

**AMENDMENT TO
AMENDED AND RESTATED FRANCHISE AGREEMENT**

This Amendment to Amended and Restated Franchise Agreement (the “Amendment”) is made and entered into _____, 2020 (“Effective Date”) by and between the City of Sonora (“City”) and Cal Sierra Disposal (“Contractor”). City and Contractor may be collectively referred to herein as the “Parties” or individually as “Party.” There are no other parties to this Amendment.

RECITALS

A. City and Contractor are parties to an October 1, 2010 Amended and Restated Franchise Agreement (the “Agreement”) which is scheduled to expire on October 31, 2020, and which permits the parties to extend such Agreement for additional five (5) year terms by mutual written consent.

B. City and Contractor wish to amend the Agreement to extend its term by five (5) years, modify the Contractor rate adjustment mechanism and add language to address unauthorized haulers conducting business in the City.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Contractor agree as follows:

AGREEMENT

1. **Recitals.** The recitals set forth above are incorporated herein by this reference and made a part of this Amendment. In the event of any inconsistencies between the recitals and sections 1 through 19 of this Amendment, sections 1 through 19 will prevail.

2. **Effect of Agreement.** Except as provided herein, the defined terms used in this Amendment shall have the same meaning as the defined terms in the Agreement. Unless expressly amended by this Amendment, all other terms and provisions of the Agreement shall remain in full force and effect. If any terms or provisions of this Amendment conflict with terms and provisions of the Agreement, the terms and provisions of this Amendment shall control.

3. **Definition of Agreement.** The Agreement, attached and incorporated herein as **Exhibit A**, together with this Amendment, collectively make and are defined together to collectively be the “Agreement”.

4. Section 4(A) of the Agreement is hereby replaced by the following:

“The initial term of this Franchise Agreement shall begin on the Effective Date and terminate on October 31, 2025. Thereafter, this Franchise Agreement may be extended for successive additional five year terms (commencing on the termination of the prior term and terminating five years thereafter), upon the same terms and conditions as set forth in this

Franchise Agreement, by mutual written consent of the CITY and CONTRACTOR entered into at least ninety (90) days prior to the termination of the then current term.”

5. Section 12(E) of the Agreement is hereby replaced by the following:

“Recyclables” means the materials defined as such in Exhibit B attached to the Amendment.”

6. The following is hereby added to Section 7 of the Agreement:

“The CITY shall use good faith efforts to protect and enforce the exclusive rights of CONTRACTOR through appropriate ordinances and reasonable enforcement of those ordinances against third party violators. If, at the request of the CONTRACTOR, the CITY takes administrative, law enforcement, or other legal action against any person who infringes on the CONTRACTOR’s exclusive rights, CONTRACTOR shall reimburse the CITY for its legal costs related to such action. CONTRACTOR may independently enforce the exclusivity provision of this Agreement against third party violators, including but not limited to seeking injunctive relief, and the CITY shall use good faith efforts to cooperate in such enforcement actions brought by CONTRACTOR.

Any person or entity reported to be in violation of CONTRACTOR’s exclusive rights hereunder will be advised in writing by the CITY to cease such activities immediately. If such person or entity continues to violate CONTRACTOR’s exclusive rights after notification by the CITY, such person or entity may be fined in a manner consistent with the Sonora Municipal Code (“Municipal Code”) provisions for public nuisances. Additionally, CONTRACTOR shall have the right to impound any waste container in violation of CONTRACTOR’s exclusive rights or any other applicable legislative requirements of the Municipal Code. The following shall apply when a waste container is to be impounded within the CITY: (i) CONTRACTOR may impound violating containers if three business days have passed since the CITY’s mailing of the above-referenced notice. However, if the owner of the waste container cannot be identified, the waste container may be immediately impounded; (ii) the owner of impounded waste containers shall be responsible for paying CONTRACTOR charges for impounding, storage, and disposal, as determined by CONTRACTOR; (iii) CONTRACTOR shall release an impounded waste container upon receipt of all amounts due from the owner. After the expiration of six weeks from the date of impound, CONTRACTOR may treat a container as lost or abandoned property, and it shall be deemed the property of CONTRACTOR. However, the container owner shall continue to be responsible for payment of impound-related charges.”

7. The base rates (the “Rates”) set forth in Exhibit A of the Agreement are hereby replaced by the Exhibit A attached hereto.

8. Section 3(B) of the Agreement is hereby replaced by the following:

“Annual CPI Increases. On August 31, 2021, and on the same date annually thereafter (the “Adjustment Date”), CONTRACTOR’s Rates in Exhibit A, as adjusted hereunder, shall be automatically adjusted by a percentage equal to the annual percent change in the average Consumer Price Index for All Urban Consumers: Water and sewer and trash collection services (“CPI”), as published by the Bureau of Labor Statistics, for the 12-month period ending the previous May 31 (compared to the average CPI for 12-month period ending the next previous May 31). At least sixty (60) days prior to the Adjustment Date, CONTRACTOR shall notify CITY of the CPI adjustment to take effect on the Adjustment Date and shall provide CITY with its computations therefor. Adjustments to the Rates shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered when making adjustments.”

9. Section 3(C) of the Agreement is hereby replaced by the following:

“Extraordinary Adjustments. In addition to the Annual CPI Adjustment provided by Section 3(B), the Rates shall, upon written request of CONTRACTOR, be further adjusted to fully capture increased expenses and lost revenue associated with performance of the services hereunder due to any one or more of the following causes: (i) a force majeure event described in Section 9; (ii) change in Applicable Law (see Section 12); (iii) increase in costs to dispose of or process materials collected hereunder; (iv) increase in surcharges, fees, assessments or taxes levied by federal, state or local regulatory authorities or other governmental entities related to the services hereunder; or (v) increase of at least fifteen percent (15%) in the cost of transportation, including fuel and third-party transportation costs, for reasons beyond CONTRACTOR’S control.

If CONTRACTOR requests a Rate adjustment pursuant to this Section 3(C), it shall prepare a Rate adjustment request setting forth its calculations of the increased costs/lost revenue and accompanying adjustment to the Rates necessary to offset such increased costs/lost revenue. The CITY may request documentation and data reasonably necessary to evaluate such request by CONTRACTOR, and may retain, at CONTRACTOR’S expense (though limited to \$10,000), an independent third party to audit and review such documentation and request. If such third party is retained, the CITY shall take reasonable steps, consistent with Applicable Law, to protect the confidential or proprietary nature of any data or information supplied by CONTRACTOR. The CITY shall not be required to approve CONTRACTOR Rate increase requests under this section unless and until CONTRACTOR has provided reasonable supporting documentation and the CITY has verified CONTRACTOR’s calculations. When those two conditions are satisfied, the CITY shall promptly approve such Rate adjustments. City shall act in good faith when reviewing CONTRACTOR rate increase requests.”

10. The following is hereby added as Section II.1.C.12 to the Agreement:

“Contamination; Overage; Overweight.

Contamination. CONTRACTOR is not obligated to collect containers which are contaminated. For purposes of this Agreement, a container is contaminated when, based

on visual or digital inspection, a Recyclables container has more than 10% non-Recyclables (volume or weight) or any amount of Unacceptable Waste. If CONTRACTOR elects to not collect a contaminated container, it shall notify the customer. If CONTRACTOR elects to collect a contaminated container, it may charge the customer a Contamination Fee set forth in Exhibit A. CONTRACTOR will provide photographic evidence of the contamination to customer upon their request. The Contamination Fee may be included on the customer's regular invoice or billed separately. CONTRACTOR may dispose of the contents of a contaminated container it elects to collect. If there have been more than three instances of a contaminated container in any 12-month period, and CONTRACTOR has photographic evidence of each instance, CONTRACTOR may (i) discontinue such service and remove the container, (ii) deliver additional or larger Solid Waste container(s), and (iii) charge the customer the applicable Rate for the additional or larger Solid Waste container(s) described in Exhibit A. After one year, the customer may petition CONTRACTOR to reinstate such service, in which case they must pay any activation and cart or bin redelivery fees set forth in Exhibit A.

Overage. CONTRACTOR is not obligated to collect Overage, unless caused by CONTRACTOR spillage of non-overloaded containers during collection. "Overage" is defined as (i) Solid Waste or Recyclables exceeding its container's intended capacity such that the lid is lifted by at least six (6) inches (or would be lifted by at least six (6) inches if there was a lid), or (ii) Solid Waste or Recyclables placed on top of or in the immediate vicinity of the container. If CONTRACTOR elects to collect Overage, it may charge the customer the Overage Rate set forth in Exhibit A. CONTRACTOR will provide photographic evidence of the Overage to customer upon their request. If there have been more than three instances of Overage in any 12-month period for a particular service (i.e., Solid Waste or Recyclables), and CONTRACTOR has photographic evidence of each instance, CONTRACTOR may increase the customer's service level (i.e., larger container or more frequent service) to mitigate the Overage, and may increase the charges to such customer according to the increased service level.

Overweight Containers. CONTRACTOR may refuse to collect any container which it reasonably believes to be overweight. A container shall be considered "overweight" if the total weight of the container and contents exceeds two times the volume capacity of said container (e.g., 192 pounds for a 96-gallon cart). CONTRACTOR shall provide electronic notification to the customer regarding each instance of non-collection.

CITY exception. The provisions of this Section II.1.C.12 shall not apply to any CITY containers located within the CITY'S Benefit Zone A, as defined by Chapter 3.36 of the Municipal Code."

11. Section II.9 of the Agreement is hereby replaced by the following:

"CITY SERVICES: CONTRACTOR agrees to provide Solid Waste and Recyclables Collection Services, equipment, and carts needed by CITY facilities and properties (to be designated by CITY and approved by CONTRACTOR, which approval shall not be unreasonably withheld) at no charge to CITY, not to exceed an allowance in the amount of

\$45,000 annually based on the fiscal year period. This allowance shall be increased by the same percentage as the CPI percentage increase in customer rates for collection services provided by CONTRACTOR authorized by this Agreement. Any amount under the \$45,000 annual allowance not used by the CITY shall be refunded to the CITY by the CONTRACTOR within forty-five (45) days following the end of the CONTRACTOR's fiscal year. Any amount exceeding the \$45,000 annual allowance shall be agreed upon in advance by the CONTRACTOR and CITY MANAGER and in case of such agreement shall be paid to the CONTRACTOR by CITY within forty-five (45) days following presentation of an invoice providing a detailed description of all services in excess of the \$45,000 annual allowance.”

12. The following definitions are hereby added to Section 12 of the Agreement:

“Applicable Law” means any law, regulation, requirement, or order of any federal, state or local agency, court or other domestic or foreign governmental body, or interpretation thereof by any court or administrative agency of competent jurisdiction, and requirements of all permits, licenses, and governmental approvals applicable to this Agreement.”

13. **Integrated Agreement.** The Amendment contains all of the agreements of the Parties and all previous understandings, negotiations, and agreements of the Parties.

14. **Severability.** In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Amendment are declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Amendment, which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties herein.

15. **Counterparts.** This Amendment may be executed simultaneously and, in several counterparts, each of which shall be deemed an original, but which together shall be deemed one and the same instrument.

16. **Authority.** All Parties to this Amendment warrant and represent that they have the power and authority to enter into this Amendment and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Amendment have been fully complied with.

17. **Document Preparation.** This Amendment will not be construed against the Party preparing it, but will be construed as if prepared by all Parties.

18. **Advice of Legal Counsel.** Each Party acknowledges that it has reviewed this Amendment with its own legal counsel and based upon the advice of that counsel, freely entered into this Amendment.

19. **Attorney's Fees and Costs.** If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Amendment, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action, or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first above written.

CITY OF SONORA

By: _____

Name: _____

CAL SIERRA DISPOSAL

By: _____
Barry Skolnick, President

EXHIBIT A

CONTRACTOR RATES

EXHIBIT B
RECYCLABLE MATERIALS

RECYCLABLES must be clean, dry, loose (not bagged) and include **ONLY** the following:

Aluminum cans – empty	Newspaper
PET bottles – empty ○ with the symbol #1 ○ with screw tops only ○ throw caps in trash	Mail
HDPE plastic bottles – empty ○ with the symbol #2 ○ milk, water bottles ○ detergent, and shampoo bottles, etc.	Magazines, glossy inserts and pamphlets
Steel and tin cans – empty	Paper ○ uncoated ○ printing, writing and office paper
Phone books	Old corrugated containers/cardboard ○ uncoated
Glass food and beverage containers – empty ○ brown ○ green ○ clear	Uncoated paperboard ○ cereal boxes ○ food and snack boxes

NON-RECYCLABLES include, but are not limited to the following:

Plastic bags, film, wrap, and bagged materials (even if containing Recyclables)	Microwavable trays
Plastic containers with symbols #3-#7 – empty ○ tubs, yogurt containers, solo cups ○ takeout containers, clamshells ○ no expanded polystyrene	
Mirrors	Window or auto glass
Light bulbs	Coated cardboard
Porcelain and ceramics	Plastics unnumbered
Holiday wrapping paper	Coat hangers
Glass and metal cookware/bakeware	Household appliances and electronics,
Hoses, cords, wires	Yard waste, construction debris, and wood
Flexible plastic or film packaging and multi-laminated materials	Needles, syringes, IV bags or other medical supplies

Food waste and liquids, containers containing such items	Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.)
Excluded Materials or containers which contained Excluded Materials	Napkins, paper towels, tissue, paper plates, paper cups, plastic cups and plastic utensils, straws
Any Recyclable materials or pieces of Recyclables less than 4" in size in any dimension ○ no shredded paper	Propane tanks, batteries
Aseptic containers	Cartons ○ milk cartons ○ juice boxes

Material may not contain Non-Recyclables or Excluded Materials. "Excluded Materials" means radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous or toxic substance or material, or regulated medical or hazardous waste as defined by, characterized or listed under applicable federal, state, or local laws or regulations, materials containing information (in hard copy or electronic format, or otherwise) which information is protected or regulated under any local, state or federal privacy or data security laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, or other regulations or ordinances.