

9/28/2017

**78-R-17**

**A RESOLUTION**

**Authorizing the City Manager to Execute a Franchise Agreement with  
Collective Resource, Inc. for the Collection, Transportation and  
Disposal of Food Scrap**

NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
EVANSTON, COOK COUNTY, ILLINOIS:

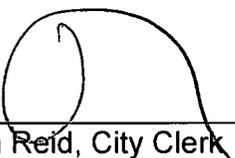
**SECTION 1:** The City Manager is hereby authorized and directed to sign a Franchise Agreement (the “**Agreement**”) by and between the City and Collective Resource, Inc. for a (5) year term, with the option for one additional three (3) year period extension, for the collection, transportation and disposal of food scrap at the service levels displayed in the franchise agreement to be charged to voluntarily participating commercial and residential properties. The Agreement is attached hereto as Exhibit 1 and incorporated herein by reference.

**SECTION 2:** The City Manager is hereby authorized and directed to negotiate any additional conditions of said Agreement that he deems to be in the best interests of the City. The Agreement will be in a form acceptable to the Corporation Counsel.

**SECTION 3:** This resolution shall be in full force and effect from and after its passage and approval, in the manner provided by law.

  
Stephen H. Hagerty, Mayor

Attest:

  
\_\_\_\_\_  
Devon Reid, City Clerk

Adopted: October 23, 2017

**EXHIBIT 1**

**FRANCHISE AGREEMENT**

## FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (hereinafter referred to as the "Agreement") entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, between the City of Evanston, an Illinois municipal corporation with offices located at 2100 Ridge Avenue, Evanston Illinois 60201 (hereinafter referred to as the "City"), and Collective Resource, Inc. with offices located at 803 Elmwood Avenue, Evanston, Illinois (hereinafter referred to as the "Franchisee").

### I. TERM

A. **Primary Term.** Subject to the provisions of this Agreement, the "**Primary Term**" must be for 5 years (60 months) and must commence on November 1, 2017 and expire on October 31, 2022.

B. **Extended Term.** Provided Franchisee is not otherwise in default beyond any applicable cure period, Franchisee, at City of Evanston's sole discretion, could be granted one option to extend the franchise agreement term for a three year period (each an "**Extension Term**") upon the same terms, covenants and conditions as herein provided. The Primary Term together with any Extension Term(s) is referred to herein collectively as the "**Term**".

### II. FRANCHISE AREA AND FEE

A. **Fee.** Franchisee shall pay a franchise fee of \$1.00 in consideration of the City providing this franchise agreement and franchisee reducing the waste that is transported to a landfill.

B. **Franchise Area.** The franchise Area granted by this Franchise Agreement shall be within the borders of the City of Evanston. The franchise Agreement is for Franchisee to service all voluntarily participating commercial and residential properties.

C. **Hours of Collection.** Franchisee agrees that, in order to protect the peace and quiet of the residents, its arrangements for the collection of food scraps, will provide that collections will not start before 7:00 a.m. or continue after 5:00 p.m., seven (7) days per week.

### III. DESCRIPTION OF SERVICES

A. **Contractual Relationship.** The Stand Alone Food Scrap Collection Program will operate at the level of service set and determined by Franchisee and then each eligible property owner will determine the level of service that best meets their needs and is invoiced directly by the Franchisee. The Franchise Agreement is entered into by and between the City and Franchisee to establish a franchise agreement for a food scrap



collection program following a Request for Proposal 17-47. Franchisee's response to the RFP 17-47 is incorporated herein by reference and attached to the Agreement as Exhibit A.

**B. Invoicing.** Franchisee will invoice customers either on a monthly, quarterly or annual basis. The pricing for the service varies depending on the invoice frequency level selected. Exhibit B outlines the prices based on each invoice frequency to be selected by customer.

**C. Customer Cancellation.** If a customer cancels the service, it cannot re-enroll for a period of 3 months. All contract terms, including cancellation, must be addressed between the two parties, customer and franchisee.

#### **IV. GENERAL PROVISIONS**

**A. Services.** Franchisee shall perform the Services in a professional and workmanlike manner. All Services performed by Franchisee shall be in accordance with the standards of reasonable care and skill of the profession. Franchisee shall take all necessary precautions to assure the safety of its employees who are engaged in the performance of the Services, all equipment and supplies used in connection therewith.

During the term of this Franchise Agreement, Grantee shall provide the City with a yearly accounting on or before November 1<sup>st</sup> of every year of participating properties and the volume food scrap material collected.

Franchisee is not a contractor of the City of Evanston.

Except as otherwise provided herein, the nature and scope of Services specified in this Agreement may only be modified by a writing approved by both parties. This Agreement may be modified or amended from time to time provided, however, that no such amendment or modification shall be effective unless reduced to writing and duly authorized and signed by the authorized representatives of the parties.

**B. Representation and Warranties.** Franchisee represents and warrants that: (1) If applicable, Franchisee possesses and will keep in force all required licenses to perform the Services, (2) the employees of Franchisee performing the Services are fully qualified, licensed as required, and skilled to perform the Services; and (3) Franchisee will dispose of the food scrap at a licensed compost facility. Franchisee must submit the location for disposal to the City for approval within 15 days of execution of this Agreement. If Franchisee changes the location for disposal, it must notify the City in writing.

**C. Termination.** City may, terminate this Agreement upon 14 days' notice if Franchisee fails to cure a default of a term of the Agreement within 30 days of

written notice of the Default.

**D. Conflict of Interest.** Franchisee represents and warrants that no prior or present services provided by Franchisee to third parties conflict with the interests of City in respect to the Services being provided hereunder except as shall have been expressly disclosed in writing by Franchisee to City and consented to in writing to City.

**E. Indemnity.** Franchisee shall defend, indemnify and hold harmless the City and its officers, elected and appointed officials, agents, and employees from any and all liability, losses, or damages as a result of claims, demands, suits, actions, or proceedings of any kind or nature, including but not limited to costs, and fees, including attorney's fees, judgments or settlements, resulting from or arising out of any negligent or willful act or omission on the part of the Franchisee or Franchisee's subcontractors, employees, agents or subcontractors during the performance of this Agreement. Such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided. This provision shall survive completion, expiration, or termination of this Agreement.

Nothing contained herein shall be construed as prohibiting the City, or its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, at its cost any claims, actions or suits brought against them. Nothing herein shall be construed as a limitation or waiver of defenses available to the City and employees and agents, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*

At the City Corporation Counsel's option, Franchisee must defend all suits brought upon all such losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Franchisee of any of its obligations under this Agreement. Any settlement of any claim or suit related to this Agreement by Franchisee must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.

Franchisee shall be responsible for any losses and costs to repair or remedy work performed under this Agreement resulting from or arising out of any breach, neglect, or misconduct in the performance of its Work or its subfranchisees' work. Acceptance of the work by the City will not relieve the Franchisee of the responsibility for subsequent correction of any such error, omissions and/or negligent acts or of its liability for loss or damage resulting therefrom. All provisions of this Section shall survive completion, expiration, or termination of this Agreement.

**F. Insurance.** Franchisee shall carry and maintain at its own cost with such companies as are reasonably acceptable to City all necessary liability insurance

(which shall include as a minimum the requirements set forth below) during the term of this Agreement, for damages caused or contributed to by Franchisee, and insuring Franchisee against claims which may arise out of or result from Franchisee's performance or failure to perform the Services hereunder: (1) worker's compensation in statutory limits and employer's liability insurance in the amount of at least \$500,000, (2) comprehensive general liability coverage, and designating City as additional insured for not less than \$1,000,000 combined single limit for bodily injury, death and property damage, per occurrence, and (3) comprehensive automobile liability insurance covering owned, non-owned and leased vehicles for not less than \$1,000,000 combined single limit for bodily injury, death or property damage, per occurrence. Franchisee shall give to the City certificates of insurance for all Services done pursuant to this Agreement before Franchisee performs any Services, or certified copies of the policies of insurance evidencing the coverage and amounts set forth in this Section. Except for Professional liability insurance, the City may also require Franchisee to provide copies of the Additional Insured Endorsement to said policy(ies) which name the City as an Additional Insured for all of Franchisee's Services and work under this Agreement. Any limitations or modification on the certificate of insurance issued to the City in compliance with this Section that conflict with the provisions of this Section shall have no force and effect. Franchisee's certificate of insurance shall contain a provision that the coverage afforded under the policy(s) will not be canceled or reduced without thirty (30) days prior written notice (hand delivered or registered mail) to City. Franchisee may rely on excess coverage to meet the limits of coverage required under this Agreement. Franchisee understands that the acceptance of certificates, policies and any other documents by the City in no way releases the Franchisee and its subcontractors from the requirements set forth herein. Franchisee expressly agrees to waive its rights, benefits and entitlements under the "Other Insurance" clause of its commercial general liability insurance policy as respects the City. In the event Franchisee fails to purchase or procure insurance as required above, the parties expressly agree that Franchisee shall be in default under this Agreement, and that the City may recover all losses, attorney's fees and costs expended in pursuing a remedy or reimbursement, at law or in equity, against Franchisee.

**G. FOIA.** Pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/7(2), records in the possession of others whom the City has contracted with to perform a governmental function are covered by the Act and subject to disclosure within limited statutory timeframes (five (5) working days with a possible five (5) working day extension). Upon notification from the City that it has received a Freedom of Information Act request that calls for records within the Franchisee's control, the Franchisee shall promptly provide all requested records to the City so that the City may comply with the request within the required timeframe. The City and the Franchisee shall cooperate to determine what records are subject to such a request and whether or not any exemptions to the disclosure of such records, or part thereof, is applicable. Vendor shall

indemnify and defend the City from and against all claims arising from the City's exceptions to disclosing certain records which Vendor may designate as proprietary or confidential. Compliance by the City with an opinion or a directive from the Illinois Public Access Counselor or the Attorney General under FOIA, or with a decision or order of Court with jurisdiction over the City, shall not be a violation of this Section.

**H. No Assignments or Subcontracts.** Franchisee shall not assign all or any part or its rights or obligations hereunder without City's express prior written approval. Any attempt to do so without the City's prior consent shall, at City's option, be null and void and of no force or effect whatsoever. Franchisee shall not employ, contract with, or use the services of any other architect, interior designer, engineer, franchisee, special contractor, or other third party in connection with the performance of the Services without the prior written consent of City.

**I. Compliance with Applicable Statutes, Ordinances and Regulations.** In performing the Services, Franchisee shall comply with all applicable federal, state, county, and municipal statutes, ordinances and regulations, at Franchisee's sole cost and expense, except to the extent expressly provided to the contrary herein. Whenever the City deems it reasonably necessary for security reasons, the City may conduct at its own expense, criminal and driver history background checks of Franchisee's officers, employees, subcontractors, or agents. Franchisee shall immediately reassign any such individual who in the opinion of the City does not pass the background check.

**J. Notices.** Every notice or other communication to be given by either party to the other with respect to this Agreement, shall be in writing and shall not be effective for any purpose unless the same shall be served personally or by United States certified or registered mail, postage prepaid, addressed if to City as follows: City of Evanston, 2100 Ridge Avenue, Evanston, Illinois 60201, Attention: Purchasing Division and to Franchisee at the address first above set forth, or at such other address or addresses as City or Franchisee may from time to time designate by notice given as above provided.

**K. Attorney's Fees.** In the event that the City commences any action, suit, or other proceeding to remedy, prevent, or obtain relief from a breach of this Agreement by Franchisee, or arising out of a breach of this Agreement by Franchisee, the City shall recover from the Franchisee as part of the judgment against Franchisee, its attorneys' fees and costs incurred in each and every such action, suit, or other proceeding.

**L. Waiver.** Any failure or delay by City to enforce the provisions of this Agreement shall in no way constitute a waiver by City of any contractual right hereunder, unless such waiver is in writing and signed by City.

**M. Severability.** In the event that any provision of this Agreement should be held void, or unenforceable, the remaining portions hereof shall remain in full force and effect.

**N. Choice of Law.** The rights and duties arising under this Agreement shall be governed by the laws of the State of Illinois. Venue for any action arising out or due to this Agreement shall be in Cook County, Illinois. The City shall not enter into binding arbitration to resolve any dispute under this Agreement. The City does not waive tort immunity by entering into this Agreement.

**O. Survival.** Except as expressly provided to the contrary herein, all provisions of this Agreement shall survive all performances hereunder including the termination of the Franchisee.

## **V. EQUAL EMPLOYMENT OPPORTUNITY**

In the event of the Franchisee's noncompliance with any provision of Section 1-12-5 of the Evanston City Code, the Illinois Human Rights Act or any other applicable law, the Franchisee may be declared nonresponsible and therefore ineligible for future contracts or subcontracts with the City, and the contract may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

During the performance of the contract, the Franchisee agrees as follows:

**A.** That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, or age or physical or mental disabilities that do not impair ability to work, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization. Franchisee shall comply with all requirements of City of Evanston Code Section 1-12-5.

**B.** That, in all solicitations or advertisements for employees placed by it on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, or disability.

## **VII. FRANCHISEE CERTIFICATIONS**

**A.** Franchisee acknowledges and agrees that should Franchisee or its subfranchisee provide false information, or fail to be or remain in compliance with the Agreement, the City may void this Agreement.

**B.** Franchisee certifies that it and its employees will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation

Act, the Americans with Disabilities Act (42 U.S.C. Section 1201 et seq.) and applicable rules in performance under this Agreement.

C. If Franchisee, or any officer, director, partner, or other managerial agent of Franchisee, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Franchisee certifies at least five years have passed since the date of the conviction.

D. Franchisee certifies that it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any State in the U.S., nor made any admission of guilt of such conduct that is a matter of record. (720 ILCS 5/33 E-3, E-4).

E. In accordance with the Steel Products Procurement Act, Franchisee certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the U.S. unless the City grants an exemption.

F. Franchisee certifies that it is properly formed and existing legal entity, and as applicable, has obtained an assumed name certificate from the appropriate authority, or has registered to conduct business in Illinois and is in good standing with the Illinois Secretary of State.

G. If more favorable terms are granted by Franchisee to any similar governmental entity in any state in a contemporaneous agreement let under the same or similar financial terms and circumstances for comparable supplies or services, the more favorable terms shall be applicable under this Agreement.

H. Franchisee certifies that it is not delinquent in the payment of any fees, fines, damages, or debts to the City of Evanston.

## VIII. INTEGRATION

This Agreement, together with Exhibit B, sets forth all the covenants, conditions and promises between the parties with regard to the subject matter set forth herein. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement. This Agreement has been negotiated and entered into by each party with the opportunity to consult with its counsel regarding the terms therein. No portion of the Agreement shall be construed against a party due to the fact that one party drafted that particular portion as the rule of *contra proferentem* shall not apply.

In the event of any inconsistency between this Agreement, and the Exhibits, this Agreement shall control over the Exhibits.

**IN WITNESS WHEREOF**, the parties hereto have each approved and executed this Agreement on the day, month and year first above written.

**FRANCHISEE:**

**CITY OF EVANSTON  
2100 RIDGE AVENUE  
EVANSTON, IL 60201**

By \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: City Manager \_\_\_\_\_

FEIN Number: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**FRANCHISEE PROPOSAL IN RESPONSE TO RFP #17-47**

## EXHIBIT B

### FOOD SCRAP COLLECTION PROGRAM FEE STRUCTURE

Weekly Bucket Program is based on invoice frequency noted below and customers must pre-pay for the service:

\$27 monthly

\$78 Quarterly

\$302.50 annually

Every Other Week Bucket Program:

\$20.50 monthly

\$58.50 quarterly

\$227 annually

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The unit prices listed above is for the service year starting on November 1, 2017 and ending on October 31, 2018. The unit prices in future service years will be adjusted annually based on the change in the Consumer Price Index (CPI-U) for the Midwest Urban Area, All Items. The charges for the previous 12 months are subject to a minimum 0.00% adjustment and a 3.5% maximum adjustment, such adjustment that shall be effective as of November 1st of each subsequent year this Agreement is in effect. Franchisee is permitted to aggregate increases in rates if not taken in prior years during the term. Additionally, if route density improves, a pricing decrease will be reviewed.

Franchisee must provide the food scrap containers to its customers, at no cost to the City. The number, color, size and placement of the containers are subject to the approval of the City of Evanston. Franchisee shall collect, transport and dispose of all food scrap by participating properties. Franchisee will dispose of the food scraps at a compost facility properly permitted to accept food waste.