

**ORDINANCE NO. 2020-31
CITY OF KUNA**

AN ORDINANCE OF THE CITY COUNCIL OF KUNA, IDAHO:

- **FINDINGS OF HISTORY, AUTHORITY, PURPOSE AND INTENT; AND**
- **GRANTING TO J & M SANITATION, INC. A FRANCHISE FOR SOLID WASTE AND RECYCLABLE WASTE COLLECTION SERVICE AND AUTHORIZING THE *THIRD AMENDED AND REFORMED FRANCHISE AGREEMENT*; AND**
- **DIRECTING THE CITY CLERK; AND**
- **PROVIDING AN EFFECTIVE DATE.**

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Kuna, Ada County, Idaho:

Section 1. Findings:

- 1.1 The City Council finds and states its history, authority, purpose and intentions for approval of this Ordinance as is set forth in Kuna City Council Ordinance No. 2020-30, in Sections 8-4-2 and 8-4-4 Kuna City Code and as is set forth in Section 2 of the *Third Amended and Reformed Franchise Agreement* granted pursuant to this Ordinance.

Section 2. Granting a franchise and authorizing the City to enter into the *Third Amended and Reformed Franchise Agreement* with J & M Sanitation, Inc.

- 2.1 The City Council does hereby grant to J & M Sanitation, Inc. a franchise to provide Solid Waste and Recyclable Solid Waste collection services within the city limits of the City of Kuna pursuant to that certain *Third Amended and Reformed Franchise Agreement*, a true and correct copy of which is attached to this Ordinance marked “Exhibit A” (the “Agreement”) and by this reference incorporated herein and the Mayor is hereby authorized to execute, as the authorized agent of the City, the Agreement and thereby bind the City to the terms and conditions stated therein.

Section 3: Directing the City Clerk

The City Clerk is directed to file this Ordinance in the official records of the City and to certify a copy of the same to J & M Sanitation, Inc.

Section 4: Effective Date

This Ordinance shall take effect and be in force from and after its passage, approval, and publication as required by law and at the discretion of the City Clerk and in lieu of publication of

the entire ordinance, a summary thereof in compliance with Section 50-901A, Idaho Code, may be published.

DATED this 4th day of November, 2020.

CITY OF KUNA



Joe L. Stear, Mayor

ATTEST:



Chris Engels, City Clerk



EXHIBIT A

Third Amended and Reformed Franchise Agreement

THIRD AMENDED AND REFORMED FRANCHISE AGREEMENT

THIS THIRD AMENDED AND REFORMED FRANCHISE AGREEMENT is made and entered into between The City of Kuna, a political subdivision of the state of Idaho (hereinafter the “City”) and J & M Sanitation, Inc., an Idaho corporation (hereinafter the “Contractor”).

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties do hereby agree as follows:

SECTION 1 DEFINITIONS

For all purposes of this Agreement, the following words in **bold** print that appear in this Agreement have the definitions as herein provided in this Section unless the context of the term clearly requires otherwise and is not capitalized:

- 1.1. **City:** means the City of Kuna, Idaho, party to this Franchise Agreement.
- 1.2. **City Fee Schedule:** means the fee schedule as established by the City Council pursuant to the Solid Waste Collection System Ordinance.
- 1.3. **Contractor:** means J & M Sanitation, Inc., an Idaho corporation, party to this Franchise Agreement as Contractor as defined in the Solid Waste Collection System Ordinance.
- 1.4. **Franchise Agreement:** means and refers to this franchise agreement entered into by and between the City and the Contractor pursuant to the authority, terms and conditions of the Solid Waste Collection System Ordinance.
- 1.5. **Ordinance:** means and refers to the City Ordinance granting this Franchise Agreement.
- 1.6. **Parties:** means and refers to the City and the Contractor as parties to this Franchise Agreement and the term may appear in the singular when relevant to either the City or the Contractor.
- 1.7. **Person:** means any person, firm, partnership, association, institution, limited liability company, corporation, trust and/or any other legal entity whether for profit or nonprofit, public or private, and in the plural as well as the singular.
- 1.8. **Premises:** means any parcel of real property within the City where Solid Waste is created, accumulated, stored otherwise exists.
- 1.9. **Recyclable Solid Waste:** means and refers to those Solid Waste materials which the Contractor provides written notice to the City and Premises subscriber owners and

occupiers describing the materials that such subscribers may place in the wheeled recycling cart for Contractor collection.

- 1.10 **Solid Waste:** means all materials discarded for disposal, putrescible and non-putrescible, solid and semi-Solid Waste material including rubbish, demolition and construction waste, industrial waste, vegetable solid and semi-Solid Waste, reusable or recyclable material, and other discarded solid and semi-Solid Wastes.
- 1.11 **Solid Waste Collection System Ordinance:** means and refers to Chapter 4 Title 8 Kuna City Code as adopted in City Ordinance No. 2020-30 with the short title of *Solid and Recyclable Waste Collection System and Service Ordinance*.

SECTION 2 RECITALS

The Parties recite and declare:

- 2.1 The City has the authority to grant an exclusive franchise for the collection, hauling and removal of Solid Waste and recyclable materials pursuant to Idaho Code §§ 50-329, 50-344 and pursuant to Chapter 4 of Title 8 Kuna City Code; and
- 2.2 The City and the Contractor entered into the original Franchise Agreement pursuant to City Ordinance No. 578 on or about August 13, 2001 (the “Original Franchise Agreement”), granting an exclusive franchise to the Contractor for the collection, hauling and removal of refuse, garbage and recyclable materials within the City; and
- 2.3 On April 20, 2004, the City adopted Kuna City Ordinance No. 679 establishing a mandatory system for the collection, hauling and removal of solid waste within the City and repealing portions of City Ordinance No. 578; and
- 2.4 The City and the Contractor entered into an amendment to the Original Franchise Agreement to provide, among other requirements, that Contractor is required to provide solid waste collection services for all premises in the City where solid waste is created or accumulated pursuant to City Ordinance No. 679 on or about March 18, 2014 (the “First Amendment”); and
- 2.5 The City and the Contractor entered into another amendment to the Original Franchise Agreement to provide that fees for solid waste collection would be set by resolution of the City Council and establishing a method for the collection thereof on or about November 18, 2014 (the “Second Amendment”); and
- 2.6 On November 4, 2020, the City adopted Kuna City Ordinance No. 2020-30 which repealed City Ordinances Nos. 578 and 679 and repealed Chapter 4 of Title 8 Kuna City Code and amended Title 8 Kuna City Code by the addition of a new Chapter 4 of Title 8 Kuna City Code [the *Solid Waste Collection Systems Ordinance*] which provides for the City’s establishment of a solid waste collection system and service

by franchise agreement inclusive of the mandatory standards for solid waste containers, establishing standards for collection of recyclable materials; and

- 2.7 The City and the Contractor believe it to be in their best interests to enter into this *Third Amended and Reformed Franchise Agreement* which includes, amends and supersedes the provisions of the Original Agreement as amended by the First Amendment and as amended by the Second Amendment in order to further amend to include provisions for standards for collection of recyclable materials and to make it consistent with the Solid Waste Collection System Ordinance.

SECTION 3 **GRANT OF FRANCHISE**

- 3.1 Grant of Franchise. Pursuant to the Solid Waste Collection System Ordinance, the City hereby grants an exclusive franchise to Contractor to regularly collect, haul, and remove Solid Waste and Recyclable Waste from all Premises within the City.

SECTION 4 **SOLID WASTE COLLECTION EXCLUSIVE SERVICES AND SCHEDULE**

- 4.1 Mandatory Solid Waste Collection Services. Contractor shall provide solid waste collection services for all Premises in the City in accordance with the Solid Waste Collection System Ordinance.
- 4.2 Collection Schedule. Subject to the approval of the Kuna City Council, Contractor shall have the right to set its own collection routes and pick up schedules for its Services as set forth herein.
- 4.3 The Contractor shall provide each owner or occupant of Premises with one (1) Contractor owned wheeled receptacle, ninety-five (95) gallons in volume, designed for the collection of Solid Waste by means of trucks equipped with an automated hydraulic lift (a "Wheeled Cart") for a fee as established by the City Fee Schedule. Contractor shall provide additional wheeled carts to such owners or occupants of Premises for an additional fee as established by the City Fee Schedule.
- 4.4 When the Contractor encounters Solid Waste which has not been placed in a Contractor supplied wheeled cart, or has been placed in an overloaded wheeled cart or has otherwise been left for collection in violation of the requirements of the Solid Waste Collection System Ordinance, the Contractor shall collect the Solid Waste that has been left in compliance with the requirements of the Solid Waste Collection System Ordinance and leave any other Solid Waste with a written notice affixed thereto stating a brief description of the reason for non-collection.
- 4.5 The Contractor shall provide Recyclable Solid Waste collection service to those Premises in the City for which the owner or occupant thereof has elected such service, on a voluntary subscription basis, for a fee as established by the City Fee Schedule.

- 4.5.1 The Contractor shall provide each such subscribing owner or occupant one (1) Contractor owned wheeled recycling cart for deposit of co-mingled Recyclable Solid Waste (a “Wheeled Recycling Cart”). Extra wheeled recycling carts may be obtained from the Contactor for an additional fee as established by the City Fee Schedule.
- 4.5.2 The Contractor shall, from time to time, deliver written notice to the subscribers of Recyclable Solid Waste collection service describing Recyclable Solid Waste that such subscribers may place in the wheeled recycling cart for collection.
- 4.5.3 When the Contractor encounters Recyclable Solid Waste which has not been placed in a Contractor supplied wheeled recycling cart, or had been placed in an overloaded wheeled recycling cart or has otherwise been left for collection in violation of the requirements of the City’s ordinances, the Contractor shall collect the recyclable material that has been left in compliance with the requirements of the Solid Waste Collection System Ordinance and leave any other Recyclable Solid Waste with a written notice affixed thereto stating a brief description of the reason for non-collection.
- 4.6 The Contractor shall establish regular weekly Solid Waste collection services in accordance with the Solid Waste Collection System Ordinance which services shall be exclusively provided by the Contractor.
- 4.7 Cart Placement. Contractor shall work with Premises owners and occupiers and the public in the determination of the proper location for the placement Wheeled Cart and Wheeled Recycling Cart and shall promptly address any concerns regarding their placement.

SECTION 5
SOLID WASTE COLLECTION SERVICES FOR THE CITY

- 5.1. City Solid Waste Collection. As consideration for this Franchise Agreement during its term, the Contractor shall, provide without charge, the following additional Solid Waste and Recyclable Solid Waste Collection Services and hazardous waste collection:
 - 5.1.1 unlimited Solid Waste and Recyclable Solid Waste collection for the City’s annual “Kuna Days” celebration and the City’s annual “Spring Clean Up;” and
 - 5.1.2 regular weekly Solid Waste and Recyclable Solid Waste collection services for any City owned or operated Premises; and
 - 5.1.3 a hazardous waste collection program consisting of collection events a minimum of twice each year.

SECTION 6
CONTRACTOR INDEMNIFICATION AND INSURANCE COVERAGE

- 6.1 Indemnification. Contractor shall defend, indemnify and hold the City harmless from and against any and all claims, costs, damages or expenses, including attorney fees, incurred which arise out of or are in any way related to the services performed by Contractor pursuant to this Franchise Agreement.
- 6.2 Insurance Coverages. For so long as this Franchise Agreement is in effect, Contractor shall maintain in effect a comprehensive public liability insurance policy with coverage of not less than \$500,000 combined single limit insuring against claims for bodily injury, death or property damage arising out of or relating to the Contractor's activities pursuant to this Franchise Agreement. All policies of insurance provide for herein shall be for the mutual and joint benefit and protection of the Contractor and the City and shall contain a provision that the Company issuing the insurance policy shall give the City twenty (20) days written notice in advance of any cancellation, lapse, or reduction in the amounts of insurance. Contractor shall, at the City's request, provide the City with a certificate evidencing the coverage required by this Section.
- 6.2.1 For so long as this Franchise Agreement is in effect, the Contractor shall maintain in full force and effect Employer's Liability, Worker's Compensation, Public Liability and Property Damage Insurance. Contractor shall maintain at all times the following types of insurance in at least the limits specified below:

Coverage	Minimum
Worker's Compensation	Statutory
Employer's Liability	\$2,000,000.00
Bodily Injury Liability Except Automobile	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
Property Damage Liability Except Automobile	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
Automobile Bodily Injury Liability	\$1,000,000.00 each occurrence \$2,500,000.00 aggregate
Automobile Property Damage Liability	\$1,000,000.00 each accident
Excess Umbrella Liability	\$1,000,000.00 each occurrence/aggregate

Such policies shall show the City has an additional interest and certificates of insurance shall be deposited with the City Clerk. Contractor shall promptly notify the City in writing if any required insurance policy is cancelled.

SECTION 7
FRANCHISE AGREEMENT TERM/TERMINATION

- 7.1 Term. This Franchise Agreement shall be in force and effect until midnight of September 30, 2030. Thereafter, the term shall automatically renew for successive terms of ten (10) years each unless either party gives written notice to the other party of its intent not to renew this Franchise Agreement at least one hundred-eighty (180) days prior to the expiration of the then current term; provided, however, that nothing in this section shall prohibit this Franchise Agreement from being terminated pursuant to the provisions of this Section.
- 7.2 Termination for Failure to Render Acceptable Performance. During the time that the franchise granted by this Agreement is in effect, should Contractor fail to perform any of the duties imposed upon it hereby, unless such failure is caused by circumstances beyond its control, the City may notify Contractor in writing of such failure, detailing the nature thereof, and Contractor shall correct such failure within thirty (30) days of the mailing or delivery of such notice. Upon expiration of the said 30-day notice period, the City Council may conduct a hearing to determine whether the Contractor has corrected such failure, provided that Contractor shall be given reasonable notice to show cause of the date, time and place and purpose of such hearing. At the hearing, the Contractor shall be provided a reasonable opportunity to present evidence and show cause why the Contractor has not failed to perform and/or show cause of reasonable steps taken to correct such failure. If it is established at such hearing that the Contractor's failure to perform its duties is a material breach of Contractor's obligations under this Franchise Agreement, and if it is further established that the Contractor has not taken reasonable steps in an attempt to correct such failure by the date of the hearing, the City Council may terminate this Franchise Agreement.
- 7.3 Termination for change in Contractor Stock Ownership. This Franchise Agreement shall terminate in the event a controlling interest in the Contractor is transferred or conveyed, unless such transfer or conveyance is first approved by resolution of the City Council. For purposes of this Agreement, the term "controlling interest" shall mean 50% or more of the outstanding stock of the Contractor.

SECTION 8
COLLECTION SERVICE FEES/CONTRACTOR PAYMENT

- 8.1. Fees. Fees for Solid Waste collection service and for Recyclable Solid Waste collection shall be set from time to time by resolution of the City Council. Solid Waste collection service fees and Recyclable Solid Waste collection service fees shall be billed by the City to the Premises owner or occupant, or owner's legally authorized agent [subject to the owner having provided written proof to the City of said agency].

- 8.1.1 Fees Adjustment. The City and Contractor agree that Contractor or the City may request an annual adjustment to the City-billed Solid Waste collection and/or the Recyclable Solid Waste collection service fees based upon the Consumer Price Index – Western Region Transportation, as published by the United States Department of Labor’s Bureau of Labor Statistics. The request shall be heard on or before the first City Council meeting in August in order for the City to have sufficient time to budget for the rate change and notify the customers.
- 8.2 Payments made to the City for any City-billed utility service or associated costs, shall be allocated to each Solid Waste collection and each Recyclable Solid Waste collection balance owed in the same or similar manner to that of the other city-billed utility services based upon aging (oldest to newest) on the actual percentage basis.
- 8.3 City-billed Solid Waste collection service fees and Recyclable Solid Waste collection service fees that become delinquent shall be treated in the same manner and shall be subject to the same penalties and procedures as are provided for delinquent water, irrigation and sewer bills.
- 8.4 The receipts from the payment and collection of fees for Solid Waste collection services and Recyclable Solid Waste collection services as herein provided shall be placed by the City in a special fund to be known as the “Solid Waste Fund”.
- 8.5 The Contractor shall be paid by the City from the Solid Waste Fund which payment amount shall include all the receipts deposited to said Fund, less the following (the “Net Receipts”):
- 8.5.1 Any collection costs incurred by the City (such as attorney fees and court costs) prorated and properly attributable to the collection of fees for Solid Waste collection services and Recyclable Solid Waste collection services; and
- 8.5.2 Any account balance write-offs, reallocations, or payment adjustments¹; and
- 8.5.3 The City administrative billing fee as shall be established from time to time by agreement with the Contractor, and as adopted by resolution of the City Council.
- 8.6 The City shall pay the Contractor each Friday (or as mutually agreed upon), the Net Receipts from the Solid Waste Fund received by the City as of the prior Thursday (Wednesday if Thursday is a holiday) at close of business.

¹ Contractor shall have the right to review with the City Treasurer, any account write-offs, reallocations, or payment adjustments prior to the City making any account adjustment that affects the amount that Contractor would receive under this Agreement.

SECTION 9
NOTICE

- 9.1 Notice. Notices required or contemplated under this Franchise Agreement shall be in writing and shall be deemed received when mailed by certified mail, postage prepaid, return receipt requested, to the respective parties at the following addresses:

City:

City of Kuna
ATTN: City Clerk
P.O. Box 13
Kuna, Idaho 83634

Contractor:

J & M Sanitation, Inc.
ATTN: Timothy W. Gordon
P.O. Box 225
Kuna, Idaho 83634

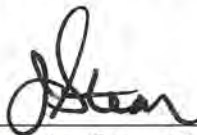
SECTION 10
MISCELLANEOUS

- 10.1 Entire Agreement. This Franchise Agreement and all exhibits hereto embody the entire Agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement supersedes all previous and contemporaneous communications, representations, and agreements, either written or verbal, between the Parties.
- 10.2 Severability. If any of the provisions of this Franchise Agreement or the related Ordinance shall be held to be unenforceable, the remaining provisions shall nevertheless be enforceable and carried into effect, unless elimination of the unenforceable provisions shall materially frustrate the intent of the Parties.
- 10.3 Amendment. No amendment, alteration or modification of this Franchise Agreement shall be effective unless made in writing and duly executed by the Parties.
- 10.4 Successors and Assigns. This Franchise Agreement shall be binding upon the Parties hereto and their respective administrators, employees, successors and assigns.
- 10.5 Force Majeure. Neither Party hereto shall be liable for its failure to perform hereunder, in whole or in part, due to contingencies beyond its reasonable control, including but not limited to acts of God or the public enemy, fire, floods, epidemics, earthquakes, quarantine restrictions, and strikes not created by Contractor, whether now existing or hereafter created.

- 10.6 Waiver. The waiver by either party of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant or condition contained in this Agreement.
- 10.7 Controlling Law. This Agreement shall be construed and interpreted in accordance with the laws of the state of Idaho and the ordinances of the City of Kuna. No term or omission of language in this Agreement shall be construed to amend or waive any provision of the regulations or the Solid Waste Collection System Ordinance. The venue for any claim, litigation or cause of action between the parties shall be Ada County, Idaho.
- 10.8 Attorney Fees. In the event any Party shall file suit or action at law or equity to interpret or enforce this Franchise Agreement, the provisions of Idaho Code Section 12-117, or any subsequent amendment or recodification of the same, shall apply to the determination of the prevailing Party and the award of reasonable attorney's fees, witness fees and other reasonable expenses.
- 10.9 Counterparts. This Agreement may be executed in counterparts, the combination of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this Agreement and made it effective as of November 4th, 2020.

CITY OF KUNA

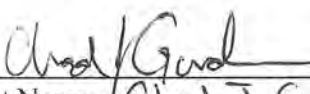
By: 
 Joe Stear, Mayor

ATTEST:


 Chris Engels, City Clerk



CONTRACTOR:
 J & M Sanitation, Inc.

By: 
 Print Name: Chad J. Gordon
 Its: Operation manager