

(EXHIBIT A)

**FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING AND DISPOSAL OF MUNICIPAL AND RESIDENTIAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION WASTE IN THE TOWN OF POETRY, TEXAS**

**THIS FRANCHISE AGREEMENT (this “Agreement”) is made and entered into as of the \_\_ day of \_\_\_\_\_, 2021, by and between NAME OF COLLECTOR, (the “COLLECTOR”), and the Town of Poetry, Texas (the “Town”).**

**WHEREAS**, the Town is empowered under state and local law to provide solid waste collection and disposal services to its residents and commercial businesses and has the authority to enter into solid waste service contracts to acquire, sell, lease or allow for the operation of all or any part of a solid waste management system, including the collection, transportation and disposal of solid waste; and

**WHEREAS**, the Town, subject to the terms and conditions set forth herein and the ordinances and regulations of the Town, desires to grant to the Collector the non-exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste, Residential Solid Waste, and Construction and Demolition Waste (as such terms are defined herein) within the Town's corporate limits.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Collector and the Town hereby agree as follows:

**SECTION 1. DEFINITIONS**

The following terms, as used herein, will be defined as follows:

**BUSINESS DAY:** Any day that is not a Sunday or a day listed as a *Holiday* herein.

**COLLECTOR:** *NAME OF COLLECTOR* a Texas [entity] authorized and registered to do business in the State of Texas, and its successors and assigns.

**CONSTRUCTION AND DEMOLITION WASTE:** Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste or Municipal Solid Waste.

**CONTAINER:** Any receptacle, including, but not limited to, dumpsters, roll-offs and carts provided by Collector for collecting Municipal and Residential Solid Waste and Construction and Demolition Waste.

**HAZARDOUS WASTE:** Solid Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and as subsequently amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

**HOLIDAYS:** The following days:

- (1) New Year's Day (January 1st)
- (2) Memorial Day
- (3) Independence Day (July 4th)
- (4) Labor Day
- (5) Thanksgiving Day
- (6) Christmas Day (December 25th).

**LANDFILL:** Any facility or area of land receiving Municipal Solid Waste, Residential Solid Waste, or Construction and Demolition Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

**MUNICIPAL SOLID WASTE:** Solid Waste resulting from or incidental to, municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Construction and Demolition Waste or Hazardous Waste.

**RESIDENTIAL SOLID WASTE:** Solid Waste resulting from or incidental to any residence.

**SERVICES:** the services provided by Collector pursuant to this Agreement.

**SOLID WASTE:** As defined by the EPA under 40 C.F.R. § 261.2(a)(1), or by the State of Texas under the Solid Waste Disposal Act, Texas Health & Safety Code, §361.003(20), as amended.

**TOWN:** Means the Town of Poetry, Texas.

## **SECTION 2. FRANCHISE GRANT**

The Town hereby grants to the Collector in accordance with the Town's ordinances and regulations governing the collection, hauling and disposal of Residential Solid Waste, Municipal Solid Waste and Construction and Demolition Waste, and this Agreement, the non-exclusive franchise, license and privilege to collect, haul and dispose of Residential Solid Waste, Municipal Solid Waste and Construction and Demolition Waste over, upon, along and across the Town's present and future streets, alleys, bridges, and rights-of-ways.

## **SECTION 3. REGISTRATION FEE**

Collector shall be required to pay an annual registration fee of \$100, which along with this Franchise Agreement, entitles them to collect solid waste within the corporate limits of the Town for one year. Such registration shall be on such forms as the Town may determine. It shall be unlawful for any person, firm or corporation to collect Municipal Solid Waste, Residential Solid Waste or Construction and Demolition Waste, or to engage in the business of Municipal Solid Waste, Residential Solid Waste, and Construction and Demolition Waste collection without first having been issued a registration to do so from the Town.

#### **SECTION 4. OPERATIONS.**

**A. SCOPE OF OPERATIONS.** It is expressly understood and agreed that the Collector will collect, haul and dispose of Residential Solid Waste, Municipal Solid Waste and Construction and Demolition Waste during Business Days: (i) generated and accumulated by Collector's customers, and (ii) placed within Containers, if required by Collector, by those customers receiving the services of the Collector, all within the Town's corporate limits, including any territories annexed by the Town during the term of this Agreement (the "Services"). This Agreement does not cover services provided in the Town's extraterritorial jurisdiction.

**B. NATURE OF OPERATIONS.** The Town hereby grants to the Collector, in accordance with the Town's ordinances and regulations governing the collection, hauling and disposal of Residential Solid Waste, Municipal Solid Waste and Construction and Demolition Waste, and this Agreement, the title to all Residential Solid Waste, Municipal Solid Waste or Construction and Demolition Waste collected, hauled and disposed of by the Collector over, upon, along and across the present and future streets, alleys, bridges, and rights-of-ways.. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

#### **SECTION 5. TITLE TO EQUIPMENT.**

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, provided by the Collector in connection with the Services, as noted above, shall at all times remain the property of the Collector.

#### **SECTION 6. EXCLUSIONS.**

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, dead animals, auto parts or used tires from any customer; provided, however, that any customer may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of dead animals, auto parts or used tires with the Collector or another reputable third party.

#### **SECTION 7. TERM OF AGREEMENT.**

The initial term of this Agreement shall be for the period of one year from the date this Agreement is executed ("Execution Date"). This Agreement may be renewed and extended for one additional

period of one year, provided, that Collector and Town mutually agree in writing at least sixty (60) days prior to the expiration of the initial term to renew the Agreement and Contractor has satisfactorily performed all conditions under this Agreement. The Town may deny the renewal of this Agreement. Upon expiration of this Agreement, Collector shall be responsible for payment to Town for all franchise fees due to Town under Section 10 below

#### **SECTION 8. ASSIGNMENT.**

This Agreement shall not be assignable or otherwise transferable by the Collector without the prior written consent of the Town; provided, however, that the Collector may assign this Agreement to an affiliate of the Collector without the Town's prior written consent.

#### **SECTION 9. ENFORCEMENT.**

During the term of this Agreement and any extension thereof, the Town agrees to adopt and maintain ordinances that will enable the Collector to provide the services set forth herein.

#### **SECTION 10. FRANCHISE FEES.**

In addition to the annual registration fee the Collector shall pay to the Town a monthly franchise fee under this Agreement in the amount of:

- A. Each Unique Residential Address - \$6.50/month
- B. Each Dumpster - \$15.00/month
- C. Each Roll-Off Container – \$25.00/month

#### **SECTION 11. FRANCHISE FEE PAYMENT**

Franchise fees shall be paid to the Town on or before the tenth (10th) day after the beginning of each quarter for amounts received by the Collector for the performance of Services during the quarter, according to the dates provided below. If this Agreement is entered into or terminated in the middle of a quarter, the applicable quarter will be prorated to exclude the time during the quarter in which no Service was provided. The Town agrees that payments owing from the Collector pursuant to this Agreement shall be based solely on the Services rendered by the Collector. The Collector shall not be held responsible for the collection of "bad debt" billed by and owed to Collector for the Services.

- 1<sup>st</sup> quarter: January 10<sup>th</sup>
- 2<sup>nd</sup> quarter: April 10<sup>th</sup>
- 3<sup>rd</sup> quarter: July 10<sup>th</sup>
- 4<sup>th</sup> quarter: October 10<sup>th</sup>

with the terms hereof. The Town agrees to treat any information disclosed to it by Collector under normal business hours and on a nondisruptive basis, as reasonably necessary to monitor compliance. Each payment to the Town shall be accompanied with a statement detailing Collector's quantities of each service type, enabling the Town to verify the appropriate payment. The Town may review Collector's books and records that relate to customers within the Town's corporate limits, during this Section as confidential, and to disclose it only to employees, representatives, and agents of the Town that have a need to know, or in order to enforce the provisions hereof, except where required by law to disclose such information.

#### **SECTION 12. SPILLAGE.**

It is understood and agreed that the Collector shall not be required, but may, clean up, collect or dispose of any loose or spilled Residential or Municipal Solid Waste not caused by the Collector's rendering of services, or collect and dispose of any excess Residential or Municipal Solid Waste placed outside of the Containers by any customer. The Collector may report the location of such conditions to the Town so that the Town can issue proper notice to the customer instructing the customer to properly contain such Residential or Municipal Solid Waste. Should excess Residential or Municipal Solid Waste continue to be placed outside of the Containers, the Town authorizes the collector to issue an additional container or more frequent pickups of roll-off or dumpster if deemed necessary.

#### **SECTION 13. HOURS OF SERVICE.**

For all the services provided hereunder, the Collector's hours of service shall be between 6:00 AM and 8:00 PM, Monday through Saturday. The Collector will not be required to provide service on Sunday or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement.

#### **SECTION 14. COMPLIANCE WITH APPLICABLE LAWS.**

The Collector shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of solid waste, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the Town not in conflict with this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the Town's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The Town shall have the right to make reasonable inspections of the Collector in order to ensure compliance with these requirements.

#### **SECTION 15. VEHICLES AND EQUIPMENT.**

Vehicles used by the Collector for the collection, hauling and disposal of Residential or Municipal Solid Waste and Construction and Demolition Waste pursuant to this Agreement shall be protected at all times while in transit to prevent the blowing or scattering of waste onto the Town's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked on both sides with

the Collector's name in letters and numbers not less than two (2) inches in height. The Town may adopt weight limits and maximum vehicle axle weight limits on vehicles used by Collector as the Town deems appropriate to minimize disruption and damage to the Town's streets, alleys and rights-of-way. Trucks operated within the Town of Poetry for residential collection must be single axle (1 steering and 1 rear) and may not exceed 33,000 pounds GVWR. Trucks used for commercial and roll-off services may be tandem axle (1 steering and 2 rear) and may not exceed 60,000 pounds GVWR.

**SECTION 16. DUE CARE.**

The Collector shall exercise due care and caution in providing the Services so that the Town's public and private property, including streets and parking areas, will be protected and preserved.

**SECTION 17. INSURANCE COVERAGE.**

Minimum Limits of Insurance: The Contractor shall procure and maintain the following minimum types of coverages:

Type Coverage	Occurrence Minimum	Aggregate Minimum
Worker's Compensation (or other state-approved program)	As required by law and shall cover all employees including drivers.	As required by law.
Comprehensive & General Public Liability	\$1,000,000	\$1,000,000
Property Damage	\$1,000,000	\$1,000,000
Comprehensive Auto Liability Bodily Injury	\$1,000,000	\$1,000,000
Comprehensive Auto Liability-Property Damage	\$500,000	\$1,000,000

The Town reserves the right to review the insurance requirements of this section during the effective period of the contract and any extension or renewal period and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the Town based upon changes in statutory law or court decisions.

Each insurance policy to be purchased by Contractor shall include the conditions as described below, as well as the following conditions by endorsement to the policy:

1. the General liability insurance policy shall name Town and its officers, employees, and

elected representatives as an additional insured without restrictions via blanket-form endorsement.

2. the policy phrase "other insurance" shall not apply to the Town where the Town is an additional insured; the policy shall specify that it is primary and non-contributory with any of the Town's policies and will state that each insured is provided coverage as though a separate policy had been issued to each, except that the insurer's liability will not be increased beyond the amount for which the insurer would have been liable had only one insured been covered;
3. each policy, except workers' compensation or other state approved program, shall require that 30 days prior to cancellation, non-renewal or any material change in coverage, a notice thereof shall be sent to Town by email. If the policy is canceled for nonpayment of premium, only 10 days' written notice to Town is required;
4. the term "Town" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the Town and individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the Town;
5. all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas;
6. all liability policies required herein shall be written with an "occurrence" basis coverage trigger;
7. prior to the effective date of cancellation of any policy, Contractor shall deliver to the Town a replacement certificate of insurance evidencing coverage;
8. each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A-; and
9. the Special Provisions Section shall state that the liability policies have been endorsed via blanket-form endorsement to provide for waivers of subrogation, to provide that those policies are primary and non-contributory as to the Town.

### **Specific Additional Insurance Requirements:**

*All insurance policies or other state-approved program proposed or obtained in satisfaction of this Contract shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:*

#### **A. General Liability Insurance:**

General Liability insurance with combined single limits of not less than \$1,000,000 shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

**B. Automobile Liability Insurance:**

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than \$1,000,000 either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

Satisfaction of the above requirement shall be in the form of a blanket-form policy endorsement for:

- any auto, or
- all owned, hired and non-owned autos.

**C. Worker's Compensation Coverage or other state-approved program**

Contractor agrees to maintain insurance for workers' compensation or self-insured employee coverage meeting the requirements established by the Tex. Worker's Comp. Act, Texas Labor Code in the amounts not less than \$500,000.

**SECTION 18. INDEMNITY.**

**THE COLLECTOR ASSUMES ALL RISKS OF LOSS OR INJURY TO PROPERTY OR PERSONS ARISING FROM ITS PERFORMANCE OF THE SERVICES. THE COLLECTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN AND ITS AGENTS, DIRECTORS, EMPLOYEES, OFFICERS AND SERVANTS FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES, LOSSES OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) INCIDENT TO ITS PERFORMANCE OF THE SERVICES THAT ARISE OUT OF A WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE COLLECTOR, ITS OFFICERS AND EMPLOYEES. HOWEVER, THE COLLECTOR SHALL NOT BE LIABLE FOR ANY LEGAL PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, COSTS, EXPENSES AND ATTORNEYS' FEES ARISING FROM THE SOLE NEGLIGENCE OF THE TOWN, ITS AGENTS, DIRECTORS, EMPLOYEES, OFFICERS AND SERVANTS.**



**NOTHING CONTAINED WITHIN THIS SECTION OR WITHIN THIS AGREEMENT SHALL BE DEEMED TO WAIVE OR IN ANY WAY ALTER THE TOWN'S SOVEREIGN IMMUNITY OR THE TOWN'S OFFICIAL, QUALIFIED OR LEGISLATIVE IMMUNITIES. NOTHING CONTAINED WITHIN THIS AGREEMENT SHALL IN ANY WAY BE DEEMED TO CREATE OR GRANT RIGHTS OR BENEFITS TO ANY PERSON NOT A PARTY TO THIS AGREEMENT.**

#### **SECTION 19. SEVERABILITY.**

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

#### **SECTION 20. TERMINATION.**

A. The sufficiency of the grounds for termination as enumerated hereinafter shall be within the sole discretion of the Town Council. It is understood and agreed that this license may be terminated after hearing before the Town Council if:

1. The Collector has failed to give prompt and courteous attention to, and correct complaints filed by its customers.
2. The Collector has failed to provide an adequate regular collection service or is in an any way in violation of this Agreement, after being given a reasonable time to correct such failure or violation.
3. The failure of the Collector to abide by any of the terms and conditions of this Agreement, applicable ordinances of the Town, or State or Federal regulations.
4. For cause as determined by the Town Council.
5. For convenience, when such convenience is determined by the Town Council to be in the best interest of the public health, safety and welfare.
6. The filing of bankruptcy or receivership proceedings, transfers for the benefit of creditors, or acts evidencing insolvency.

B. In the event of termination for the reasons set forth in the foregoing paragraphs A (1) through (6) the Town shall notify Collector of the reasons for consideration of termination and Collector

shall have a period of thirty (30) days to cure such reason.

C. Collector may terminate this Agreement upon written notice received by the Town not less than 60 days before the date set forth in said notice for termination.

#### **SECTION 21. FORCE MAJEURE.**

The performance of this Agreement may be suspended, and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended, and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

#### **SECTION 22. GOVERNING LAW.**

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the laws of the State of Texas. The parties hereby agree that exclusive venue of any action arising under the terms of this Agreement shall be in the state courts of appropriate jurisdiction in Hunt and/or Kaufman County, Texas, depending on the location of the incident giving rise to a cause of action.

#### **SECTION 23. NOTICE.**

Any notices required or permitted to be delivered under this Agreement shall be deemed receivable when sent by email to [mayor.tara@poetrytexas.org](mailto:mayor.tara@poetrytexas.org) or the United States mail, postage pre-paid, certified mail, return receipt requested, addressed to the party at the address set forth opposite the signature of the party.

#### **SECTION 24. MERGER CLAUSE.**

This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral, oral, or written agreement between the parties that in any matter relates to the subject matter of this Agreement, except as provided in the Agreement documents.

#### **SECTION 25. COUNTERPARTS.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**SECTION 26. RECITALS.**

The recitals to this Agreement are incorporated herein.

**SECTION 27. EFFECTIVE DATE.**

This Agreement is effective beginning \_\_\_\_\_, 2021.

Executed in single or multiple originals this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**COLLECTOR:**

[Address]

By:(Company) \_\_\_\_\_

Address: \_\_\_\_\_

Name: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY:**

[Address]

By: **Town of Poetry**

Address: 20425 FM 986, Poetry, TX 75160

Name: Tara Senkevech

Signature; \_\_\_\_\_

Title: Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
TOWN ATTORNEY, PATRICIA ADAMS