COMMERCIAL SOLID WASTE AND RECYCLABLES COLLECTION FRANCHISE AGREEMENT BETWEEN THE CITY OF SAN JOSE AND PANTHER INDUSTRIES

THIS AGREEMENT is made and entered into this ___th day of _____, 2009 by and between the CITY OF SAN JOSÉ, a municipal corporation ("CITY"), and PANTHER INDUSTRIES, a sole proprietorship ("FRANCHISEE").

WHEREAS, pursuant to Part 11 of Chapter 9.10 of the San José Municipal Code, FRANCHISEE has applied to CITY for a Commercial Solid Waste and Recyclables Collection Franchise; and

WHEREAS on May 12, 2009 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

WHEREAS, the City Council has determined that the grant of such Franchise to FRANCHISEE is in the public interest; and

WHEREAS, CITY and FRANCHISEE desire to enter into a Commercial Solid Waste and Recyclables Collection Franchise Agreement in order that FRANCHISEE may perform commercial solid waste and recyclables collection, transportation and disposal services in the City of San José;

NOW, THEREFORE, CITY AND FRANCHISEE DO HEREBY AGREE AS FOLLOWS:

SECTION 1. GRANT OF FRANCHISE.

By Ordinance No. _____, CITY has granted to FRANCHISEE a non-exclusive Commercial Solid Waste and Recyclables Collection Franchise authorizing FRANCHISEE to engage in the business of collecting, transporting and disposing of commercial solid waste 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 said Franchise is not exclusive and that said 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

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of Chapter 9.10 of the San José Municipal Code, and the terms and conditions of this AGREEMENT.

SECTION 2. TERM OF FRANCHISE.

Subject to SECTION 16 of this AGREEMENT, the term of the Commercial Solid Waste and Recyclables Collection Franchise granted to FRANCHISEE shall be from, July 1, 2009 to June 30, 2012, inclusive ("Initial Term"). The CITY's Director of Environmental Services may, in the Director's discretion, extend the term of this AGREEMENT for up to three one-year increments ("Additional Term"). Any such extension of the term of this AGREEMENT shall be given in writing and shall not be effective unless and until accepted in writing by FRANCHISEE.

SECTION 3. REPORTS.

A. FRANCHISEE shall submit to CITY complete and accurate monthly reports prepared in an electronic format provided by the Director of Environmental Services. FRANCHISEE shall submit a monthly report regardless of whether FRANCHISEE provided service to any customers during the reporting period. The monthly report shall include a listing of each container size in the City of San José from which FRANCHISEE collected commercial solid waste or recyclables during the reportable month; the number of collections of each listed container size during the reportable month; the total volume of commercial solid waste and recyclables collected in the City of San José during the reportable month; the total weight (in tons) of commercial solid waste disposed of by FRANCHISEE at landfills and transfer stations during the reportable month; the total weight and the weight by material category (in tons) of commercial solid waste delivered by FRANCHISEE to recycling and materials recovery facilities during the reportable month; the total weight and the weight by material category (in tons) of all recyclables delivered by FRANCHISEE to recycling and materials recovery facilities during the reportable month; the number of San José service locations

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by volume (cubic yards) of service provided; FRANCHISEE's gross receipts for collection services provided in San José during the reportable month; the weight or cubic yardage of solid waste and the weight or cubic yardage of recyclable materials collected at large venues and large events (as defined by Chapter 9.10 of the San Jose Municipal Code) during the reportable month; and 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 shall file the monthly report electronically at a web address to be provided by CITY, and shall mail or personally deliver a hardcopy of the first page of the monthly report, with original signature, to the address listed below. Upon request by CITY, FRANCHISEE shall submit a hard copy of the monthly report in the form attached to this AGREEMENT as Exhibit A. Such hard copy report shall be submitted within thirty (30) days of the request from the Director and shall be mailed or personally delivered to:

Director
Environmental Services Department
200 East Santa Clara Street 10th Floor
San Jose, 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 shall be deemed delinquent. If the report is delinquent, FRANCHISEE shall pay to CITY a delinquent report charge in the amount set out in San José Municipal Code Section 9.10.1720. Such delinquent report charges shall be in addition to any franchise fees or other charges payable by FRANCHISEE for the same period of time.

D. FRANCHISEE acknowledges that CITY may need to confirm service in response to complaints, and must collect customer service information to facilitate the potential transition to an exclusive commercial franchise system.

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1. If FRANCHISEE was providing commercial solid waste and/or recyclables collection services during the period of April 1, 2009 through June 30, 2009, FRANCHISEE shall provide CITY with a report of the following information, during this period, regarding the monthly service to each location served: the service address, container type, size, frequency of service (both scheduled and on-call), and the type of materials collected. This report is due on or before August 1, 2009.
2. For commercial solid waste and/or recyclables collection services after July 1, 2009, FRANCHISEE shall submit a report, after each calendar quarter, of the following information regarding the monthly service to each location served: the service address, container type, size, frequency of service (both scheduled and on-call), and the type of materials collected.
3. The quarterly report is due 30 days after the end of the previous calendar quarter. A report regarding services provided during July 1 through September 30, 2009 is due on or before October 31, 2009.
4. All reports shall be provided in an electronic format that would permit CITY to modify the data to facilitate analysis of the data. If the reports required under subsection D are not filed by the due date specified above or is incomplete or inaccurate, the report shall be deemed delinquent. If the report is delinquent, FRANCHISEE shall pay to CITY a delinquent report charge in the amount set out in the San Jose Municipal Code Section 9.10.1720. Such delinquent report charges shall be in addition to any franchise fees or other charges payable by FRANCHISEE for the same period of time.

SECTION 4. FRANCHISE FEES.

A. During the term of the Commercial Solid Waste and Recyclables Collection Franchise, FRANCHISEE shall pay to CITY franchise fees for the privilege of engaging in the business of collecting, transporting and disposing of commercial

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solid waste and recyclables kept, accumulated or generated in the City of San José.

B. FRANCHISEE shall pay commercial solid waste franchise fees on all commercial solid waste services performed by FRANCHISEE in the City of San José. Such fees shall be in the amount established for commercial solid waste services as set forth in Resolution No. 72754 adopted by the City Council June 21, 2005, and in such other amounts as are set forth in any subsequent resolution that may be adopted by the City Council.

C. FRANCHISEE shall pay commercial solid waste franchise fees in accordance with this SECTION on:

1. All solid wastes collected pursuant to the Commercial Solid Waste and Recyclables Collection Franchise and this AGREEMENT regardless of the method of disposal of such solid wastes; and
2. All recyclables collected pursuant to the Commercial Solid Waste and Recyclables Collection Franchise and this AGREEMENT in any case where the recyclables are not recycled but are disposed by landfilling or other non-recycling method.

D. FRANCHISEE shall pay commingled recyclables franchise fees on all commingled recyclables services performed by FRANCHISEE in the City of San José. Such fees shall be in the amount established for commingled (or mixed) recyclables services as set forth in Resolution No. 64468 adopted by the City Council on March 24, 1993, and in such other amounts as are set forth in any subsequent resolution that may be adopted by the City Council.

E. Each franchise fee payment shall be accompanied by a hard copy of the first page of the monthly report, with an original signature required under SECTION 3 of this AGREEMENT and a written statement described in Section 9.10.1710 C of Chapter 9.10 of the San José Municipal Code. FRANCHISEE shall submit such documentation, together with the payment of all required franchise fees, to:

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

F. Franchise fees equal to or exceeding $10,000 shall be paid by wire transfer.

G. Franchise fees shall be due and payable at the time and in such manner as set forth in Section 9.10.1710 of Chapter 9.10 of the San José Municipal Code. If franchise fees are not paid by FRANCHISEE at the times required by said Section 9.10.1710, such franchise fees shall be delinquent and in addition to the franchise fees, FRANCHISEE shall pay a late payment charge in an amount equal to ten percent (10%) of the franchise fee that was not timely paid by FRANCHISEE. If FRANCHISEE fails to pay delinquent franchise fees within thirty (30) days of the date required by said Section 9.10.1710, FRANCHISEE shall pay a second late payment charge in an amount equal to ten percent (10%) of the franchise fee outstanding after such thirty day period. Such second late payment charge shall be in addition to the first late payment charge. In addition, FRANCHISEE shall pay interest on all unpaid franchise fees at the rate of ten percent (10%) per annum or the legal rate allowed, whichever is less, from the date said franchise fees were due and payable to the date actually paid.

H. If FRANCHISEE remits franchise fees by personal delivery to CITY, such franchise fees shall be deemed timely paid only if delivered on or before the due date set forth Section 9.10.1710 of Chapter 9.10 of the San José Municipal Code. If FRANCHISEE remits franchise fees by mail or other delivery service, such franchise fees shall be deemed timely only if (1) the envelope or wire transfer containing the franchise fee payment bears a postmark or receipt showing that the payment was mailed or sent on or before the due date set forth in said Section 9.10.1710; or (2) FRANCHISEE submits proof satisfactory to the Director of Finance that the franchise fee payment was in fact deposited in the mail or sent on or before said due date.

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I. In the event FRANCHISEE believes that FRANCHISEE has paid franchise 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 Director of Finance. If proof of overpayment is satisfactory to said Director, the Director shall refund to FRANCHISEE any overpayment. FRANCHISEE shall not apply any overpayment as a credit against any SRR Fees, franchise fees or other amounts payable to CITY unless specifically so authorized by the Director of Finance in writing.

J. FRANCHISEE acknowledges that CITY has reserved the right to increase franchise fees payable by FRANCHISEE at any time.

SECTION 5. SOURCE REDUCTION AND RECYCLING FEES.

A. FRANCHISEE shall 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 solid waste handling services pursuant to the Commercial Solid Waste and Recyclables Collection Franchise. The invoice sent to the solid waste generator shall itemize the SRR Fee. The SRR Fee shall 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.

1. All solid wastes (other than those which are segregated by the generator and collected as commingled recyclables) collected pursuant to the Commercial Solid Waste and Recyclables Collection Franchise and this AGREEMENT regardless of the method of disposal (landfilling, recycling or otherwise) of such solid wastes; and
2. All commingled recyclables collected pursuant to the Commercial Solid Waste and Recyclables Collection Franchise and this AGREEMENT in any case where the recyclables are not recycled but are disposed by landfilling or other non-recycling method.

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B. FRANCHISEE shall remit the SRR Fees to CITY at the time and place FRANCHISEE remits franchise fees to CITY under SECTION 3 of this AGREEMENT. If, within the time required by this AGREEMENT, FRANCHISEE fails to remit to CITY the SRR Fees which FRANCHISEE has received from any generator, then FRANCHISEE shall pay a late payment charge in an amount equal to ten percent (10%) of the SRR Fees which FRANCHISEE failed to remit. If FRANCHISEE fails to remit the SRR Fees within thirty (30) days of the due date provided in this AGREEMENT, FRANCHISEE shall pay a second late payment charge in an amount equal to ten percent (10%) of the SRR Fees outstanding at the end of such thirty day period. Such second late payment charge shall be in addition to the first late payment charge. In addition, FRANCHISEE shall pay interest on all unremitted SRR Fees at the rate of ten percent (10%) per annum or the legal rate allowed, whichever is less, from the date said SRR Fees were due to be remitted to the date actually remitted.

C. If FRANCHISEE remits SRR Fees by personal delivery to CITY, such SRR Fees shall be deemed timely paid only if delivered on or before the due date specified in this AGREEMENT. If FRANCHISEE remits SRR Fees by mail or other delivery service, such SRR Fees shall be deemed timely only if: (1) the envelope or wire transfer containing the SRR Fees payment bears a postmark or receipt showing that the payment was mailed or sent on or before the due date specified in this AGREEMENT; or (2) FRANCHISEE submits proof satisfactory to the Director of Finance that the SRR Fees payment was in fact deposited in the mail or sent on or before said due date.

D. In the event FRANCHISEE believes that FRANCHISEE has remitted SRR Fees in excess of the SRR Fees due to CITY, FRANCHISEE may submit a written request for refund, together with supporting documentation, to the Director of Finance. If proof of overpayment is satisfactory to said Director, the Director shall refund to FRANCHISEE any overpayment. FRANCHISEE shall not apply any overpayment as a credit against any SRR Fees, franchise fees or other

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amounts payable to CITY unless specifically so authorized by the Director of Finance in writing.

E. FRANCHISEE shall report all SRR Fees separately from franchise fees and other charges paid by FRANCHISEE to CITY.

F. CITY shall 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 shall 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.

G. For each month in which any generator fails or refuses to pay SRR Fees to FRANCHISEE when such fees are due and payable, FRANCHISEE shall 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 shall provide documentation supporting FRANCHISEE's claim (including documentation showing that FRANCHISEE billed the generator for the SRR Fees). Such notification shall be given at the time FRANCHISEE submits the monthly report required by SECTION 3 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 6. COMMINGLING OF WASTES.

A. Recyclables may only be collected as specified in written rules promulgated by the Director of Environmental Services.

B. FRANCHISEE shall keep all recyclables collected pursuant to the Commercial Solid Waste and Recyclables Collection Franchise and this AGREEMENT separate from other solid waste during any time the recyclables are collected or transported by FRANCHISEE. FRANCHISEE shall ascertain that all recyclables stored, collected or transported by FRANCHISEE are free of all but incidental contamination, as determined by CITY's Director of Environmental Services. In

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the event FRANCHISEE collects recyclables that have been stored with other solid waste and the recyclables are not free of all but incidental contamination, such recyclables shall be deemed to be commercial solid waste and shall be subject to all franchise fees and SRR Fees described in this AGREEMENT. Upon the request of said Director, FRANCHISEE shall provide written documentation that recyclables collected by FRANCHISEE are, in fact, being recycled within the meaning of Chapter 9.10 of the San José Municipal Code. In the event FRANCHISEE disposes of any recyclables collected by FRANCHISEE by any means such that the recyclables are not actually recycled, whether by delivery to any landfill, transfer station, or other facility that will not actually recycle the recyclables or by any other non-recycling method, such recyclables shall be deemed to be commercial solid waste and shall be subject to all franchise fees and SRR Fees described in this AGREEMENT.

C. In the event FRANCHISEE is authorized to perform solid waste or recyclables collection services at residential premises in San José, FRANCHISEE shall not commingle, in the collection vehicles or at FRANCHISEE's recyclables processing facility or otherwise, any solid waste or recyclable material collected from such residential premises with any other waste or recyclable material collected by FRANCHISEE, whether collected pursuant to this AGREEMENT or otherwise, without the express prior written authorization of CITY's City Manager or Director of Environmental Services.

SECTION 7. COLLECTION AND TRANSPORTATION OF SOLID WASTE AND RECYCLABLES.

A. FRANCHISEE shall conduct collection and transportation of solid waste and recyclables so that no materials spill out of the collecting or transporting container or vehicle. FRANCHISEE shall ensure that any of FRANCHISEE's employees or contractors collecting or transporting solid waste or recyclables shall immediately pick up all material that spills or is blown from the collecting or

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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 shall not collect, take, move or transport solid waste or commingled recyclables from any premises that is within three hundred (300) feet of any residential premises, except between the hours of 6:00 a.m. and 6:00 p.m. on any day. The Director of Environmental Services 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, CITY's Director of Environmental Services 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 8. DISPOSAL OF COMMERCIAL SOLID WASTE.

A. FRANCHISEE shall dispose of commercial solid waste collected or transported by FRANCHISEE only by taking such commercial solid waste to a landfill, transfer station, recycling facility, or materials recovery facility which is lawfully authorized to accept such solid waste. FRANCHISEE shall not dispose of such commercial solid 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.

B. Nothing in the Commercial Solid Waste and Recyclables Collection Franchise or in this AGREEMENT shall be deemed or construed as authorizing FRANCHISEE to operate a landfill, recycling center, or other solid waste disposal facility

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SECTION 9. ADDITIONAL SERVICES.

A. Distribution of Public Outreach Materials

1. On a schedule determined by the Director of Environmental Services or the Director's designee, but not greater than twice per year, FRANCHISEE shall distribute public outreach materials to all of FRANCHISEE's regular San José customers. For the purposes of this provision, "regular" customer means a customer, as of the date the outreach materials are to be distributed, for which FRANCHISEE provides services at least once per week pursuant to the Commercial Solid Waste and Recyclables Collection Franchise; and "public outreach materials" means written materials such as flyers, brochures and newsletters, which provide information to FRANCHISEE's customers about waste reduction, reuse, recycling, or solid waste rules and regulations of the CITY. CITY shall notify FRANCHISEE of the distribution date at least four 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 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 of CITY's Environmental Services Department. Distribution of the materials shall be at FRANCHISEE's sole cost and expense.

B. Promotion of Adequate Service Levels

1. For each new San José customer for which FRANCHISEE provides commercial solid waste collection services, FRANCHISEE shall offer to

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provide recyclables collection services or shall provide a list of persons performing such services in any case where:

a. FRANCHISEE provides only commercial solid waste collection services for the customer; and

b. The customer does not have recyclables collection services performed by another person authorized to perform recyclables collection.

2. For each new San Jose customer for which FRANCHISEE provides commercial recyclables collection services only, FRANCHISEE shall offer to provide solid waste collection services or shall provide a list of persons performing such services.

3. For the purposes of this subsection B, "new" customer means an entity for whom FRANCHISEE begins providing collection services during the term of this Agreement and for whom FRANCHISEE had not performed such services during the ninety-day period immediately preceding the commencement of such services.

4. CITY will maintain a list of businesses that perform solid waste and recyclables collection services in San José, and will make such list available to FRANCHISEE at no cost to FRANCHISEE.

5. FRANCHISEE shall maintain records of customer contacts, including date and person contacted, demonstrating FRANCHISEE's compliance with this subsection B. Such records shall be maintained at FRANCHISEE's place of business shown in SECTION 19 of this AGREEMENT for receipt of notices, shall be in a format approved by CITY's Director of Environmental Services, shall be kept for not less than three (3) years, and shall be subject to inspection and audit by CITY upon the request of the Director of Environmental Services, the City Manager, the City Auditor, or their designated agent.

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C. CITY will make available to FRANCHISEE supplies for the promotion of recycling, including, but not limited, to desk-side containers, and FRANCHISEE shall distribute such supplies to any of FRANCHISEE's customers who request such supplies. For the purpose of this subsection C, "desk-side containers" means receptacles provided by CITY for the purpose of storing recyclables inside the business premises.

D. In the event FRANCHISEE provides collection services for construction and demolition debris and delivers the material to a facility that is certified under CITY's Construction and Demolition Diversion Deposit Program, FRANCHISEE shall provide to the customer a copy of the receipt issued by the certified facility.

SECTION 10. FRANCHISEE'S RECORDS.

A. FRANCHISEE shall keep and maintain books of account and other records showing all business transactions conducted by FRANCHISEE in connection with the Commercial Solid Waste and Recyclables Collection Franchise granted to FRANCHISEE. Such records shall be kept at FRANCHISEE's place of business shown in SECTION 19 of this AGREEMENT for receipt of notices, and shall 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 shall require its subcontractors, if any, who perform commercial solid waste and/or commingled recyclables collection, transportation or disposal services in connection with the Commercial Solid Waste and Recycling Collection franchise granted to FRANCHISEE to keep and maintain books of account and other records showing all business transaction conducted by such subcontractors in connection with the Commercial Solid Waste and Recyclables Collection Franchise granted to FRANCHISEE.

C. All such books of account and other records shall 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

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designated agent. The purpose of such inspection and/or audit shall 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 commercial solid waste and recyclables reported by FRANCHISEE pursuant to SECTION 3 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 Source Reduction and Recycling 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 shall pay all outstanding fees and late penalties due to CITY. FRANCHISEE shall pay for the audit costs when FRANCHISEE has underpaid franchise fees due to CITY and the amount of franchise fees still due to CITY is greater than the Threshold Amount. The Threshold Amount is either One Thousand Dollars ($1,000) or ten percent (10%) of the franchise fees payable to CITY during the period covered by the audit, whichever is greater. Such reimbursement shall be paid by FRANCHISEE within thirty (30) days of the date CITY notifies FRANCHISEE of the amount of CITY's costs.

SECTION 11. INSURANCE REQUIREMENTS.

FRANCHISEE shall obtain and shall 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. <u>Minimum Scope and Limits of Insurance</u>.

Coverage shall be at least as broad as:

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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.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance.

FRANCHISEE shall maintain limits no less than:

1. 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 shall apply separately to this AGREEMENT or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage.

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.

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 shall reduce or eliminate such deductibles or self-insured retentions as respects to CITY, its officers, employees, agents and contractors; or FRANCHISEE shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by CITY's Risk Manager.

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D. Endorsements.

The required insurance policies are to 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 as respects: 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 shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees and agents and contractors.

   b. FRANCHISEE'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 FRANCHISEE'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 FRANCHISEE'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.

   e. Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability.

   Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors.

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3. All Coverages.

Each insurance policy required by this 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's Risk Manager, except that ten (10) days prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Placement of Insurance.

Insurance shall be placed with insurers acceptable to CITY's Risk Manager.

F. Proof of Insurance.

FRANCHISEE shall 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. Proof of insurance shall be mailed or personally delivered to the following address or to such other address as may be directed in writing by CITY's Commercial Program Manager:

Commercial Program Manager
City Of San José
Environmental Services Department
200 East Santa Clara Street, 10th Floor
San José, California 95113

FRANCHISEE ACKNOWLEDGES THAT UNDER SAN JOSÉ MUNICIPAL CODE SECTION 9.10.1670 THE COMMERCIAL SOLID WASTE AND RECYCLABLES COLLECTION FRANCHISE GRANTED TO FRANCHISEE WILL NOT BECOME EFFECTIVE, AND FRANCHISEE WILL HAVE NO AUTHORITY TO PERFORM COMMERCIAL SOLID WASTE OR COMMINGLED RECYCLABLES COLLECTION 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 shall include all subcontractors as insureds under FRANCHISEE's

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policies or shall 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 12. EQUIPMENT.

A. FRANCHISEE shall provide that all containers are properly labeled, handled, and maintained in accordance with the following:

1. Requirements of Chapter 9.10 of the San Jose Municipal Code.
2. The containers must be marked at a minimum with FRANCHISEE's name, telephone number, and material type in letters that are 4 inches (4") or more in height and that can be easily read by the general public. Containers shall have necessary safety messaging and reflectors. Signage may be affixed with labels, magnets, hot stamps, paint, or other format approved by CITY. For the purpose of this AGREEMENT, "front-load container" means a collection container designed to be emptied mechanically by a collection vehicle, is constructed of metal or plastic, has a closable plastic lid, and is 1 to 8 cubic yards in size.
3. Front-load containers shall be clearly labeled with letters three inches (3") or more in height and state "Clean Up Spills."
4. FRANCHISEE shall remove, or cause to be removed, graffiti from FRANCHISEE's containers within forty-eight hours (48) after notification from CITY that there is graffiti on the container.
5. FRANCHISEE may not place any containers used for solid waste or recyclables 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 cart or

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container for immediate collection and during the six hours immediately following collection.

B. FRANCHISEE shall ensure that all vehicles used to perform commercial solid waste and/or recycling collection services comply with the following:

1. All vehicles shall 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 4 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.

C. FRANCHISEE shall 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 seven (7) calendar days of the change.

SECTION 13. ABANDONED CONTAINERS.

A. If FRANCHISEE abandons any container used to provide solid waste services under the Commercial Solid Waste and Recyclables Collection Franchise, CITY may remove the container and/or dispose of the contents of the container.

B. 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 shall reimburse CITY for such costs within ten (10) days of the date of CITY's invoice for such costs.

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C. 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 Commercial Solid Waste and Recyclables Collection Franchise pursuant to Section 9.10.1690 of the San Jose Municipal Code;
2. FRANCHISEE's failure to remove the container within ten (10) working days after the expiration of the Commercial Solid Waste and Recyclables Collection 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 Commercial Solid Waste and Recyclables Collection Franchise authorizing FRANCHISEE to collect and transport the type or types of solid waste 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 customer service agreement between FRANCHISEE and the generator.

SECTION 14. 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 Jose Municipal Code, the Code shall govern.

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SECTION 15. PERMITS AND LICENSES.

FRANCHISEE shall obtain and maintain, at FRANCHISEE's sole cost and expense, all permits and licenses applicable to FRANCHISEE's operations under the Commercial Solid Waste and Recyclables Collection Franchise which are required of FRANCHISEE by any governmental agency.

SECTION 16. TERMINATION AND SUSPENSION.

A. The Commercial Solid Waste and Recyclables Collection Franchise granted to FRANCHISEE may be terminated by the City Council pursuant to Section 9.10.1690 A of Chapter 9.10 of the San José Municipal Code.

B. The Commercial Solid Waste and Recyclables Collection Franchise granted to FRANCHISEE shall be automatically suspended, without notice to FRANCHISEE, upon the occurrence of any event described in Section 9.10.1690 B of Chapter 9.10 of the San José Municipal Code.

C. The Commercial Solid Waste and Recyclables Collection Franchise granted to FRANCHISEE may be suspended by the Director of CITY's Environmental Services Department if FRANCHISEE fails to submit timely, complete, and accurate reports as described in Section 9.10.1720 of Chapter 9.10 of the San José Municipal Code and in SECTION 3 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 Commercial Solid Waste and Recyclables Collection Franchise is terminated pursuant to subsection A above, is suspended pursuant to subsection B or subsection C above, or expires pursuant to SECTION 2:

1. FRANCHISEE shall have no right or authority to engage in commercial solid waste or commingled recyclables collection, transportation or disposal operations in the City of San José.
2. FRANCHISEE shall, however, remain liable to CITY for any and all franchise fees that would otherwise be payable by FRANCHISEE, for any

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and all late payment charges and interest assessed pursuant to SECTION 4 of this AGREEMENT, for any Source Reduction and Recycling Fees collected by FRANCHISEE, and for any and all delinquent report charges assessed pursuant to SECTION 3 of this AGREEMENT.

3. FRANCHISEE shall have a continuing obligation to submit to CITY all reports required by SECTION 3 of this AGREEMENT which relate to commercial solid waste or recycling activities performed by FRANCHISEE up to and including the date of termination, suspension or expiration.

4. FRANCHISEE shall allow the solid waste or recyclables generators served by FRANCHISEE to arrange for solid waste or recyclables collection services with a collector authorized to perform such services, without penalty or liability for breach of contract on the part of the generators, for such period of time as FRANCHISEE is not authorized to perform such services because of the termination or suspension.

E. In the event the Commercial Solid Waste and Recyclables Collection Franchise is terminated pursuant to subsection A above, then within the time period specified by the City Council, FRANCHISEE shall remove all of FRANCHISEE's commercial solid waste containers and recyclables containers, and all of such containers used by FRANCHISEE's subcontractors in performance of collection services pursuant to said Franchise, from all of FRANCHISEE's collection service locations and shall properly dispose of all solid waste or recyclables in such containers.

F. In the event the Commercial Solid Waste and Recyclables Collection Franchise is terminated pursuant to subsection A above or expires pursuant to SECTION 2 without an extension of the term and without a grant of a subsequent Commercial Solid Waste and Recyclables Collection Franchise allowing FRANCHISEE to continue performing such services, then within ten (10) days of such termination or expiration FRANCHISEE shall either:

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1. Submit to CITY's Director of Environmental Services a list of the names and addresses of commercial solid waste and/or recyclables generators 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
2. Send written notification to each commercial solid waste generator and each commingled recyclables generator on FRANCHISEE's customer list that FRANCHISEE is no longer authorized to provide commercial solid waste or commingled recycling services in San José. Such notification shall be in the form provided by CITY's Director of Environmental Services and shall be personally delivered or shall be sent by first class mail, postage prepaid, to the customers' billing addresses. FRANCHISEE shall submit to CITY's Director of Environmental Services 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.

G. The CITY is in the process of redesigning the commercial solid waste and recycling system and this redesign may result in limiting the issuance of franchises. FRANCHISEE acknowledges CITY could terminate this AGREEMENT and the Commercial Solid Waste and Recyclables Collection Franchise when the new system is implemented. CITY will notify FRANCHISEE in writing no less than 60 days in advance of the effective date. FRANCHISEE agrees to cooperate with CITY and the new exclusive franchised hauler(s) during the time of transition which shall be from the date the City Council awards the exclusive franchised hauler with the new agreement to the date of implementation. Cooperation may include providing information, attending meetings, removing containers, and other types of coordination needed to ensure a seamless transition.

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SECTION 17. 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.

C. The offer or giving of any gift prohibited by Chapter 12.08 shall 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 for such breach as provided in SECTION 16 of this AGREEMENT.

SECTION 18. 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 Jose Municipal Code ("Revolving Door Ordinance"). FRANCHISEE shall 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 19. NOTICES.

A. Except as otherwise provided in this AGREEMENT, all notices required by this AGREEMENT or by the Commercial Solid Waste and Recyclables Collection Franchise 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: Director
Environmental Services Department
200 East Santa Clara Street, 10th Floor
San José, CA 95113

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To FRANCHISEE: Panther Industries
Attention: David Poto, Owner
23782 Connecticut Street, #6
Hayward, CA 94545

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

B. FRANCHISEE shall provide to CITY a functional e-mail address where FRANCHISEE can correspond with CITY, receive periodic information and updates from CITY. Any information sent via the e-mail address shall be deemed effective on the date sent by CITY. FRANCHISEE shall immediately notify CITY, with confirmation in writing as provided in subsection A above, of any change in FRANCHISEE's e-mail address.

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SECTION 20. DEFINITIONS.

Unless the provisions of the context otherwise require, the definitions set forth in Chapter 9.10 of the San Jose Municipal Code shall govern the construction of this AGREEMENT.

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

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSÉ, a municipal corporation

By: _____

_____
Rosa Tsongtaatarii
Deputy City Attorney
Date: _____

Lee Price, MMC
City Clerk
Date: _____

"FRANCHISEE"

PANTHER INDUSTRIES, a sole proprietorship

By: _____

David Poto
Owner

Date: _____

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