

**NON-EXCLUSIVE FRANCHISE AGREEMENT  
BETWEEN  
THE CITY OF SAN JOSE  
AND  
GARDEN OF EDEN LANDSCAPES, INC.  
DBA GROUND FORCE ENTERPRISES**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between the CITY OF SAN JOSE, a municipal corporation ("**City**"), and GARDEN OF EDEN LANDSCAPES, INC., a California corporation doing business as GROUND FORCE ENTERPRISES ("**Franchisee**"), for the purpose of providing collection, transportation and disposal services for residential clean-out material and construction and demolition debris in the City of San José.

**RECITALS**

- A. Franchisee has applied to City for a Non-Exclusive Franchise under San José Municipal Code, Chapter 9.10, Part 11 ("Franchise"); and
- B. On February 25, 2020, the City Council held a public hearing for the purpose of hearing persons in favor of or in opposition to the granting of such Franchise; and
- C. The City Council has determined that the grant of such Franchise to Franchisee is in the public interest; and
- D. The City and Franchisee desire to enter into a Non-Exclusive Franchise Agreement so that Franchisee may perform collection, transportation and disposal services for residential clean-out material and construction and demolition debris in the City of San José.

**NOW, THEREFORE**, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the City and Franchisee hereby agree as follows:

**SECTION 1. DEFINITIONS.**

For the purpose of this Agreement, the definitions contained in this Section 1 will apply unless otherwise specifically stated. If a word or phrase is not defined in this

Section 1, the definition of such word or phrase as contained in Chapter 9.10 of the San José Municipal Code will control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender includes the feminine gender.

A. Construction and Demolition Debris (“C&D Debris”).

Construction and Demolition Debris means:

1. Recyclable and non-recyclable waste building materials, packaging, and rubble resulting solely from construction, remodeling, and demolition operations on pavements, houses, commercial buildings, and other structures authorized by a permit issued under Chapter 24.02 of the San José Municipal Code and collected pursuant to a temporary service agreement of no longer than one (1) year; or
2. Rock, concrete, asphalt and dirt.

B. Director.

“**Director**” means the Director of Environmental Services or designee.

C. Incidental Contamination.

“**Incidental Contamination**” means twenty (20) percent or less, by volume or weight, of solid waste.

D. Recycle.

“**Recycle**” means handling, separating, processing, sorting, cleansing, treating, and reconstituting material that would otherwise be disposed in a landfill and returning it 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 also includes any processing, energy conversion, beneficial reuse, or other activity deemed to be Recycling under the statutes or regulations enforced by the Department of Resources Recycling and Recovery (“CalRecycle”) with the exception that Recycle shall not include use as landfill alternative daily cover.

E. Recyclable Material.

“**Recyclable Material**” means glass, paper, cardboard, wood, concrete,

aggregate, plastic, ferrous and non-ferrous metal, aluminum and any other materials that are capable of being Recycled. Recyclable Material also includes any materials defined in Chapter 9.10 of the Municipal Code or City regulation.

F. Recyclable Material Processing Facility.

**“Recyclable Material Processing Facility”** means a lawfully authorized and permitted facility, selected by the Franchisee, that will receive, sort, process, bale, store, and otherwise recover and Recycle any Recyclable Material from Franchisee collected C&D Debris and Residential Clean-Out Material for reuse or sale to other processors or manufacturers.

G. Residential Clean-Out Material.

**“Residential Clean-Out Material”** means material resulting from the cleaning out of residential premises and collected in roll-off or front-load containers rented for a period of one (1) week or less.

H. Residue.

**“Residue”** means the material remaining after Recycling that cannot be Recycled and is disposed of in a landfill.

**SECTION 2. GRANT OF FRANCHISE.**

By Ordinance No.\_\_\_\_\_, City has granted to Franchisee a Non-Exclusive Franchise authorizing Franchisee to engage in the business of collecting, transporting and disposing of Residential Clean-Out Material and C&D Debris kept, accumulated or generated in the City of San José and to use the public streets and rights of way for such purpose.

Franchisee acknowledges that the Franchise granted in this Agreement is not exclusive and that Franchise is subject to the terms and conditions specified in Article XIII of the City Charter, the terms and conditions specified in Ordinance No.\_\_\_\_, the provisions of Chapter 9.10 of the San José Municipal Code, and the terms and conditions of this Agreement.

**SECTION 3. TERM OF FRANCHISE.**

Subject to Section 18 of this Agreement, the term of the Non-Exclusive Franchise granted to Franchisee is from the effective date of the Ordinance granting the Franchise,

per Section 605 of the City Charter, to June 30, 2020, inclusive. The Director may, in the Director's discretion, extend the term of this Agreement and the Franchise for up to one (1) year through June 30, 2021. Any such extension of the term of this Agreement and the Franchise will be given in writing and is not effective until accepted by Franchisee in writing.

#### **SECTION 4. REPORTS.**

- A. Franchisee must submit to City complete and accurate monthly reports prepared in an electronic format provided by the Director. Franchisee must submit a monthly report regardless of whether Franchisee provided service to any customers during the reporting period. The monthly report must include:
1. a listing of each customer address in the City of San José from which Franchisee collected Residential Clean-Out Material and/or C&D Debris during the reportable month;
  2. for each customer during the reportable month, the date on which Franchisee delivered the container for Residential Clean-Out Material, and/or the start date of the service agreement between the Franchisee and the customer for collection of C&D Debris;
  3. the level of service (size of container in cubic yards and number of collections) provided to each customer during the reportable month;
  4. the total volume (in cubic yards) by material category of Residential Clean-Out Material and C&D Debris collected in the City of San José during the reportable month;
  5. the total weight (in tons) by material category of Residential Clean-Out Material and C&D Debris disposed of by Franchisee at each Recyclable Material Processing Facility during the reportable month;
  6. the total weight (in tons) by material category of Residential Clean-Out Material and C&D Debris delivered by Franchisee to each recycling and materials recovery facility during the reportable month;
  7. the name of the Recyclable Material Processing Facility which Franchisee delivered Residential Clean-Out Material and/or C&D Debris;

8. Franchisee's gross receipts for collection services provided in San José during the reportable month;
  9. an inventory of all containers that Franchisee owns or possesses, regardless of whether used that month, listed by the serial number Franchisee assigned to each container as required under Section 14; and
  10. such additional information as may be required by the Director.
- B. On or before the last day of the calendar month immediately following the reportable month, Franchisee must file the monthly report electronically at a web address to be provided by City. Upon request by City, Franchisee must submit a hard copy of the monthly report. Such hard copy report will be submitted within thirty (30) days of the request from the Director and must be mailed or personally delivered to:
- City of San José  
Director, Environmental Services Department  
200 East Santa Clara Street, 10th Floor  
San José, CA 95113
- C. If the monthly report required under subsection A is not filed by the due date specified above or is incomplete or inaccurate, the report will be deemed delinquent. If the report is delinquent, Franchisee must pay to City a delinquent report charge in the amount set out in Chapter 9.10 of the San José Municipal Code. Such delinquent report charges will be in addition to any franchise fees or other charges payable by Franchisee for the same period of time.

## **SECTION 5. FRANCHISE FEES.**

- A. During the term of this Agreement, Franchisee must pay to City franchise fees for the privilege of engaging in the business of collecting, transporting and disposing of Residential Clean-Out Material and C&D Debris kept, accumulated or generated in the City of San José.
- B. Franchisee must pay commercial solid waste franchise fees on all Residential Clean-Out Material and C&D Debris services performed by Franchisee in the City of San José. Such fees will be in the amount established for commercial solid waste services adopted by the City Council and in such other amounts as are set

forth in any subsequent resolution that may be adopted by the City Council.

- C. Franchisee acknowledges that City has reserved the right to increase franchise fees payable by Franchisee at any time.

**SECTION 6. SOURCE REDUCTION AND RECYCLING FEES.**

- A. Franchisee will bill, collect and remit to City the Source Reduction and Recycling Fee (“**SRR Fee**”) imposed by City on solid waste generators for whom Franchisee performs services pursuant to this Agreement. The invoice sent to the solid waste generator must itemize the SRR Fee. The SRR Fee will be in the amount set forth for Commercial Solid Waste in the Schedule of Fees adopted by resolution of the City Council and any amendment thereto that may be adopted by the City Council. Any material collected that is not recycled but is disposed of by landfilling or other non-recycling method will be subject to an SRR Fee for solid waste as set forth in a resolution adopted by the City Council.
- B. City will notify Franchisee in writing of any changes in the amount of the SRR Fee to be billed to solid waste generators and of the date any such changes are to be effective. Franchisee must implement such changes in Franchisee’s billing system and shall begin billing any changes in the SRR Fee by the effective date specified in City’s notice.
- C. For each month in which any generator fails or refuses to pay SRR Fees to Franchisee when such fees are due and payable, Franchisee must notify City of the generator’s name, address, the amount due for SRR Fees, and account information (including the size of the containers and frequency of collection), and must provide documentation supporting Franchisee’s claim (including documentation showing that Franchisee billed the generator for the SRR Fees). Such notification must be given at the time Franchisee submits the monthly report required by Section 4 of this Agreement. Franchisee, in lieu of providing the information required by this Paragraph, may pay to City the SRR fees which the generator failed or refused to pay.

**SECTION 7. PAYMENT OF FRANCHISE AND SRR FEES.**

- A. Franchise and SRR fees will be due and payable on the last day of the month

immediately following the month in which collection services were provided. If fees are not paid by Franchisee at the times required by this Agreement, such fees will be delinquent and in addition to the fees, Franchisee must pay a late payment charge in an amount equal to ten percent (10%) of the fees that were not timely paid by Franchisee. If Franchisee fails to pay delinquent fees within thirty (30) days of the date required by this Agreement, Franchisee must pay a second late payment charge in an amount equal to ten percent (10%) of the outstanding fees after such thirty (30) day period. Such second late payment charge is intended to be in addition to the first late payment charge. In addition, Franchisee must pay interest on all unremitted franchise and SRR Fees at the rate of ten percent (10%) per annum or the legal rate allowed, whichever is less, from the date the Franchise and SRR Fees were due to be remitted to the date actually remitted.

- B. Each franchise fee payment must be accompanied by a hard copy of the first page of the monthly report, with an original signature required under Section 4 of this Agreement and a written statement, verified by the person making the payment, or a duly authorized representative of the person, showing the calculation of the franchise fee payable in such form and detail as the City's Director of Finance may require and such other information as the City's Director of Finance may determine is material to a determination of the amount due. Franchisee must submit such documentation, together with the payment of all required franchise and SRR fees, to:

City of San José  
Department of Finance  
Payment Processing / Revenue Management  
200 East Santa Clara Street, 14th Floor  
San José, CA 95113-1905

- C. If Franchisee remits franchise and SRR fees by personal delivery to CITY, such fees will be deemed timely paid only if delivered on or before the last day of the month immediately following the month in which the collection services were provided. If Franchisee remits fees by mail or other delivery service, such fees will be deemed timely only if (1) the envelope or wire transfer containing the fee payment bears a postmark or receipt showing that the payment was mailed or sent on or before the due date set forth in this Agreement; or (2) Franchisee

submits proof satisfactory to the City's Director of Finance that the fee payment was in fact deposited in the mail or sent on or before said due date.

- D. Franchise and/or SRR fees equal to or exceeding \$10,000 must be paid by wire transfer or cashier's check.
- E. In the event Franchisee believes that Franchisee has paid franchise and/or SRR fees in excess of the fees due to City, Franchisee may submit a written request for refund, together with documentation supporting the request, to the City's Director of Finance. If proof of overpayment is satisfactory to said Director, the Director will refund to Franchisee any overpayment. Franchisee will not apply any overpayment as a credit against any franchise fees, SRR fees, or other amounts payable to City unless specifically so authorized by the City's Director of Finance in writing.
- F. Franchisee must report all SRR Fees separately from franchise fees and other charges paid by Franchisee to City.

**SECTION 8. COMMINGLING OF MATERIALS.**

- A. Residential Clean-Out material and C&D Debris may only be collected as specified in writing by the Director.
- B. Nothing in this Agreement grants a Franchise to Franchisee for the collection of Commercial Solid Waste and Recyclables Materials Collection in the City of San José.
- C. Franchisee must keep all Residential Clean-Out Material and C&D Debris collected pursuant to this Agreement separate from other solid waste during any time the material is collected or transported by Franchisee. Franchisee must ascertain that all Residential Clean-Out material and C&D Debris stored, collected or transported by Franchisee pursuant to this Agreement is free of all but Incidental Contamination. In the event Franchisee collects Residential Clean-Out Material and/or C&D Debris that has been stored with other solid waste and is not free of all but Incidental Contamination, such collected material will be deemed to be commercial solid waste and will be subject to all franchise fees, SRR Fees, and Liquidated Damages described in this Agreement.

**SECTION 9. COLLECTION AND TRANSPORTATION OF MATERIALS.**

- A. Franchisee must collect and transport all materials so that no materials spill out of the collecting or transporting container or vehicle. This obligation includes covering the container as specified in Chapter 9.10 of the San José Municipal Code. Franchisee must ensure that any of Franchisee's employees or contractors collecting or transporting Residential Clean-Out material and/or C&D Debris will immediately pick up all material that spills or is blown from the collecting or transporting container or vehicle and cleans the place onto which the material was spilled or blown.
- B. Except in the Central Business District and the Transit Mall Zone (as defined in Part 10 of Chapter 9.10 of the San José Municipal Code), Franchisee cannot collect, take, move or transport materials from any premise that is within three hundred (300) feet of any residential premise, except between the hours of 6:00 a.m. and 6:00 p.m. on any day. The Director may grant an exception to these limitations if Franchisee demonstrates to the satisfaction of the Director that such an exception will not create noise, impediment of traffic flow or other interference with the quiet enjoyment of the residential premises. In the event Franchisee violates this provision, in addition to any other remedies the City may have, the Director may charge Franchisee for City's costs of enforcement of this provision. Franchisee shall reimburse City for such costs within ten (10) days of the date of City's invoice for such costs.

**SECTION 10. DELIVERY AND DISPOSAL OF MATERIAL.**

- A. Franchisee agrees that all material collected pursuant to this Agreement will be delivered to a Recyclable Material Processing Facility which is lawfully authorized to accept such material. Franchisee may not dispose of any material prior to delivery to a Recyclable Material Processing Facility.
- B. Franchisee may not dispose of such material 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.
- C. Nothing in this Agreement authorizes Franchisee to operate a landfill, recycling center, or other solid waste disposal facility.

**SECTION 11. ADDITIONAL SERVICES.**

- A. Distribution of Public Outreach Materials
  - 1. On a schedule determined by the Director, but not greater than once per year, Franchisee will distribute public outreach materials to all of Franchisee's recent customers. For the purposes of this provision, "**recent**" customer means any San José customer to whom Franchisee provided service pursuant to this Agreement within the previous twelve (12) months and "**public outreach materials**" means written materials such as flyers, brochures and newsletters that provide information to Franchisee's customers about waste reduction, reuse, recycling, or solid waste rules and regulations of the City. City will notify Franchisee of the distribution date at least four (4) weeks before the distribution deadline.
  - 2. City will design and produce the outreach materials at City's sole cost and expense, and will deliver the outreach materials to Franchisee's local office at an agreed upon date but no later than one (1) week prior to the distribution deadline. The design of the outreach materials shall be such that the cost of mailing an item does not exceed the cost of first class postage (determined as of the date of the mailing).
  - 3. Franchisee may deliver the outreach materials by personal delivery, by U.S. mail postage prepaid as a bill insert, or by any other method

approved in advance by the Director. Franchisee will be solely responsible for the cost and expense of handling and distributing the materials.

B. Education Regarding Recycling Requirements and Adequate Service Levels

1. For each new San José customer for which Franchisee provides services, Franchisee must offer to provide a list of services that Franchisee is authorized to offer pursuant to this Agreement or Franchisee must provide customers with information for the exclusive collector of commercial solid waste and recyclables in San José if the customer does not have commercial solid waste or recyclables collection service.
  2. For the purposes of this subsection B, “**new**” customer means an entity for which Franchisee begins providing collection services during the term of this Agreement and for which Franchisee had not performed such services during the ninety (90) day period immediately preceding the commencement of such services.
  3. City will maintain the information for the exclusive collector that performs solid waste and recyclables collection services in San José and will make this information available to Franchisee at no cost to Franchisee.
  4. Franchisee must maintain records of customer contacts, including the date and the name of the person contacted, demonstrating Franchisee’s compliance with this subsection B. Such records must be maintained at Franchisee’s place of business shown in Section 21 of this Agreement for receipt of notices, must be in a format approved by the Director, must be kept for not less than three (3) years, and must be subject to inspection and audit by City upon the request of the Director, the City Manager, the City Auditor, or their designated agent.
- C. In the event Franchisee provides collection services for C&D Debris, Franchisee must provide to the customer, upon request, documentation substantiating the weight of the C&D Debris, and the facility where the C&D Debris was delivered.

**SECTION 12. FRANCHISEE'S RECORDS.**

- A. Franchisee must keep and maintain books of account and other records showing all business transactions conducted by Franchisee in connection with this Agreement. Such records must be kept at Franchisee place of business shown in Section 21 of this Agreement for receipt of notices, and must be kept for not less than three (3) years after the occurrence of the business transactions that are the subject of the records.
- B. Franchisee agrees to require its subcontractors, if any, who perform collection, transportation or disposal services of Residential Clean-Out Material and C&D Debris in connection with this Agreement to keep and maintain books of account and other records showing all business transactions conducted by such subcontractors in connection with the Non-Exclusive Franchise granted to Franchisee.
- C. All such books of account and other records will be subject to inspection and/or audit at Franchisee's place of business during normal business hours upon request or demand of the City Manager, City Auditor, City Attorney, or their designated agent. The purpose of such inspection or audit may be for verification of the franchise fees paid by Franchisee, and the accuracy thereof; for the verification of Source Reduction and Recycling Fees collected and remitted by Franchisee, and the accuracy thereof; and for verification of the amounts of material disposed as reported by Franchisee pursuant to Section 4 of this Agreement.
- D. In the event any audit conducted by City or by City's representative discloses that Franchisee has made any misrepresentation with respect to the franchise fees or the SRR Fees due to City or discloses that Franchisee has underpaid franchise fees due to City then in addition to any other remedies available to City, Franchisee shall reimburse City for City's costs incurred in the performance of the audit and must pay all outstanding fees and late penalties due to City. Franchisee will pay for the audit costs when Franchisee has underpaid franchise fees due to City and the amount of franchise fees still due to City meets the following conditions:

1. The amount of franchise fees still due to City is greater than ten percent (10%) of the total franchise fees payable to City during the period covered by the audit, and
2. The amount of franchise fees still due to City is greater than One Thousand Dollars (\$1,000).

Franchisee must pay the City the delinquent franchise fees within thirty (30) days of the date City notifies Franchisee of the amount of City's costs.

### **SECTION 13. INSURANCE REQUIREMENTS.**

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

#### **A. Minimum Scope and Limits of Insurance.**

Insurance coverage must be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage (“**occurrence**”) Form Number CG 0001.
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles.
3. Workers’ Compensation insurance as required by the California Labor Code and Employers Liability insurance.

Franchisee may not reduce the amount of coverage or the scope of coverage unless Franchisee obtains prior approval from the City's Risk Manager.

#### **B. Minimum Limits of Insurance.**

1. Franchisee must carry Level One insurance if Franchisee’s actual gross receipts for the previous year were greater than \$500,000, or if Franchisee’s projected annual gross receipts is in excess of \$500,000. Franchisee must maintain limits no less than:

- a. Commercial General Liability: \$1,000,000 combined single limit per

occurrence for bodily injury, personal injury and property damage.

If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit will apply separately to this Agreement or the general aggregate limit must be twice the required occurrence limit.

- b. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
  - c. 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.
  - d. Excess Umbrella Liability: \$5,000,000 per occurrence.
2. Franchisee must carry Level Two insurance if Franchisee's gross receipts do not exceed \$500,000 and if any of Franchisee's collection vehicles meet any of the following criteria:
- Has more than two (2) axles,
  - Has on-board compacting equipment,
  - Has mechanized bin/cart tipping equipment,
  - Is a roll-off vehicle,
  - Is a front-end loading vehicle. Franchisee must maintain limits no less than:
- a. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this Agreement or the general aggregate limit must be twice the required occurrence limit.
  - b. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
  - c. 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.

3. Franchisee must carry Level Three insurance if Franchisee's annual gross receipts do not exceed \$500,000 and the Level Two collection vehicle criteria do not apply to any of Franchisee's vehicles. Franchisee must maintain limits no less than:
  - a. Commercial General Liability: \$300,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this Agreement or the general aggregate limit must be twice the required occurrence limit.
  - b. Automobile Liability: Bodily injury liability of \$300,000 each person; \$300,000 each occurrence; \$50,000 property damage each occurrence; or a \$300,000 combined single limit per occurrence for bodily injury and property damage.
  - c. 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.

C. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by City's Risk Manager. At the option of City, either the insurer will reduce or eliminate such deductibles or self-insured retentions as respects to City, its officers, employees, agents and contractors, or Franchisee will procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by City's Risk Manager.

D. Endorsements.

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

1. General Liability and Automobile Liability Coverages.
  - a. The City of San José, its officers, employees, agents and contractors are to be covered as an additional insured for liability arising out of activities performed by, or on behalf of Franchisee, products and completed operations of Franchisee, premises owned, leased or

used by Franchisee, and automobiles owned, leased, hired or borrowed by Franchisee. The coverage may not contain any special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.

- b. Franchisee's Insurance Coverage Must 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 Must Be Excess Of Franchisee's insurance and may not contribute with it.
- c. Any failure to comply with reporting provisions of the policies may not affect coverage provided to City, its officers, employees, agents or contractors.
- d. The insurance policies must state that Franchisee's insurance will 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.
- e. All insurance policies must contain waiver of subrogation in favor of the City of San José, its officers, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability.

All insurance policies must contain waiver of subrogation in favor of the City of San José, its officers, employees, agents and contractors.

3. All Coverages.

Each insurance policy required by this Agreement must be endorsed to state that coverage may not be suspended, voided, canceled, or reduced in limits except after thirty (30) days prior written notice has been given to City's Risk Manager, except that ten (10) days prior written notice will be sufficient in the event of cancellation for non-payment of premium.

E. Placement of Insurance.

Insurance must be placed with insurers with an A.M. Best's rating of A-. VII or better.

F. Proof of Insurance.

Franchisee must furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates

and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon City's request, Franchisee agrees to provide copies of insurance policies. Proof of insurance must be mailed or personally delivered to the following address or to such other address as may be directed in writing by City's Risk Manager:

City of San José  
Risk Manager  
Department of Finance  
200 East Santa Clara Street, 14th Floor  
San José, California 95113

**FRANCHISEE ACKNOWLEDGES THAT UNDER SAN JOSE MUNICIPAL CODE SECTION 9.10.1670, AS MAY BE AMENDED, THE NON-EXCLUSIVE FRANCHISE GRANTED TO FRANCHISEE WILL NOT BECOME EFFECTIVE, AND FRANCHISEE WILL HAVE NO AUTHORITY TO PERFORM COLLECTION OF RESIDENTIAL CLEAN-OUT MATERIAL AND CONSTRUCTION AND DEMOLITION DEBRIS IN THE CITY OF SAN JOSÉ, UNLESS FRANCHISEE PROVIDES SATISFACTORY PROOF OF INSURANCE WITHIN TWENTY (20) DAYS FROM THE DATE OF THE CITY COUNCIL'S ADOPTION OF THE ORDINANCE GRANTING SAID FRANCHISE.**

G. Subcontractors.

Franchisee must include all subcontractors as insureds under Franchisee's policies or must obtain separate certificates and endorsements for each subcontractor.

H. Modification of Insurance Requirements.

These insurance requirements may be modified by City's Risk Manager if the Risk Manager finds that the exposure to City warrants such modifications.

**SECTION 14. EQUIPMENT.**

- A. Franchisee may collect Residential Clean-Out Material in roll-off or front-load containers. Franchisee may collect C&D Debris in roll-off, front-load, or other containers that meet the criteria listed below. For the purposes of this Agreement, roll-off, front-load, and other containers are defined as follows:
1. Roll-Off Container: A metal container that must be loaded on a collection vehicle. Roll-off containers may have capacities up to forty (40) cubic yards. All Roll-off containers must have reflectors at each outside corner, and be watertight. Upon request, Franchisee will provide customers with a cover, such as a tarp, for all Roll-Off Containers to prevent storm water intrusion into the roll-off container.
  2. Front-Load Container: A collection container designed to be emptied mechanically by a collection vehicle, is constructed of metal or plastic, and is one (1) to eight (8) cubic yards in size. All front-load containers must have a permanent lid which closes tightly and prevents water from intruding into the container.
  3. Other containers: If only used for C&D Debris, Franchisee may utilize other types of receptacles composed of durable plastic or metal (such as carts and woven polypropylene bags) that are also designed to collect solid waste material.
- B. Container Maintenance.
- Franchisee must maintain all containers in accordance with the following:
1. Containers must comply with and are subject to all requirements under Chapter 9.57 of the San José Municipal Code.
  2. Franchisee must remove, or cause to be removed, graffiti from Franchisee's containers within forty-eight (48) hours after notification from customer or City that there is graffiti on the container.
  3. Franchisee is responsible for the general repair and upkeep of all containers.
  4. Franchisee must ensure that all containers are watertight and designed and constructed to eliminate spillage during normal use.

5. Franchisee must repair or replace all containers that are not serviceable within five (5) business days of being notified by the customer, the City, or observing the damaged container, whichever is earlier in time. If the repair or replacement cannot be completed within five (5) business days, Franchisee must provide the customer a container that is the same size or larger.

C. Container Labeling.

Franchisee must properly label, operate, and maintain all containers in accordance with the following:

1. Containers must comply with all requirements under Chapter 9.10 of the San José Municipal Code.
2. Containers must be marked with Franchisee's name, telephone number, and material type in letters that are four inches (4") or more in height and that can be easily read by the general public.
3. Containers must have necessary safety messaging and reflectors.
4. Container must be marked with a visible and legible serial number that is four (4") inches or more in height and that can be easily read by the general public. Franchisee may assign the serial number for each container, but the assigned serial number must be different for each container. Serial numbers may be a series of numbers, letters, or a combination of both.
5. All containers must be clearly labeled with letters three inches (3") or more in height and state "Clean Up Spills."
6. All signage must be located on each long side of the Container and may be affixed with labels, magnets, hot stamps, paint, or other format approved by City.
7. Franchisee acknowledges that the City may issue labels to Franchisee for placement on any containers that Franchisee uses in the City of San José. If the City issues labels to Franchisee, Franchisee agrees to affix the labels to its containers as requested by the City.

- D. Franchisee may not place any containers used for collection in any places such that the container impedes normal vehicular traffic, public transportation, or pedestrian or wheelchair access to the public rights-of-way except when staging the container for

immediate collection and during the six (6) hours immediately following collection.

E. Vehicle Maintenance.

Franchisee must ensure that all vehicles used to perform collection of Residential Clean-Out Material and C&D Debris comply with the following:

1. All vehicles must comply with vehicle standards established by federal, state, and local laws including, but not limited to, state emission standards and reporting requirements relating to such standards.
2. Franchisee may not idle vehicles in parking lots or other locations adjacent to residential premises, or stage vehicles in parking lots or other locations adjacent to residential premises unless the vehicle engine is turned off.
3. All vehicles must be marked at a minimum with Franchisee's name, telephone number, and vehicle number in letters that are four inches (4") or more in height and that can be easily read by the general public. Signage may be affixed with labels, magnets, hot stamps, paint, or other format approved by City.

F. Franchisee must notify the City in writing of any changes to Franchisee's collection vehicle fleet information, as identified in Franchisee's application for a franchise, within thirty (30) calendar days of the change.

**SECTION 15. ABANDONED CONTAINERS.**

A. For the purpose of this section, "**abandoned**" includes:

1. Franchisee's failure to remove the container within the time period specified by the City Council upon termination of the Non-Exclusive Franchise pursuant to Chapter 9.10 of the San José Municipal Code.
2. Franchisee's failure to remove the container within ten (10) working days after the expiration of the Non-Exclusive Franchise granted to Franchisee, except in the case where Franchisee has been granted an extension of the term of said Franchise or Franchisee has been granted a subsequent franchise authorizing Franchisee to collect and transport the type or types of material for which the container was used pursuant to this Agreement.

3. Franchisee's failure to dispose of the contents of the container within five (5) days after City's Director of Environmental Services issues written notice of Franchisee to dispose of the contents.
  4. Franchisee's failure to remove the container within five (5) working days after the termination of the agreement between Franchisee and the customer.
- B. If Franchisee abandons any container used to provide collection of Residential Clean-Out Material or C&D Debris under the Non-Exclusive Franchise, City may remove the container and/or dispose of the contents of the container.
- C. If City removes a container abandoned by Franchisee and/or disposes of the contents of any container abandoned by Franchisee, City may charge Franchisee for City's costs incurred in such removal/disposal and for City's costs of storage of the container. Franchisee agrees to reimburse City for such costs within ten (10) days of the date of City's invoice for such costs.

#### **SECTION 16. COMPLIANCE WITH LAW.**

Franchisee shall perform all collection, transportation and disposal operations in accordance with applicable federal, state, and local law, including Chapter 9.10 of the San José Municipal Code, in accordance with all regulations promulgated under such laws, and in accordance with the terms and conditions of this Agreement. To the extent that the terms and conditions of this Agreement are in conflict with Chapter 9.10 of the San José Municipal Code, the San José Municipal Code shall govern.

#### **SECTION 17. PERMITS AND LICENSES.**

Franchisee must obtain and maintain, at Franchisee's sole cost and expense, all permits and licenses applicable to Franchisee's operations under the Non-Exclusive Franchise that are required of Franchisee by any governmental agency.

#### **SECTION 18. LIQUIDATED DAMAGES, TERMINATION, AND SUSPENSION.**

##### **A. Liquidated Damages.**

1. In the event Franchisee fails to comply with the term of this Agreement, Franchisee agrees to pay liquidated damages in the amounts specified in

Exhibit A.

2. Franchisee agrees to pay any and all liquidated damages to the City on or before the date specified in the notice of breach provided by City. Prior to imposing liquidated damages, City must give Franchisee written notice of any acts or omissions of Franchisee that City contends may give rise to the imposition of liquidated damages under this Agreement and allow Franchisee to respond under any cure provisions in this Agreement or to present additional information for consideration by City.
3. City's right to collect liquidated damages will not prevent City from exercising any other right or remedy, as set forth in this Agreement, including the right to terminate this Franchise, for Franchisee's failure to comply with this Agreement.

B. Termination.

1. The City Council may terminate the Non-Exclusive Franchise in accordance with Chapter 9.10 of the San José Municipal Code.
2. Franchisee may, in writing, terminate the Non-Exclusive Franchise. If Franchisee elects to terminate the Non-Exclusive Franchise, Franchisee waives any public hearing under San José Municipal Code Section 9.10.1690.
3. In the event the Non-Exclusive Franchise is terminated, then within the time period specified by the City, Franchisee must remove all of Franchisee's collection containers, and all containers used by Franchisee's subcontractors in performance of collection services under this Agreement, from all of Franchisee's collection service locations and will properly dispose of all materials in such containers.
4. In the event the Non-Exclusive Franchise is terminated or expires pursuant to Section 3 without an extension of the term and without a grant of a subsequent franchise allowing Franchisee to continue performing such services, then within ten (10) days of such termination or expiration Franchisee must either:
  - a. Submit to Director a list of the names and addresses in San José for which Franchisee provided services as of the date of termination or expiration (i.e., Franchisee's San José customer list); or
  - b. Send written notification to all customers for which Franchisee provided

Residential Clean-Out Material and C&D Debris collection services that Franchisee is no longer authorized to provide such services in San José. Such notification must be in the form provided by the Director and must be personally delivered or sent by first class mail, postage prepaid, to the customers' billing addresses. Franchisee must submit to the Director an affidavit, signed under penalty of perjury, stating that the required notification has been provided by Franchisee to all of Franchisee's San José customers.

5. Subject to Chapter 9.10 of the San José Municipal Code, Franchisee acknowledges City may terminate this Agreement and the Non-Exclusive Franchise in writing no less than sixty (60) days in advance of the effective date. Franchisee agrees to cooperate with City or other haulers as requested by City. Cooperation may include providing information, attending meetings, removing containers, and other types of coordination needed to ensure a seamless transition.

C. Suspension.

1. The Non-Exclusive Franchise granted to Franchisee is automatically suspended, without notice to Franchisee, upon the occurrence of any event described in Chapter 9.10 of the San José Municipal Code.
2. The Non-Exclusive Franchise granted to Franchisee may be suspended by the Director if Franchisee fails to submit timely, complete, and accurate reports as described in Chapter 9.10 of the San José Municipal Code and in Section 4 of this Agreement and Franchisee fails to cure such default within fifteen (15) days after written notice to Franchisee of such default.

D. In the event the Non-Exclusive Franchise is terminated or suspended in accordance with this Section, or expires pursuant to Section 3:

1. Franchisee will have no right or authority to engage in collection, transportation or disposal operations of Residential Clean-Out Material or C&D Debris in the City of San José.
2. Franchisee will, however, remain liable to City for any and all franchise fees that would otherwise be payable by Franchisee, for any and all late payment charges and interest assessed pursuant to Section 7 of this Agreement, for

any SRR Fees collected by Franchisee, and for any and all delinquent report charges assessed pursuant to Section 4 of this Agreement.

3. Franchisee will have a continuing obligation to submit to City all reports required by Section 4 of this Agreement which relate to Residential Clean-Out Material and C&D Debris activities performed by Franchisee up to and including the date of termination, suspension or expiration.
4. Franchisee must allow customers served by Franchisee to arrange for Residential Clean-Out Material or C&D Debris collection services with a collector authorized to perform such services, without penalty or liability for breach of contract on the part of the customer, for such period of time as Franchisee is not authorized to perform such services.

#### **SECTION 19. GIFTS.**

- A. Franchisee represents that Franchisee is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. Franchisee agrees not to offer any City officer or designated employee any gift prohibited by said Chapter, as amended.
- C. The offer or giving of any gift prohibited by Chapter 12.08, as amended, will constitute a material breach of this Agreement by Franchisee. In addition to any other remedies City may have in law or equity, City may terminate this Agreement as provided in Section 18 of this Agreement.

#### **SECTION 20. DISQUALIFICATION OF FORMER EMPLOYEES.**

Franchisee represents that Franchisee is familiar with the provisions relating to the disqualification of former officers and employees of City in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("**Revolving Door Ordinance**"). Franchisee will not utilize either directly or indirectly any officer, employee, or agent of Franchisee to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

**SECTION 21. NOTICES.**

Except as otherwise provided in this Agreement, whenever either party desires to give notice to the other, the notice must be in writing and given as provided in this section. For the present, the parties designate the following as the respective persons and places for giving notice.

To CITY: City of San José  
Director of Environmental Services  
200 East Santa Clara Street, 10th Floor  
San José, CA 95113  
Kerrie.Romanow@sanjoseca.gov

To FRANCHISEE: Garden of Eden Landscapes, Inc.  
DBA Ground Force Enterprises  
6021 Grassland Drive  
Castro Valley, CA 94552  
sales@groundforceenterprises.com

Notices will be effective two days following their deposit in the U.S. mail, postage prepaid, or when personally delivered to the address specified above or to such address as designated by a party by providing written notice of a change in address. Notice may also be sent by electronic mail (“**e-mail**”) transmission and will be effective when received, provided e-mail transmissions received after 4:30pm Pacific Time or on weekends or Holidays will be deemed received the next business day. The original of items that are transmitted by e-mail must also be mailed or personally delivered as provided above within three (3) business days of the e-mail transmission.

**SECTION 22. MISCELLANEOUS PROVISIONS.**

- A. Controlling Law. This Agreement will be governed and construed by and according to the laws of the State of California.
- B. Entire Agreement. This Agreement contains all of the terms and conditions entered into and made by and between the Parties and may not be modified orally, or in any manner, other than by an amendment to this Agreement in writing signed by both City and Franchisee or their respective successors-in- interest.
- C. Authority to Bind Franchisee. Franchisee must submit a copy of any corporate

resolution, if requested by City, which authorizes any director or officer to act on behalf of Franchisee to bind Franchisee to this Agreement or which authorizes Franchisee to enter into this Agreement.

- D. Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the remaining provisions of this Agreement will remain in effect, providing the Parties' original intent when entering into this Agreement can still be met.
- E. Franchisee is Not an Agent of City. Franchisee is not an agent, contractor or employee of City, and nothing in this Agreement, nor may any action of Franchisee, be construed in any way to constitute Franchisee as an agent, contractor, or employee of the City for any purpose.
- F. Time of Essence. Time is of the essence in this Agreement and each of its provisions, and failure to comply with this provision will be a material breach of this Agreement.
- G. Venue. In the event that suit shall be brought by either Party hereunder, the Parties agree that venue shall be exclusively vested in the state courts of California in the County of Santa Clara or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern California.

H. Interpretation. The Parties agree that this Agreement has been prepared equally by both Parties, and its individual provisions may not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

**WITNESS THE EXECUTION OF THIS AGREEMENT ON THE DATE WRITTEN  
BELOW EACH SIGNATURE:**

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal  
corporation

\_\_\_\_\_  
MARK VANNI  
Deputy City Attorney

By:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk  
Date: \_\_\_\_\_

"FRANCHISEE"

GARDEN OF EDEN LANDSCAPES, INC.,  
a California corporation doing business as  
GROUND FORCE ENTERPRISES

By:

\_\_\_\_\_  
Name: C. Philip Teixeira  
Title: President, Secretary, and Treasurer  
Date: \_\_\_\_\_

**EXHIBIT A****Liquidated Damages**

It shall be the duty of Franchisee to perform services under this Agreement in such a manner as to implement practices, policies, and procedures designed to achieve the goals set forth in the Agreement.

Franchisee agrees its failure to perform the services as set forth in the Agreement would cause City damage. City and Franchisee mutually agree that making a precise determination of the amount of City's damage as a result of Franchisee's failure would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event such a failure, Franchisee shall pay to City as liquidated damages the amounts listed below.

1	Failure to keep collected material separate pursuant to Section 8	\$500 per incident
2	Failure to properly cover material in collection vehicles pursuant to Section 9	\$500 per incident
3	Failure to cleanup spills or litter during the course of collection pursuant to Section 9	\$100 per incident
4	Failure to deliver any collected material to a Recyclable Material Processing Facility pursuant to Section 10	\$2,500 first offense, \$5,000 each subsequent offense
5	Failure to remove graffiti from any container pursuant to Section 14	\$100 per incident
6	Failure to maintain equipment as provided in Section 14	\$500 per incident
7	Failure to reasonably resolve any complaint within five (5) business days pursuant to Section 15	\$100 per incident