

CITY OF FAIRFIELD
CONSTRUCTION AND DEMOLITION WASTE
COLLECTION AGREEMENT

This Collection Agreement is made and entered into this _____, 20__, by and between the City of Fairfield, a California municipal corporation (“CITY”), and _____ (“COLLECTOR”).

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

WHEREAS, CITY has determined that the public health, safety and welfare require that non-exclusive agreements be awarded to qualified companies for the collection, transport and disposal of Construction and Demolition Waste in the City; and

WHEREAS, CITY requires all haulers providing Construction and Demolition Waste collection services in the City to enter into a non-exclusive Collection Agreement in order to regulate this business, ensure its orderly operation and to minimize the potential for adverse effects it may have on the local environment; and

WHEREAS, COLLECTOR has applied to CITY for a Construction and Demolition Waste Collection Agreement; and

WHEREAS, the City Manager has reviewed COLLECTOR’S application for the purpose of determining whether COLLECTOR meets the requirements for the granting of such Collection Agreement, and has determined that the grant for such Collection Agreement to COLLECTOR is in the public interest; and

WHEREAS, COLLECTOR agrees to ensure and document that at least sixty-five percent (65%) of the Construction and Demolition Waste collected by the COLLECTOR is recycled or otherwise diverted from Disposal in a landfill; and

WHEREAS, CITY and COLLECTOR desire to enter into a Construction and Demolition Waste Collection Agreement in order that COLLECTOR may perform Construction and Demolition Waste collection, transportation and disposal services in the City.

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

Section 1. Definitions

Whenever Section 9.030 of Chapter 9 of the Fairfield City Code has defined any term used in this Collection Agreement, the definitions in Chapter 9 shall apply unless the term is otherwise defined in this Collection Agreement. Whenever Division 30, Part 1, Chapter 2 of the California Public Resources Code, has defined any term used in this Collection Agreement, those definitions shall apply unless the term is otherwise defined in this Collection Agreement or in Chapter 9 of the City Code. In addition, the following definitions are hereby incorporated into this Collection Agreement:

- a) “Applicable Law” means all laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the collection and disposition of Solid Waste and Recyclables that are in force on the date of this Collection Agreement, and as they may be enacted, issued or amended during the term of this Collection Agreement.
- b) “Debris Box” means a Bin or Box used for the collection of Construction and Demolition Waste.
- c) “Chapter 9” means Chapter 9 of the Fairfield City Code.
- d) “C&D Waste” means “Construction and Demolition Waste”, as that term is defined in Chapter 9. For purposes of this Collection Agreement only, the parties agree that the definition of “Construction and Demolition Waste” in Chapter 9 refers to both recyclable and non-recyclable C&D Waste.
- e) “Disposal Site” means the landfill used by Collector for the disposal of C&D Waste pursuant to this Collection Agreement.
- f) “Processing Facility” means the recycling facility, materials recovery facility, or transfer station used by COLLECTOR for the processing of C&D Waste pursuant to this Collection Agreement.

Section 2. Grant of Collection Rights

CITY hereby grants to COLLECTOR the non-exclusive right to engage in the business of collecting, transporting, disposing, and delivery for processing of C&D Waste placed in Bins or Boxes by residential or commercial generators in the CITY. Except as expressly set forth herein, no other rights are granted COLLECTOR.

Section 3. Acceptance of Collection Agreement

COLLECTOR hereby accepts this Collection Agreement pursuant to the terms and conditions set forth in this Collection Agreement, the City Code, and all related ordinances and resolutions.

COLLECTOR hereby waives any right it may possess to contest the legal right, power of authority of CITY to enter into and perform this Collection Agreement, and agrees to cooperate

with and assist CITY in supporting the legal validity of and authorization for such provisions in the event of legal challenge thereto brought or made in any manner by a third party.

Section 4. Term of Collection Agreement

The term of this Collection Agreement (“Term”) shall commence on the date that all conditions precedent set forth in Section 5 are satisfied or waived in writing by CITY. The Term shall expire on December 31, 2019, unless terminated earlier as provided in this Collection Agreement.

Section 5. Conditions Precedent

The effectiveness of this Collection Agreement is subject to COLLECTOR’S satisfaction of each and all of the conditions set forth below, each of which may be waived in whole or in part by CITY.

- a) Accuracy of Representations. The representation and warranties made by COLLECTOR in its Application for Collection Agreement are true and correct on and as of the effective date.
- b) Absence of Litigation. There is no litigation pending on the effective date in any court challenging the award or execution of this Collection Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance. COLLECTOR has furnished evidence of the Insurance required in Section 14 of this Collection Agreement.
- d) COLLECTOR has delivered to CITY evidence satisfactory to the City Manager that COLLECTOR has the authority to provide, or has arranged for, the Disposal and Processing rights at authorized landfills and/or processing facilities capable of recycling C&D Waste.

This Collection Agreement shall not become effective and CITY shall not be obligated to perform the undertakings provided for in this Collection Agreement unless and until each and all of the conditions set out in this Section are satisfied, or waived in writing by CITY. Waiver of any condition to the effectiveness of this Collection Agreement will not preclude CITY from pursuing any claim for breach of this Collection Agreement.

Section 6. Collector Fees

- a) During the term of this Collection Agreement, COLLECTOR shall pay to CITY Collector fees for the privilege of engaging in the business of collecting, transporting and disposing of C&D Waste kept, accumulated or generated in the City.
- b) Collector fees shall be payable on the gross revenues received by COLLECTOR for C&D Waste collection service received from customers located within the City. The Collector fees shall be calculated based on gross collection revenues

prior to COLLECTOR imposing Collector fees on its customers. The Collector fee shall be thirteen percent (13%).

Section 7. Collector Fee Payment

- a) Collector fees shall be payable on a monthly basis, and shall be due and payable on the fifteenth (15th) day of the month immediately following the month in which collection services were provided. Each payment shall be calculated in accordance with the provisions of this Collection Agreement.
- b) The Collector fee shall be paid to the Finance Department. COLLECTOR shall pay all required Collector fees to: City of Fairfield, Attention: Finance Director, 1000 Webster Street, Fairfield, CA 94533. Each payment shall be accompanied by a written statement, verified by the person making the payment, or a duly authorized representative of the person, showing the calculation of the Collector fee payable in such form and detail as CITY may require and such other information as CITY may determine is material to a determination of the amount due. A copy of the calculation worksheet(s) will be delivered to the City Manager's Office.
- c) No statement filed under this Section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude CITY from collecting by appropriate action the sum that is actually due and payable.

If Collector fees are not paid by COLLECTOR at the times required by this Section, then in addition to the Collector fees, COLLECTOR shall pay a late payment charge in an amount equal to two percent (2%) of the Collector fee that is due plus interest equal to one and one-half (1-1/2%) for each month in which the Collector fee was not timely paid.

- d) If COLLECTOR remits Collector fees by personal delivery to CITY, such Collector fees shall be deemed timely paid only if delivered on or before the due date. If COLLECTOR remits Collector fees by mail or other delivery service, such Collector fees shall be deemed timely only if (1) the envelope containing the Collector fee payment bears the postmark or receipt showing that the payment was mailed or sent on or before the due date or (2) COLLECTOR submits proof satisfactory to the City Manager that the Collector fee payment was in fact deposited in the mail or sent on or before the due date.
- e) In the event COLLECTOR believes that it has paid Collector fees in excess of the fees due to CITY, COLLECTOR may submit a request for refund to the City Manager on a form provided by the City Manager. If proof of overpayment is satisfactory to the City Manager, the City Manager shall cause to be refunded to the COLLECTOR any overpayment. COLLECTOR shall not apply any overpayment as a credit against any Collector fees or other amounts payable to CITY unless specifically so authorized by the City Manager in writing.

Section 8. Ownership of Construction and Demolition Waste

CITY does not gain any ownership or right to possess C&D Waste collected by COLLECTOR pursuant to this Collection Agreement. Subject to the provisions of this Collection Agreement, COLLECTOR shall have title to and may retain, recycle, process, dispose of, or use the C&D Waste that it collects.

Section 9. Disposal and Diversion of C&D Waste

- a) COLLECTOR shall dispose of C&D Waste collected or transported by COLLECTOR only by taking such C&D Waste to a landfill, transfer station, recycling facility or materials recovery facility. Consistent with the requirements of the California Green Building Standards Code, including Section 5.408, COLLECTOR shall ensure and document that at least sixty-five percent (65%) of the C&D Waste collected is recycled or otherwise diverted from disposal in a landfill. If the California Green Building Standards Code's minimum diversion rate is increased at any point during the term of this Collection Agreement, COLLECTOR shall ensure compliance with the increased rate, even if such rate exceeds the sixty-five percent (65%) established by this Section. COLLECTOR shall not dispose of C&D Waste by depositing it on any land, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system. If C&D Waste collected or transported by COLLECTOR includes items classified as Universal Waste under Chapter 23, Title 22 of the California Code of Regulations, as may be amended from time to time, COLLECTOR shall separate and properly dispose of all such items, ensuring that all Universal Waste is diverted from landfills.
- b) COLLECTOR shall ensure that the Disposal Site and Processing Facilities are each properly permitted and in compliance with Applicable Law at all times during the term of this Collection Agreement, and that none of them are on or being considered for inclusion on a State or federal Superfund list, or CalRecycle list of Solid Waste facilities failing to meet State minimum standards. COLLECTOR shall immediately inform City Manager in writing in the event of any non-compliance, and CITY, in its sole discretion, shall have the right to require the use of a different Disposal or Processing Facility, to be selected by COLLECTOR. The City Council may also, in its sole discretion, require the use of a different site at any time during the term of this Collection Agreement if the Disposal Site or Processing Facility is found to not be in compliance with the provisions of this Section, and the City Council determines that the Disposal Site or Processing Facility is not acceptable due to a failure to comply with the terms of this Collection Agreement or a finding by State or federal regulatory agencies that it is not in compliance with Applicable Law.

Section 10. Public Access to COLLECTOR

- a) COLLECTOR shall establish and maintain a local or regional office at all times during the term of this Collection Agreement.

- b) A responsible and qualified representative of COLLECTOR shall be available at COLLECTOR's office during office hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., for communication with CITY or the public.

Section 11. Reports

- a) COLLECTOR shall file with the City Manager a quarterly report of the quantities of C&D Waste collected, transported, diverted, and/or disposed. Such report shall be in such form and detail as required by the City Manager. Specifically, the report shall contain, but not be limited to, the following information:
 - 1) The C&D Waste tonnage collected and removed within the City during the previous quarter;
 - 2) The C&D Waste tonnage collected and removed during the previous quarter within the City that was diverted and the location of the facility where such waste was diverted, with copies of the receipts issued by the facility;
 - 3) The C&D Waste tonnage collected and removed within the City that was disposed of during the previous quarter and the location of the disposal facility where the disposal of such waste occurred, with copies of the disposal receipts issued by the disposal facility; and
 - 4) Gross revenues earned during previous quarter.
- b) COLLECTOR shall maintain quarterly records, on forms prescribed by the City Manager, containing such information as may be required by the City Manager pertaining to the number and types of accounts served by COLLECTOR. This information shall be provided to the City Manager upon request.
- c) The City Manager shall establish guidelines, forms and other appropriate material to assist COLLECTOR in preparing the reports required by this Section. COLLECTOR's failure to file the reports required by this Section should constitute cause for termination or suspension of its Collection Agreement.
- d) If the quarterly report required under subsection a) is not filed by the due date, the report shall be deemed delinquent, and COLLECTOR shall pay to CITY a delinquent report charge in the amount of twenty-five dollars (\$25.00) per day. Such delinquent report charge shall be in addition to any Collector fees or other charges payable by COLLECTOR for the same period of time.
- e) COLLECTOR has the option to file its reports to CITY electronically through an approved third party company. The third party company's use fees are the sole responsibility of COLLECTOR.
- f) Each quarterly report shall be submitted on or before the last day of the calendar month immediately following the reportable quarter and shall be submitted to:

City of Fairfield
Public Works Department
1000 Webster Street
Fairfield, CA 94533

- g) Upon the reasonable request of the City Manager, COLLECTOR shall submit to CITY monthly reports including a listing of each Debris Box size in the City from which COLLECTOR collected C&D Waste during the reporting month; the number of collections of each listed Debris Box during the reporting month; the total volume of C&D Waste collected in the City during the reporting month; the total weight (in tons) of C&D Waste disposed of by COLLECTOR at landfills and transfer stations during the reporting month; the total weight and the weight by material category (in tons) of C&D Waste delivered by COLLECTOR to recycling and materials recovery facilities during the reporting month; the number of service locations by volume (cubic yards) of service provided; COLLECTOR's gross receipts for collection services provided in the City during the reporting month; and such additional information as may be requested by the City Manager. Such monthly reports shall be prepared in a form as required by the City Manager.

Section 12. Inspection Authority

- a) COLLECTOR shall at all times maintain accurate and complete accounts of all revenues and income arising out of its operations pursuant to this Collection Agreement; any service complaints received and how they were resolved; all Solid Waste collected, transported and/or disposed of; the source of such Solid Waste; and the final destination of such solid waste. COLLECTOR's books, accounts and records reasonably necessary for the enforcement of this Collection Agreement shall be made available for inspection, examination and audit during the normal business hours by authorized officers, employees and agents of CITY. CITY shall provide COLLECTOR written notice at least three (3) business days prior to an inspection, audit or examination of these records.
- b) In the event any audit conducted by CITY or by CITY's representative discloses that COLLECTOR has made any misrepresentation with respect to the Collector fees or its diversion amounts to CITY or discloses that COLLECTOR has underpaid Collector fees due to CITY in an amount greater than One Thousand Dollars (\$1,000) or ten percent (10%) of the Collector fees payable to CITY during the period covered by the audit, whichever amount is greater, then in addition to any other remedies available to CITY, COLLECTOR shall reimburse CITY for CITY's costs incurred in the performance of the audit. Such reimbursement shall be paid by COLLECTOR, along with any underpaid Collector fees, late payments and interest, within thirty (30) days of the date CITY notifies COLLECTOR of the amount of CITY's costs.

Section 13. Service Fees

COLLECTOR shall set its own service fees for C&D Waste collection services. CITY reserves the right to establish maximum service fees for C&D Waste collection service with one hundred and twenty (120) days notice to COLLECTOR. Such maximum service fees, should they be established, will be adjusted annually as determined by CITY, at its sole discretion.

Section 14. Insurance Requirements

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

- a) Minimum Scope and Limits of Insurance. COLLECTOR shall maintain at least the following minimum insurance coverages:
 - 1) Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and a \$2,000,000 aggregate limit.
 - 2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall include hired autos and non-owned autos.
 - 3) Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.
 - 4) Pollution and/or Environmental Impairment Liability: \$1,000,000 each occurrence/\$3,000,000 policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants.
- b) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retention must be approved by CITY's Risk Manager, who shall have sole and absolute discretion to approve the deductibles or self-insured retention, or to require reduction of such limits, as he or she deems necessary. COLLECTOR shall be responsible for payment of all deductibles or self-insured retention.
- c) Pollution and/or Environmental Impairment Liability and/or Errors and Omissions. COLLECTOR shall ensure that such coverage shall, if commercially available, without involvement of CITY automatically broaden in its form of coverage to include legislated changes in the definition of the waste materials and/or irritants, contaminants or pollutants. The policy shall stipulate this insurance is primary and no other insurance carried by CITY will be called upon to contribute to loss suffered by COLLECTOR hereunder and waive subrogation against CITY and other addition insured.

- d) Other Insurance Provisions. The required insurance policies are to contain, or be endorsed to contain, the following provisions:
- 1) *General Liability and Automobile Liability Coverages.*
 - a. CITY, its officers, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of COLLECTOR; products and completed operations of COLLECTOR; premises owned, leased or used by COLLECTOR; and automobiles owned, leased, hired or borrowed by COLLECTOR. The coverage shall contain no special limitations of the scope of protection afforded to CITY, its officers, employees and agents and contractors.
 - b. COLLECTOR'S insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of COLLECTOR's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officers, employees, agents or contractors.
 - d. Coverage shall state that COLLECTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 2) *All Coverages.* Each insurance policy required by this Collection Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.
- e) Placement of Insurance. Insurance shall be placed with insurers acceptable to CITY's Risk Manager. COLLECTOR must place insurance with a current A.M. Best rating of no less than A:VII. CITY's Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interest of CITY and the general public are adequately protected.
- f) Proof of Insurance. COLLECTOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Collection Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Proof of insurance shall be mailed or personally delivered to the address provided in Section 24 of this Collection Agreement.

COLLECTOR acknowledges that this Collection Agreement will not become effective, and COLLECTOR will have no authority to perform C&D Waste collection in the City, unless COLLECTOR provides satisfactory proof of insurance PRIOR TO BEGINNING OPERATIONS AS A COLLECTOR.

Section 15. Indemnity

COLLECTOR agrees to defend, with counsel agreed upon by both parties, indemnify, and hold harmless CITY, and its Council members, agents, officers, servants, and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CITY's Council members, employees, agents or officers which arise from, or are connected with or are caused by willful or negligent acts or omissions of COLLECTOR, or its Council members, agents, officers or employees, in the performance of this Collection Agreement, or in performing the work or services herein, and all costs and expenses of investigating and defending against same; provided, however, that COLLECTOR's duty to indemnify and hold harmless shall not include any claims or liability arising solely from the negligence or willful misconduct of CITY, its Council members, agents, officers, and employees.

Section 16. Equipment

- a) Any and all containers provided to waste generators by COLLECTOR for storage, collection or transportation of C&D Waste shall meet the requirements of CITY.
- b) Any and all vehicles used by COLLECTOR to perform C&D Waste collection services shall comply with all Applicable Law, including but not limited to the requirements of the California Air Resources Board and the requirements of CITY.
- c) All equipment used or provided by COLLECTOR shall be kept in a safe and sanitary condition. Vehicles and containers shall be cleaned and painted as needed, and as determined by CITY.

Section 17. Abandoned Containers

- a) If COLLECTOR abandons any container used to provide C&D Waste services in the City, CITY may remove the container and/or dispose of the contents of the container. If CITY removes a container abandoned by COLLECTOR and/or disposes of the contents of any container abandoned by COLLECTOR, CITY may charge COLLECTOR for CITY's costs incurred in such removal/disposal, and COLLECTOR shall pay CITY's costs within ten (10) days of the date of CITY's invoice for such costs.
- b) For the purposes of this Section, "abandoned" includes:
 - 1) COLLECTOR's failure to remove the container within the time period specified by CITY upon termination of this Collection Agreement;

- 2) COLLECTOR's failure to remove the container within a reasonable period after the expiration of this Collection Agreement, where COLLECTOR has not been granted a subsequent C&D Waste Collection Agreement authorizing COLLECTOR to collect and transport the type or types of C&D Waste for which the container was used pursuant to this Collection Agreement.
- 3) COLLECTOR's failure to dispose of the contents of the container within five (5) days after the City Manager issues written notice to COLLECTOR to dispose of the contents.

Section 18. COLLECTOR Provided Construction and Demolition Debris Containers

- a) **General.** Containers used for storage of C&D Waste shall be designed and constructed to be watertight and prevent the leakage of liquid. All containers shall be painted and shall prominently display the name of COLLECTOR.
- b) **Cleaning, Painting, Maintenance.** COLLECTOR shall make reasonable efforts to replace, clean or repaint all containers as needed so as to present a clean appearance.

Section 19. Personnel

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

Section 20. Compliance With Law

In providing the services required under this Collection Agreement, COLLECTOR shall at all times, at its sole cost, comply with all Applicable Law (including but not limited to Chapter 9, which is incorporated herein by this reference).

Section 21. Permits and Licenses

COLLECTOR shall obtain and maintain, at COLLECTOR's sole cost and expense, all permits and licenses applicable to COLLECTOR's operations under this Collection Agreement required of COLLECTOR by any governmental agency.

Section 22. Default, Termination

- a) Default. CITY shall provide written notice of a material default for failure to comply with any obligation or duty imposed on COLLECTOR under this Collection Agreement, including but not limited to those specified in subsection c).
- b) If COLLECTOR fails to correct such default within thirty (30) days from the date of the notice given by CITY, or where such default cannot be cured within such thirty (30) day period, COLLECTOR fails to commence such action required to cure the particular default within ten (10) calendar days after such notice, or fails to continue such performance diligently until completed, CITY shall then provide notice of termination in accordance with subsection d).
- c) The following events shall also constitute a material breach and default under this Collection Agreement:
 - 1) *Misrepresentation.* Any misrepresentation or disclosure made to CITY by the COLLECTOR in connection with or as an inducement to entering this Collection Agreement or any future amendment to this Collection Agreement, which proves to be false or misleading in any material respect as of the time that representation or disclosure is made, whether or not any such representation or disclosure appears as a part of this Collection Agreement.
 - 2) *Fraud or Deceit.* If COLLECTOR practices, or attempts to practice, any fraud or deceit upon CITY.
 - 3) *Failure to Maintain Coverage.* If COLLECTOR fails to provide or maintain in full force and effect the insurance required by this Collection Agreement.
 - 4) *Violations of Regulation.* If COLLECTOR violates any permits, orders or filing of any regulatory body having jurisdiction over COLLECTOR, which violation or non-compliance materially affects COLLECTOR's ability to perform under this Collection Agreement, provided that COLLECTOR may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Collection Agreement shall be deemed to have occurred during the pendency of the contestation or appeal, to the extent COLLECTOR is able to adequately perform during that period.
 - 5) *Acts or Omissions.* Any other act or omission by COLLECTOR which materially violates the terms, conditions, or requirements of this Collection Agreement, Chapter 9 or other portions of the Fairfield City Code, the Act, as they may be amended from time to time, or any order, directive, rule, or regulation issued hereunder and which is not corrected

or remedied within the time set in the written notice of the breach within the time set forth in such notices.

- 6) *Challenge to terms of the Collection Agreement.* Challenge of any of the terms herein in a court of law or legislative body. By entering into this Collection Agreement, COLLECTOR agrees to all of its terms.
 - 7) *Failure to divert at least sixty-five percent (65%) of the waste from disposal in a landfill.* If COLLECTOR fails to divert at least sixty-five percent (65%) of the waste from disposal in a landfill for any six (6) month period.
- d) Termination. Upon the occurrence of a material breach, failure to cure will result in a notice of termination of this Collection Agreement by CITY. The City Manager shall serve written notice, either personally or by registered or certified mail, postage prepaid of the termination of this Collection Agreement to the last place of business of COLLECTOR.
 - e) Any COLLECTOR whose Collection Agreement has been terminated has the right to an appeal hearing before the City Council of CITY, if COLLECTOR requests such a hearing in writing to the City Clerk within ten (10) calendar days after receipt of notice of termination. The City Council shall hold the appeal hearing not later than thirty (30) days following the receipt of the written request. The City Clerk shall give written notice of the time, date and place of the appeal hearing to COLLECTOR and the City Manager. CITY shall render its decision within fifteen (15) calendar days after the close of the appeal hearing and its decision shall be final; provided, however, that nothing herein shall limit COLLECTOR's right to seek judicial review or remedies. If COLLECTOR requests such an appeal hearing, COLLECTOR may continue collecting and transporting or disposing of C&D Waste until CITY has rendered its decision on the termination of this Collection Agreement.
 - f) Force Majeure. The performance of this Collection Agreement may be discontinued or temporarily suspended in the event of force majeure. COLLECTOR shall not be deemed to be in default and shall not be liable for failure to perform under this Collection Agreement if COLLECTOR's performance is prevented or delayed by force majeure. Force majeure means acts of God including landslides, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, lockouts, wars, blockades, public riots, explosions, or government restraint.

Section 23. Conditions Upon Termination

- a) In the event that this Collection Agreement is terminated:
 - 1) COLLECTOR shall have no right or authority to engage in C&D Waste collection, transportation or disposal operations in CITY.

- 2) COLLECTOR shall, however, remain liable to CITY for any and all Collector fees that would otherwise be payable by COLLECTOR, for any and all late payment charges and interest assessed pursuant to Section 7 of this Collection Agreement, for any and all delinquent report charges assessed pursuant to Section 11 of this Collection Agreement, and for any indemnity obligations under Section 15.
 - 3) COLLECTOR shall have a continuing obligation to submit to CITY all reports required by Section 11 of this Collection Agreement which relate to C&D Waste or recycling activities performed by COLLECTOR up to and including the date of termination.
 - 4) COLLECTOR shall allow the C&D Waste generators served by COLLECTOR to arrange for C&D Waste collection services with a collector authorized to perform such services, without penalty or liability for breach of contract on the part of the generators.
- b) In the event this Collection Agreement is terminated, then within the time period specified by CITY and if directed by the City Manager, COLLECTOR shall remove all of COLLECTOR's C&D Waste Debris Boxes from all of COLLECTOR's collection service locations and shall properly dispose of all C&D Waste or recyclable in such containers.
- c) In the event this Collection Agreement is terminated, then within ten (10) days of such termination or expiration and upon notification by the City Manager to do so, COLLECTOR shall:
- 1) Submit to the City Manager a list of the names and addresses of C&D Waste and/or recyclable generators in the City for which COLLECTOR provided services as of the date of termination or expiration (i.e., COLLECTOR's customers list); and
 - 2) Send written notification to each C&D Waste generator on COLLECTOR's customer list that COLLECTOR is no longer authorized to provide C&D Waste services in the City. Such notification shall be in the form provided by the City Manager and shall be personally delivered or shall be sent by first class mail, postage prepaid, to the customers billing address. COLLECTOR shall submit to the City Manager an affidavit, signed under penalty of perjury, stating that the required notification has been provided by COLLECTOR to all of COLLECTOR's customers in the City.

Section 24. Notices

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

To CITY: City of Fairfield
Public Works Department
1000 Webster Street
Fairfield, CA 94533

To COLLECTOR: Owner or Representative: _____
Title: _____
Company Name: _____
Address _____
City, State, Zip: _____

Notice shall be deemed effective on the date personally served or, if mailed, three (3) days after the date deposited in the mail.

Section 25. Relationship of Parties

The parties intend that COLLECTOR shall perform the services required by this Collection Agreement as an independent contractor and not as an officer or employee neither of CITY nor as a partner of or joint venture with CITY. No employee or agent of COLLECTOR shall be deemed to be an employee or agent of CITY. Except as expressly provided herein, COLLECTOR shall have the exclusive control over the manner and means of conducting the C&D Waste collection services performed under this Collection Agreement and all persons performing such services. COLLECTOR shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents shall not obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to the employees of CITY by virtue of their employment with CITY.

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

Section 26. Governing Law

This Collection Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California and the United States.

Section 27. Jurisdiction

Any lawsuits between the parties arising out of this Collection Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Collection Agreement is made in and will be performed in the City, County of Solano. Federal courts may have jurisdiction over certain lawsuits arising from this Collection Agreement and these should be brought and concluded within the Eastern District of California.

Section 28. Assignment

- a) COLLECTOR acknowledges that this Collection Agreement involves rendering a vital service to the residents and businesses within the City, and that CITY has authorized COLLECTOR to perform the services specified herein based on (1) COLLECTOR's experience, skill and reputation for conducting its C&D Waste collection in a safe, effective and responsible fashion, at all times in keeping with applicable waste management laws, regulations and good waste management practices, and (2) COLLECTOR's financial resources to maintain the required equipment and to support its indemnity obligations to CITY under this Collection Agreement. CITY has relied on each of these factors, among others, in choosing COLLECTOR to perform the services to be rendered by COLLECTOR under this Collection Agreement.
- b) This Collection Agreement is a privilege to be held in trust by the original COLLECTOR. This Collection Agreement issued by CITY shall not be transferred, sold, leased, assigned, or relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the written prior approval of CITY. This restriction includes the transfer of ownership of the Collection Agreement, or a majority of the ownership or control of COLLECTOR, or the conveyance of COLLECTOR's stock to a new controlling interest. This Collection Agreement shall become void upon the abandonment of it by COLLECTOR. CITY shall not unreasonably withhold approval of a Collection Agreement assignment, provided that such assignment does not unreasonably impact competition and the assignee meets all of the requirements established by CITY for the granting of this Collection Agreement and is qualified to perform its obligations as required by this Collection Agreement.
- c) COLLECTOR shall promptly notify the City Manager in writing in advance of any proposed assignment, sale, or transfer. In the event CITY approves of any assignment, sale, or transfer, such approval shall not relieve COLLECTOR of any of its obligations or duties under this Collection Agreement unless this Collection Agreement is modified in writing to that effect.

Section 29. Binding on Successors

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

Section 30. Waiver

The waiver by either party of any breach or violation of any provisions of this Collection Agreement shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provisions of this Collection Agreement.

Section 31. COLLECTOR's Investigation

COLLECTOR has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding this Collection Agreement and the work to be performed by it.

Section 32. Notice

The parties agree that in the event CITY determines to change the system for the collection of C&D Waste from a non-exclusive Collection Agreement system to an exclusive Collection Agreement system, COLLECTOR shall be entitled to notice of one hundred and twenty (120) days prior to the expiration of this Collection Agreement. The parties acknowledge that this Collection Agreement fulfills CITY's obligations under Section 49520 through 49524 of the Public Resources Code to the extent such notice was not previously provided to COLLECTOR.

Section 33. Entire Agreement

This Collection Agreement represents the full and entire Agreement between the parties with respect to the matters covered herein.

Section 34. Interpretation

This Collection 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.

Section 35. Amendment

This Collection Agreement may not be modified or amended in any respect except by a written agreement duly approved and signed by the parties.

Section 36. Severability

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

IN WITNESS WHEREOF, the parties hereto have executed this Collection Agreement as of the day and year written above.

[signatures begin on next page]

ATTEST

City Clerk

CITY

City of Fairfield, a municipal corporation:

By:

GEORGE R. HICKS
Public Works Director

COLLECTOR

Collector:

By:

Name: _____

Title: _____

and

By:

Name: _____

Title: _____