 The Franchisee certifies that it has fully acquainted itself with all conditions related to this Franchise and will complete its services in and under any conditions it may encounter or create, without additional cost to the City or to the commercial solid waste customers, except for material changes in conditions or requirements of the work occurring during the term of this Franchise without the fault of the Franchisee.

1.1.3 The Franchisee certifies that it is not now nor will it become delinquent in the payment of taxes or fees to any governmental entity.

Section 1.2 Definitions

In this Franchise, the following terms will have the following meanings:

1.2.1 *Collection* - The removal and transportation of materials from the pickup point to the approved processing or disposal site.

1.2.2 *Commercial Customer* - The owner or occupant of a commercial unit.

1.2.3 *Commercial Solid Waste* - All bulky waste, construction debris, garbage, rubbish or stable matter, generated by a producer at a commercial or industrial unit.

1.2.4 *Commercial unit* - Any premise, location or entity, public or private, other than a residential unit, that requires solid waste collection within the Franchise area. Commercial unit includes commercial, industrial and multi-family uses, and all other uses that do not qualify as residential units.

1.2.5 *Container* - A metal bin used to store solid waste, designed to be lifted and emptied mechanically.

1.2.6 *Franchise or Franchise Documents* - Includes the following: This Franchise, the request for proposals, the Franchisee's proposal, addenda, Franchise area maps, insurance certificates, and supplemental agreements or amendments. The terms *Franchise* and *Franchise Documents* have the same meaning.

1.2.7 *Franchise area* - The Seguin city limits, as they now exist or may be amended in the future.

1.2.8 *Director* - An Assistant City Manager, assigned by the City Manager shall be the Director.

1.2.9 *Disposal site* - A solid waste depository, including but not limited to sanitary landfills, transfer stations, incinerators, and waste processing/separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction, and requiring such licenses, permits or approvals to receive for processing or final disposal of solid waste or dead animals as long as said disposal site is not located over a major aquifer or its contributing zone.

1.2.10 *Franchisee* - The Company designated as Franchisee, above, which is granted license to operate a business using the franchisor's established brand name, trademarks, products, and operational systems and pay ongoing fees for the right to operate under the established model.

1.2.11 *Franchise Agreement or Agreement* - This Franchise Agreement for Collection and Disposal of Commercial Recycling and Commercial Solid Waste and all subsequent renewals thereof.

1.2.12 *Franchise Ordinance or Ordinance* - Commercial Waste Hauling Ordinance as amended November 2010 or as it may be thereafter amended.

1.2.13 *Garbage* - Readily decayable solid waste, including dead animals, animal and vegetable waste, food containers, and all other waste matter which is likely to attract flies or vermin, except any matter included in the definitions of bulky waste, construction debris, dead animal, hazardous waste, rubbish or stable matter.

1.2.14 *Gross Collected Revenues* -Revenues derived directly or indirectly by the Franchisee, its affiliates, subsidiaries, parent, and any person in which the Franchisee has a financial interest, from or in connection with the operation of Waste Hauling Services pursuant to this Agreement. "Gross Revenues" shall not include any taxes on Waste Hauling Services furnished by the Franchisee imposed directly upon any customer by the state, city or other governmental unit and collected by the Franchisee on behalf of such governmental units.

1.2.15 *Hazardous waste* - Any chemical, compound, mixture, substance or article designated as a "hazardous material" under state or federal law.

1.2.16 *Producer or customer* - An occupant of a commercial or industrial unit or a residential unit who generates solid waste.

1.2.17 *Receptacle* - A container used to store solid waste, designed to accept liners that are to be emptied manually.

1.2.18 *Recyclable Waste* - All garbage, refuse, or similar matter collected in a separate container clearly marked for recycling purposes whereby the contents of the recycle container is taken to a facility that processes it for recycling.

1.2.19 *Rubbish* - Solid waste that is not readily decayable, including wood, wood products, grass cuttings, plants, leaves, paper, cardboard, cloth, leather, footwear, ashes, cinders, floor sweepings, glass, mineral or metallic materials, and all other waste materials other than bulky waste, construction debris, garbage, hazardous waste, stable matter, tree trimmings or yard waste.

1.2.20 *Solid waste* - Garbage, rubbish, bulky waste, construction debris, stable matter, tree trimmings and yard waste.

1.2.21 *Stable matter* - All manure and other waste matter normally accumulated in or about a stable, or any animal, livestock, or poultry enclosure, and resulting from the keeping of animals, poultry or livestock.

1.1.22 *Unacceptable Waste* - Any and all waste that is either:

- A. waste which is now or in the future prohibited from disposal at a sanitary landfill by state or federal laws or the regulations promulgated thereunder;
- B. hazardous waste, as defined herein;
- C. special waste, as defined by the laws of the United States or the State of Texas or the regulations promulgated thereunder;
- D. tires, concrete, and bulk petroleum or chemical products or by-products;
- E. septic tank pumping and grease and grit trap wastes;
- F. sludge waste, including water supply treatment plant sludges and stabilized and/or unstabilized sludges from municipal or industrial wastewater treatment plants;
- G. medical waste, including infectious or pathological waste from laboratories, research facilities, and health and veterinary facilities;
- H. liquid waste, which for the purposes of this Franchise means any waste material that is determined to be or contain "free liquid" by the paint filter test (EPA Method 9095);
- I. waste from an industrial process;
- J. waste from a pollution control process;
- K. waste transported in a bulk tanker;
- L. friable and/or nonfriable asbestos waste;
- M. empty containers which have been used for pesticides, herbicides, fungicides, or rodenticides; or containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in this definition;

- N. residue or debris from the cleanup of a spill or release of chemical substances, commercial products or other wastes listed in this definition;
- O. soil, water, residue, debris or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in this definition, including soil contaminated from underground storage tanks used or formerly used for the storage of petroleum products;
- P. any waste that requires other than normal handling, storage, management and/or disposal, as determined by the Director;
- Q. dead animals and/or slaughterhouse waste, except for animals euthanized under the authority and direction of the City; or
- R. any waste which because of its quantity, concentration, frequency of disposal, required disposal procedures, regulatory status, or physical, chemical infectious or other characteristics jeopardizes or may jeopardize the environmentally sound operation of a disposal site, as determined by the Director.

1.2.23 *Work* - The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the Franchise and the carrying out of all duties and obligations imposed by this Franchise on the Franchisee.

Section 1.3 Solid Waste Collection

1.3.1 Commercial Solid Waste

A. The Franchisee will collect all Recyclable Waste and Commercial Solid Waste generated at commercial units with which the Franchisee has been contracted to perform collection (“Commercial Clients”) in the Franchise area, including temporary units and construction sites. The Franchisee will make containers and collection service available to all Commercial Clients in the Franchise area in a non-discriminatory manner. The Franchisee will be responsible for negotiating the nature and frequency of collections with each Commercial Client based upon the needs of the customer. The Franchisee will accomplish all commercial solid waste collections Monday-Saturday between the hours of 6:00 AM and 7:00 PM. Franchisee shall collect from hospitals, schools, commercial and industrial customers between the hours of 6:00 a.m. to 7:00 p.m., except customers located within 1,000 feet of residential dwellings shall be serviced between the hours of 8:00 a.m. and 7:00 p.m. only.

B. The Franchisee will provide containers for Recyclable Waste and for Commercial Solid Waste upon the request of a Commercial Client within the Franchise area. The types of containers provided by the Franchisee will be subject to review and approval by the Director. The containers provided by the Franchisee will be equipped with suitable covers to prevent blowing or scattering of solid waste materials. The Franchisee will maintain all containers in good repair, appearance, and in a sanitary condition, and clearly marked with the Franchisee’s name and telephone number. Containers shall be emptied not less than one time per week. The Franchisee will provide to each Commercial Client containers sufficient in number and size to hold all of the Commercial Client’s solid waste that is generated between collections. (See section 1.4.1, Quality)

C. The Franchisee shall perform all customer ordering, billing, and collections.

- D. The Franchisee will charge Commercial Clients for all collections by size of container and frequency of service, in accordance with the not-to-exceed prices the Franchisee provided in its proposal to RFP# AF-2026-23, as may otherwise be negotiated between Franchisee and the Commercial Client.
- E. If a Commercial Client has specialized service needs, the Franchisee may negotiate those services separately from its standard Recyclable Waste and Commercial Solid Waste services. Franchisee agrees to provide the Director with detailed information of any specialized service agreements made within the Franchise area.

Section 1.4 Operation of Collection Services

1.4.1 Quality

- A. The Franchisee will not spill or leave Garbage or Rubbish remaining when making pickups. If the Franchisee spills Garbage or Rubbish it will clean the spill by whatever means necessary before the truck leaves the premises. The Franchisee will clean up liquid and hydraulic spills with an absorbent that will be carried on all trucks. If a spill leaves a stain on a roadway, building, or other similar surface, the Franchisee will use all reasonable means available to remove the stain and restore the facility to the satisfaction of the Director.
- B. The Franchisee will be responsible for injuries to any person and damage to any property, including City-owned property caused by willful or negligent acts or accidents related to the Franchisee's operations and activities under this Franchise.
- C. The Franchisee will pick up all items placed for regular solid waste collection, whether contained in the provided commercial container or not, and regardless of the mode of collection utilized. The Franchisee may charge a fee as deemed necessary to the Commercial Client for waste collected outside the collection container as may be permitted by the contracts between the franchisee and the Commercial Client.
- D. All damaged commercial containers shall be replaced with a clean container in good repair and appearance.

1.4.2 Complaints

- A. The City will serve as the contact point for all Commercial Client complaints about the Franchisee's services. The City will provide the Franchisee with contact information for this purpose. If the Franchisee receives a complaint directly from a Commercial Client, the Franchisee may respond to the complaint, but shall also provide a written briefing of the complaint and the response to the Director.
- B. The Franchisee will respond promptly and courteously to investigate and provide resolution to all complaints it receives from the City. The Franchisee will respond promptly to City telephone or email inquiries regarding the status of complaints and complaint resolution.

- C. The Franchisee will investigate all alleged missed scheduled collections, and if such allegations are verified by the Franchisee or by the City, the Franchisee will arrange for the collection of the uncollected solid waste within 24 hours after the complaint is received.
- D. The Franchisee will notify the City of all commercial solid waste the Franchisee declines to collect and the reason for it. The Director may investigate “no pickup” complaints and advise the customer of the reasons, or require the Franchisee to collect the material.
- E. The City will keep a record of the dates and times complaints are received and the dates and times the complaints were resolved by the Franchisee.

1.4.3 Complaint Resolution and Penalties

- A. The Franchisee may be charged an administrative penalty of not less than \$100.00 nor more than \$1,500.00 for each customer complaint or other violation of this Franchise Agreement that is not resolved to the satisfaction of the City Manager. The Franchisee may appeal a penalty assessment to the City Council by filing a written notice with the City Manager within 10 days of the date of the City Manager’s decision. The City Council will hear the appeal at its next regular meeting that is ten days or more after the date the appeal notice is filed. The City Council’s decision will be final.

1.4.4 Equipment

- A. With the exception of construction roll-offs, the Franchisee will operate only enclosed packer type trucks suitable to keep the solid waste or recyclable materials from falling or blowing from the trucks. Solid waste or recyclable materials hauled by the Franchisee will be contained, tied or enclosed so that leaking, spilling and blowing is prevented. All of the Franchisee’s equipment will be in good mechanical condition and possess current federal and TXDOT certifications.
- B. The Franchisee will provide radio communication to all trucks from a base station.
- C. The Franchisee will utilize only that equipment approved for use under this Franchise and specified in the Proponents List of Equipment attached to this Franchise. The Franchisee may make changes to the equipment list with the written consent of the Director. The Franchisee will not use equipment that is more than seven years old to provide the services required under this Franchise. The Franchisee will use only equipment manufactured by a nationally known manufacturer.
- D. The Franchisee will keep all equipment clean and in a good state of repair.
- E. The Franchisee will not allow the noise level for the collection vehicles during the stationary collection or compaction process to exceed 75 decibels at a distance of 25 feet from the collection vehicle and at an elevation of five feet from the horizontal base plane of the vehicle.
- F. The Franchisee will identify its vehicles and other equipment with the name, address, and phone number of the Franchisee’s most local office on each of its passenger doors so that the information is clearly readable from a distance of 100 feet.

- G. The Franchisee will provide access at any time for the City to inspect the equipment to ensure that all equipment meets the requirements of this Franchise and has the proper TXDOT certification.

1.4.5 Personnel

- A. The Franchisee will provide properly-trained, capable drivers with current drivers licenses of the proper classification for the trucks being driven.
- B. The Franchisee will ensure that all of its employees, permanent or temporary, can be easily recognized while performing work under this Franchise. All of its employees will wear appropriate identification badges and/or uniforms.
- C. The Franchisee will ensure that any persons employed who are not United States citizens have valid work permits.
- D. The Franchisee will remove from service under this Franchise and replace any of its employees, as may be requested by the City.

1.4.6 Customer Service/Office Facilities

The Franchisee will maintain an office within the City limits or provide other facilities through which it can be contacted. The Franchisee will provide sufficient local or toll-free telephones and office staff in order to provide necessary services from 8:00 a.m. to 5:00 p.m. on regular collection days. In addition, the Franchisee will provide for voice mail receipt of after-hours inquiries and communications.

1.4.7 Disposal

The Franchisee will haul and dispose of all Recyclable Waste and/or Commercial Solid Waste collected by it in the Franchise area at a disposal site licensed by the State of Texas for that purpose. The disposal site must have adequate capacity to accommodate the requirements of this Franchise. The Franchisee is responsible for payment of all costs of disposal, including without limitation, tipping, environmental, inspection or other fees charged by disposal site operators or governmental authorities in connection with disposal activities.

1.4.8 Ownership of Collected Solid Waste

The Franchisee accepts title to all Recyclable Waste and Commercial Solide Waste placed in the Franchisee's collection vehicles, removed by the Franchisee from a container, or removed by the Franchisee from a Commercial Client's premises. The City does not accept ownership or title to any such items.

1.4.9 Notifications and Disposal Site Reports

- A. The Franchisee will notify all customers of complaint procedures and regulations.

- B. The Franchisee will forward to the City at its request, copies of all Texas Health Department Inspection Reports for the sites being used for the disposal of solid waste collected under this Franchise.

1.4.10 Interruption of Service

In the event the collection and disposal of Recyclable Waste and/or Commercial Solid Waste is interrupted for any reason within the Franchisee's reasonable control for more than 48 hours, the City will have the right to make temporary independent arrangements for continuing these services to its citizens to provide and protect the public health and safety. In the event of this type of interruption, the Franchisee will bear all expenses incurred for collection and disposal. Notwithstanding any other provision of this Franchise, if an interruption in service continues for a period of ten or more consecutive days, the City will have the right to immediately terminate this Franchise and to seek any remedy provided by law.

1.4.11 Natural Disaster

In the case of excessive amounts of solid waste caused by a tornado, severe storm, high winds, flooding, hurricane, ice storm or similar natural occurrence, the City may dispose of the solid waste in whatever manner it may elect; provided however, that the City will attempt in good faith to use the Franchisee's services if they can be used at the same or lower cost than other methods available to the City.

1.4.12 Place of Collection

Commercial: The Franchisee will ensure that Commercial Clients place and store all containers entirely off of streets, alleys or other public property and into any existing enclosure. Franchisee and its Commercial Clients will adhere to the City's ordinances, including those related to screening of containers.

1.4.13 Truck Routes

Except as applicable to pick-up sites, all vehicles must follow designated truck routes and weight limitations set out in the Seguin Code of Ordinances Sections 98-42 and 98-43.

1.4.14 Miscellaneous

The Franchisee will have right to provide collection and disposal services for Recyclable Waste and/or Commercial Solid Waste for its Commercial Clients from within the Franchise area.

ARTICLE 2 THE CITY'S RESPONSIBILITIES

Section 2.1

The City hereby designates the City Secretary to act as the City's authorized representative with respect to this Franchise. The City Secretary shall coordinate with the Director for matters under this Agreement requiring Director action.

ARTICLE 3 FRANCHISE AND PAYMENTS

Section 3.1 Granting of Franchise

In accordance with the approval of the Seguin City Council, granted prior to the effective date of this Franchise, and subject to the terms set forth below, Franchisee is hereby granted the right, privilege, and franchise to have, use and operate in the entire area of the City a Waste Hauling Service; and to have, use and operate its vehicles in, over, under, along, and across the present and future streets and alleys for a term of five years. This grant is nonexclusive and does not establish priority for use over other franchise holders, permit holders and the City's or public's use of public property. The Franchisee's use of city streets and alleys shall be subject to and in accordance with the City's policies and procedures governing said use.

Section 3.2 Assignment

This franchise is personal to the company for which it is issued and may not be transferred, sold, or assigned without prior approval by the Seguin City Council.

Section 3.3 Acceptance of Franchise Agreement

Upon execution of this Franchise Agreement, the Franchisee agrees to be bound by all the terms and conditions contained herein and promises to comply with and abide by all its provisions, terms, and conditions, as well as any additional terms contained in the Franchise Ordinance.

Section 3.4. Franchise Fee – Review and Penalties

3.4.1 Since the streets and public easements to be used by Franchisee in the operation of its Waste Hauling Services within the boundaries of the City are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and since the grant to Franchisee of the use of said streets and alleys is a valuable property right without which said Franchisee would be required to invest substantial capital in right-of-way costs and acquisitions, and since the City will incur costs in regulating and administering the franchise, Franchisee shall be required to pay quarterly to the City a franchise fee in an amount equal to five percent (5%) of the Gross Collected Revenues derived during the preceding quarter from or in connection with the operation of the Franchisee's Waste Hauling Service within the City. The obligation to pay the franchise fee shall accrue upon the City Council's approval of the franchise.

3.4.2 The franchise fee and other costs or penalties assessed shall be paid quarterly to the City on or before the last day of the month following the end of the quarterly period for which said payment is due. A five percent (5%) penalty will be assessed on delinquent amounts. An additional five percent (5%) penalty will be assessed if such delinquent amounts are not paid within 30 days from the date due. Thereafter, the delinquent amount will bear interest at the rate of ten percent (10%) per annum until paid.

3.4.3 Along with its quarterly payment the Franchisee shall file a statement delivered to the Director, showing the calculations of the amount of such quarterly payment, including the name of the business, the number and size of containers picked up in the city and frequency of pick-up. An officer of the Franchisee shall certify this fee statement. If Franchisee does not want this information to be public information, Franchisee should mark each page as "confidential information."

3.4.4 The Franchisee shall file annually with the City Director of Finance no later than four (4) months after the end of the Franchisee's fiscal year an audited statement. The audited statement shall show the

revenues attributable to the operations of its Waste Hauling Service within the City pursuant to this Agreement. This statement shall present a detailed breakdown of gross revenues. The statement shall have been audited by an independent Certified Public Accountant whose report shall accompany the statement.

3.4.5 The City shall have the right to review or audit the Franchisee's franchise fee statements and statements of revenues and other books and records, and to recompute any amounts determined to be payable under this Agreement; provided, however, that any such review or audit shall take place within thirty-six (36) months following the close of the fiscal year covered by such statement(s). The Franchisee shall pay any additional amount due to the City as a result of the City's review or audit within thirty (30) days following written notice to the Franchisee. In addition to the right to review the records, the City shall have the right to select an independent accounting firm to audit the books and records of the Franchisee to determine compliance with this Ordinance and the Franchise Agreement. The costs of the audit, if requested by the City, shall be paid by the City; provided, however, that in the event the audit reveals an error in Franchisee's reporting of gross revenues by a margin of greater than three percent (3%), then the cost of the audit shall be paid by the Franchisee.

Section 3.5. Default; Failure of City to enforce Franchise Agreement or Ordinance; No Waiver of the Terms Thereof

Should Franchisee default in any of the terms or conditions of the Ordinance or this Franchise Agreement, the City may elect to terminate the Franchise Agreement and extinguish the franchise, in which case the Franchisee shall continue be liable for all franchise fees and penalties accrued or incurred through the date of termination. The Franchisee shall not be excused from complying with any of the terms and conditions of the Ordinance or this Franchise Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

Section 3.6 Rates and Billing

3.6.1 The Franchisee will perform all billing and collection of commercial accounts.

~~3.6.2 The rates charged by the Franchisee will be as follows:~~

~~_____ [insert table of services and rates per Proposal Sheet]~~

Section 3.7 Modification of Rates

~~3.7.1 The fees which may be charged by the Franchisee for the second and subsequent years of the Franchise term may be adjusted upward or downward to reflect the net percentage change from the previous year in the Consumer Price Index for Urban Wage Earners and Clerical Workers (all items), and the Consumer Price Index for Urban Wage Earners and Clerical Workers, Expenditures Category "Gasoline," both as published by the United States Department of Labor, Bureau of Labor Statistics. The fees may be increased or decreased in a percentage amount equal to 90 percent of the net percentage change of the All Items Index plus 10 percent of the net percentage change of the Gasoline Index.~~

~~3.7.2 On November 1st of each year of this Franchise will be the Rate Modification Index Date. As soon as possible after a Rate Modification Index Date, the Franchisee will send the City a comparative statement setting out for both the All Items Index and the Gasoline Index a) the composite percentage change equal to the net percentage change in the All Items Index plus the net percentage change in the~~

~~Gasoline Index; and b) the increase or decrease in the fees which may be charged by the Franchisee. The rate change based on this information will be implemented by an amendment to this Franchise, approved by the City Council, effective on the next ensuing anniversary date of this Franchise.~~

~~3.7.3 In addition to the above, the Franchisee may petition the City for rate and price adjustments above its not-to-exceed pricing provided in RFP# AF-2026-23 based on increases in cost of operations, caused by factors such as revised laws, ordinances, regulations, changes in disposal sites, disposal costs, and for other similar reasons. The Franchisee's petition will specifically identify the reasons for the requested adjustment, and its impact upon the Franchisee's cost of operations, in unit terms, with an explanation of the methodology used to calculate such impact. The City may request additional information it considers necessary to evaluate the requested adjustment. The Director may grant such adjustments if the Director agrees there is good cause for the adjustments. If the Franchisee and the City do not agree on any rate increase requested by the Franchisee, the Franchisee may elect to continue the Franchise at the current rate or may terminate the Franchise effective upon 60 calendar days written notice.~~

Section 3.8 Administrative Fee Payments

In consideration of the City's tracking complaints and providing other administrative services under this Franchise, in addition to the 5% franchise fee the Franchisee shall pay a 3% administrative fee based on the Franchisee's gross billings (excluding appropriate sales taxes) for solid waste services in the Franchise area. The Franchisee will provide written notification to the City by the 10th of each month of the amount of its gross billings for these services that month, and the fee, based on these amounts, shall be paid by the 15th day of the next month.

ARTICLE 4 RECORDS AND REPORTS

Section 4.1 The Franchisee will file the following records and reports with the City quarterly.

4.1.1 Reports of all actions taken by the Franchisee to resolve complaints.

4.1.2 Report of commercial accounts which includes number of accounts, container(s) size, frequency, and volume.

4.1.3 The City shall have access, at reasonable hours, to all the Franchisee's records, customer service cards and all papers relating to Franchisee's operations.

Section 4.2 The Franchisee will retain all records and supporting documentation applicable to this Franchise, and not delivered to the City, for a period of three years except in the event that the Franchisee goes out of business, it will deliver to the City all of its records relating to this Franchise for retention by the City.

ARTICLE 5 TERM OF FRANCHISE

Section 5.1 Franchise Term

This Franchise will be effective January 1, 2027 and will continue until December 31, 2031. The Franchise may be extended for three additional two-year periods, provided all terms and conditions

remain in full force and effect except for the Franchise being extended and a modification to rates as specified in Section 3.1.2 of this Franchise. This option, if exercised, is to be executed in the form of a letter agreement, to be executed no sooner than 180 days prior to expiration of the Franchise, nor later than the final day of the Franchise period. This option to renew requires the mutual agreement of the City and the Franchisee. Refusal by either party to exercise this option to renew, will cause the Franchise to expire on the original or mutually agreed upon date. The total period of the Franchise, including the extension as a result of exercising this option, will not exceed a maximum combined period of 11 years.

Section 5.2 Breach/Default

Failure by either party to this Franchise to perform any of its provisions will constitute a breach of Franchise, in which case, either party may require corrective action within ten days from date of receipt of written notice citing the exact nature of such breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing such failure within the prescribed ten days will constitute a default of Franchise. The defaulting party will be given a 20-day period within which to show cause why the Franchise should not be terminated for default. The City Council may take whatever action as its interest may appear, resulting from such notice. The City reserves the right to enforce the performance of the Franchise in any manner prescribed by law in the event of breach or default of the Franchise and may Franchise with another party with or without solicitation of proposals or further notification to the Franchisee. At a minimum, the Franchisee will be required to pay any difference in the cost of securing the services covered by this Franchise or compensate for any loss or damage to the City derived hereunder should it become necessary to Franchise with another source because of this default, plus reasonable administrative costs and attorney's fees. In the event of termination, the City, its agents or representatives, will not be liable for loss of any profits anticipated to be made under this Franchise.

Section 5.3 Termination By City

The City reserves the right to terminate this Franchise upon 30 days written notice for any reason deemed by City Council to serve the public interest, or resulting from any governmental law, ordinance, regulations, or court order. No termination for convenience will be taken with the intention of awarding the same or a similar Franchise to another source. However, the City will not be liable for loss of any profits anticipated to be made under this Franchise.

ARTICLE 6 MISCELLANEOUS PROVISIONS

Section 6.1 Governing Law and Venue

This Franchise is governed by the laws of the State of Texas. Exclusive venue for any dispute arising under this Franchise is in Guadalupe County, Texas.

Section 6.2 Limitations

As to all acts or failures to act by either party to this Franchise, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act(s) or failure(s) to act.

Section 6.3 Gratuities

The City may terminate this Franchise if the City finds that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Franchisee or any agent or representative of the Franchisee, to any officer or employee of the City to secure favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Franchise. In the event this Franchise is terminated under this section, the City may collect, in addition to any other damages or remedies to which it may be entitled by law, exemplary damages in an amount not less than three nor more than ten times the value of the gratuity offered or given to any city officer or employee.

Section 6.4 Nondiscrimination

In performing the services required under this Franchise, the Franchisee will not discriminate against any person on the basis of race, color, religion, sex, national origin, age or disability. The Franchisee will comply with all laws and regulations prohibiting discriminating against employees or prospective employees because of age, religion, race, color, sex, disability, or national origin. The Franchisee will submit reports at the City's request to assure compliance.

Section 6.5 Construction

All references in this Franchise to any particular gender are for convenience only and will be construed and interpreted to be of the neuter gender. The term "will" is mandatory in this Franchise.

Section 6.6 Severability

Should any provision in this Franchise be found or deemed to be invalid, this Franchise will be construed as not containing the provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Franchise are declared to be severable.

Section 6.7 Compliance With Laws

In performing this Franchise, the Franchisee, its subcontractors, successors and assigns will comply with all local, state and federal laws.

Section 6.8 Public Information Act

The City of Seguin is governed by the Texas Public Information Act (the "Act"), Chapter 552 of the Texas Government Code. This Franchise and all written information generated under this Franchise may be subject to release under the Act. The Franchisee shall not make any reports, information, data, etc. generated under this Franchise available to any individual or organization without the written approval of the City.

Section 6.9 Waiver/Renunciation

No claim or right arising out of a breach of the Franchise can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing and signed by both parties.

Section 6.10 Franchisee Name Change

The Franchisee is responsible for the performance of the Franchise. In the event the Franchisee changes its name, the Franchisee will notify the City Manager in writing prior to the change taking effect, and the

Franchisee will publish notice of the change in a newspaper circulated in the Franchise area prior to the change taking effect. A fee of \$100.00, payable to the City, will be charged the Franchisee for administrative costs in processing each name change under this provision. The Franchise will then be modified to reflect the change.

Section 6.11 Force Majeure

In the event that the performance by either party of any of its obligations under the Franchise is interrupted or delayed by events outside of their control such as acts of God, war, riot, or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of the events.

Section 6.12 Successors and Assigns; Assignment

The City and the Franchisee, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Franchise and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Franchise. Neither the City nor the Franchisee will assign, sublet or transfer any interest in this Franchise without the written consent of the other, which will not be unreasonably withheld.

Section 6.13 Entire Agreement

This Franchise represents the entire and integrated Franchise between the City and the Franchisee and supersedes all prior negotiations, representations or agreements either written or oral.

Section 6.14 Written Assurances

Whenever one party to this Franchise, in good faith, has reason to question the other party's intent to perform, the former may demand that the other party give written assurance of intent to perform. In the event that a demand is made and no such assurance is received within 5 working days, the demanding party may treat this failure as an anticipatory repudiation of this Franchise.

ARTICLE 7 INSURANCE, INDEMNITY AND BONDS

Section 7.1 Indemnity

THE FRANCHISEE WILL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY AND ITS EMPLOYEES, AGENTS, OFFICERS AND SERVANTS FROM ANY AND ALL LAWSUITS, CLAIMS, DEMANDS AND CAUSES OF ACTION OF ANY KIND ARISING FROM THE NEGLIGENCE OR INTENTIONAL WRONGFUL ACTS OF THE FRANCHISEE, ITS EMPLOYEES, SUBCONTRACTORS OR AGENTS. THIS WILL INCLUDE, BUT NOT BE LIMITED TO, THE AMOUNTS OF JUDGMENTS, PENALTIES, INTEREST, COURT COSTS, LEGAL FEES, AND ALL OTHER EXPENSES INCURRED BY THE CITY ARISING IN FAVOR OF ANY PARTY, INCLUDING THE AMOUNTS OF ANY DAMAGES OR AWARDS RESULTING FROM CLAIMS DEMANDS AND CAUSES OF ACTION FOR PERSONAL INJURIES, DEATH OR DAMAGES TO PROPERTY, ALLEGED OR ACTUAL INFRINGEMENT OF PATENTS, COPYRIGHTS, AND TRADEMARKS AND WITHOUT LIMITATION BY ENUMERATION, ALL OTHER CLAIMS, DEMANDS, OR CAUSES OF ACTION OF EVERY CHARACTER OCCURRING, RESULTING, OR ARISING FROM ANY

NEGLIGENT OR INTENTIONAL WRONGFUL ACT, ERROR OR OMISSION OF THE FRANCHISEE AND/OR ITS AGENTS AND/OR EMPLOYEES. THIS OBLIGATION OF THE FRANCHISEE WILL NOT BE LIMITED BY REASON OF THE SPECIFICATION OF ANY PARTICULAR INSURANCE COVERAGE IN THIS FRANCHISE.

Section 7.2 Insurance

The Franchisee will procure and maintain at its expense insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of Texas, covering all operations under this Franchise, whether performed by the Franchisee or its agents, subcontractors or employees. Before commencing the work, the Franchisee will furnish to the City a certificate or certificates in form satisfactory to the City, showing that the Franchisee has complied with this paragraph. All certificates will provide that the policy will not be materially changed or canceled until at least 30 days written notice will have been given to the City and will name the City as an additional insured on all policies except workers' compensation. The kinds and minimum amounts of insurance required are as follows:

<u>Workers' Compensation Insurance:</u>	Statutory amounts, also to include employer's liability protection with minimum \$100,000 per occurrence.
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Commercial General Liability insurance

Combined single limit	\$1,000,000
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Automobile Liability:

Combined Single Limit	\$500,000
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Excess Umbrella	\$5,000,000
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The stated limits of insurance required by this Paragraph are MINIMUM ONLY and it will be the Franchisee's responsibility to determine what limits are adequate. These minimum limits may be basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of Certificates of Insurance that in any respect do not comply with the requirements of this Franchise does not release the Franchisee from compliance herewith.

Section 7.3 Bonds

The Franchisee will furnish a performance bond in the amount of Five Hundred Thousand Dollars (\$500,000.00) as security for the performance of the Franchise within 10 days following the Franchisee's receipt of a fully executed Franchise and before commencing any work under this Franchise, and annually thereafter. The performance bond must be an amount equal to the remaining Franchise amount. The Franchisee will pay the premium for this bond. The surety on the bond will be a duly authorized corporate surety authorized to do business in the State of Texas. The attorney-in-fact who signs performance bonds must file with each bond a certified and effectively dated copy of a power of attorney.

This Franchise will be effective January 1, 2027.

City of Seguin:

Franchisee:

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____