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Franchise Agreement

Between

County Of Santa Barbara

And

[Franchisee]

For

Residential, Multi-family and Commercial

Solid Waste, Recyclables, Green Waste

And

Special Waste

Collection Services

Franchise Date:

Expiration Date:

1
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32 Contract Conventions

33

34 The text in this Agreement uses the following conventions, unless specified otherwise:

- 35 • References to **Sections and Articles** refer to Sections and Articles of this Agreement.
- 36 • References to **Subsections** are to the Section in which that Subsection occurs.
- 37 • References to **Attachments and Exhibits** refer to Attachments and Exhibits appended to
- 38 this Agreement.
- 39 • Words have the meanings defined below or in the text of this Agreement.
- 40 • Lists are numbered 1, 2, 3, etc. or use bullets.

1
 2 Text is arranged in the following outline:
 3 **ARTICLE** I, II, III, etc.
 4 **Section** 1.01, 1.02 etc.
 5 **Subsection a, b, c, etc**
 6 (1) **Subsection** etc.
 7 (i) **Sub-subsection**

8
 9 **Glossary**
 10

Defined Term	Definition / Section Cross-Reference
AB 939 or the CA IWM Act	California Integrated Waste Management Act, Public Resource Code at Section 40000 <i>et seq.</i>
abandoned waste	4.06b(1)
affiliates	<p>all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Franchisee by virtue of direct or indirect ownership interests or common management, including any or all of the following:</p> <ul style="list-style-type: none"> • Subsidiaries: a business in which Franchisee owns a direct or indirect ownership interest, • Parents: a business which has a direct or indirect ownership interest in Franchisee, and • Siblings: a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Franchisee
Agreement	This Agreement, including all exhibits and attachments, as may be amended
Annual Report	10.02a / Exhibit
Assurance of Performance	11.05
bins	containers for collection of solid waste with front end loading vehicles, such as 3 yard bins
bulky waste	<p>solid waste that cannot be contained within a cart, but can be lifted by 2 people using a dolly, including the following:</p> <ol style="list-style-type: none"> 1. furniture (such as chairs, sofas, mattresses and rugs), 2. appliances (such as refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as

	<p>“white goods”),</p> <ol style="list-style-type: none"> 3. yard wastes (such as tree branches, scrap wood), 4. clothing, and 5. up to two tires for automobiles or pick-up trucks, per set-out. <p>“bulky waste” does <i>not</i> include construction and demolition debris. <i>See also other types of solid waste (refuse, recyclables, green waste), household hazardous waste, special waste (universal waste and e-waste) and sharps.</i></p>
business day	day on which County Administration building is open for business with the public
Business Recycling Program	Exhibit 4.05(3)
CalRecycle	California Department of Resources, Recycling and Recovery
carts	Wheeled containers for storing discarded solid waste that are collected by either semi or fully automated vehicles
Change in Law	14.03a
collect, collection or other form	solid waste pickups made by Franchisee under this Agreement
commercial	used with respect to premises that are <i>not</i> residential premises, where solid waste is generated or accumulated, including any or all of the following: <ul style="list-style-type: none"> • premises owned or operated by governmental entities, and • hotels or motels
compactor	4.05(1)
container(s)	the receptacles supplied by Franchisee as part of franchise services for discard of solid waste pending collection, including the following: <ol style="list-style-type: none"> 1. carts, 2. bins, 3. roll-offs, and 4. compactors
Container Acquisition Agreement	5.03d
conversion	7.01
Conversion Facility	any facility described in Section 7.01a and identified by County
Conviction	12.01e
County	Preamble
County Board	governing body of County
County Code	County Code of Ordinances, including Chapter 17 Solid Waste Services
County Insureds	Exhibit 11.01d(3)
County Reimbursement Costs	13.05
County Representative	17.07a(1) and Exhibit 17.07a(1)
CPI	Exhibit 13.02b

Criminal Conduct	12.01c(2)
customer	anyone to whom Franchisee provides franchise services, such as owners, managers, tenants, occupants and other individuals having the care or control of any premises in the franchise service area; and County (with respect to collection of public containers and abandoned waste)
customer's collection day	4.07 (contrast "franchise collection day")
Customer Service Policy	411b and Franchisee Documentation / Exhibit 4.14
Customer Service Summary	4.13a and Franchisee Documentation / Exhibit 4.13a
day	calendar day
direct costs	13.05
Disposal Facility/Facilities	the facility described in Section 7.01 and identified by County, including any Conversion Facility
diversion	6.03
event of default	14.02
e-waste	waste that is powered by batteries or electricity (such as computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, videocassette players/recorders, compact disc players/recorders, and calculators), including CEDs (a covered electronic device as defined in California Public Resources Code Section 42463) such as the following: <ol style="list-style-type: none"> 1. cathode ray tube (CRT) device (including television and computer monitor), 2. LCD desktop monitor, laptop computer with LCD display, LCD television, 3. plasma television, 4. any other covered electronic devices listed in the regulations adopted by the California Department of Toxic Substances Control pursuant to California Health and Safety Code Section 25214.10.1(b)
franchise collection day	Monday-Saturday, except holidays (Contrast "customer's collection day".)
franchise date	Cover page
franchise fee	13.04a
Franchise Managers	12.01a and Exhibit 12.01ae
franchise obligation	Franchisee's duties to County under this Agreement (such as keeping records, giving reports, timely responding to County), including franchise services
Franchise Service Summary	Exhibit 14.03

franchise service(s)	4.01a
franchise service area	4.01a
franchise service asset(s)	5.05
franchise term	3.01
franchise year	County's fiscal year, July1 – June 30

1

Franchisee Documentation	Exhibit #`	Document
	4.03	Transition Plan (Tasks And Timeline)
	4.04a(8)	Application for Carry-Out Service: Qualifying Customer
	4.04b(2)	Business and Multi-family Recycling Plan
	4.05(3)	Business and Multi-family Recycling Program
	4.11b	Customer Service Policy
	4.13a	CUSTOMER ORIENTATION PACKET (1) <u>Customer</u> Service Summary <ul style="list-style-type: none"> • Residential Cart • Residential Bin • Commercial (2) <u>Franchise</u> Service Summary <ul style="list-style-type: none"> • Residential Cart • Residential Bin • Commercial (3) Discard and Set-Out Instructions: <ul style="list-style-type: none"> • Residential Cart • Residential Bin • Commercial
	4.16a	Form of customer bill
	5.03a	Container Specifications
	5.03b	Container Labels
	5.03c	Container Acquisition Agreement(s)
	5.05b	Container inventory
	5.07	Back-up Plan
	5.08	Hazardous Waste Handling Procedure
	8.03	Permits
	11.01	Insurance
	11.03	Letter Of Credit
	11.04	Parent Guaranty

Franchisee	Preamble
Franchisee contact Information	4.12d
Franchisee office	4.12a
Franchisee office hours	4.12a
Franchisee phone hours	4.12c
Franchisee Reimbursement Costs	8.01
Franchisee Representative	17.07b / Exhibit 17.07b
green waste	organic solid waste generated on landscapes, such as tree trimmings, grass cuttings, dead plants, leaves, branches, dead trees, and bedding straw <i>See also other types of solid waste (refuse, recyclables, bulky waste), household hazardous waste, special waste (universal waste and e-waste) and sharps.</i>
Guarantor	11.04
Guaranty	11.04
hazardous waste	5.08
Hazardous Waste Handling Procedure	5.08 / Franchise Documentation - Exhibit 5.08
<ol style="list-style-type: none"> 1. herein 2. hereof 3. hereunder 4. hereinbefore 5. hereinafter 	<ol style="list-style-type: none"> 1. in this Agreement, 2. of this Agreement, 3. under this Agreement 4. before the Franchise date 5. after the Franchise date
holidays	4.07b
household hazardous waste	hazardous waste generated in small quantities at residential premises <i>See also solid waste (refuse, recyclables, green waste, bulky waste), special waste (universal waste and e-waste) and sharps.</i>
including	“including, without limitation”, “including, but not limited to”
Indemnification	any franchise obligation to indemnify, release and hold harmless, and defend County, including under the following Sections: <ol style="list-style-type: none"> 1. 6.02 (diversion), and 2. 11.02 (franchise services).
law	8.03 / examples in Exhibit 8.03
Liabilities	11.02
key personnel	5.06a
Minimum Diversion Requirement	6.03
Monthly Report	10.02 / Exhibit 10.02
MRF(s)	the materials recovery facility defined in 6.01a and identified by

	County
multi-family	used with respect to dwellings other than single family homes, including the following: <ol style="list-style-type: none"> 1. having more than one unit (such as duplex, triplex, multi-family, apartment, stock cooperative and condominium residences, and mobile home parks, but <i>not</i> hotels or motels), 2. each with separate cooking and bathing facilities, and 3. located in the franchise service area
non-collection notice	4.10b / Exhibit 4.10b
Notice (or Notify)	notice in form required under Section 19.01 (or to give notice in that form)
“due Notice”	Notice given under Section 19.01
Organics Site(s)	the facility defined in Section 6.01a and identified by County
ownership	18.01
permits	8.03e / Exhibit 8.03e
person	any of the following: <ol style="list-style-type: none"> 1. individual, 2. firm, association, organization, 3. partnership, corporation, joint venture, 4. trust, 5. the United States, 6. the State, 7. the County, a municipality or special purpose district, or 8. other entity.
Pleas	12.01e
Position of Influence	12.01
public containers	4.06b(2)
public right-of-way	4.06(2)
Rates	13.01b
Rate Schedule	13.02 / Attachment 13.02
reasonable business efforts	efforts a reasonably prudent business person would expend under the same or similar circumstances, exercising business judgment and intending in good faith to take steps calculated to satisfy its obligations
records	the Items enumerated in Attachment 10.01
recyclables	solid waste discarded, thrown away or abandoned by the generator or owner thereof, including the following: <ol style="list-style-type: none"> 1. Plastic, including polyethylene terephthalate containers

	<p>("PET") marked "1" and high density polyethylene containers ("HDPE") marked "2", and #3-7</p> <ol style="list-style-type: none"> 2. California redemption containers 3. glass containers 4. ferrous and non-ferrous metals 5. white paper, mixed paper and newspaper 6. corrugated cardboard and chipboard 7. telephone books 8. materials commonly collected in recycling programs in the County. <p><i>See also other types of solid waste (refuse, green waste, bulky waste), household hazardous waste, special waste and sharps.</i></p>
refuse	<p>solid waste comprised of rubbish, trash and garbage</p> <p><i>See also other types of solid waste (recyclables, green waste, bulky waste), household hazardous waste, special waste (universal waste and e-waste) and sharps.</i></p>
regulatory authority	14.02
residential customer	anyone subscribing to franchise services at a residential premise
residential container (bin, cart or can)	container for discard of solid waste at residential premises(refuse, recyclables, green waste)
residential	<p>Used with respect to either or both of the following:</p> <ol style="list-style-type: none"> 1. single family residences, and 2. multi-family residences.
residential solid waste	any or all types of solid waste (refuse, green waste, recyclables, bulky waste) discarded at residential premises
roll-offs	4.05(1)
roll out services	4.01a(4)
set-out site	4.10d
Sharps	<p>any item having corners, edges, or projections capable of cutting or piercing the skin to deliver injections or for medical purposes, including the following:</p> <ol style="list-style-type: none"> 1. needles (hypodermic, pen or intravenous), 2. needles with syringes, 3. needles with attached tubing, and 4. lancets.
single family	used with respect to detached, single family homes
solid waste	<p>"solid waste "defined in CA Public Utility Code Section 40191 that is discarded in the franchise service area, including the following:</p> <ol style="list-style-type: none"> 1. refuse

	<ol style="list-style-type: none"> 2. recyclables 3. green waste, and 4. bulky waste. <p><i>See also types of solid waste (refuse, recyclables, green waste, bulky waste), household hazardous waste, special waste (universal waste and e-waste) and sharps.</i></p>
Solid Waste Program Fee	13.04b
special waste	<ol style="list-style-type: none"> 1. Universal Waste, and 2. e-waste
State	State of California
termination events	events listed in Section 15.01a
transfer	18.01b
transfer cost	18.01b
Transition Plan	4.03 / Exhibit 4.03
Uncontrollable Circumstances	14.03a
Universal Waste	<p>materials that the California Department of Toxic Substances Control considers universal waste, including materials listed in 22 CCR 66261.9, including the following:</p> <ol style="list-style-type: none"> 1. batteries 2. aerosol cans 3. certain mercury-containing devices 4. thermostats, lamps, cathode ray tubes, 5. computers, calculators, 6. telephones, answering machines, 7. radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders, compact disc players/recorders, and 8. some appliances.
vehicles	5.02a
violation	14.02
year	Means a calendar year of January 1 through December 31, <i>unless</i> a franchise year is explicitly specified

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1 **PREAMBLE**

2

3 This Agreement between County of Santa Barbara ("**County**") and Franchisee named on the
4 execution page of this Agreement, is dated the franchise date on its cover page.¹

"County" means either of the following:

1. *County of Santa Barbara, a political subdivision of the State of California, or*
2. *any governmental entity which may assume waste management obligations of County after the franchise date, including any joint exercise of powers authority or other similar public entity with which County participates or contracts with, established to provide solid waste management services or meet solid waste diversion requirements under law.*

5

"Franchisee" means the following:

1. *the signatory named and signing the execution page of this Agreement, and*
2. *anyone that is successor to Franchisee's rights or obligations under this Agreement, including anyone to whom Franchisee Transfers this Agreement.*

6

7

"party and parties" means County or Franchisee, or County and Franchisee, respectively.

8

9 **Recitals**

10

11 **PROTECTION OF HEALTH, SAFETY AND WELFARE.** The Board of Supervisors has made the
12 following findings with respect to provision of solid waste handling services, including under
13 Section 17-2 of the County Code.

14

15 Solid waste handling services, including the collection, transportation, storage, transfer, and
16 processing of solid wastes, recyclables and compostables are so closely intertwined with the
17 protection of the health, safety and welfare of the residents of this County that solid waste

¹ If this Franchise is awarded to an incumbent Franchisee, add the following language: "[It replaces any prior franchise agreement between the parties described in its **Recitals**. This agreement supersedes any prior franchise agreement *except* for the parties' respective rights, obligations, representations and warranties that survive the expiration or termination of the prior service agreement.]

1 handling services provided by private solid waste enterprises require government regulation
2 and monitoring.

3
4 It is in the public interest to foster and encourage solid waste enterprises so that, at all times,
5 there will continue to be competent enterprises willing and financially able to furnish needed
6 solid waste handling services.

7
8 The purpose of this Agreement is to insure that solid waste handling services are continuously
9 provided to the public in a safe, adequate, reliable and efficient manner.

10

11

12 **AB 939 SOLID WASTE DIVERSION**

13 **The County is responsible for meeting AB 939 Diversion requirements.** The State of California
14 has found and declared that the amount of Solid Waste generated in California, coupled with
15 diminishing landfill space and potential adverse environmental impacts from land filling, have
16 created an urgent need for State and local agencies to enact and implement an aggressive new
17 integrated waste management program. Through enactment of CA IWM Act the State has
18 directed County to promote recycling and to maximize the use of feasible source reduction,
19 recycling and composting options to reduce the amount of Solid Waste that must be disposed
20 of by land disposal; and as of the franchise date, County must divert at from landfills least 50%
21 of solid waste generated in the County. This percent may be increased under pending
22 legislation.

23

24 As of 2009 , the County has achieved over 70% diversion. By entering into this Agreement,
25 County intends and expects Franchisee at a minimum to maintain, and using reasonable
26 business efforts, increase diversion. County is relying upon Franchisee meeting the Minimum
27 Diversion Requirement under this Agreement in order to help County remain in compliance
28 with the Act.

29

30 The County anticipates that in the future it will be required to divert an even higher percentage
31 of solid waste. This Agreement gives County the right to direct changes in its recycling programs
32 and the scope or specifications of Franchisee’s recycling service, and prescribes a protocol for
33 County and Franchisee to resolve disputes over the amount of any consequent adjustment in
34 maximum Rates.

35

36

37 **RATES NOT SUBJECT TO PROPOSITION 218**

38 **The County is providing for private, not public, solid waste collection and transportation**

1 **services.** By entering into this Agreement, County meets its obligations under the CA IWM Act
2 in part by contracting with Franchisee to provide collection and transport to County-identified
3 facilities for recycling, processing and disposal of solid waste materials as required under the CA
4 IWM Act.

- 5 1. **Private Service: Franchisee bills customers and collects service charges.** Franchisee
6 provides franchise services and charges its customers for those franchise services. The
7 County is not providing public solid waste collection and transportation services nor is it
8 billing customers and collecting charges for those services. Franchise services are not
9 “public services” within the meaning of CA Constitution Article XIID, Section 2(h).
- 10 2. **The County sets only maximum customer rates.** The County is authorizing the
11 Franchisee to charge customers service charges up to the maximum amounts in the
12 Rate Schedule. The Franchisee must charge all customers that receive the same capacity
13 and frequency of collection service, the same, uniform rates.
- 14 3. **Rates are paid for franchise services, not as an incident of property ownership.**
15 There is no mandatory solid waste collection service in the franchise service area.
16 Residents and businesses can choose to self-haul solid waste or subscribe to franchise
17 services. (Businesses cannot dispose of recyclables.) The Board of Supervisors has *not*
18 exercised its authority to require that any person or responsible party residing in or
19 occupying any dwelling unit or other premises located within any area of the
20 unincorporated territory of the county which is within urban boundary lines or
21 developed rural areas, as designated in the adopted county general plan as amended
22 from time to time, must subscribe to the service of an authorized collector.

23 24 **COUNTY AUTHORIZATION**

25 **Solid Waste handling is highly regulated by federal and state governments and County is**
26 **responsible for protection of public health and the environment.** The State has not only
27 authorized but required that the County provide Solid Waste handling services to its citizens
28 under Section 40002 of the *California Integrated Waste Management Act*(California Public
29 Resources Code at Section 40000, *et seq.*, “**CA IWM Act**” and often referred to as “AB 939”),
30 including source reduction, recycling, composting activities and the collection, transfer and
31 disposal of solid waste within County boundaries subject to solid waste handling regulations
32 under Section 40057 of the CA IWM Act.

33
34 Under Section 40059(a)(1) of the CA IWM Act, County may determine all aspects of solid waste
35 handling which are of local concern, as provided in this Agreement, including:

- 36 1. frequency of collection,
- 37 2. means of collection and transportation,

- 1 3. level of services,
- 2 4. charges and fees, and
- 3 5. nature, location and extent of providing solid waste handling services.

4

5 **EXCLUSIVE FRANCHISE**

6 **State Law Authorization.** Section 40059(a)(2) of the CA IWM Act authorizes County to provide
7 solid waste handling services by means of wholly exclusive franchise, contract, license or
8 permit.

9

10 **County Code Mandate.** Under Section 17-29 (a) of the County Code all regular residential and
11 commercial solid waste handling services must be provided by a collector pursuant to an
12 exclusive franchise or contract between a collector and the county, subject to the terms and
13 conditions of Chapter 17, and the duly adopted rules, regulations and resolutions authorized by
14 Chapter 17. Any person or solid waste enterprise receiving payment for providing regular solid
15 waste handling services must have an exclusive franchise or contract with the County.

16

17 **Necessity.** It is necessary for the protection of the public health, safety, and welfare to provide
18 regular residential and commercial solid waste handling services, which may include the
19 collection and transportation of recyclables, by means of exclusive franchise or contract within
20 specified zones or territories of the unincorporated area of the County, as found by the Board
21 of Supervisors under Section 17-29 of the County Code.

22

23 **Capital Investment.** The provision of such solid waste handling services requires large capital
24 investment in trucks, equipment, and the maintenance thereof, and that unrestricted
25 competition for such services may result in the inability of a collector to provide efficient and
26 timely service without an exclusive franchise or contract to operate within a specified
27 geographic zone, as further found by the Board of Supervisors under Section 17-29 of the
28 County Code.

29

30 **Consideration.** This exclusive franchise has significant monetary value to franchisee, which
31 pays the franchise fee in consideration for County's grant of this franchise.

32

33 **COMPETITIVE PROCUREMENT**

34 **State Authorization.** Section 40059(a)(2) of the CA IWM Act authorizes County to provide solid
35 waste handling services with or without competitive bidding.

36

37 **County's Exclusive Franchise Zones.** Prior to 1997, County licensed all solid waste haulers

1 doing business in the County. In 1997, County granted exclusive franchises to haulers then
2 doing business in 5 different zones (under 17-29(d) of the County Code) without competitive
3 bidding. County and haulers negotiated the exclusive franchise agreements.

4
5 3 of those franchises expire on June 30, 2011. County has re-configured those 3 zones and
6 competitively procured this exclusive franchise Agreement to replace the expiring franchise
7 agreements. This Agreement includes new solid waste franchise services necessary to comply
8 with the CA IWM Act and other environmental laws enacted since 1997.

9
10 County grants this franchise and enters into this Agreement on the terms and conditions in this
11 Agreement as authorized by the Board under Section 17-3(c) of the County Code.

12
13 NOW, THEREFORE, in consideration of the mutual promises, covenants, guaranties and
14 conditions contained in this Agreement and for other good and valuable consideration, County
15 and Franchisee agree as follows:

16 17 18 **Article 1 Definitions And Contract Interpretation**

19
20 **1.01 Definitions.** For ease of reading, some words that are defined terms in this Agreement
21 are not capitalized, as is done in the County Code. Words in this Agreement have the meanings
22 given in the Glossary or text of this Agreement, *regardless* of whether or not they are
23 capitalized.

24 25 26 **1.02 Interpretation**

27
28 **a. Gender.** Words stated (or implied) in the masculine gender include correlative words of
29 the feminine and neuter genders, and vice versa. For example, *“he” and “she” are used*
30 *interchangeably, “customer” refers to both men and women, whether the related adjective “his”*
31 *or “her” is used. As another example, “County Representative” includes both male and female.*

32
33 **b. Headings, Font.** Any captions or headings following the Attachment, Exhibit, Section,
34 Subsection, paragraph and Article numbers and preceding the operative text of this Agreement
35 is for convenience of reference only and does not control or affect the scope, intent, meaning,
36 construction, interpretation or effect of this Agreement. Any underlined, italicized (such as
37 examples and definitions), bold-faced, upper captioned or other font style are for ease of

1 reading and contract administration only and do not in any way imply relative importance or
2 unimportance of any provision of this Agreement.

3
4 **c. References to This Agreement.** References to Articles, Sections, Subsections,
5 Attachments and Exhibits refer to this Agreement, unless specified otherwise.

6
7 **e. Specifics Not Limitation on Generalities.** The mention of any specific franchise
8 obligation may not be construed to limit or restrict any general liability or duty imposed upon
9 Franchisee elsewhere in this Agreement or under law.

10
11 **f. Ambiguities, Inconsistencies and Conflicts.** If any provisions contained in the text of
12 Articles 1 through 20 and in any Attachments or Exhibits to this Agreement are ambiguous,
13 inconsistent or conflict, the provisions of the text in Article 1 through 20 will govern.

14
15
16 **1.03 Integration.** This Agreement contains the entire agreement between the parties with
17 respect to the rights and responsibilities of the parties under this Agreement, including the
18 enforcement and administration of this Agreement. This Agreement shall completely and fully
19 supersede all prior understandings and agreements between the parties with respect to said
20 rights and responsibilities, including those contained in proposals and addendums,
21 memorandums, correspondence, telephone calls, field trips, negotiations and County Board
22 sessions.

23
24
25 **1.04 Governing Law.** This Agreement is governed by, and construed and enforced under, the
26 law of the State of California, without giving effect to the State's principles of conflicts of laws.

27
28
29 **1.05 Severability.** If any clause, sentence, provision, Subsection, Section or Article of this
30 Agreement or Exhibit to this Agreement (an "**Agreement Provision**") is ruled unconstitutional,
31 illegal, invalid, non-binding or unenforceable by any court of competent jurisdiction, then the
32 parties will do the following:

- 33 1. within one week of the ruling, meet and negotiate a substitute for that Agreement
34 Provision and any related changes to other provisions of this Agreement in order to
35 realize the parties' original intent to the greatest extent allowable under law, and
36 2. apply to the same court that made the original ruling for its judicial construction of the
37 substituted Agreement Provision and any other changes to this Agreement. Franchisee

1 will pay County half of the direct costs of the application within 10 days of County
2 request.

3
4 The unconstitutionality, illegality, invalidity, non-binding nature or unenforceability of any
5 Agreement Provision will not affect any of the remaining provisions of this Agreement. This
6 Agreement will be construed and enforced as if that Agreement Provision did not exist.

7
8 However, if any court of competent jurisdiction rules any Agreement Provision with respect to
9 County identification of any MRF(s), Organics Site(s), or Disposal Facility/Facilities,
10 unconstitutional, illegal, invalid, non-binding or unenforceable by County, then County may in
11 its sole discretion do any of the following:

- 12 1. Accept the ruling without deleting that Agreement Provision,
- 13 2. Delete that Agreement Provision and construe and enforce this Agreement under this
14 Section, or
- 15 3. terminate this Agreement.

16
17
18 **1.06 Interpretation.** Franchisee acknowledges the following:

- 19 1. It had opportunity to comment [commented] upon the form of this Agreement.
- 20 2. It submitted a proposal to provide franchise services and entered into this Agreement
21 upon its own choice and initiative.
- 22 3. It had opportunity to except [took exception to] provisions of this Agreement in its
23 proposal to provide franchise services.

24
25 Each party represents and warrants as follows:

- 26 1. It has reviewed and commented upon this Agreement with advice of its attorneys.
- 27 2. It agrees that no provision herein can be construed against County solely because
28 County prepared this Agreement in its executed form.

29
30 Therefore, this Agreement must be interpreted and construed reasonably and neither for nor
31 against either party, regardless of the degree to which either party participated in its drafting.

32
33
34 **1.07 Timely Performance**

35
36 **a. Specified Days on Weekdays.**

1 (1) **Performance.** Where this Agreement requires that an obligation be performed
2 within a specified number of days, If the last day falls on a weekend or holiday, the
3 obligated party may perform that obligation on next weekday following the weekend or
4 holiday. *For example, if Franchisee must provide documentation to County within 2 days*
5 *of County request on a Friday, Franchisee must give County the documentation by the*
6 *following Monday.*

7
8 (2) **Counting.** Each calendar day is counted when determining the last day of the
9 specified number of days. *For example, if Franchisee must provide documentation to*
10 *County within one week of County's request on a Friday, Franchisee must give County*
11 *the documentation by the next Friday.*

12
13 **b. Specified Hours on Any Day.** Where this Agreement requires that an obligation be
14 performed at a specified time, in any of the following events the obligated party must perform
15 that obligation within the specified time, *even if* the time for performance falls on a weekend or
16 holiday:

- 17 1. the specified time is measured in hours,
- 18 2. the County specifies the time (*for example, on a Saturday even though performance*
19 *would otherwise occur on Monday*), or
- 20 3. County determines that there is a threat to public health or safety.

21
22
23 **ARTICLE 2 REPRESENTATIONS AND WARRANTIES**

24
25 **2.01 Of Franchisee.** Franchisee represents and warrants under Exhibit 2.01.

26
27
28 **2.02 Of County.** County represents and warrants as of the date it executes this Agreement,
29 under Exhibit 2.02.

30
31
32 **ARTICLE 3 TERM OF AGREEMENT**

33
34 **3.01 Term**

35
36 **a. Franchise Term.** This Agreement expires on June 30, 2019, subject to extension. If

1 the business license required under Section 17-5 of the County Code remains in effect after the
2 franchise term, Franchisee nevertheless may not provide franchise services or other solid waste
3 services in the franchise service area. THIS FRANCHISEE OBLIGATIONS SURVIVES THE FRANCHISE
4 TERM.
5

“franchise term” means the period beginning on the date written on the cover of this Agreement and ending on the earlier of the expiration or termination of this Agreement.

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b. Optional County Extension Right. County in its sole discretion may extend the franchise term expiration one or more times for one or more months, not exceeding 12 months total, by giving Franchisee at least 30 days advance Notice. *For example, County could extend the expiration of the franchise date by 6 months, 3 months and 3 months.*

14 **3.02 Survival of Certain Provisions.** The following provisions survive the franchise term:

- 15 1. parties’ representations and warranties,
- 16 2. Indemnifications,
- 17 3. amounts that Franchisee owes. County or customers, including County Reimbursements
18 Costs and damages directly or indirectly payable under this Agreement,
- 19 4. any other rights and obligations of the parties accrued prior to expiration or
20 termination of this Agreement, and
- 21 5. any other rights and obligations of the parties expressly stated to survive the franchise
22 term.

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If County does not award Franchisee an agreement to continue to provide solid waste services following the expiration or earlier termination of this Agreement, Franchisee will cooperate fully with County and any subsequent services solid waste service provider(s) to assure a smooth transition from franchise services to other services, including all of the following:

- 28 1. transfer of records on County request,
- 29 2. providing reports under this Agreement,
- 30 3. allow customers to use containers for the following times:
 - 31 • up to two weeks (with respect to expiration), or
 - 32 • if County does not exercise its option to buy any or all containers, until
33 customers have replacement containers (with respect to termination), and
- 34 4. coordinating with County and any subsequent solid waste service provider to transition
35 to new service.

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3.03 Parties’ Rights. Upon expiration or termination of this Agreement, Franchisee will stop providing franchise services even if the expiration or termination occurs before the end of the period described in Public Resource Code § 49520. Franchisee acknowledges the following:

- 1. This Agreement does not grant Franchisee any rights under Public Resource Code § 49520.
- 2. Franchisee does not have the right to make any claim under Public Resource Code § 49520, but only under this Agreement.
- 3. After expiration or termination of this Agreement, County may reprocur one or more agreements for solid waste services with Franchisee or other solid waste haulers. Those agreements may be exclusive, partially exclusive, or wholly exclusive franchises, contracts, licenses, permits or otherwise, with or without competitive bidding.

Franchisee acknowledges that it has no right to recover an amount equal to the undepreciated value of assets it uses to provide franchise services that might remain at the expiration or termination of this Agreement, from County or customers.

ARTICLE 4 CUSTOMER COLLECTION SERVICES

4.01 Franchise Grant

a. Scope. County grants Franchisee the exclusive right and privilege together with the obligation to provide franchise services subject to the following conditions:

- 1. Franchisee is ready, willing and able to provide franchise services,
- 2. Franchisee fully and timely pays the franchise fees, and
- 3. No event of default has occurred.

“franchise services” means all obligations under this Agreement to County and customers in the franchise service area.

“franchise service area” means the portion of the unincorporated County under Attachment 4.01a.

- 1 **b. Exclusions.** The franchise grant excludes the right and privilege to collect the
 2 following types of solid waste:
 3

FRANCHISE EXCEPTIONS	EXAMPLES
<p>Unscheduled Solid Waste Handling Services: Solid waste that can be collected only by holders of an Unscheduled Solid Waste Handling Services permit issued under Section 17—44 of the County Code</p>	<ul style="list-style-type: none"> • One-time collection of a temporary roll-off
<p>Self-hauled solid waste: Owners and occupants of premises may remove any type of solid waste in their own vehicles in compliance with law.</p>	<ul style="list-style-type: none"> • transporting recyclables to drop-off or buy-back facilities and redemption centers, • transporting refuse to a landfill or transfer station
<p>Composted solid waste, such as green waste or other organic solid waste that is composted on premises.</p>	
<p>Incidental solid waste generated by someone who</p> <ol style="list-style-type: none"> 1. removes that solid waste from a premise as an incident of her total and primary service, and 2. who does not separately itemize the removal costs as a refuse hauling service. 	<ul style="list-style-type: none"> • construction contractors or subcontractors (such as carpenters, masons, roofers, electricians and plumbers), hauling solid waste such as debris they generate in the course of providing construction or demolition services (such as home renovation), but not debris they merely gather or collect from residential premises for transport and disposal, • hired gardeners hauling yard waste they generate, including through trimming trees, shrubs and bushes; cutting grass; and pulling weeds, and • retail stores selling furnishings, hauling solid waste such as carpet, cabinets, mattresses, home appliances and furniture that they remove following delivery of comparable new merchandise.
<p>Donated or sold solid waste (recyclables):</p>	<ul style="list-style-type: none"> • resale of bulky waste such as

<p>solid waste that the owner or occupant of a premises <u>sells</u> or <u>donates</u> to someone else (who may remove that solid waste from owner or occupant’s premises), including source separated recyclables under Section 17-18 of the County Code. The owner or occupant cannot <u>pay</u> anyone else to remove that solid waste from the premises.</p>	<p>appliances,</p> <ul style="list-style-type: none"> • donation of recyclables such as aluminum cans to a scout troop, • donation of bulky waste such as furniture to a thrift shop, if either the owner/occupant transports the furniture to the thrift shop or thrift shop picks up the furniture at the owner/occupant’s premises.
<p>solid waste generated by certain public entities, including the following:</p> <ul style="list-style-type: none"> • the State of California, • any school district, • any entity that is excluded by law from the obligation to subscribe to franchise services 	

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c. Franchise Fee

(1) Consideration. In consideration for this exclusive franchise, Franchisee will pay the franchise fee as follows:

1. simultaneously upon the parties’ signing this Agreement, an initial installment of the Franchise Fee the non-refundable amount of \$XX,XXXX² by certified check; and
2. the amount at the time and in the manner established from time to time by County ordinance or resolution of the Board of Supervisors, under Section 17-29(a)(2) of the County Code.

(2) Franchisee’s Cost of Doing Business. Franchisee acknowledges the following

1. The franchise fee is an obligation of Franchisee and not customers.
2. Franchisee pays County the franchise fee as consideration for County’s granting Franchisee this monopoly.
3. The franchise fees is one of Franchisee’s many costs of doing business, just like fuel, labor, capital investment, etc.

“Franchise Fee” means the Franchise Fee established from time to time and paid under County Code Chapter 17-29 and implementing ordinances or resolutions of the Board of Supervisors.

² Zone 3 \$45,000.

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4.02 Franchise Service Arrangements. Franchisee will independently arrange to provide franchise services at the frequency, capacity, price and other terms agreed to with its customers. Franchisee acknowledges that County is not responsible for supervising or performing franchise services. Franchisee acknowledges that customers are not obligated to discard their recyclables and that they may donate, sell or otherwise dispose of their recyclables, including taking them to drop-off facilities and donating or selling them to private or public entities.

4.03 Transition to New Franchise Services. Franchisee acknowledges that it is of the utmost importance to County that the transition from solid waste services provided prior to entering into this Agreement to franchise services will proceed smoothly to the satisfaction of customers. Therefore:

1. Franchisee will implement the Transition Plan included in Franchisee Documentation, acceptable to County. It will add shifts or authorize over-time at its cost in order to meet the schedule in the Transition Plan.
2. Beginning on the first Friday following the franchise date, each Friday Franchise will report to County on implementation status of the Transition Plan.
3. Franchisee will meet with County and County request to review implementation progress.

4.04 Residential/Multi-family

a. Carts. Franchisee will provide the franchise services under this subsection to residential customers who subscribe to carts. Franchisee will supply requested aggregate capacity of carts requested by any customer, but may consider the size and shape of the set out site with respect to the combination of 32, 64 or 96 gallon carts.

- (1) Refuse.** Franchisee will:
1. **Supply cart(s)** for discard of refuse:
 - One 32, 64 or 96 gallon cart, as customer requests,
 - additional 32, 65 or 96 gallon carts upon customer request, for additional Rate,
 2. **Weekly:** Collect cart(s) weekly from set-out site on customer’s service day, and
 3. **Holiday:** Collect up to 96 gallons of refuse discarded on customer’s service day

1 next to the refuse cart in bundles, boxes or cans (such as an approximately 32
2 gallon standard refuse can) from December 26 through January 12.
3

4 **(2) Recyclables.** Regular residential solid waste handling services includes the
5 collection and transportation of recyclables under Section 17-29 (a) of the County Code.
6 Franchisee will:

- 7 1. **Supply Cart(s)** for discard of recyclables:
 - 8 • Up to and including 192 gallons of cart capacity as customer requests, in
9 any combination of 32, 64 and 96 gallon recycling cart(s), and,
 - 10 • More than 192 gallons of cart capacity, upon customer request, in any
11 combination of 32, 64 and 96 gallon recycling cart(s), for additional rate;
- 12 2. **Bi-weekly:** Collect cart(s) every other week from set-out site on same day as
13 refuse collection.
- 14 3. **Holiday:** Collect up to 96 gallons of recyclables discarded on customer's service
15 day next to the recyclables cart in bundles, boxes or cans (such as an
16 approximately 32 gallon standard refuse can) from December 26 through
17 January 12.
18

19 **(3) [Zone 2] Green Waste.** Franchisee will provide Green Waste Services to all
20 of the following customers:

- 21 • **Required:** All single family residential customers,
- 22 • **Optional:** multi-family residential customers who request Green Waste Services,
23 for additional rate.

24 "Green Waste Services" means Franchisee will provide the following franchise services:

- 25 1. Supply cart(s) for discard of green waste:
 - 26 • Up to and including 96 gallons capacity as requested by customer, in any
27 combination of 32, 64 or 96 gallon cart(s), and
 - 28 • More than 96 gallons capacity as requested by customer, in any
29 combination of 32, 64 or 96 gallon cart(s) upon customer request), for
30 additional Rate.
- 31 2. **Weekly:** Collect cart(s) weekly from set-out site on same day as refuse collection,
32 and
- 33 3. **Extra bags:**
 - 34 • Give each customer 6 bags designed for green waste collection,
35 acceptable to County, at both of the following times;
36 (i) upon commencement of franchise service, and
37 (ii) during each following January.
 - 38 • throughout the year, pick up extra bags of green waste discarded on
39 customer's service day next to green waste cart(s),

- empty green waste from bag for diversion, and
- separately dispose of bags.

(3) [Zones 4 & 5] Green Waste. Franchisee will provide Green Waste Services to all of the following customers:

- **Required:** All single family residential customers,
- **Optional:** multi-family residential customers who request Green Waste Services, for additional rate.

“Green Waste Services” means Franchisee will provide the following franchise services:

1. Supply cart(s) for discard of green waste:
 - Up to and including 192 gallons capacity as customer requests, in any combination of 32, 64 or 96 gallon cart(s), and
 - More than 192 gallons capacity as customer requests, in any combination of 32, 64 or 96 gallon cart(s) upon customer request), for additional Rate.
2. **Bi-Weekly:** Collect cart(s) every other week from set-out site on same day as refuse collection,
3. **Extra bags:**
 - Give each customer 6 bags designed for green waste collection, acceptable to County, at both of the following times;
(i) upon commencement of franchise service, and
(ii) during each following January.
 - throughout the year, pick up extra bags of green waste discarded on customer’s service day next to green waste cart(s),
 - empty green waste from bag for diversion, and
 - separately dispose of bags.

(4) Extra Items. Franchisee will:

1. Twice each year, collect unlimited amounts of following items discarded curbside (or other location agreed to between Franchisee and customer) within 5 franchise service days of residential customer request, on day specified to customer:
 - **Bulky waste**
 - **Special waste**
 - **E-waste.**
2. Three or more times each year, collect bulky waste, special waste and e-waste in the manner described in the preceding item, for additional Rate.
3. **Avoid breakage:** do not compact or tip items from trucks. Use flat bed trucks (or other truck acceptable to County),

1 4. Deliver items to facilities that provide the following services, in the following
2 order of priority:

- 3 • reuse “as is”,
- 4 • disassembly for reuse or recycling,
- 5 • recycling,
- 6 • disposal.

7
8 **(5) Batteries.** Franchisee will:

- 9 1. Collect batteries discarded in clear plastic bags provided by residential customer
10 and laid on top of residential recyclables carts, and
- 11 2. reuse or process batteries (not dispose of them).

12
13 **(6) Christmas Trees.** Franchisee will:

- 14 1. Collect Christmas trees discarded next to green waste carts during January 1-14,
15 and
- 16 2. Collect Christmas trees discarded next to green waste carts after January 14, for
17 an additional Rate.

18
19
20 **“Christmas Trees”** means trees stripped of tinsel, flocking and artificial
21 ornamentation.

22
23
24 **(7) Sharps.** Upon residential customer request, Franchisee will provide for disposal
25 of sharps generated through personal (not business or commercial) use, including the
26 following:

- 27 1. containers designed for discard of sharps, that comply with law and acceptable
28 to County,
- 29 2. shipping boxes with pre-paid postage,
- 30 3. pre-addressed labels, and
- 31 4. pre-paid disposal.

32
33 **(8) Curbside / Carry-out Service.** Franchisee will provide Carry-Out Services
34 upon request of a qualifying customer in form attached as Franchisee Documentation.
35 Franchisee will provide Carry-Out Service upon request of a customer who is *not* a
36 qualifying customer for an additional Rate.

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"qualifying customer" means any residential customer meeting the following criteria:

1. *Has handicapped status recognized by the California Department of Motor Vehicle, or*
2. *provides letter from physician attesting to disability, and*
3. *provides written representation that neither he nor anyone else residing in the serviced premises is functionally able to roll carts to the curb.*

(9) County-approved Franchise Services. Franchisee may provide franchise services approved by County, in addition the franchise services in this subsection, for the Rate approved by the County, such as different frequency or materials type (*for example, collection of refuse twice each week from single family residences like condominiums or town houses whose landscape service collects green waste*).

b. Bins. Franchisee will provide the franchise services under this section to both single family and multi-family residential customers who subscribe to franchise service in bins.

(1) Refuse. Franchisee will:

1. **Supply** 1.5, 2, 3 or 4 cubic yard bins for discard of refuse upon customer request), and
2. **Weekly:** Collect bins as frequently as requested by customer, at least weekly from set-out site on customer's service day(s).

(2) Recyclables. Franchisee will:

1. **Supply:** Supply recycling containers in type and capacity chosen by customer:
 - 96 gallon cart(s) or 1.5, 2, 3 or 4 cubic yard bins, up to and including 30% of the capacity of customer's weekly refuse disposal service,
 - Additional cart(s) or bins for additional Rate.
2. **Bi-Weekly:** Collect container(s) every other week from set-out site on same day(s) as refuse collection, and
3. **Business and Multi-Family Recycling Plan:** implement its Business and Multi-family Recycling Plan under Franchisee Documentation in Exhibit 4.04b(2).

(3) [Zone 2] Optional Green Waste for Additional Rate. Franchisee will:

1. **Supply Container:** Supply 96 gallon cart or 1.5, 2, 3 or 4 cubic yard bin, as customer requests, for prescribed Rate.
2. **Weekly:** Collect container(s) every week from set-out site on same day as

1 refuse collection.
2

3 **(3) [Zone 4 & 5] Optional Green Waste for Additional Rate**

4 . Franchisee will:

- 5 1. **Supply Container:** Supply 96 gallon cart or 1.5, 2, 3 or 4 cubic yard bin, as
6 customer requests, for prescribed Rate.
7 2. **Bi-Weekly:** Collect container(s) every *other* week from set-out site on
8 same day as refuse collection.
9

10 **(4) Extra Items.** Franchisee will collect the following materials twice each year at
11 customer request (who may be the owner or property manager of a multi-family
12 premise):

- 13 1. bulky waste, special waste and e-waste under subsection a(4), and
14 2. batteries under subsection a(5) laid next to bulky items.
15

16 **(5) Christmas Trees.** Franchisee will collect Christmas trees under subsection
17 a(6), discarded next to customer's refuse bin
18 .

19 **(6) Sharps.** Upon customer request, Franchisee will provide for disposal of sharps
20 under subsection a(7).
21

22 **(7) Optional Manure for Additional Rate.** Franchisee will do the following at
23 customer option, for the additional Rate:

- 24 1. **Supply** 96 gallon cart or 1.5, 2, 3 or 4 cubic yard, as requested by customer, for
25 discard of manure, and
26 2. **Weekly:** Collect bins as frequently as requested by customer, at least weekly
27 from set-out site on day(s) agreed upon with customer.
28

29 **"Manure"** means solid waste comprised of animal dung or excrement,
30 including straw or other bedding material.
31

32
33 **4.05 Commercial.** Franchisee will provide the franchise services under this subsection to
34 commercial customers.
35

36 **(1) Refuse.** Franchisee will:

- 37 1. **Supply** the following containers for discard of refuse upon customer request:
38 • 32, 64 or 96 gallon cart(s),

- 1.5, 2, 3 or 4 cubic yard bins, or
 - roll-offs , and
2. **1-6 Times Weekly:** Collect the following from 1 to 6 times each week, as requested by customer (but at least weekly) from, set-out site on customer’s service day(s):
- container(s) supplied by Franchisee, and
 - compactors that might be provided by customer.

“**compactor**” ,means a receptacle for discard and storage of solid waste pending collection, containing a ram that pushes and compresses waste into a container or bale.

(2) **Recyclables Collection for Additional Rate**

(i) **County Recyclables Disposal Ban.** Franchise acknowledges that although the County requires that businesses recycle, businesses do not have to subscribe to franchise services from Franchisee for collection of recyclables; businesses have 3 recycling options:

1. Donating or selling their recyclables (such as paper or cardboard),
2. Self-hauling recyclables to buy back/drop off centers, or
3. Subscribing to franchise services for an additional Rate.

(ii) **Franchise Services for Recyclables.** Franchisee will provide the following franchisee services to customers for the additional Rate:

1. **Supply Container(s):** Supply recycling containers in the following type and capacity chosen by customer:32, 64 or 96 gallon cart(s) or 1.5, 2, 3 or 4 cubic yard bins.
2. **1-6 Times Weekly:** Collect the following from 1 to 6 times each week, as requested by customer (but at least weekly) from, set-out site on customer’s service day(s):
 - container(s) supplied by Franchisee, and
 - any compactor provided by customer, and
3. **Business and Multi-family Recycling Program:** implement its Business Recycling Program under Franchisee Documentation in Exhibit 4.05(2) and comply with the compliance protocol under Chapter 2, Section 2-100 of the County Code Rules and Regulations with respect to Chapter 17 of the County Code.

1
2 (iii) **State Mandatory Commercial Recycling.** Franchisee acknowledges
3 that as of the franchise date, CalRecycle is developing regulations that will
4 require mandatory recycling at commercial premises (and perhaps multi-family
5 “dwelling units” under this Agreement). Franchisee will assist both customers
6 and County customers to comply with the regulations.
7

8 (3) **[Zone 2] Optional Green Waste for Additional Rate.** Franchisee will
9 provide the following franchisee services to customers for the additional Rate:

- 10 1. **Supply Container(s):** Supply 96 gallon cart or 1.5, 2, 3 or 4 cubic yard bin, as
11 customer requests.
12 2. **Weekly:** Collect container(s) every week from set-out site on same day as refuse
13 collection.
14

15 (3) **[Zone 4 & 5] Optional Green Waste for Additional Rate.** Franchisee
16 will provide the following franchisee services to customers for the additional Rate:

- 17 1. **Supply Container(s):** Supply 96 gallon cart or 1.5, 2, 3 or 4 cubic yard bin, as
18 customer requests.
19 2. **Bi-Weekly:** Collect container(s) every *other* week from set-out site on same day
20 as refuse collection..
21
22

23 4.06 Public Services

24 a. Illegal Dumping

25
26
27 **[Zone 2] (1) On-call.** Franchisee will collect no more than 10 tons of
28 abandoned solid waste discarded along roads at locations identified by the County,
29 without charge to customers or County and upon request of the County no more than
30 40 times each franchise year at the following times:

- 31 1. **Before Noon:** If County contacts Franchisee by noon on a weekday, Franchisee
32 will collect abandoned solid waste that same day.
33 2. **Afternoon:** If County contacts Franchisee after noon on a weekday, Franchisee
34 will collect abandoned solid waste by the end of the following weekday.
35

36 **[Zone 4 & 5] (1) On-call.** Franchisee will collect no more than 25 tons of
37 abandoned solid waste discarded along roads at locations identified by the County,

1 without charge to customers or County and upon request of the County no more than
2 100 times each franchise year at the following times:

- 3 1. **Before Noon:** If County contacts Franchisee by noon on a weekday, Franchisee
4 will collect abandoned solid waste that same day.
- 5 2. **Afternoon:** If County contacts Franchisee after noon on a weekday, Franchisee
6 will collect abandoned solid waste by the end of the following weekday.

7
8
9 **“Abandoned Waste”** means solid waste (other than scattered litter such as paper,
10 plastic bags and food packaging), comprised of:

- 11 1. boxes, bags or bundles, and
- 12 2. bulky items.

13
14 **(2) Cooperating with County.** Franchisee will cooperate with County in any
15 investigation and prosecution of illegal dumping.

16
17 **(3) Litter clean up.** Franchisee will clean up litter within a 10 foot radius of each
18 abandoned solid waste collection site.

19
20 **(4) Diversion.** Franchisee will use reasonable business efforts to divert the
21 abandoned solid waste that it collects.

22 23 **b. Public Trash Cans.**

24
25 **(1) Location and Frequency.** Franchisee will collect the following franchise
26 services, without charge to customers or County:

- 27 1. Provide containers for the public’s discard of refuse, acceptable to County, at the
28 following locations:
 - 29 • Metro Transit District bus stops identified on Exhibit 4.06b(1), and
 - 30 • No more than 10 additional locations identified by County.
- 31 2. Collect those containers weekly.

32
33 **(2) Container Handling, Placement and Bags.** Franchisee will:

- 34 1. handle each litter container with care;
- 35 2. after emptying each litter container, set it adjacent to the bus stop upright,
36 without obstructing any passable driveway, sidewalk or street; and
- 37 3. provide and replace trash bags acceptable to County.

1 **(2) Litter Clean Up.** Franchisee will clean up litter within a 5 foot radius of each
2 litter container.
3
4

5 **4.07 Collection Times and Schedules.**
6

7 **a. Times.** County establishes the following times, as authorized under Section 17-30(d) of
8 the County Code.
9

10 **(1) Residential Areas.** Franchisee will provide collection in residential areas at the
11 following times:

- 12 1. Monday through Friday between 6:00 a.m. and 6:00 p.m., and
13 2. Saturday between 7:00 a.m. and 6:00 p.m.
14

15 **(2) Commercial and Industrial Areas.** Franchisee will provide collection in Commercial
16 and industrial residential areas at the following times:

- 17 1. Monday through Saturday between 5:00 a.m. and 6:00 p.m., or
18 2. no sooner than 6.a.m. if directed by County when a resident complains of noise.
19

20 **b. Schedule**
21

22 **(1) Holiday Schedule.** Franchisee will provide collection scheduled for a holiday on the
23 franchise collection day immediately following the holiday. Franchisee will provide affected
24 customers advance written notice of that change in all of the following manners:

- 25 1. in affected customers' bill immediately preceding the holiday,
26 2. by email to customers who have provided email addresses, and
27 3. in the newsletter sent to customers before the holiday.
28

29 *"holidays" means holidays designated from time to time by County, comprised on the*
30 *franchise date of the following:*

- 31 1. *New Year's Day,*
32 2. *Memorial Day,*
33 3. *Independence Day,*
34 4. *Labor Day,*
 5. *Thanksgiving and*
 6. *Christmas.*

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(2) Changed Schedule. Franchisee will notify each customer of any change in that customer’s service day in each of the following manners:

- 1. on a tag attached to each residential customer’s container on that customer’s collection day immediately preceding the change;
- 2. on phone or in person to a commercial customer the week before the change,
- 3. by email to customers who have provided email addresses. and
- 4. any other manner and time requested by County.

4.08 Container Service

a. Provided by Franchisee. Franchisee will provide customers with the following receptacles for storage of discarded solid waste pending collection, approved by County:

- 1. all containers (*except* compactors) for all customers
- 2. green waste bags for residential customers
- 3. sharps containers, boxes and labels for residential customers.

b. Delivery, Pick-up and Exchange

(1) Service Commencement; Lost or Stolen Containers. Franchisee will deliver containers to the set-out site no later than the next franchise collection day after customer request and ensure that each customer has a container for solid waste discard during the days remaining prior to customer’s collection day.

(2) Service Termination; Change in Subscription Levels. Franchisee will pick up, exchange, increase or decrease the number of containers at the set-out site no later than the next customer’s collection day after customer request to terminate service or change service levels:

- once each year, and
- the second or more times in a year, for the additional Rate.

For example, Franchisee will pick up containers if a customer terminates service when moving from his premises. Franchisee will exchange a 96 gallon refuse cart for a 64 gallon refuse cart, and deliver an additional 96 gallon recyclables cart, if customer requests that change.

1
2 **c. Repair or Replacement.** Franchisee will maintain and repair all containers, and
3 comply with Section 17-8(g) of the County Code. On the next customer's collection day after
4 any customer or County request, Franchisee will repair or replace containers that are damaged
5 or constitute a threat to public health and safety (including keeping out rodents, flies and other
6 vectors). County determination of whether a container must be repaired or replaced will bind
7 Franchisee.

8
9 **d. Annual Cleaning of Commercial Bins.** Franchisee will clean bins at commercial
10 premises at the following times:

- 11 1. All containers, once each year upon customer request, and
- 12 2. 2 or more times each year for the additional Rate.

13
14 **e. Collection and Emptying of Containers.** After emptying each container
15 Franchisee will replace it in its set-out site.

16
17
18 **4.09 Service Standards.**

19
20 **a. General.** Franchisee will perform all franchise services in a prompt, thorough,
21 comprehensive, reliable, courteous and professional manner so that customers receive high-
22 quality franchise service at all times. Franchisee must perform franchise services regardless of
23 weather conditions and regardless of difficulty of collection, subject to the exceptions under
24 Section 4.04. Particular specifications in this Agreement do not relieve Franchisee of its duty
25 and obligation to accomplish all other aspects of franchise services in the manner provided in
26 this subsection, whether or not those other aspects are enumerated elsewhere in this
27 Agreement.

28
29 **b. Litter and Leaks**

30
31 **(1) Customer.** If Franchisee repeatedly observes littered solid waste outside a
32 container set out for collection, Franchisee will do the following:

- 33 1. discuss ways to prevent litter directly with the customer who subscribes to those
34 containers, and
- 35 2. if the problem persists, report its discussion to County.

1 **(2) Franchisee**

2
3 **(i) *Solid Waste.*** Franchisee will comply with Section 17-21 of the County
4 Code and immediately clean up all solid waste spilled, scattered or littered while
5 performing franchise services, including:

- 6 1. lifting and emptying containers, and
7 2. driving from or between collection stops and tracking solid waste onto
8 any alley, street or public place.

9 **(ii) *Liquids.*** Franchisee will not allow hydraulic fluid or other liquid to leak
10 from any vehicle and will immediately clean up any leaks. Franchisee will keep a
11 record of leaks including type, amount and action taken to clean it up.

12
13 **(iii) *Equipment and supplies.*** Franchisee will equip each vehicle with a
14 broom, shovel and absorbent material.

15
16 Franchisee will clean up litter and leaks by 8:00 p.m. on the day County requests, or County
17 may clean it up and Franchisee will reimburse County for County Reimbursement Costs.

18
19 Franchisee will pay fines for improperly covering loads assessed by the operator of
20 MRF(s), Disposal Facility/Facilities, Organics Site(s) or anyone else.

21
22 **c. Respect for Property**

23
24 **(1) Private Property.** Franchisee will do the following:

- 25 1. use due care in entering and exiting customers' property or enclosures,
26 2. use paved walks or surfaces where practicable and avoid crossing private or
27 public landscaped areas,
28 3. *not* jump over hedges and fences,
29 4. after making collections, close all gates it opened.

30
31 Within 2 days of receiving customer notice (oral or written) of any damage, Franchisee
32 will determine whether or not the damage to customer's property was caused by the
33 inattention, carelessness or negligence of Franchisee's employees. Within 3 days of
34 making its determination that it was responsible for the damage, Franchisee will
35 reimburse customer her direct costs of repairing or replacing damaged property.
36 However, Franchisee may request the customer to give Franchisee a waiver of damage
37 liability and/or indemnification if customer specifically directs Franchisee to drive on

1 private driveways or pavement in the course of providing franchise service.

2
3 Franchisee will include description of any customer notice of damage, including status of
4 resolution, in its Monthly Report.

5
6 **(2) Containers**

7
8 **(i) *Care.*** Franchisee will handle containers carefully. Franchisee will
9 not throw or drop containers from trucks or roughly handle, damage or break
10 them.

11
12 **(ii) *Placement.*** Franchisee will return containers to within 5 feet of
13 the location from which they were picked up, upright, without obstructing any
14 passable driveway, sidewalk or street.

15
16 **(3) Pavement and Utilities**

17 **(i) *Pavement.*** Franchisee is responsible for damage to driving
18 surfaces [where containers are located on public or private property], other than
19 ordinary wear and tear, when County or customer can demonstrate to
20 satisfaction of County either of the following:

- 21 1. a vehicle driven on the damaged surface exceeded the maximum weight
22 limits under law, or
23 2. Franchisee operated the vehicle negligently.

24
25 **(ii) *Utilities.*** Franchisee is responsible for damage to [public and
26 private] utilities[, whether located on public or private, streets or property,]
27 when County or customer can demonstrate to satisfaction of County that
28 damages are the result of the inattention, carelessness or negligence of
29 Franchisee.

30
31 **(iii) *Repair or Replacement.*** County or customer may do either of the
32 following:

- 33 1. direct Franchisee to repair or replace damaged pavement or utilities to
34 satisfaction of customer or County within one week of direction, or
35 2. repair and replace them itself or through a third party.

36 In either event, Franchisee will reimburse customer his or her direct costs of

1 repair or replacement and County its County Reimbursement Costs of repair or
2 replacement.

3
4 **d. Noise.** Franchisee will conduct collection as quietly as possible. Franchisee will resolve
5 any noise complaints to County satisfaction within 2 days of County request.

6
7
8 **4.10 Service Exceptions and Non-Collection Notices**

9
10 **a. Non-collection.** Franchisee is *not* required to Collect solid waste in the following
11 events, when it must take the following actions:

12

Collection Exception	Actions: Non-Collection Notice
Contaminated materials: customer has discarded materials <i>other</i> than the following: <ul style="list-style-type: none">• recyclables in the recyclables container,• green waste in the green waste container (including manure, <i>unless</i> the Organics Site process green waste mixed with manure), or• manure in a manure container (including green waste, <i>unless</i> the [Organics Site or Disposal Facility] process green waste mixed with manure).	<ol style="list-style-type: none">1. Attach a non-collection notice, marked to explain the reason for non-collection, together with2. information listing examples of recyclables or green waste, and how to discard them.
Setting container out on wrong day (for example, setting out a recyclables cart on the week when Franchisee does not collect recyclables)	Attach a non-collection notice, marked to explain the reason for non-collection
Uncontainerized Solid Waste: solid waste discarded outside a container <i>unless</i> allowed under this Agreement, including the following: <ol style="list-style-type: none">1. bulky waste,2. bags of green waste, and3. Christmas trees.	<ol style="list-style-type: none">1. Attach notice to uncontainerized materials or customer's adjacent container, marked to explain the reason for non-collection together with2. together with a Franchise Service Summary that explains when, where and what uncontainerized

	materials customer may discard
Excess Weight: container in excess of weight limits posted on container	Attach notice to container marked to explain the reason for non-collection.
Hazardous Waste. Franchisee determines that containers contain hazardous waste (other than household hazardous waste not discovered and identified by Franchisee acting under its Hazardous Waste Handling Protocol)	<ol style="list-style-type: none"> 1. Implement Hazardous Waste Protocol, 2. Attach notice to container marked to explain the reason for non-collection containing hazardous waste, if safe, 3. attempt to personally provide the customer with written information about the proper disposal of hazardous waste prior to leaving customer's premises, and 4. report to County in Monthly Report.
Improper Set-out Site: container is not placed in either of following locations: <ol style="list-style-type: none"> 1. At the curb of a residential premises, or 2. If no curb, edge of residential premises abutting street, or 3. For Rollout Services, at the spot agreed upon between customer and Franchisee and noted in the customer subscription records. 	Attach notice to improperly placed container, marked to explain the reason for non-collection
Health or Safety Threat: Franchisee determines that any condition at or near any set-out site presents a health or safety threat to Franchisee's employees.	Immediately notify the customer. Upon County authorization, Franchisee will discontinue collection until the threat is eliminated.

- 1
- 2 **b. Notice.** Franchisee will include the preceding information in the Non-collection Notice.
- 3 When Franchisee leaves a Non-collection Notice, it will mark the reason that it did not collect
- 4 the solid waste.

“Non-collection Notice” means the notice prescribed in this Section and in Franchisee Documentation, acceptable to County.

5

1 **c. Report.** Franchisee will report the non-collection to the County by the next franchise
2 collection day.

3
4
5 **4.11 Missed Pickups and Other Complaints .** Franchisee acknowledges that County
6 determined to procure and enter into this Agreement with Franchisee for reasons including
7 providing high quality customer service, relations and satisfaction.

8
9 **a. Timeliness.** On the next franchise collection day after customer or County complaint
10 (such as a missed pickup), Franchisee will take resolve the complaint acceptably to customer or
11 County (including providing a special pickup).

12
13 **b. Customer Service Policy**

14
15 **(1) Records.** Franchisee will maintain a daily written record of communications
16 between customers and Franchisee related to franchise service orders, complaints and
17 disputes. Franchise will include information requested by County, including the
18 following:

- 19 1. date and time communication was made,
- 20 2. individual's name and address (if she is willing to give this information,
- 21 3. description of the communication), and
- 22 4. date and description of response to communication (or reason for non-
23 response), including resolution of any complaint or dispute.

24
25 Franchisee will give County access to those records during Franchisee office hours by
26 either or both of the following means, at County option:

- 27 1. at Franchisee office, or
- 28 2. electronically.

29
30 **(2) Resolution.** Franchisee will handle complaints and resolve disputes (including
31 billing disputes) under its Customer Service Policy.

32
33 **c. Reimbursement of County Cost.** Franchisee acknowledges that County is not
34 responsible for taking, responding or resolving customers' questions, complaints and disputes,
35 including the following:

- 36 1. missed pickups,

- 1 2. billing disputes,
- 2 3. notice of commingling green waste or recyclables with refuse,
- 3 4. reports of noise, litter, damage. or
- 4 5. requests for information on franchise services, such as dates of bulky waste collection,
- 5 holiday schedules, permissible items of green waste or recyclables, etc.
- 6

7 However, if County chooses to take, respond or resolve any question, complaint or dispute,
8 Franchisee will reimburse County Reimbursement Costs that County incurs in excess of the
9 following times:

- 10 1. **5 hours/complaint:** more than five hours resolving a particular customer's complaint, or
- 11 2. **2 hours/week:** more than two hours in any work week (Monday through Friday)
- 12 resolving one or more customer complaints.
- 13
- 14

15 **4.12 Means of Communicating with Customers and County**

- 16

17 **a. Franchisee office.** Franchisee will maintain an office ("**Franchisee office**") within the
18 franchise service area. Franchisee will keep its office open at a minimum from 8:00 a.m. to 5:00
19 p.m. weekdays, *except* holidays ("**Franchisee office hours**"). During Franchisee office hours, a
20 representative of Franchisee must be available for receiving the County Representative (and
21 individuals accompanying County Representative), customers and the public.

22 **b. E-mail**

23
24
25 **(1) Franchisee's.** Franchisee will maintain an email address for the following
26 purposes:

- 27 1. correspondence with customers and County, and
- 28 2. paying bills on line.
- 29

30 **(2) Customers'.** Franchisee will record customers' email addresses.

31
32 **c. Phone.** Franchisee acknowledges that customers' contact with Franchisee's employees
33 by telephone is critical in establishing and maintaining good customer service, relations and
34 satisfaction.

35

1 **(1) Phone Hours.** Franchisee will answer the telephone at the following times:

- 2 1. at least during Franchisee office hours, and
- 3 2. if Franchisee provides collection on Saturday, from 8:00 a.m. to noon on
- 4 Saturdays ("**Franchisee's phone hours**").

5
6 Franchisee will provide an answering machine or answering service to take messages of
7 calls received outside of Phone Hours. Franchisee must answer messages no later than
8 the following franchise collection day.

9
10 **(2) Toll-free Number.** Franchisee will list its toll-free telephone number under
11 Franchisee's name in County telephone directories (white pages and yellow pages).

12
13 **(3) Emergency Number.** Franchisee will also maintain a local emergency telephone
14 number disclosed to County Representative and any other individual named by County
15 for use outside Franchisee's phone hours. Franchisee will return any call made to that
16 number as soon as possible, and not less than one hour.

17
18 **(4) Response Standards.** Franchisee will comply with the response standards under
19 this subsection.

20
21 **(i) Phone Tree.** An automatic phone tree cannot have more than two
22 options, such as:

- 23 1. speaking to an operator in Spanish (English being the default, which the
- 24 caller does not have to choose), or
- 25 2. indicating if the caller is a residential or commercial customer.

26
27 **(ii) Answer Time.** Franchisee will answer all incoming calls as follows:

- 28 1. 80% by a live operator within 4 rings, or
- 29 2. giving the caller the option of leaving a voice mail message. Franchisee
- 30 will respond to all messages that same day.

31
32 **(iv) Records and Checks.** Franchisee will install a call tracking system capable
33 of the following:

- 34 1. logging all incoming calls,
- 35 2. recording the length of time callers are put on hold,
- 36 3. recording calls that hang up,
- 37 4. aggregating individual records and generating cumulative performance

1 reports.
2 County may evidence Franchisee’s compliance with - or breach of - these phone
3 response obligations based on the following:
4 1. the phone logs, or
5 2. County’s check:
6 • at least 3 calls within one week, or
7 • at least 10 calls within one month.
8

9 **d. Posting Contact Information.** Franchisee will post its Contact Information on all of
10 its written communications with customers, including:
11 1. bills,
12 2. Customer Service Summary,
13 3. Franchise Service Summary,
14 4. non-collection notices, and
15 5. newsletters.

“Franchisee Contact Information” means all of the following:
1. Franchisee office and office hours,
2. Franchisee’s toll-free phone number and phone hours,
3. Franchisee’s web site and email address.

20
21

22 **4.13 Education and Public Relations**

23
24 **a. Customer Orientation Packet**

25
26 **(1) Service Commencement**

27
28 **(i) Delivery.** Franchisee will produce a Customer Orientation Packet and
29 attach it to a container in a clear bag when Franchisee delivers container(s) to a
30 new customer. Franchisee will prepare a separate Customer Orientation Packet
31 for each of the following franchise services:

- 32 1. residential customers who subscribe to carts,
33 2. residential / multi-family customers who subscribe to bins,
34 3. commercial customers.

1
2 (ii) **Content.** Franchisee will include the following in each Customer
3 Orientation Package under Franchisee Documentation in Exhibit 14.03a:

- 4 1. Form of Customer Service Summary,
5 2. Form of Franchise Service Summary, and
6 3. Form of Discard and Set-out Instructions.

7
8 **“Customer Orientation Packet”** means the information under Exhibit 4.13a.
9

10
11 (2) **Annually.** Annually, Franchisee will give each customer the following in the
12 same way that Franchisee sends that customer bills:

- 13 1. a copy of its Customer Service Summary, and
14 2. notice that customer can obtain a copy of the Franchise Service Summary on
15 Franchisee’s web site or upon request.
16

17 **b. Educational Materials**
18

19 (1) **Quarterly Newsletter.** Franchisee will produce a quarterly newsletter
20 designed to promote safe waste handling, recycling and diversion. Franchisee will email
21 the newsletter to each of the following customers who:

- 22 1. receive their bills on-line, and
23 2. request electronic communication.
24

25 (2) **Additional Information**
26

27 (i) **County Request.** Franchisee will produce and distribute additional
28 educational materials on County request.
29

30 (ii) **Franchisee Initiative.** Franchisee may also produce and distribute
31 additional materials on its own initiative.
32

33 (3) **Mandatory Business Recycling.** Franchisee will annually produce and
34 distribute information to all its commercial and multi-family customers describing the
35 County’s Mandatory Business Recycling Program and the benefits of recycling, under the
36 attached Commercial Recycling Program.

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c. Web Site. Franchisee will maintain a web site with content acceptable to County.

Franchisee will post all of the following information on its web-site:

1. the Franchise Service Summary and other information about franchise services,
2. a copy of the current rate schedule,
3. link to the County’s lessismore.org web site,
4. link to programs or facilities where customer can legally discard special waste (including e-waste) and hazardous waste,
5. Franchisee’s contact information, and
6. other information related to waste management upon County request.

4.14 Customers' Privacy. Franchisee will strictly observe and protect customers' rights of privacy under this Section and law.

a. Customers’ Solid Waste. Franchisee will not reveal information identifying individual customers or the composition or contents of a customer's waste stream to anyone unless upon request of a regulatory authority, as required by law or receipt of valid customer authorization. This provision will not be construed to preclude Franchisee from preparing, participating in or assisting in the preparation of waste characterization studies or waste stream analyses requested by County.

b. Customer Lists. Franchisee will not market, sell, convey, or donate to anyone any list with the name or address of customers *except* in the following circumstances:

1. upon request of a regulatory authority,
2. as required by law, or
3. following receipt of valid customer authorization.

4.15 No Discrimination. Franchisee will not discriminate against customers on the basis of race, color, national origin, ancestry, religion, creed, physical handicap, medical condition, marital status or sexual orientation.

1 **4.16 Franchisee Billing**

2
3 **a. Schedule**

4
5 **1. Presentment**

- 6 • **Timing.** Franchisee will calculate each customer’s bill based on the Rates for that
7 customer’s franchise service and present it at the following times:
8 ○ Residential cart customers, bi-monthly in advance,
9 ○ All other customers (whether bin or cart), monthly in arrears.

10
11 Franchisee will present the bill no sooner than the first day of the billing period. (*For*
12 *example, a residential bill dated January 1 will be for the upcoming month of*
13 *January and February.*)

- 14 • **Means.** Franchisee will offer customers the option of receiving and paying bills
15 by postal service or on-line at the postal or e-mail address printed on bills.
16 • **County Sample.** At the same time it presents customers’ bills, Franchisee will
17 send County a sample bill copy, including inserts or announcements.
18 • **Format.** Franchisee will distribute bills in the format under Franchisee
19 Documentation.

- 20 **2. Payment.** Bills must be payable only to the order of Franchisee, and no one else,
21 including affiliates. Bills payable in advance must be paid on the last day of the service
22 period after presentation (*for example, a residential bill is dated January 1, will be*
23 *payable by February 28*). County is not liable for paying any customer’s bill or
24 delinquencies. Franchisee releases County from any liability to compensate Franchisee
25 for providing franchise service to any customer.

26 **3. Delinquency**

- 27 • Residential bills paid in advance must become delinquent after the date payment
28 is due, upon prior notice to customer (*for example, if the residential bill is dated*
29 *January 1, after February 28*).
30 • Commercial bills paid in arrears must become delinquent no sooner than 30
31 days, *unless* County accepts an earlier date (*for example, if the commercial bill is*
32 *dated January 1, after February 28*).
33 • **Late Payment Charges.** Franchisee may charge a customer a late payment fee in
34 the amount of 1.5% per month (not compounded) on all or a portion of invoiced
35 but unpaid amounts from the due date until the date paid, *including* on amounts
36 that customer withheld pending resolution of a dispute with Franchisee, but

1 which Franchisee subsequently determined the customer owed to Franchisee.
2

3 4. **Suspension of Service.** Franchisee may suspend or terminate franchise service for
4 failure to fully pay bills at the following times:

- 5 • 90 days after the date of a residential bill,
- 6 • 30 days after the date of a commercial bill,

7 Franchisee may charge a deposit equal to one month's Rate to re-commence providing
8 service on a suspended or terminated account.

9 5. **Refunds.** Franchisee will refund to customer overcharges (including advance payments
10 for franchise services that customer subsequently canceled) within 30 days of the
11 following times:

- 12 • Franchisee's receipt of customer payment, or
- 13 • Franchisee's discovery of the overcharge.

14 Franchisee will pay interest at 10% per annum from the date originally overcharged until
15 the date refunded, or lesser amount acceptable to County.
16

17 **b. County Right to Bill.** County may provide billing services on no less than 180 days
18 Notice to Franchisee, with corresponding Rate reduction of \$1.00 per customer.
19

20 **c. Billing County Fees.** Franchisee will bill customers the Solid Waste Program Fee in
21 effect on the franchise date and any other Solid Waste Program Fees requested by County.
22 Franchisee will add the Solid Waste Program Fee to the Rate it charges customers for franchise
23 services.
24

25 **d. Aggregate Rates and Fees.** Franchisee may *not* identify or itemize any Solid Waste
26 Program Fee or Franchisee Fee separately from the Rate, including any of the following:

- 27 1. communication with customers (including the Franchise Service Summary, franchise
28 service bill or other correspondence) or
- 29 2. public posting .
30

31
32 **4.17 Customer Satisfaction Survey.** County may conduct customer service satisfaction
33 surveys. Franchisee may review and comment upon the survey form and content. Franchisee
34 will cooperate with County and its surveyor in conducting the survey. Franchisee may obtain a
35 copy of the survey results.
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ARTICLE 5 OPERATIONS

5.01 Route Maps, Schedules and Audits

a. Route Maps and Schedule. Within 7 days of County request, Franchisee will give County any or all of the following documentation:

- 1. maps showing Franchisee's refuse, recyclables and green waste collection routes, and
- 2. route sheets listing the following information,
 - customers' names and addresses,
 - levels of franchise service, and
 - day and approximate time (morning or afternoon) of pickup.

At least 30 days prior to any route changes, Franchisee will give County revised maps and route sheets.

c. Route Audits. Franchisee will cooperate with County route audits of vehicles that collect solid waste in County, including the following:

- 1. allowing County to follow the vehicles, and
- 2. with Franchisee consent, ride in the vehicles.

5.02 Vehicles

a. Air Emissions. As a contractual obligation (even if Franchisee is not obligated to do so under law), by December 31, 2013 Franchisee will use only vehicles that meet the State's 2010 emission standards for heavy duty diesel vehicles, including:

- 1. PM-standard = 0.01 grams per brake-horsepower-hour (gm/bhp-hr), and
- 2. NOx standard = 0.20 gm/bhp-hr.

b. Noise

(1) Limits. Franchisee will ensure that its vehicles do not generate noise during stationary compaction in excess of the following levels, whichever is more stringent:

- 1.
 - 75 decibels
 - at a distance of 25 feet from the collection vehicle

- measured at an elevation of five feet above ground level
 - using the "A" scale of a standard sound level meter at slow response, or
2. law.

(2) **Tests.** Franchisee will conduct noise tests by someone certified by the Board of Certified Safety Professionals (who may be an employee of Franchisee) at both of the following times:

1. within 7 days of County request, and
2. within one month of submitting its Annual Report.

Franchisee will give County a written copy of the testing results.

County may conduct random noise checks, and Franchisee will cooperate with County.

(3) **Safety.** Within 2 franchise service days of County request, Franchisee will give County a copy of its vehicle maintenance log and any safety compliance report, including the following:

1. any report issued under Division 14.8 of the California Vehicle Code (Section 34500 *et seq.*), and
2. the biennial "BIT" inspections conducted by the California Highway Patrol.

“vehicles” means all trucks (including trucks providing refuse, recyclables, green waste, bulky waste and litter pickup, field supervisors and administrator’s vehicles), rolling stock and other vehicles used to provide franchise services (including collection as well as repair and maintenance), whether owned or leased by Franchisee.

c. **Vehicle Identification**

(1) **Lettering**

(i) **Mandatory.** Franchisee will place the following information on every Vehicle in letters and figures at least three inches high in colors that contrast with the background:

1. Franchisee’s name (not an affiliate’s), *unless* Franchisee immediately informs County that Franchisee has substituted another vehicle without Franchisee’s name to temporarily provide collection when the vehicle that Franchisee usually uses for collection in the County is undergoing repair;

2. toll-free telephone number; and
3. unique vehicle number.

(ii) **Permitted.** Franchisee may place safety instructions on vehicles.

(iii) **Prohibited.** Franchisee will *not* place any other words (such as County name) or pictures (such as County logo) without County consent.

(2) **Permit.** Franchisee will clearly display its County permit in the front window of every collection vehicle.

d. Vehicle Maintenance. Franchisee will maintain vehicles in clean condition and good repair so that they operate properly and safely.

(1) **Inspections.**

(i) **CHP.** Franchisee will have the California Highway Patrol inspect each vehicle under law.

(ii) **County.** Franchisee will conduct additional inspections (such as brake testing) within one week of County request. Franchisee acknowledges that County may – but is not required to - inspect vehicles.

(2) **Appearance.** Franchisee acknowledges that it is important to County that Franchisee present a professional and pleasing image.

(i) **Wash and scrub.** Franchisee will wash and scrub vehicles clean at all of the following times:

1. each franchise service day, with respect to the bonnets of front-end loading vehicles,
2. as often necessary to preserve and maintain a professional and pleasing image, and
3. within 2 days of County request.

(ii) **Paint.** Franchisee will paint vehicles at both of the following times:

1. annually, and
2. within 30 days of County request.

1 **(3) Oil Recycling, Re-refined Oil.** Franchisee will recycle all used oil from its vehicle
2 maintenance operations and make reasonable business efforts to use re-refined oil.

3
4 **(4) Spare Vehicles.** Franchisee will maintain a sufficient number of spare vehicles,
5 fully fueled and ready to dispatch, to replace any vehicle that breaks down on route so
6 that customer service is minimally delayed.

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9 **5.03 Containers**

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11 **a. Specifications.** Franchisee will acquire containers meeting specifications listed in
12 Exhibit 5.03a and attached as Franchisee Documentation. Prior to submitting orders for new
13 containers to the manufacturer, Franchisee will give County copies of container orders for
14 County review and acceptance.

15
16 **b. Labels.** Franchisee will label each cart with the information listed in Exhibit 5.03b and
17 attached as Franchisee Documentation (with respect to “Cart Specifications and Labels”)
18 acceptable to County.

19
20 **c. Container Acquisition Agreements.** Franchisee acknowledges that County must
21 have full use and possession of carts in order to secure its rights under this Agreement,
22 including the following:

- 23 1. purchase unamortized refuse and green waste carts at the end of the Term,
24 2. provide substitute franchise service under Section 14.10, and
25 3. purchase carts under Section 15.02.

26
27 Therefore, if Franchisee does not own carts outright without encumbrance, any cart Acquisition
28 Agreement must allow the Guarantor, County or County designee to do all of the following:

- 29 1. assume Franchisee's obligations under the Container Acquisition Agreement,
30 2. take use and possession of the containers, and
31 3. obtain the benefits of any outstanding container warranties.

“Container Acquisition Agreement” means an instrument establishing a security interest in the carts or otherwise that encumbers or limits Franchisee's interest in containers, including any of the following:

1. lease or lease-purchase agreement,
2. installment sales or other financing contract, or
3. note or other loan documentation.

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d. Inventory. Franchisee will store unused containers in a secure location. Franchisee will update its container inventory at the following times:

1. in each Monthly Annual Report, or
2. within one week of County request.

5.04 Facilities

a. Requirements. If Franchisee locates its operations and maintenance facilities in County, it will do the following:

1. comply with laws, including zoning laws,
2. provide ample entrance and exits for vehicles, and avoid vehicles queuing on public streets,
3. enclose facilities with fencing,
4. maintain its facilities, including adjacent landscape, in a neat, clean and presentable manner, including regular sweeping for litter,
5. park, fuel, maintain and repair vehicles in the parking area of the facilities and not on County streets, and
6. provide cleaning facilities designed with paved and curbed areas that direct drainage to a catch basin connected to a sanitary sewer system or a holding tank and prevent drainage to surrounding areas.

b. County Entry Rights. Franchisee will allow County to enter Franchisee's operation and maintenance facilities during Franchisee office hours upon two hours' prior telephone or facsimile notice, and investigate, observe, inspect and review Franchisee's operations.

c. Compliance with Law. Franchisee will maintain a rating of Satisfactory (S) (or better) by the California Highway Patrol's Biennial Inspection of Terminals (BIT).

1
2 **5.05 Franchise Service Asset Requirements.**
3

4 **a. Franchise Service Asset.** Franchisee will finance, procure, repair and maintain
5 without any compensation in excess of its Rate, at its own cost and expense, franchise service
6 assets (including vehicles and containers it supplies to customers) which in number, design, and
7 capacity, are sufficient to enable Franchisee to perform franchise services without interruption,
8 including providing customers with their requested capacity cart. If any useful part of the
9 franchise service asset is damaged or destroyed, as expeditiously as possible Franchisee will
10 commence and diligently repair or replace that service asset and restore it to the extent
11 required to perform franchise services.
12

“franchise service assets” means all property of Franchisee used directly or indirectly in performing franchise services, including the following:

1. *vehicles,*
2. *containers,*
3. *software and hardware to maintain customer subscription records and complaint logs, and billing,*
4. *routing software and hardware, and*
5. *maintenance equipment and facilities, administrative equipment and offices and related supplies.*

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15 **5.06 Personnel**
16

17 **a. Key Personnel³.** Franchisee acknowledges that providing franchise services are
18 personal in nature, since it requires continuous and extensive communication between
19 Franchisee's personnel and County staff, and knowledge of County streets, terrain, and contract
20 requirements under this Agreement (including reporting). Therefore, no later than 30 days
21 prior to change in the following personnel, Franchisee will use reasonable business efforts to
22 notify County:

- 23 1. Franchisee Representative,
- 24 2. Route Supervisor,
- 25 3. County liaison in Franchisee's financial accounting department responsible for

³ Proposers, staff that you name in your proposals will be listed here.

- 1 submitting reports with respect to franchise fees, and
2 4. County liaison responsible for submitting reports with respect to Franchisee's diversion
3 of solid waste in County.
4

5 In its notice to County, Franchisee will include the name and professional qualifications of the
6 replacement personnel. Upon County request given within 30 days of receiving notice,
7 Franchisee will propose an alternative individual.
8

9 Within 10 days of County request at any time, Franchisee will replace Franchisee
10 Representative.
11

12 **b. Driver.** Franchisee will take the following actions:

- 13 1. give everyone who drives vehicles or operate other equipment for collection suitable
14 operational and safety training, including on-job-training by supervisors, and keep
15 complete training records,
16 2. train sufficient numbers of drivers to drive all collection routes so there is no lapse of
17 franchise services,
18 3. use reasonable business efforts to assign the same driver(s) to identified routes in order
19 to encourage accountability and enhance customer relations,
20 4. give each driver a cell phone to keep in contact with Franchisee's customer service
21 representatives, operation and maintenance personnel and the route supervisor,
22 5. carry out drug and alcohol testing, and keep complete testing records, and
23 6. make certain that all drivers have in full force and effect a valid license of the
24 appropriate class issued by the California Department of Motor vehicles, and keep
25 Photostat copies of licenses.
26

27 **c. Field Route Supervisor.** Franchisee will assign qualified personnel to supervise field
28 operations in the franchise service area, including:

- 29 1. checking that collection meets program specifications under this Agreement,
30 2. making collection improvements,
31 3. resolving field problems (*such as reports of commingling green waste or recyclables with*
32 *refuse*), and
33 4. responding to complaints of customers in person or by telephone (*such as missed*
34 *pickups, noise, litter*).
35

36 Franchisee will give the route supervisor a cell phone to keep in contact with Franchisee's
37 customer service representatives, operation and maintenance personnel, County, and drivers.

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b. Identification, Appearance, Conduct. Franchisee will ensure that all of its personnel who come into contact with the public present a neat, tidy and orderly appearance.

c. Soliciting Gratuities Prohibited. Franchisee will not permit its personnel to demand or solicit, directly or indirectly, any additional compensation or gratuity from customers or any members of the public.

d. Nondiscrimination. Franchisee will not discriminate against any personnel on the basis of his or her race, color, national origin, ancestry, religion, creed, physical handicap, medical condition, marital status or sexual orientation.

e. Compliance with Law. Franchisee will comply with law, including keeping records of compliance with the Federal Immigration and Control Act of 1986.

A citation or failure-to-abate notice from the California Division of Occupational Safety and Health is a breach of this Agreement.

5.07 Back-up Plan. If franchise service is interrupted, within 24 hours of County request Franchisee will implement its back up plan in Franchisee Documentation.

5.08 Hazardous Waste Handling

a. Driver Observation. Franchisee will use reasonable business efforts to screen all solid waste for hazardous waste when tipping containers into vehicles, such as using driver observation in mirrors when tipping carts in front of the vehicle.

b. Hazardous Waste Handling Procedure. Franchisee will follow its Hazardous Waste Handling Procedure in Franchisee Documentation.

c. Inadvertent Delivery of Hazardous Waste. If Franchisee inadvertently delivers materials to any facility that comprise hazardous waste, Franchisee will take the following actions:

- 1 1. make a good faith, best effort to identify and contact the customer that discarded the
- 2 hazardous waste, and recover the hazardous waste handling costs, and
- 3 2. cooperate with the facility owners or operators to arrange for proper disposal under
- 4 law.
- 5

“Hazardous Waste” is a material which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged, or any waste which is regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, including:

1. *“Hazardous Waste”* pursuant to Section 40141 of the California Public Resources Code, regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code, all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or recodification of said statutes or regulations promulgated there under, including 23 California Code of Regulations Sections 2521 and 2522,
2. materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the solid waste disposal Act Amendments of 1980), and related federal, State and local laws and regulations,
3. materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal, State and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.,
4. materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., as amended, and regulations promulgated there under,
5. materials regulated under any future additional or substitute federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or hazardous waste, and
6. Household Hazardous Waste.

9 If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste", for purposes of collection, transportation, processing and/or disposal, the broader, more restrictive definition is employed for purposes of this Agreement.

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“Household Hazardous Waste” means any hazardous waste generated incidental to owning or maintaining a place of residence, excluding any hazardous waste generated in the course of operation of a business concern at a residence, under Section 25218.1 of the California Health and Safety Code.

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ARTICLE 6 DIVERSION

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6.01 MRF(S) and Organics Site(s)

a. Identified Diversion Facilities.

(1) **Recyclables and Green Waste.** Franchisee will transport and deliver all recyclables to the MRF(s) and all green waste (including Christmas trees) to the Organics Site(s) identified by County and comply with Section 17-11(b) of the County Code (“Scavenging Prohibited”). As of the franchise date,

1. the MRF(s) is XXX located at XXX, and the parties deem the distance to that MRF(s) to be XX measured from a centric located at xx, and
2. the Organics Site(s) is XXX located at XXX, and the parties deem the distance to that Organics Site(s) to be XX measured from a centric located at xx.

“MRF(S)” means the materials recovery facility for either or both sorting and processing recyclables (whether source separated or commingled) identified by County.

A change in designation that results in a different distance (greater or less) from the centric measured by the shortest available route on roads that collection vehicles may travel, is a change in franchise services under Article 9.

(2) **Manure.** Franchisee will transport and deliver all manure to the site that it identifies, acceptable to County. As of the franchise date, this site is XXX.

(3) **Universal Waste and E-waste.** Franchisee will transport and deliver all universal waste and e-waste to the facility/facilities it identifies, acceptable to County. As of the franchise date, this facility is / facilities are: XXXXX.

1 **b. Weighing and Record Requirements.** Franchisee will cause a weigh master who is
2 certified under law to weigh all recyclables and green waste upon delivery to the MRF(s) and
3 Organics Site(s), and record the following information:

- 4 1. weight and material type,
- 5 2. delivery date and time,
- 6 3. route and truck number, and
- 7 4. driver name and any identification number.

10 **6.02 Diversion Defense and Indemnification**

11
12 **a. Defense.** Franchisee will contribute up to a maximum of \$10,000 of County direct
13 costs in the following events:

- 14 1. **Failure to divert:** Franchisee fails to meet its Minimum Diversion Guaranty, or
- 15 2. **Failure to report:** Franchisee fails to timely submit reports, or within 2 days of County
16 request, give County records that contain information that must be included, directly or
17 indirectly, in reports that County must timely submit under law, and
- 18 3. **Meeting:** County offers to meet with Franchisee to discuss the relationship, if any,
19 among Franchisee failures, County potential fines or penalties, and Franchisee's
20 potential liabilities to County under this Section.

21 Franchisee's defense obligation is limited to its Allocable Fault.

“Allocable Fault” means the ratio of the following:

1. *the amount of solid waste collected by Franchisee under this Agreement during the period that County failed to meet the diversion goals, determined under Section 6.03d, to*
2. *the total amount of solid waste collected in County.*

24 **b. Indemnification**

25
26 **(1) Conditions.** Franchisee agrees to indemnify and hold harmless County
27 from and against all fines and penalties imposed by CalRecycle if the diversion
28 goals specified in California Public Resources Code Section 41780 are not met,
29 upon the occurrence (or non-occurrence) of all of the following events:

- 30 1. **Failure to divert or report:** Franchisee fails to meet its Minimum

1 Diversion Guaranty, to timely submit reports under Section 10.02, or
2 within 2 days of County request, give County records that contain
3 information that must be included, directly or indirectly, reports required
4 to be timely submitted by County under the California Public Resources
5 Code,

- 6 2. **SRRE / PRC 40059.1(c)(1):** the fine or penalty is not based solely upon
7 the failure of County to establish and maintain a Source Reduction and
8 recycling Element as required by Public Resources Code Section
9 40059.1(c)(1), as established, recited, declared, found or determined by
10 CalRecycle, and
11 3. **Administrative relief / PRC 40059.1(c)(5):** County has affirmatively
12 sought in good faith, all administrative relief available pursuant to
13 Chapter 6 (commencing with Section 47680) and Chapter 7 (commencing
14 with Section 41800) of part 2 of the Public Resources Code, *unless* County
15 demonstrates good cause, based on substantial evidence in the record,
16 for not pursuing that administrative relief. The parties agree that good
17 cause includes County estimate that County Reimbursement Costs of
18 seeking administrative relief exceed fees that County budgeted to fund
19 implementation of County Source Reduction and Recycling Element.
20

21 **(2) Apportionment by Fault.** Franchisee's indemnity obligation for fines and
22 penalties will be apportioned by fault between County and Franchisee, in both of the
23 following events:

- 24 1. **Franchisee's breach or noncompliance / PRC 40059.1(c)(2):** the fine or penalty
25 results from Franchisee's breach of this Agreement (such as failing to meet the
26 Minimum Diversion Guaranty) or noncompliance with any other authorization
27 (such as Franchisee's County permit conditions).
28 2. **County Act or Inaction / PRC 40059.1(c)(3):** Franchisee breach or noncompliance
29 did *not* result from action or inaction of County.

30 If CalRecycle does not apportion the percentage of relative fault, Franchisee fault will be
31 Franchisee Allocable Fault.
32

33 **(3) Causation Limitation / PRC 40059.1(c)(4):** Franchisee's indemnity obligation for
34 fines and penalties will be limited to the portion of fines and penalties caused by
35 Franchisee's breach of or non-compliance of an express obligation or requirement. If
36 CalRecycle does not make any determination with respect to causation, but Franchisee
37 did breach an express provision of this Agreement (such as the Minimum Diversion

1 Guaranty) or fail to comply with an express requirement (such as provisions of County
2 Code) the portion will be Franchisee Allocable Fault.

3
4 **c. Survival.** FRANCHISEE’S DEFENSE AND INDEMNIFICATION OBLIGATIONS PROVIDED IN
5 THIS SECTION SURVIVE THE FRANCHISE TERM.
6

7 8 **6.03 Diversion**

9
10 **a. Maximizing Diversion.** Franchisee will use reasonable business efforts to maximize
11 recycling, processing, marketing and diversion of solid waste.

“divert” or “diversion” means “diversion” defined in Section 40124 of the California Public Resources Code that entitles County to credit under Section 41780 of the California Public Resources Code.

12 13 **b. Minimum Diversion Requirement**

14
15 **(1) Percentage.** *Each franchise year Franchisee divert at least xx%⁴ by weight of all*
16 *solid waste that it collects under this Agreement (the “Minimum Diversion*
17 *Requirement”).*

18
19 **(2) Merit-based Compensation.** If Franchisee fails to meet the Minimum Diversion
20 Requirement, Franchisee’s compensation for providing franchise services may be
21 reduced by County in County’s sole discretion, by denying Franchisee’s request for a
22 Rate increase effective the following franchise year.

23
24 **(3) Remedies.** If Franchisee fails to meet the annual Minimum Diversion
25 Requirement, County may terminate this Agreement.
26

27 **b. Measurement of Minimum Diversion Requirement.** Compliance with the Minimum
28 Diversion Requirement is measured by calculating the percentage that solid waste that
29 Franchisee diverted comprises of Franchisee's total solid waste collected, whether in containers
30 or, with respect to bulky waste, at a customer’s set-out site. *Examples of diverted solid waste*
31 *include the following:*

⁴ Proposers, see % for each Zone listed in RFP.

- 1 1. *recyclables that are diverted at MRF(s),*
- 2 2. *green waste that is diverted at Organics Site(s),*
- 3 3. *refuse that is diverted at any Conversion Facility, and*
- 4 4. *any type of solid waste that is diverted at disposal Facilities (such as bulky waste sorted*
5 *on the floor of a transfer station or tires removed from refuse at a landfill) .*

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Minimum Diversion Requirement = diverted solid waste / collected solid waste, or

1. diverted:
 - recyclables +
 - diverted green waste [conversion (if any)], +
 - bulky waste or other that Franchisee sorts for diversion at its operations yard, /
2. collected
 - recyclables +
 - green waste +
 - refuse (including any conversion).

“Identified MSW Facility” means a facility defined in Section 40194 of the California Public Resources Code, including the following:

1. *the MRF(s),*
2. *the Organics Site(s),*
3. *any Conversion Facility,*
4. *the Disposal facility/facilities*
5. *the manure site,*
6. *the universal waste and e-waste facility/facilities.*

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c. Corroboration of Diversion

(1) Reports. The amount of diverted solid waste is the sum of the number of tons (allocable to County) of each type of solid waste that an Identified MSW Facility Diverts and reports, including the Facility’s reconciliations with diversion and disposal data reported to the State disposal Reporting System (“**DRS**”). Conversely, County may calculate or direct Franchisee to calculate the amount of diverted tons based upon tons of residual remaining after processing of any type of solid waste, as allocable and reported to County.

1 **(2) Primary Source Documentation.** Alternatively, County may calculate, or direct
2 Franchisee to calculate, the amount of any type of diverted solid waste based upon
3 diverted tons that a solid waste Processing Facility Diverts, corroborates in written
4 documentation, which is the basis of the reports described in Subsection (d)(1),
5 acceptable to County including the following from transporters, shippers, brokers,
6 beneficiators, remanufacturers and purchasers or other users:

- 7 1. weigh tickets,
- 8 2. invoices,
- 9 3. bills of lading, and
- 10 4. receipts.

11
12 County may request different or additional documentation under subsection (e), if
13 Franchisee commingles solid waste. Franchisee will provide County with copies of
14 documentation within 7 days of County request.

15
16 **d. Determination of Collected Materials**

17
18 **(1) Reports.** In its Monthly Reports and Annual Reports Franchisee will report the
19 following:

- 20 1. **Reported data (MSW Facility / Franchisee):** MSW Facility Tonnage, including:
 - 21 • recyclables that are diverted at recyclables Processing Facilities,
 - 22 • green waste that is diverted at green waste Processing Facilities,
 - 23 • refuse that is diverted at conversion Facilities not owned or operated by County, and
 - 24 • refuse that is disposed at disposal Facilities not owned or operated by County.
- 25 2. **Reconciled data (DRS):**
 - 26 • MSW Facility Tonnage, reconciled with
 - 27 • County DRS Tonnage reviewed and reconciled under subsections (d)(2) and (3).

28
“MSW Facility Tonnage” means County’s allocable portion of solid waste Tonnage that Franchisee delivers to each MSW Facility for disposal or diversion, including either of the following:

- 1. Tonnage that the MSW Facilities report to Franchisee, or*
- 2. other Tonnage agreed to between MSW Facilities and Franchisee).*

“County DRS Tonnage” means County’s solid waste Tonnage that the DRS report attributes to County.

29
30 **(2) Franchisee Preliminary Review of County Tonnage Reported to DRS.**

1 Franchisee will request each MSW Facility not owned or operated by County to send
2 Franchisee a copy of Tonnage that the MSW Facility submits to the DRS before or
3 simultaneously with submission to the DRS.
4

5 **(3) Reconciliation of Discrepancies**
6

7 **(i) *County Request.*** County may request Franchisee to report on Tonnage
8 discrepancies, including the following:

- 9 1. discrepancies *within* one of Franchisee's reports to County, or
10 2. discrepancies *between* Franchisee's reports to County and records from any MSW
11 Facility or the DRS.
12

13 **(ii) *Franchisee Response to County's Request.*** Within 15 business days of
14 County request, Franchisee will submit the following information to the County:

- 15 1. identification of the nature and source of the discrepancy, and
16 2. proposed method and schedule for resolving the discrepancy.
17

18 **(iii) *Franchisee Reconciliation.*** Franchisee will resolve the discrepancy within
19 45 days of County's request under Sub-subsection (i).
20

21 **(iv) *County Reimbursement Costs.*** Within one week of upon County request,
22 Franchisee will pay County its County Reimbursement Costs incurred to resolve or
23 identify discrepancies to satisfaction of County if Franchisee does not do *either or both*
24 of the following:

- 25 1. report on the discrepancy within 15 business days of County request,
26 2. resolve the discrepancy within the scheduled time accepted or directed by the County.
27

28 **(4) *County Reimbursement Costs.*** Within one week of County request, Franchisee
29 will pay County its County Reimbursements Costs incurred with respect to correcting
30 Franchisee reporting errors, including:

- 31 1. errors that Franchisee did not correct in the County DRS Tonnage data that the MSW
32 Facility submits to the Franchisee for review under Subsection (d)(2), and
33 2. discrepancies that Franchisee did not timely identify or resolve under Subsection (d)(3).
34

35 County Reimbursement Costs include preparing and sending the following:

- 36 1. corrected documentation to the affected parties, and
37 2. a disposal Report Modification Request to CalRecycle.
38

39 **e. *Allocation of Commingled Materials.*** If Franchisee commingles any type of solid waste
40 with materials generated or collected outside the franchise service area, Franchisee will

- 1 allocate solid waste to County under a protocol satisfactory to County, at the following times,
2 1. in Annual Reports, and
3 2. in any Annual Report for succeeding calendar years, if different than the protocol
4 applied in the previous calendar year.

5
6 Within one week of County request, Franchisee will give County information supporting the
7 allocation, including the following:

- 8 1. route collection maps and sheets,
9 2. total number of cans, carts and bins by size and capacity, and
10 3. assumed weight per refuse, recyclables and green waste container.

11
12 If County is dissatisfied with the allocation protocol, calculations or supporting information, it
13 may revise the protocol, redo calculations and use its own sources of information. Franchisee
14 will be bound by County revisions.

15
16 **e. Diversion Plan.** Franchisee will implement its Diversion Plan under
17 Franchisee Documentation in Exhibit 6.03. Franchisee will revise its Diversion
18 Plan in conjunction with any change in scope of franchise services (for example,
19 addition of a new program in response to increased State diversion
20 requirements).

21
22 **6.04 Enforcement of Anti-Scavenging Laws.** Franchisee will cooperate with County in
23 enforcing anti-scavenging laws, including instituting civil actions against a person alleged to
24 have violated Section 41950 of the CA IWM Act for treble damages, as measured by the value
25 of the material removed, or a civil penalty of not more than one thousand dollars, whichever is
26 greater, for each unauthorized removal, under Section 41953 of the CA IWM Act.

27
28
29 **6.05 No Commingling.** Franchisee will not mix refuse, recyclables or green waste. parties
30 acknowledge that customers might not cooperate with collection programs and might discard
31 refuse, recyclables or green waste together in the same container.

32
33
34 **6.06 CRV Payments to County.** Franchisee will annually pay 100% of the CRV payments
35 that Franchisee reported to CalRecycle under its registration to operate a curbside recyclables
36 program and receives from the California Department of Conservation for recyclables that

1 Franchisee collected in the franchise service area, calculated in a manner acceptable to the
2 County.

3

4 **ARTICLE 7 DISPOSAL**

5

6 **7.01 Transportation to Disposal Facility/Facilities.**

7

8 **(1) Identification.** Franchisee will transport refuse to the disposal facility/facilities
9 identified by County. As of the franchise date, the disposal facility is XXX.

10

11 **(2) Compliance.** Franchisee will observe and comply with all regulations in effect at
12 the disposal facility/facilities and cooperate with the operator thereof with respect to
13 operations thereat, including directions to unload collection vehicles in designated
14 areas, accommodating construction and maintenance, and hazardous waste exclusion
15 programs. Franchisee will at all times operate according to safe industry practices.

16

17

18 **ARTICLE 8 MISCELLANEOUS SERVICE PROVISIONS**

19

20 **8.01 Emergency Services.** Within 8 hours of County request, Franchisee will provide, or
21 begin providing, services beyond the scope of franchise services at the times and to the extent
22 directed by County, including unscheduled discard, collection and disposal of bulky waste,
23 construction and demolition debris and other solid waste associated with earthquakes, fires,
24 storms, floods or riot.

25 Franchisee will charge County the lesser of the following amounts:

- 26 1. Franchisee's lowest charge to other customers to Collect any container (such as roll-offs
27 or bins) located in County for collection of the same capacity or frequency of service (or
28 service charge pro-Rated for most similar capacity or frequency), or
29 2. Franchisee Reimbursement Costs for those services.

30 Upon County request, Franchisee will file information with County, State of California or federal
31 officials that is related to cost of providing the services (such as number or amount of vehicles,
32 fuel, employees, tonnage and disposal fees).

33

“Franchisee Reimbursement Costs” means Franchisee direct costs plus 10%.

36 Franchisee will document its direct costs to satisfaction of County, including the following:

- 1 1. a certificate signed by the principal financial officer of Franchisee, setting forth the
2 following:
- 3 • amount of the direct costs and the reason why they are properly chargeable
4 to County, and
 - 5 • certifying that the direct costs are an arm's length and competitive price, if
6 there are competitive prices, for the service or materials supplied, and
- 7 2. on County request, additional back-up documentation to substantiate any direct cost,
8 such as invoices from suppliers and subcontractors.
- 9
10

11 **8.02 Ownership of Solid Waste.** This Agreement does not purport to grant Franchisee or
12 County ownership over materials that Franchisee collects. The right to possession or ownership
13 of those materials must be determined under law (including 14 CCR 17334 and Section 17-17 of
14 County Code), and not as a result of this Agreement. However, County nevertheless has the
15 right to direct Franchisee to transport those materials to facilities designated by County.

16
17

18 **8.03 Compliance with Law.**

19
20 **a. Contractual Obligations.** Franchisee will provide franchise services in compliance
21 with law, including Section 17-19 of the County Code. Provisions of law are incorporated into
22 this Agreement by reference as Franchisee's contractual obligations. County may enforce those
23 provisions not as violations of law (subject to fines or penalties), but as breaches of this
24 Agreement (subject to remedies under this Agreement). County has no obligation to enforce
25 law.

26

27 **b. Compliance With More Stringent Contract Provisions.** If any terms of this
28 Agreement are more stringent than comparable provisions of law, the provisions of this
29 Agreement will apply.

30

31 **c. Amendments, Recodification.** Reference to specific provisions of law (including
32 law and regulations) include future amendments to or recodification of those provisions and to
33 other law (such as regulations) promulgated under the authority of law.

34

35 **d. Definitions**

“law” means any or all of the following enacted, adopted, promulgated, issued, ruled, ordered, determined or otherwise made by any regulatory authority with respect to franchise services or the parties' obligations under this Agreement:

1. *laws, statutes,*
2. *rules, regulations,*
3. *guidelines,*
4. *permits,*
5. *actions, determinations, judgments, orders, or*
6. *other requirements.*

1
2 Examples of applicable law are listed in Attachment 8.03.

3
4 **e. Permits.** Franchisee will apply and pay for all permits (including County permits) at
5 Franchisee's sole cost, including permits listed in Exhibit 8.03e. Within 2 days of County
6 request, Franchisee will show County any permit and demonstrate compliance with permits.

7
8 Franchisee acknowledges that County is authorized to make all necessary and reasonable rules
9 and regulations regarding all aspects of MSW Services. Franchisee will comply with all County
10 rules and regulations.

11
“permits” means all permits, orders, licenses, approvals, authorizations, consents and entitlements that are under law required with respect to franchise service.

12
13
14 **8.04 Cooperation with Waste Studies.** Franchisee will cooperate with County on waste
15 characterization or composition studies conducted no more frequently than once each contract
16 year, at no additional cost to County, including the following:

- 17 1. modifying routes,
- 18 2. separately collecting individual customer's solid waste, and
- 19 3. delivering targeted loads of solid waste to a County-identified location.

20
21
22 **8.05 Service Materials Belong to County.** Reports, public education and community
23 relations materials prepared under this Agreement and all work product (whether
24 computerized, written, printed or photographic) developed by Franchisee in connection with

1 franchise services, is and will remain the property of County without limitation or restriction on
2 the use of the materials by County. Franchisee will not use the materials in connection with
3 any project not connected with this Agreement without the prior consent of County.
4
5

6 **8.06 Environmentally Responsible Operations**

7

8 **a. Carts, Paper.** Franchisee will procure the following:

- 9 **1.** carts which are recyclable, and
- 10 **2.** paper products for all publicity, billing and other management and operational franchise
11 services having not less than 20% recycled paper content, including at least 10% post-
12 consumer recycled paper content.
13

14 **b. Other Supplies.** Franchisee will use reasonable business efforts to procure supplies with
15 post-consumer recycled content under County Recycled Content Procurement Policy adopted
16 by County pursuant to Resolution 00-44 and appended to this Agreement for convenience of
17 the parties.
18

19 **c. Green Business Program.** Franchisee will obtain certification under the
20 County's Green Business Program within one year from the franchise date.
21

22 **8.07 News Media Relations**

23

24 **a. Requests for Interviews or Inquiries.** Before responding to any inquiries from
25 news media related to franchise services or County, Franchisee will discuss Franchisee's
26 proposed response with County. Franchisee will use reasonable business efforts to inform
27 County by telephone followed by printed copy of all requests for interviews, comment, or
28 information related to franchise services or County within 24 hours of Franchisee's receipt of
29 the request.
30

31 **b. Franchisee News Releases.** Franchisee will not release or submit news releases or
32 proposed trade journal articles that reference the County or franchise services *unless* they are
33 acceptable to County.
34

35 **c. County Copies.** Within 5 days after publication or broadcasting, Franchisee will give
36 County copies of text (by hard copy or e-text) or transcript mentioning franchise services or

- 1 County, including the following:
 2 1. Articles following media inquiries,
 3 2. Texts of interviews,
 4 3. Franchisee news releases.

5
 6
 7 **8.08 County Review of Printed Materials:** Prior to distributing any printed material
 8 (including the following) to either or both (1) customers (other than correspondence related to
 9 a specific customer’s service) or (2) the public by any means (including written and electronic),
 10 Franchisee will give County a copy for County review, comment, and acceptance or disapproval
 11 of form and content by the following times:
 12

Section	Printed Material	County Review Period (business days prior to distribution)
4.13a	Customer Orientation Packet	10
4.13b(1)	Quarterly Newsletter	10
4.13b(2)	Any educational material	10
8.07b	News releases	5

13
 14
 15
 16

8.09 Responsiveness to County

17 **a. Phone calls.** Franchisee will return telephone calls from County to the individual who
 18 made that call no later than the next business day.

19
 20 **b. Meetings.** Franchisee will meet with County at County offices within one week of
 21 County request.

22
 23 **c. E-mails.** Franchisee will respond to all e-mails from County no later than the next
 24 business day.

25
 26 **d. Written correspondence.** Franchisee will respond to mailed correspondence from
 27 County no later than the earliest of the following times:

- 28 1. if the correspondence is written confirmation of earlier phone, meeting or email

1 correspondence, within the time required for phone, meeting or email response in this
2 section, or

- 3 2. within one week of receiving the mail, or
- 4 3. other time specified by County.

7 **ARTICLE 9 CHANGE IN SCOPE OF FRANCHISE SERVICES**

9 **9.01 Change in Scope of Franchise Services**

11 **a. Upon County Direction.** County may direct Franchisee to implement a change in
12 scope of franchise services, including new or amended mandatory commercial recycling
13 programs, food waste collection and composting, specific material diversion programs and
14 special services.

16 **b. Upon Franchisee Proposal.** Franchisee may propose to County a change in the
17 scope of franchise services, including the following:

- 18 1. incorporating new developments in collection technologies and techniques,
- 19 2. and adding programs that facilitate County compliance with AB 939 diversion
20 requirements, and
- 21 3. implementing changes necessitated by a change in law.

24 **9.02 Review and Comment**

26 **a. County Request for Plan.** Prior to directing a change in franchise services County
27 will request Franchisee to propose a plan to implement the proposed franchise service changes,
28 including all of the following:

- 29 1. Franchisee's proposal to implement the change,
- 30 2. the implementation schedule, and
- 31 3. the effect, if any, on the Rate.

32 County may withdraw the request at any time, for any reason, including receipt of an
33 unsatisfactory plan from Franchisee. County may implement the proposed franchise service
34 change itself or through others.

- 1 **b. Franchisee Proposal.** Franchisee will submit its proposal (including a time line)
2 described in Subsection (a) at the following times:
3 1. within 10 days of receiving County request for a plan (or a longer period that County
4 may request in light of the complexity or magnitude of the change directed by County),
5 or
6 2. in conjunction with its own proposal.

7
8 Franchisee will include documentation supporting its stated effect on the Rate.
9

10 If County requests Franchisee (or Franchisee proposes) to collect, process and market an
11 additional material(s), Franchisee will describe the extent to which the addition of the proposed
12 material would require the modification of vehicles, an additional container(s), additional
13 vehicles or routes, or additional route time and the associated additional costs, if any.
14

15 **c. Proposal Implementation.** Upon County request, Franchisee will diligently provide
16 the changes in franchise services under the timeline accepted by County under subsection a.
17
18

19 **ARTICLE 10 RECORDS AND REPORTING**

20
21 Franchisee acknowledges County right to review records and receive reports provided in this
22 Article, for reasons including:

- 23 1. determining compliance with the Minimum Diversion Guaranty,
24 2. enforcing customers' rights,
25 3. evaluating Franchisee's performance under this Agreement
26 4. exercising County rights to perform, or cause a third person to perform, Service
27 Obligations in certain Events of Default and Uncontrollable Circumstances,
28 5. corroborating the amount of any fees or other amounts due and payable to County, and
29 6. corroborating the tons of solid waste reported to the County.
30
31

32 **10.01 Records Maintenance, Retention, Inspection and Audit.**

33
34 **a. Maintenance.** Franchisee will keep accurate records listed in Attachment 10.01 in
35 electronic form acceptable to County and comply with Sections 17-13 and 17-32(a) of the
36 County Code. It will maintain the following accounting records in both the following manners:

- 1 1. with respect to franchise services provided by Franchisee and any of its affiliates,
2 separately from Franchisee’s and its affiliates’ other operations,
3 2. with respect to all of Franchisee’s operations, combined as an entity.
4 Franchisee will back up all electronic records in a location other than the place where the
5 records’ are kept.

6
7 **b. Retention**

8
9 **(1) Time Periods.** Franchisee will retain records for the following periods and
10 comply with Section 17-13 of the County Code:

- 11 1. records generally, for the franchise term plus 4 years, and
12 2. financial records, for 4 years following the close of Franchisee’s fiscal year.

13
14 **(2) Disposal Records.** Franchisee acknowledges that County may incur liability for
15 refuse that Franchisee transports to a Disposal Facility not owned by County.
16 Franchisee will continually maintain all refuse disposal records. If Franchisee wishes to
17 destroy disposal records it will Notify County and give the records to County within 2
18 weeks of County request.

19
20 **c. County Inspection and Audit**

21
22 **(1) At County Offices.** Within 2 business days of County request, Franchisee will use
23 reasonable business efforts to give copies of records to County or County designees for
24 inspection or audit at County offices.

25
26 **(2) At Franchisee Office.** If Franchisee cannot give County copies of the records
27 using reasonable business efforts, Franchisee will make records available to County or
28 County designees for inspection or audit at Franchisee office during Franchisee office
29 hours.

30
31 **(3) Scope.** The scope of County inspection or audit may include any period during
32 the franchise term. Franchisee will use reasonable business efforts to provide County
33 any additional information relevant to this Agreement which is not specified in this
34 Article, within 2 days of County request.
35

1 **(4) Audit Costs.** If an audit conducted by County demonstrates that Franchisee
2 underpaid Franchisee Fees, Solid Waste Program Fees, CRV revenues or other money
3 owed to County by 2% or more, then within 30 days of receiving the results of the audit
4 Franchisee will pay County both of the following amounts:

- 5 1. County’s Reimbursement Costs for the audit, and
- 6 2. the amount of the understated fees *plus* interest on those fees at 10% per
7 annum from the date originally due until paid, or lesser amount acceptable to
8 County.

9
10 **(5) Franchisee Dispute.** Franchisee must Notify County if it disagrees with the audit
11 results within 7 days of receiving the results, or it will be deemed to concur with the
12 results. Franchisee must describe the basis for its disagreement and include
13 documentation supporting its dispute.

14
15 **(3) Dispute Resolution.** If County and Franchisee cannot reach agreement within 15
16 days following Franchisee’s submission of its dispute, County may submit the matter to
17 the Independent Mediator for non-binding mediation under Article 9.

18
19 **10.02 Reports**

- 20
21 **a. Timing.** Franchisee will submit reports to County at the following times:
22 1. Monthly Reports no later than the 20th day of each month,
23 2. Annual Reports on or before each July 20.

24
25

“Monthly Reports” means the report including the information listed in Attachment 10.02 under “Monthly Reports”, for the preceding contract year.

26
27

“Annual Reports” means the report including the information listed in Attachment 10.02 under “Annual Report”, for the preceding contract year.

- 28
29 **b. Submission and Correction.** Franchisee will do the following: provide complete and
30 accurate reports by required submission dates,
31 1. incorporate County comments on, and corrections in, reports within 5 days of receiving
 them,
 2. submit corrected reports or additional information submitted to any regulatory

1 authority (such as tonnage information to the State DRS) as soon as possible, and no
2 later than 5 days,

- 3 3. provide additional complete and accurate information requested by County by the date
4 specified by County.
5

6 **c. AB 939 reports.** Contractor will assist County in preparation of state-mandated
7 documents and to implement measures and recordkeeping to achieve County's integrated solid
8 waste management goals as mandated by CA IWM CA IWM Act, and authorized under Section
9 17-3(e) f the County Code.
10

11 THE FRANCHISEE OBLIGATION TO SUBMIT THE ANNUAL REPORT SURVIVES THE FRANCHISE
12 TERM. Franchisee will submit an Annual Report for the final contract year of this Agreement at
13 the time required in Section 10.02.
14

15 **d. Survival.** THE FRANCHISEE OBLIGATIONS TO SUBMIT ANY MONTHLY REPORT AND
16 ANNUAL REPORT SURVIVES THE FRANCHISE TERM. Franchisee will submit an Annual Report for
17 the final contract year of this Agreement at the time required in Section 10.02.
18

19 **10.03 Financial Statements.**

20
21 **a. Preparation.** Franchisee will cause an independent certified public accountant to
22 prepare the following financial statements:

- 23 1. Franchisee's financial statements with respect to franchise services for each of its fiscal
24 years, and
25 2. Guarantor's financial statements for each of its fiscal years.
26

27 Franchise will attach to the financial statements the following:

- 28 1. The accountant's representation that he has audited either or both Franchisee's and
29 Guarantor's financial statements in accordance with Generally Accepted Auditing
30 Principles, and
31 2. The accountant's following opinion:
32 • that the statements have been prepared in accordance with Generally Accepted
33 Accounting Principles consistently applied, and
34 • the statements fairly present the financial position, the results of operations and the
35 cash flows of either or both the Franchisee and Guarantor, and
36 3. the following statement of Franchisee's Chief Financial Officer:

- 1 • that no events subsequent to the preparation of the last financial statement
- 2 submitted under this Agreement have materially changed Franchisee's financial
- 3 status or condition, or
- 4 • describing any material changes in Franchisee's financial status or condition since
- 5 the preparation of the last financial statement.

6

7 **b. Annual Delivery to County.** Franchisee will give County 3 copies of the financial

8 statements in substantially the form attached as Exhibit 10.03, acceptable to the County,

9 together with the accountant(s)' representation and opinions on the earlier of the following

10 dates:

- 11 1. 100 days after the close of the Franchisee's and Guarantor's fiscal year, or
- 12 2. within one week of any statement's release,

13 Franchisee will comply with Section 17-32(b) of the County Code.

14

15 **c. County Review.** Franchisee will allow County and its representatives review the audit

16 plan and work papers of the independent certified public accountant(s) who audited and

17 opined on either or both of Franchisee's and Guarantor's financial statements. Within 2 weeks

18 of County request, Franchisee and its accountant(s) will meet with the County and its

19 representatives to discuss County's concerns and answer its questions.

20

21

22 **10.04 Proprietary Records and Reports**

23

24 **a. Notice of Request.** If County receives a request from a third person to review or

25 copy material which Franchisee has marked "confidential", County will inform Franchisee and

26 allow Franchisee to present arguments and facts to County in support of Franchisee's position

27 that the material is entitled to an exemption from disclosure under the State Public records CA

28 IWM Act and should not be released.

29

30 **b. Notice of Release.** If County determines that the material is *not* entitled to an

31 exemption under this Agreement and that it must be released, County will inform Franchisee

32 before releasing that material so that Franchisee may seek a court order enjoining that release.

33

34 **c. Notice of Legal Action.** If County determines that the material is entitled to that

35 exemption, and the person who requested the information files a legal action seeking its

36 release, County will inform Franchisee and will not oppose a motion by Franchisee to intervene

1 in the action. Franchisee must either intervene or accept the release of the material. County is
2 not obligated to defend the action and may release the material sought without any liability.

3 4 5 **ARTICLE 11 FINANCIAL ASSURANCES**

6 7 **11.01 Insurance**

8
9 **a. Required coverage.** Franchisee will carry insurance meeting the requirements in
10 Exhibit 11.01 and comply with Section 17-20(c) of the County Code.

11
12 **b. Notice of Claims.** Franchisee will inform County of any claim against either of the
13 following:

- 14 1. Franchisee, or
- 15 2. any subcontractor of Franchisee,

16 which claim exceeds the amount of any deductibles or self-insured retentions, within one week
17 of Franchisee's learning of the claim.

18
19 **c. Monitoring System.** Franchisee will institute a comprehensive accounting system
20 satisfactory to County to monitor all insurance requirements under this Agreement, including
21 those of its Subcontractors.

22
23 **d. Franchisee Compliance.** Franchisee will comply with all requirements of its
24 insurance policies and insurers.

25 26 27 **11.02 Franchisee Indemnification**

28 29 **a. Franchisee Conduct Included**

30 31 **(1) Indemnity, Release and Hold Harmless, Defense**

32
33 **(i) Indemnification.** Franchisee will indemnify County from and
34 against all liabilities arising out of or in any way connected to franchise services,
35 including reimbursing County for County liabilities to someone other than
36 Contactor (such as damages resulting from a suit against County by a customer).

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(ii) Release and Hold Harmless. Franchisee will release and hold harmless County from and against all liabilities arising out of or in any way connected to franchise services, including refraining from seeking reimbursement from County for Franchisee's liability to someone else (such as damages resulting from a suit against Franchisee by a customer).

(iii) Defense. Immediately upon commencement of any lawsuits, claims, complaints, causes of actions or other demands brought against County for liabilities arising out of or in any way connected to franchise services, Franchisee will do either of the following:

- 1. defend County with counsel approved by County, or
- 2. fund County Reimbursement Costs of defense.

County may retain co-counsel at its own cost and expense and Franchisee will direct Franchisee's counsel to assist and cooperate with County co-counsel.

(iv) County Sole Negligence Excluded. Franchisee is not obligated to indemnify, release, hold harmless or defend County if County is found solely negligent by a court of competent jurisdiction after County has exhausted all appeals.

(v) Definitions

In this Section, "County" includes everyone described in the definition of "County".

“liabilities” includes:

1. *lawsuits, claims, complaints, cause of actions and other demands,*
2. *citations, fine and other penalties,*
3. *investigations, such as costs of audits, related to another type of Liability (such as a fine),*
4. *judgments, liens, cleanup orders, and damages in contract or tort, including the following:*
 - *personal injury or death, and*
 - *property damage,*
5. *losses, injuries, costs and expenses (including all costs and expenses of litigation, mediation or arbitration, such as any or all of the following fees and court costs:*
 - *attorneys’ fees, whether County Counsel or Franchisee's staff attorneys or outside attorneys,*
 - *accountants fees, whether County Finance Director or outside accounts,*
 - *appraisers fees, and*
 - *expert witness fees, and*
6. *other detriments of every nature and description whatsoever, whether under State of California or federal law.*

*Reference to “**Indemnification**” in this Agreement includes the indemnification, release, hold harmless and defense under this Section.*

(2) Scope of liabilities. For purposes of this indemnity, liabilities must be paid, incurred or suffered by, or asserted against, County arising from or attributable to any repair, cleanup or detoxification pursuant to, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous waste at any place where Franchisee delivers, stores, processes, recycles, composts or disposes of solid waste to the extent that liabilities are caused by the following:

1. **Franchisee negligence or misconduct:** the wrongful, willful or negligent act, error or omission, or the misconduct of Franchisee, or
2. **Non-customer materials:** the collection, delivery, handling, recycling, processing, composting or disposal by Franchisee of any materials or waste, including hazardous waste, which are generated by someone other than

1 customers or collected from premises other than customers' premises, or

- 2 3. **Failure to Comply With Hazardous Waste Protocol:** the failure of Franchisee to
3 undertake hazardous waste training procedures required by law with respect to
4 its employees or any subcontractors' or the hazardous waste Handling Protocol,
5 whichever is more stringent, or

6 4.

7 **Franchisee-identified Hazardous Waste:** Franchisee's improper or negligent
8 collection, handling, delivery, processing, recycling, composting or disposal of
9 hazardous waste which Franchisee inadvertently collects from customers and
10 which Franchisee identifies as hazardous waste prior to its delivery,
11 processing, recycling, composting or disposal.

12
13 County acknowledges that the mere presence of household hazardous waste in the solid
14 waste does not constitute negligence and create any Liability on the part of Franchisee
15 absent any of the circumstances described in preceding Items 1-4.

16
17 **b. Indemnification With Respect to Franchise Services Only.** Indemnification
18 under this Section is limited to liabilities incurred or occurring after the franchise date through
19 the franchise term and excludes liabilities incurred or occurring prior to the franchise date.
20 However, THE INDEMNIFICATION SURVIVES THE FRANCHISE TERM.

21
22 **c. Statutory Agreement.** The Indemnity in this Section is intended to operate as an
23 agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section
24 25364, to insure, protect, hold harmless and indemnify County from liability under this Section.
25 It includes the specific actions or inactions of Franchisee described in Items 1 – 4, such as a
26 driver accepting a customer bribe and illegally disposing of hazardous waste that upon
27 identification thereof, must be segregated and transported under law.

28
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30 **11.03 Letter of Credit.** Franchisee will give County a Letter of Credit under Exhibit 11.03
31 acceptable to County.

32
33
34 **11.04 Guaranty Agreement.** If Franchisee has any affiliates, Franchisee will provide a
35 Guaranty that is legal, valid and binding against a Guarantor, acceptable to County.

“Guaranty” means the obligation in substantially the form attached as Exhibit 11.04, acceptable to County.

“Guarantor” means signatory of the Guaranty.

11.05 Assurance of Performance. In addition to all other remedies it may have, within 5 days of County request Franchisee will provide reasonable assurances that Franchise can timely and fully meet its Franchise Obligations under this Agreement in the following events:

1. **Labor.** Franchisee is the subject of any labor unrest (including work stoppage or slowdown, sick-out, picketing and other concerted job actions).
1. **Tipping Fees.** Franchisee does not pay an MSW Facility for services.
2. **Employee Wages.** Franchisee does not pay wages to its employees, provide workers’ compensation insurance required by law, or pays employment –related taxes or fees.
3. **County.** Franchisee does not pay County any County Reimbursement Costs.
4. In the County’s judgment, the occurrence of either of the following events jeopardizes Franchisee’s ability to timely and fully meet Franchisee’s Franchise Obligations:
 - Franchisee does not regularly pay its bills when due, or
 - The entering of any judgment against Franchisee or Guarantor with respect to Criminal Conduct by Franchisee or Guarantor.

“Assurances of Performance” means any of the following actions, as requested by County:

1. *reduction or elimination of insurance deductibles or self-insured retention,*
2. *increasing the size of a letter of credit, or*
3. *providing an additional performance bond, certificate of deposit or other instrument.*

ARTICLE 12 CRIMINAL CONDUCT

12.01 Criminal Conduct

a. Notice

1 **(1) Franchisee Representative etc.** Franchisee will immediately inform County of
2 any Convictions or Pleas with respect to Criminal Conduct by any Franchise Manager
3 described in items 1-4 of the definition of “Franchise Managers”.

4
5 **(2) Other Franchise Managers.** Franchisee will use reasonable business efforts to
6 immediately inform County of any Convictions or Pleas with respect to Criminal
7 Conduct by any Franchise Manager described in Item 5 of the definition of “Franchise
8 Managers”.

9

“Franchise Managers” means the following

1. *Franchisee,*
2. *Franchise Representative*
3. *Franchise officers and directors,*
4. *the officers and directors of any direct or indirect parent corporation of Franchisee,*
and
5. *anyone else who has the authority or responsibility to directly or indirectly administer,*
manage, direct, supervise or oversee franchise services or this Agreement, including
the following:
 - *supplying goods or services,*
 - *serving as director of the board of directors of Franchisee or an Affiliate,*
 - *serving as an officer or employee of Franchisee or an Affiliate,*
 - *reviewing or negotiating Franchisee’s contracts (including this Agreement),*
 - *providing in-house legal services, and*
 - *providing processing or disposal,**but excluding the following:*
 - *monitoring Franchisee’s performance,*
 - *supervising Franchisee’s finance and capital budget decisions and*
 - *articulating general policies and procedures not related to Criminal CA IWM*
Activity.

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13 **b. Cure.** Upon the occurrence of any Convictions or Pleas with respect to Criminal
14 Conduct by any Franchise Manager, Franchisee must do both of the following:

- 1 1. terminate from employment or remove from office the offending Franchise Manager
2 who is an individual (or, with respect to a Franchise Manager that is Franchisee or an
3 affiliate, the individual or individuals responsible for the Criminal CA IWM Activity),
4 *unless*:
- 5 • otherwise directed or ordered by regulatory authority of competent jurisdiction
6 and/or authority, or
 - 7 • termination would subject Franchisee, an affiliate or any of its Franchise
8 Managers to substantial liability for breach of any labor agreement entered into
9 after the franchise date, and
- 10 2. eliminate the participation by that Franchise Manager who is an individual (or with
11 respect to a Franchise Manager that is Franchisee or an affiliate, the individual or
12 individuals responsible for the Criminal CA IWM Activity), holding a Position of
13 Influence.
14

15 **c. County Remedy.** County in its sole discretion may terminate the Agreement upon 30
16 days Notice to Franchisee, or may impose other sanctions (which may include financial
17 sanctions, temporary suspensions or any other condition deemed appropriate short of
18 termination) as it deems proper, in the following events:

- 19 1. Franchisee or any affiliate fails to implement the preceding cure in Subsection (b), or
20 2. the Criminal Conduct (other than Criminal Conduct described in Item 4 of the definition
21 of "Criminal Conduct," with respect to hazardous waste, which Franchisee did not have
22 actual knowledge) is both of the following:
- 23 • a felony, and
 - 24 • is related to this Agreement.

25 Franchisee must be given the opportunity to present evidence in mitigation during the
26 preceding notice period. County will consider that evidence.

1

“Criminal Conduct” means any of the following:

1. *fraud or criminal offense other than offenses constituting infractions in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to recyclables, green waste or solid waste services of any kind (including collection, hauling, transfer, processing, composting or disposal), including this Agreement , or*
2. *bribery or attempting to bribe a public officer or employee of a local, state, or federal agency by Franchisee or by any Franchise Manager in that Franchise Manager’s official capacity, or*
3. *embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony, or*
4. *unlawful disposal of hazardous or designated waste, the occurrence of which Franchisee or any of its Franchise Managers knew or should have known, or*
5. *violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practice laws, including with respect to inflation of waste collection, hauling or disposal fees.*

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d. No Subversion. Franchisee will not, or will not allow, hire or transfer from any affiliate of any employee, officer or director of an affiliate who is the subject of any Conviction or Plea to a position as a Franchise Manager.

7

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e. Definitions

“Conviction” means any of the following:

1. *a criminal conviction,*
2. *a permanent mandatory or prohibitory injunction, or*
3. *a final judgment or order*

from a regulatory authority of competent jurisdiction with respect to any Criminal CA IWM Activity.

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“Pleas” means either of the following,

1. pleading “guilty”, or
2. entering a plea of “nolo contendere” or “no contest”

to Criminal CA IWM Activity occurring

1. within County, or
2. relating to this Agreement.

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8 **ARTICLE 13 CUSTOMER RATES**

9

10 **13.01 Franchisee Compensation.**

11

12 **a. Payable Only From Rates.** In consideration of and as compensation for full and timely
13 performing franchise services, Franchisee may charge customers Rates. Franchisee is
14 compensated solely from customers and not County. This Agreement is a service agreement
15 and does not constitute indebtedness of County in violation of law.

16

17 **b. Rates Comprise Total Compensation.** Franchisee acknowledges that it is not entitled to
18 any compensation in excess of Rates, *unless* this Agreement explicitly specifies the following:

19

1. an “additional Rate”,
2. “Franchisee’s reimbursement cost”.

20

21

“Rate(s)” means charges under Section 13.02 and Attachment 13.02, listed on the Rate
Schedule.

22

23 Franchisee must pay all costs of providing services and complying with its franchise obligations,
24 including:

25

1. tipping fees at MRF(s), Organics Site(s) and Disposal Facility/Facilities;
2. franchise fees, and
3. fuel.

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30 **13.02 Rates**

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a. County Approves Maximum Rates / Franchisee Sets Uniform Rates.

1 Franchisee will set Franchisee's charges to customers for franchise services no greater than the
2 maximum amount approved by County on the Rate Schedule. Franchisee will charge uniform
3 Rates to all customers for each franchise service component.
4

5 **b. Rate Adjustments.** Rates will be adjusted only under Attachment 13.02. The annual
6 Rate adjustment for changes in indices and tipping fees will be effective each July 1. All other
7 Rate adjustments will be effective as soon as practicable under law, including any public notice,
8 publication and Board approval requirements. Rates will not otherwise be adjusted, including
9 for actual changes in the price of fuel.
10

11 **c. Customer Notice of Changes.** Franchisee will notify affected customers of any
12 change in Rates in their first bill following change. Franchisee will submit the notice to County
13 for review no later than 5 days prior to giving the notice.
14
15

16 **13.03 Security Deposit.** Franchisee may not charge customer any security deposit,
17 container rental or other amounts not listed on the Rate schedule except under Section 4.16.
18
19

20 **13.04 Fees**

21 **a. Franchisee Fees**

22
23
24 **(1) Franchise and Other Fees.** Franchisee will pay County all fees that County
25 may establish from time to time, including the following:

- 26 1. the Franchise Fee.
- 27 2. a business tax, and
- 28 3. a permit or license fee.

29 Franchisee acknowledges that these fees are costs of Franchisee doing business and
30 providing franchise services.

*These fees that are liabilities of Franchisee and not customers are referred to in this Agreement as "**Franchisee Fees**".*

31 32 33 **(2) Franchise Fee Payment**

1
2 (i) **Amount.** As of the franchise date the Franchise fee is equal to x% of
3 Franchisee’s gross receipts under this Agreement. County in its sole discretion
4 may change the amount of the Franchise fee and manner of calculating the
5 Franchise fee at any time.
6

7 (ii) **Payment.** the franchise fee to the County by the 20th of each month,
8 based on gross receipts that Franchisee received during the previous month.
9

10 **b. Solid Waste Program Fees**

11
12 (1) **Current and Future Fees.** Franchisee acknowledges the following:

13 1. County currently charges a solid waste program fee established from
14 time to time by the County, which is xx% of Franchisee’s gross receipts
15 under this Agreement on the franchise date, and

16 2. County in its sole discretion may impose different or additional fees
17 authorized under law (such CA Public Resources Code Section 40900,
18 commonly referred to as “AB 939” fees; and County Code 17.29) directly
19 on customer, to reimburse County for County’s administrative costs and
20 impact expenses as the following:

- 21 • administering and enforcing this Agreement,
- 22 • implementing its Solid Waste Program Plan as required by law,
- 23 • maintaining, repairing and replacing County’s infrastructure (such as roads) that
24 are worn or damages by providing franchise services , and
- 25 • providing MSW services that protect public health, safety and welfare,
26
27

28 *These fees payable by customers are referred to in this Agreement as “Solid Waste Program*
29 *Fees”.*
30

31 (2) **Recording County Money.** Upon receiving payments from customers,
32 Franchisee will first record receipt of Solid Waste Program Fees (which belongs to
33 County and not Franchisee) in a separate account within Franchisee's detailed general
34 ledger titled “Santa Barbara County Solid Waste Program Fee”, and record the
35 remaining receipts as Franchisee's income.
36

37 (3) **Remitting County Money.** By the 20th day of each month, Franchisee will pay
38 County the aggregate of any Solid Waste Program Fees and give County documentation

1 satisfactory to County supporting the calculation of those fees.
2
3

4 **13.05 Franchisee Payment of Money Owed County.** County may demand payment
5 from Franchisee of, or draw on Franchisee's letter of credit for any money Franchisee owes
6 County, including the following:

- 7 1. **Damages:** including under Section 14.01,
- 8 2. **Fees:** including under Section 13.04,
- 9 3. **CRV revenues** under Section 6.06,
- 10 4. County **Reimbursement** Costs: including the following:

Section	County Reimbursement Cost
4.10e	repair of damaged property
11.01d	insurance premiums
14.10	substitute performance costs

12
13 *“County Reimbursement Costs” means County’s direct costs plus 35%.*

15
16
17 **“direct costs”** means the sum of the following:

1. payroll costs directly related to the performance, or management or supervision of any obligation pursuant to the provisions of “this Agreement, comprised of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, workers compensation insurance, federal and state unemployment taxes and all medical and health insurance benefits, plus
 2. the costs of materials, services, direct rental costs and supplies, plus
 3. travel and subsistence costs, plus
 4. the reasonable costs of any payments to consultants or (sub)contractors necessary to and in connection with performance under this Agreement, plus
 5. any other cost or expense which is directly or normally associated with the task performed,
- which direct costs are substantiated to satisfaction of the other party.

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ARTICLE 14 BREACHES, DEFAULTS AND REMEDIES

14.01 Certain Breaches and Liquidated Damages.

a. Breaches. Within two weeks of County assessment, Franchisee will pay the following liquidated (or compensatory) damages for each of the corresponding breaches determined by County. County may assess damages for each instance of breach, even if Franchisee subsequently remedies the breach. (Franchisee nevertheless might have the opportunity to cure the breach before it becomes an event of default under Section 87714.02.)

Section ⁵	Failure to Meet Franchise Obligations	Liquidated Damages (per failure in each Franchise Year)
4.03	Comply with Transition Plan	\$1,000 / failure
4.03 – 4.05	1. Collect any set-out container of discarded refuse, recyclables or green waste	1. 1-15 / \$100 Over 15 / \$500
4.06a	2. Collect refuse in public containers . . . regardless of whether Franchisee subsequently remedied the missed collection	2. 11-15 \$200 Over 15 \$500
4.06b	Collect abandoned waste at County request	1-2 / \$500 3-5 / \$1,000 Over 5 / \$5,000
4.07	Collect within permitted hours	1-3 / \$200 Over 3 / \$1,000 (per vehicle)
4.08a-c	Timely repair, replace, deliver or pick up container	1-15 / \$15 Over 15 / @200 (per container)
4.08d	Return container to set-out site	1-15 / \$50 Over 15 / \$200

⁵ Citation for convenience of parties, but not necessarily the exclusive citation for applicable franchise obligations

787	Perform franchise services in courteous and professional manner (rudeness)	1-3 / \$500 Over 3 / \$1,000 per incident verified or experienced by County
4.09b	Clean up litter	1-5 / \$250 Over 5 / \$500
4.09c	Timely determination of damage causation / repair or replace damaged property, or reimburse cost of repair or replacement	1-5 / \$100 Over 5 / \$500
4.09d	Excess noise levels	1-3 / \$100 Over 3 / \$500 (per reported incident, as confirmed by County)
4.04-4.06 4.11a 4.12c	Timely response to customer, including any of the following: <ul style="list-style-type: none"> • Fulfilling franchise service request (such as commencing / stopping regular service, providing roll-out service; making on-call pickups of bulky, special or e-waste), • taking corrective action, or • answering voice mail messages. 	1-5 / \$200 Over 5 / \$1,000 per incident per day
4.11b(1)	Record complaint	1-5 / \$100 Over 5 / \$500 (per complaint)
4.12c(4)	Meet phone response standards, including answering within 4 rings	5-10 / \$50 11-20 / \$100 Over 20 / \$500
5.03b	Label containers	Over 5 / \$100 per container per day
4.16a item 1	Miscalculate / charge incorrect or unauthorized Rate	1-5 / \$100 for each and every customer's bill, and one or more bill(s) presented to a customer Over 5 / \$500
6.01 7.01	Deliver: <ol style="list-style-type: none"> 1. recyclables to MRF(s), 	1-5 / \$1,000 per failed delivery

	2. green waste to Organics Site(s), 3. refuse to Disposal Facility/Facilities 4. manure to the identified site, and 5. universal waste and e-waste to the identified facilities	Over 5 / \$5,000 (+ compensatory damages = County Reimbursement Cost of monitoring or confirming compliance)
6.06	Mixing refuse, recyclables or green waste	1-3 / \$5,000 per truck Over 3 / \$10,000
Including 8.09	Timely respond to County request	1-2 / \$500 3-5 / \$1,000 Over 5 / \$5,000
10.01c	Provide County access to records	\$1,000 per day
8.08 & throughout	Provide text to County no later than required times, including quarterly newsletters to customers and news releases	1 / \$500 2-3 / \$1,000 Over 3 / \$5,000
10.02 & throughout	Timely submit or correct (errors, omissions, format etc.) reports	\$200/day until submitted or corrected
4.01 13.04, 13.05 Throughout	Late payments to County, including franchise fee, Franchisee Fees, Solid Waste Program Fees, County Reimbursement Costs,	\$500/day
	Any other franchise obligation	1-5 / \$100 Over 5 / \$500

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Franchisee will pay liquidated (or compensatory damages) under Section 13.05.

b. Contest. Franchisee may contest imposition of damages by Notifying County within 10 days of receiving County request for payment, indicating Franchisee's basis for disagreement. County Manager will consider information provided by County Representative and Franchisee and make a binding determination as soon as possible.

c. Acknowledgements. Franchisee acknowledges the following:

1. County incurred considerable time and expense procuring this Agreement in order to secure an improved level of collection service quality and increased customer satisfaction. Therefore consistent and reliable franchise services are of utmost importance to County and customers.
2. County has considered and relied on Franchisee's representations as to its quality of service commitment in entering into this Agreement, and Franchisee's breach of its Franchise Obligations referenced in this Section above represents a loss of bargain to County.

- 1 3. Quantified standards of performance are necessary and appropriate to ensure the
 2 consistent and reliable collection service, and if Franchisee fails to meet Service
 3 obligations referenced in this Section above, County will suffer damages (including the
 4 following:
 5 • customers' inconvenience,
 6 • potential political pressure, criticism and complaint by customers,
 7 • lost County Board and staff time, and
 8 • loss of bargain,
 9 4. It is and will be impracticable and extremely difficult to ascertain and determine the
 10 value of damages.
 11

12 **d. Reasonable estimate.** Therefore, the parties agree that the above liquidated
 13 damages represent a reasonable estimate of the amount of the damages, considering all of the
 14 circumstances existing on the Franchise date, including the following:
 15 1. relationship of the sums to the range of harm to County that reasonably could be
 16 anticipated, and
 17 2. anticipation that proof of actual damages would be costly, time-consuming or
 18 inconvenient.
 19

20 **d. Confirmation.** In signing this Agreement, each Party specifically confirms the
 21 following:
 22 1. the accuracy of the statements made in this Section, and
 23 2. it had ample opportunity to consult its legal counsel for an explanation of this liquidated
 24 damage provision.
 25
 26

27 **14.02 Defaults.** Each of the following is event of default (“**event of default**”) under this
 28 Agreement:
 29
 30

31 [ch7787887 check citations]

SECTION	EVENT OF DEFAULT	EFFECTIVE TERMINATION DATE
SERVICE DEFAULTS		
4.01a(3)	Failure to collect , subject to Uncontrollable Circumstances, more than 5 times during any contract year or 50 times over the Term	Franchisee's receipt of Notice of failure
6.01, 7.01	Failure to deliver solid waste to Identified MSW	Franchisee’s receipt of

	<p>Facility: more than 3 times during any contract year or 25 times over the Term, subject to Uncontrollable Circumstances, Franchisee fails to deliver:</p> <ol style="list-style-type: none"> 1. refuse to the disposal facility/facilities, 2. green waste to the Organics Site(s), 3. recyclables to the recyclables Processing Facility, 4. manure to an identified site, or 5. universal waste or e-waste to identified facility/facilities 	Notice of failure
6.03	Failure to meet Minimum Diversion Requirement, subject to Uncontrollable Circumstances.	Franchisee's receipt of Notice of failure
8.04	<p>Failure to Comply With Law within 5 days' Notice of violation by a regulatory authority.</p> <p><i>“violation” means any written notice, assessment or determination of non-compliance with Applicable law from any regulatory authority to Franchisee, whether or not a fine or penalty is included, assessed, levied or attached.</i></p> <p><i>“regulatory authority” means any federal, state or local governmental unit (whether a separate entity or a department or division of the federal, state or any local government) that does either or both of the following:</i></p> <ol style="list-style-type: none"> 1. regulates franchise services or operations of Franchisee, or 2. enforces law applicable to franchise services or operations of Franchisee, <p><i>including:</i></p> <ul style="list-style-type: none"> • CA DOT, CA DMV and other units that regulate transportation or enforce transportation laws, • CalRecycle, AQMD, water board and other units that regulate operations or enforce environmental laws, • EDD, U.S. Immigration and Naturalization Services, federal and state departments of labor and other units that 	Franchisee's receipt of Notice of failure

	<p><i>regulator operations or enforce labor laws,</i></p> <ul style="list-style-type: none"> • <i>IRS, CA Franchise Tax Board, SEC, federal and state Departments of Justice, and other unites that regulate taxation or financial affairs of Franchisee,</i> • <i>County (or County Public Works Department or other department), and</i> • <i>the Local Enforcement Agency in the County.</i> 	
Any provision	<p>Breach of Agreement</p> <ol style="list-style-type: none"> 1. Franchisee fails to meet any franchise obligation (other than with respect to any event of default listed in this table), and 2. County Notifies Franchisee as follows: <ul style="list-style-type: none"> • that in County opinion a specific breach has occurred, and • if Franchisee does not cure that breach within 20 days of receiving County Notice, County may terminate this Agreement. 3. If Franchisee cannot cure the breach within 20 days, as soon as possible (but no less than 2 days) Franchisee will Notify County as follows: <ul style="list-style-type: none"> • explain why Franchisee believes it needs additional time cure the breach, and • propose a schedule for curing the breach. 4. County, in its sole discretion, may do any of the following: <ul style="list-style-type: none"> • accept Franchisee's schedule, • present County alternative schedule, or • terminate this Agreement at the end of the 20-day period <p>This event of default is subject to Uncontrollable Circumstances <i>unless</i> related to the payment of money.</p>	20 days (or other County-prescribed period) following Franchisee's receipt of County Notice of failure
12.01	<p>Criminal CA IWM Activity: The failure to timely terminate and/or replace any employee, officer or director upon the occurrence of any conduct proscribed in Section 12.01</p>	Franchisee's receipt of Notice of failure

PERFORMANCE ASSURANCE DEFAULTS		
Article 11	Failure to provide any of the following: <ol style="list-style-type: none"> 1. insurance, 2. performance bond, 3. guaranty, 4. letter of credit, or 5. assurance of performance 	Immediately following the public hearing required under Section 17-86(b) and (c)(1) of the County Code
14.09	Failure to provide assurances of performance within time required by County	Franchisee's receipt of Notice of failure
13.05	Failure to pay damages	Franchisee's receipt of Notice of failure
18.01	transfer without County consent	Franchisee's receipt of Notice of failure
	Seizure, Attachment: In the opinion of County, a seizure, attachment (other than a pre-judgment attachment) or levy upon any franchise service asset s: <ol style="list-style-type: none"> 1. substantially impairs Franchisee's ability to meet any Franchise Obligation, and 2. cannot be released, bonded or otherwise lifted within 48 hours, excepting weekends and holidays. 	Franchisee's receipt of Notice of failure
	Insolvency, Bankruptcy, Liquidation: <ol style="list-style-type: none"> 1. Franchisee does any of the following: <ul style="list-style-type: none"> • files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, <i>unless</i> Franchisee retains full control of franchise service assets throughout the pendency of that claim, or • consents to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of franchise service asset s no longer used to provide franchise services or backup franchise services), trustee (other than as security of an obligation under a deed of trust), custodian, sequestration, administrator (or similar official) of Franchisee for any part of Franchisee's operating assets or any substantial part of 	Immediately, to the extent permitted by law, following the public hearing required under Section 17-86(b) and (c)(1) of the County Code

	<p>Franchisee's property, or</p> <ul style="list-style-type: none"> • makes any general assignment for the benefit of Franchisee's creditors, or • fails generally to pay Franchisee's debts as they become due, or takes any action in furtherance of any of the foregoing. <p>2. Involuntary bankruptcy:</p> <ul style="list-style-type: none"> • A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or • Franchisee consents to or fails to oppose any the proceeding, or • any court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, administrator (or similar official) of Franchisee or for any part of Franchisee's operating equipment or assets, or orders the winding up or liquidation of the affairs of Franchisee. 	
	Default under Guaranty	Franchisee's receipt of Notice of failure
Attachment 2.01 & throughout Agreement	<p>False Representations, Breach of Representations or Warranties: Franchisee makes a representation, certification or warranty herein or pursuant to this Agreement, including Attachment 2.01, which Franchisee knows, or in the course of diligently conducting business and providing franchise services should have known, is untrue as of the date thereof.</p> <p>Franchisee makes a representation or fails to make a disclosure, whether within this Agreement or otherwise, to County in connection with or as a material inducement to entering into this Agreement or any future amendment to this Agreement, which representation or failed disclosure is false or misleading in any material respect when made.</p>	Franchisee's receipt of Notice of failure

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14.03 Breaches and Defaults Excused by Uncontrollable Circumstances

a. Performance Excused

- (1) **Franchisee.** Franchisee's failure to meet any franchise obligation will *not* be deemed an event of default if all of the following conditions are met:
1. the event of default is *caused* by Uncontrollable Circumstances ,
 2. the event of default is explicitly *subject to* Uncontrollable Circumstances under this Agreement, and
 3. Franchisee exerted reasonable business efforts to prevent the occurrence and mitigate the effects of the Uncontrollable Circumstance.
- (2) **County.** County failure to meet any obligation under this Agreement (other than payment of money *unless* County may withhold or offset payment under this Agreement) will *not* be deemed an event of default if the conditions in preceding Subsection (a)(1) are met.

Uncontrollable Circumstances means any of the following events:

1. Riots, war, or emergency affecting the Country declared by the President of the United States or Congress of the United States, the Governor of California, or the Board of Supervisors;
2. Sabotage, civil disturbance, insurrection, explosion;
3. Natural disasters such as floods, earthquakes, landslides and fires that are not reasonably anticipated weather conditions in the County;
4. A Change in Law except for a Change in Law that meets both the following conditions:
 - It is enacted by County (including County's change in Franchisee Fees), and
 - The County is not required to enact it in order to comply with federal or State law; or
5. The failure of any public or private utility provider to provide water or electricity to the Franchisee office or maintenance facility.

19

“Change in Law” means any of the following:

1. *The adoption, promulgation, modification, or change in law (including County’s change in or addition of Franchisee Fees or Solid Waste Program Fees) or in judicial or administrative interpretation of the law occurring after the Franchise Date, except with respect to the following:*
 - *Income or business taxes,*
 - *Employment or payroll taxes, or*
 - *Franchise fees (other than Franchise Fees levied by County); or*
2. *Any order or judgment of any Regulatory Agency issued after the Execution Date if both of the following conditions are met:*
 - *The order or judgment is not also the result of the willful misconduct or negligent action or inaction of either of the following:*
 - *The party relying thereon, or*
 - *Anyone for whom that party is directly responsible; and*
 - *The party relying on the order or judgment makes Reasonable Business Efforts to contest that order or judgment, unless the other party excuses it from contest; or*
3. *A Regulatory Agency imposes any new or different material conditions in connection with the issuance, renewal, or modification of any permit after the Franchise Date; or*
4. *A Regulatory Agency does any of the following after the Franchise Date:*
 - *Fails to issue or renew permit,*
 - *Suspends, interrupts or terminates any permit**and the Regulatory Agency’s actions is not also the result of the willful misconduct or negligent action or inaction of either of the following:*
 - *The party relying thereon, or*
 - *Anyone for whom that party is directly responsible.*

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b. Notice. The Party experiencing an Uncontrollable Circumstance that causes that Party breach its obligations under this Agreement will give immediate Notice to the other Party, including all of the following:

1. describing performance under this Agreement for which it seeks to be excused,
2. the expected duration of the Uncontrollable Circumstance,
3. the extent franchise services may be curtailed,
4. any requests or suggestions to mitigate the adverse effects of the Uncontrollable Circumstance, and
5. any extension of the schedule in refuse and green waste cart roll-out plan.

c. County Rights

1 **(1) Provide Franchise Services.** Even though Franchisee's breach is not event of
2 default under Subsection then County in its sole discretion may perform any franchise
3 obligation itself under Section 14.09 if Franchisee does not cure the breach within 48
4 hours of County Notice.

5
6 **(2) Contract Remedies.** If Franchisee's breach continues for 30 days, County may
7 exercise any remedies under this Agreement.
8
9

10 **14.04 Remedies Upon Default**

11
12 **a. Types.** County may exercise any or all of the following remedies in event of default in
13 its sole discretion:

- 14 **1. Termination:** to terminate any or all of this Agreement,
- 15 **2. Suspension:** to suspend any or all of this Agreement,
- 16 **3. County Right to Perform Franchise Services:** perform franchise services under Section
17 14.10,
- 18 **4. Damages:** assess damages (including liquidated damages under Section 14.01) ,and
- 19 **5. All Other Available Remedies:** exercise any other available remedies at law and in
20 equity (including specific performance).
21

22 **b. Acknowledgements.** Franchisee acknowledges that County remedy of damages may
23 be inadequate for reasons including the following:

- 24 1. The urgency of timely, continuous and high-quality franchise service, including
25 collection, transportation and/or transfer for disposal of putrescible wastes which
26 constitute a threat to public health.
- 27 2. The long time and significant investment of money and personnel (both County staff
28 and private consultants, including financial advisors, procurement counsel and elected
29 County officials) required to request and evaluate qualifications and proposals for
30 alternative service comparable to franchise service for the price under this Agreement,
31 and to negotiate new agreements for comparable service.
- 32 3. County relies on Franchisee's technical solid waste management expertise.
- 33 4. Franchisee's failure to transport and deliver solid waste to an Identified MSW Facility
34 ("Delivery Default") may increase County risk of liability for environmental damage due
35 to release or threatened release of hazardous or toxic substances, petroleum products
36 and other materials, including the following:
 - 37 • water or ground water contamination from those Facilities,
 - 38 • replacement or restoration of natural resources, and
 - 39 • repair, cleanup or detoxification of the solid waste management facility and any
40 related removal, remedial, response, closure or other plan, whether under

1 Section 107(e) of CERCLA Section 9607(e). California Health and Safety Code
2 Section 25364 or other law.

- 3 5. A Delivery Default may adversely affect County ability to measure the Minimum
4 diversion Requirement and secure AB 939 compliance.
5 6. A Delivery Default is not in the best economic, health and safety interest of customers.
6

7 Consequently, County is entitled to all available equitable remedies, including injunctive relief.
8
9

10 **14.05 Remedies Not Exclusive.** Each Party's rights and remedies under this Agreement
11 are not exclusive. A Party's exercise of one remedy (including liquidated damages under
12 Section 14.01), is not an election of remedies. It is cumulative with any other available
13 remedies.
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16 **14.06 Waivers**

17 **a. County**

18 (1) **Each Waiver is Discrete.** County waiver of any breach or event of default is not a
19 waiver of any other breach or event of default, including one with respect to the same
20 obligations under this Agreement.
21
22

23 (2) **No Demand for Damages.** County decision not to demand damages will not be
24 deemed a waiver of any Franchisee breach or event of default.
25
26

27 (3) **Acceptance of Damages.** County subsequent acceptance of any damages or
28 other money from Franchisee will not be deemed to be a waiver by County of any pre-
29 existing or concurrent breach or event of default.
30

31 **b. Franchisee Waiver of Certain Defenses.** Franchisee acknowledges that it is solely
32 responsible for providing franchise services. Franchisee irrevocably and unconditionally waives
33 defenses to the payment and performance of its Franchise Obligations based upon any of the
34 following:

- 35 1. failure of consideration,
36 2. contract of adhesion,
37 3. impossibility or impracticability of performance,
38 4. commercial frustration of purpose, or

- 1 5. the existence, non-existence, occurrence or non-occurrence of any foreseen or
2 unforeseen fact, event or contingency that may be a basic assumption of Franchisee
3 with regard to any provision of this Agreement.
4

5 Franchisee does *not* waive any defenses of Uncontrollable Circumstances.
6
7

8 **14.07 Jurisdiction, Venue, Service of Process** 9

10 **a. Exclusive State Court Jurisdiction.** Parties will bring any lawsuits arising out of this
11 Agreement in State courts, which will have exclusive jurisdiction over the lawsuits.
12

13 **b. Venue.** Venue is made in and will be performed in courts sitting in County of Los
14 Angeles.
15

16 **c. Location.** Parties will conduct any other hearing or action, whether arbitration or non-
17 judicial, of whatever nature or kind regarding this Agreement, in County of Los Angeles.
18

19 **d. Service of Process.** Franchisee will accept service of process at the address where it
20 receives Notices.
21
22

23 **14.08 Costs** Within two weeks of County request, Franchisee will pay County Reimbursement
24 Costs reasonably incurred to enforce County rights or exercise its remedies for any Franchisee
25 breach of this Agreement that results in an event of default.
26
27

28 **14.09 Assurance of Performance.** County may demand that Franchisee give County
29 reasonable assurances that Franchisee will timely and fully perform its Franchise Obligations if
30 County believes in good faith that Franchisee has substantially jeopardized its ability to timely
31 and fully meet Franchise Obligations for any of the following reasons:

- 32 1. Franchisee is the subject of any labor unrest (including work stoppage or slowdown,
33 sick-out, picketing or other concerted job action),
34 2. Franchisee appears in the reasonable judgment of County to be unable to regularly pay
35 its bills as they become due, or
36 3. Franchisee is the subject of a civil or criminal judgment or order entered by a federal,
37 state, regional or local agency for violation of an environmental or tax law.
38

1 These reasonable assurances are in addition to all other remedies County may have.
2 Franchisee's failure to give County reasonable assurances by the date required by County is an
3 event of default effective 30 days following County Notice to Franchisee.
4
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6 **14.10 County Right to Perform Franchise Services**

7

8 **a. Events.** County may perform, or contract for the performance of, any or all Franchise
9 Obligations in either of the following events:

- 10 1. County in its sole discretion determines that Franchisee's failure to provide any portion
11 of Franchise Obligations for a period of 48 consecutive hours poses a danger to public
12 health, safety or welfare, or
13 2. County suspends or terminates all or any portion of this Agreement.
14

15 This right is in addition to all other County remedies.
16

17 County has no obligation to continue performing Franchise Obligations. At any time, County in
18 its sole discretion may stop performing Franchise Obligations. However, County may continue
19 to perform Franchise Obligations until either of the following times:

- 20 1. Franchisee can demonstrate to County satisfaction that Franchisee is ready, willing and
21 able to timely and fully perform all Franchise Obligations, or
22 2. County provides MSW Services comparable to franchise services in scope and price,
23 which may include contracting with another service provider.
24

25 **b. Notice.** County may give Franchisee 24-hour oral notice that County is exercising its
26 right to perform any or all Franchise Obligations, effective immediately. Within those 24 hours,
27 County will give Franchisee a written Notice of confirmation.
28

29 **c. Containers.** Franchisee is deemed to give County possessory interest in any or all
30 containers necessary or convenient to provide franchise services, effective when County gives
31 oral notice. County may use containers to provide all or a portion of franchise services. County
32 will have absolute and exclusive control over containers as though County were the absolute
33 owner thereof, subject to actual possession by customers. Franchisee will maintain all
34 insurance required under this Agreement while County exercises its rights under this Section.
35

36 **d. Personnel.** Immediately upon giving Franchisee oral notice under Subsection (b),
37 County may engage personnel necessary or convenient to provide all or a portion of Franchise
38 Obligations, including any or all of the following:

- 39 1. County municipal employees,

- 1 2. Franchisee's current or prior employees such as:
2 • Key personnel and other management,
3 • drivers,
4 • route superintendents,
5 • customer service representatives, and
6 • billing, accounting and other office staff, and
7 3. any other person.
8

9 **e. Records.** Upon County request, Franchisee will give County immediate access to
10 Franchisee's Franchisee office and any or all records, including records related to routing,
11 customer service subscriptions and billing.
12

13 **f. Franchisee Payment or County Reimbursement**
14

15 **(1) Uncontrollable Circumstances.** If events enumerated in Items 1 and 2 in Subsection (a)
16 are due to Uncontrollable Circumstances, then County will pay Franchisee any of the
17 following costs so long as Franchisee is not being compensated for franchise services
18 through charging and collecting Rates from customers:

- 19 1. rental fees for County use and possession of carts and bins equal to their fair
20 market as determined by an independent appraiser selected by the parties in the
21 same manner as an the mediator under Article 16, and
22 2. Franchisee direct cost of making its personnel available to County under
23 Subsection (d).
24

25 **(2) Franchisee Breach or Event of Default.** If events enumerated in Items 1 and 2 in
26 Subsection (a) above are *not* due to Uncontrollable Circumstances, then within 10 days of
27 County request, Franchisee will pay County its County Reimbursement Costs incurred in
28 performing Franchisee Obligations. If Franchisee does pay within 10 days, County may draw
29 upon any letter of credit, guaranty or other security provided under this Agreement.
30

31 **g. Stipulations.** Franchisee agrees and stipulates that County exercise of rights under
32 this Section:

- 33 1. is not a taking of private property for which County must compensate Franchisee,
34 2. will not create any liability on the part of County to Franchisee, except for rental under
35 Subsection (f)(1), and
36 3. does not exempt Franchisee from any Indemnifications, which Franchisee acknowledges
37 apply to this Section, *except* with respect to liabilities arising from

- the negligence of County officers and employees (other than employees of Franchisee at the time County commenced performing the franchise services), and
- individuals driving collection vehicles.

ARTICLE 15 SUSPENSION OR TERMINATION

15.01 County Right to Suspend or Terminate

a. Termination Events. County may in its sole discretion terminate this Agreement (i) in whole, or (ii) by directing Franchisee to cease performing any portion or Item of its Franchise Obligations, in part, in any of the following events:

1. **Franchisee Default:** the occurrence of an event of default,
2. **Uncontrollable Circumstances:** the occurrence and continuance of an Uncontrollable Circumstance,
3. **Non-Severable Provisions:** any clause, sentence, provision, Subsection, Section or Article of this Agreement or Exhibit to this Agreement is ruled invalid by any court of competent jurisdiction but is not severable,
4. **Assignment of Guaranty Without Consent:** the Guarantor assigns the Guaranty without County consent required by the Guaranty despite County Board action denying County consent, and the Guarantor does not provide County with a substitute Guarantor or alternative financial credit support satisfactory to County within 15 days of that denial.

b. Suspension Events. County may in its sole discretion suspend this Agreement for up to 30 days upon the occurrence of any event listed in Subsection (a), as follows:

1. in whole, or
2. by directing Franchisee to cease performing any portion or Item of its franchise obligations, in part.

During those 30 days Franchisee will have the opportunity to demonstrate to the sole satisfaction of County that Franchisee can once again fully and timely perform Franchise Obligations. If County is satisfied, County right to suspend or terminate the Agreement will cease and Franchisee may resume providing Franchise Obligations. If County is *not* satisfied, County may terminate the Agreement and exercise any of its other rights and remedies.

c. Notice. Termination is effective at the times listed under Section 14.02 or any longer times required by County.

1 **d. Suspension, Termination of a Portion of Franchise Obligations.** If County
2 suspends or terminates a portion of this Agreement or Franchisee Obligations, Franchisee will
3 continue to fully and timely perform its remaining Franchisee Obligations and within two
4 weeks, give customers written notice of reductions in franchise services. *For example, if County*
5 *suspends Franchisee Obligations with respect to residential recyclables collection, Franchisee*
6 *would be obligated to fully perform its other Franchise Obligations, such as residential refuse*
7 *and green waste collection.*
8
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10 **15.02 Franchisee Obligations Upon Termination.** THIS SECTION SURVIVES THE
11 FRANCHISE TERM. Upon termination of this Agreement, County has the following rights and
12 Franchisee the corresponding obligations. Under this Agreement, County may exercise these
13 rights no later than the day that Franchisee receives County’s Notice of termination.
14

- 15 **1. Use of Franchise service assets.** If County requests, Franchisee will give County
16 possession of franchise service assets (including vehicles) to provide franchise services.
17 Franchisee will transfer or assign to County all rights necessary to give County
18 possession and use of franchise service assets. County may keep those franchise service
19 assets until the County purchases or otherwise acquires replacement assets. Franchisee
20 will comply with Section 17-86(c)(2) of the County Code.
- 21 **2. Receipt of Customers’ Franchise Service Payments.** Franchisee will give
22 County immediate access to Franchisee’s service subscription and billing records. By
23 entering into this Agreement, Franchisee authorizes County to bill and collect and keep
24 customer service charges. Franchisee will comply with Section 17-86(c)(2) of the
25 County Code.
- 26 **3. Option to Purchase Carts.** County *may* purchase some or all carts at a price equal
27 to the then book value of carts amortized straight-line over a 7 year life. Franchisee will
28 transfer or assign to County all rights necessary to give County ownership, possession
29 and use of carts, including under any cart Acquisition Agreement. If County does *not*
30 purchase carts, upon County request Franchisee will pick up those carts at its customers’
31 cart set-out site on the date specified by County. Franchisee will recycle rather than
32 dispose of carts.
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35 **ARTICLE 16 [RESERVED]**
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37 **16.01 RESERVED**
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1 **ARTICLE 17 THE PARTIES**
2

3 **17.01 Franchisee Is Independent** . Franchisee will perform franchise services as an
4 independent Franchisee engaged by County and not as officer, agent, servant, employee or
5 partner of County or as a joint venture with County. No employee or agent of Franchisee is
6 deemed to be an employee or agent of County. Franchisee will have the exclusive control over
7 the manner and means of performing franchise services anyone else performing franchise
8 services, *except* for County right to change the scope of franchise services under Article 9.
9 Franchisee is solely responsible for the acts and omissions of its officers, employees,
10 Franchisees, subcontractors and agents, none of whom is deemed to be an officer, agent,
11 servant, employee of County. Neither Franchisee nor its officers, employees, Franchisees,
12 subcontractors and agents will obtain any rights to retirement benefits, workers compensation
13 benefits, or any other benefits which accrue to County employees, and Franchisee expressly
14 waives any claim it may have or acquire to the benefits.
15
16

17 **17.02 Parties In Interest.** Nothing in this Agreement, whether express or implied, is
18 intended to confer any rights on anyone other than the parties and representatives, successors
19 and permitted assigns.
20
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22 **17.03 Binding On Successors.** The provisions of this Agreement will inure to the benefit of
23 and be binding on the successors and permitted assigns of the parties.
24
25

26 **17.04 Further Assurances.** Each Party will execute and deliver any instruments and
27 perform any acts as may be necessary or reasonably requested by the other in order to give full
28 effect to this Agreement.
29
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31 **17.05 Actions of County In Its Governmental Capacity.** Nothing in this Agreement can
32 be interpreted as limiting the rights and obligations of County in its governmental or regulatory
33 capacity. However, the parties intend that County designation of any Identified MSW Facility is
34 an exercise of County contractual rights and not a governmental or regulatory action.
35
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37 **17.06 Franchisee Obligations Performed at Franchisee’s Sole Expense.** Franchisee
38 will perform franchise services solely for Rates the compensation in the form of Rates paid by
39 customers.

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17.07 Parties’ Representatives

a. County Representative

(1) Named. County Representative is the Deputy Director of the Public Works Department (Resource Recovery and Waste Management Division) *unless* otherwise named upon County Notice to Franchisee. County Representative is authorized to act on behalf of County in the administration of this Agreement, unless another individual is specifically named.

12

“County Representative” means the Person named by County under this Section.

(2) Delegation. By authorizing the execution of this Agreement, County delegates to County Representative the authority to exercise County rights, remedies and options under this Agreement and administer this Agreement (including the right to accept or reject Franchisee’s submissions to County), *except* with respect to:

- 1. extending the Term,
- 2. suspending or terminating the Agreement,
- 3. approving or disapproving transfer of this Agreement, and
- 4. exercising any delegation of authority contrary to law.

b. Franchisee Representative. Franchisee Representative is the individual whom Franchisee names in Franchisee Documentation. County may assume that Franchisee has authorized Franchisee Representative to act on behalf of Franchisee under this Agreement. Franchisee Representative is a key personnel named under Section 5.06a. Franchisee Representative must have at least 5 years experience in MSW Services with respect to collection prior to being named Franchisee Representative.

“Franchisee Representative” means the Person named by Franchisee under this Section.

17.08 Due Diligence. Franchisee acknowledges that County may be subject to statutory fines for failure to achieve mandated diversion levels and that waste management is a public

1 health and safety concern. It agrees that it will exercise due diligence in performing franchise
2 services.

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5 **17.09 No Use of County Name.** Franchisee will not do business as or use a corporate,
6 partnership, venture or other formal name containing the words “Santa Barbara County” or
7 implying municipal ownership. However, upon County direction, Franchisee will use County
8 name in any of the public relations materials.

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11 **ARTICLE 18 TRANSFER AND AMENDMENTS**

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13 **18.01 Transfer**

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15 **a. County Transfer.** County may transfer this Agreement to a sanitation district, joint
16 power authority, sanitation district or other public entity succeeding to the major portion of
17 County solid waste management rights and obligations. County may transfer this Agreement to
18 anyone else if it determines that the transferee is capable of meeting County obligations under
19 this Agreement.

20
21 **b. Franchisee Transfer**

22
23 **(1) Franchisee Acknowledgments.** Franchisee acknowledges as follows:

- 24 1. In Franchisee’s proposal to provide franchise services Franchisee submitted
25 information with respect to Franchisee’s:
- 26 • experience in providing services similar to franchise services in a timely, safe and
27 effective manner,
 - 28 • financial strength and creditworthiness to meet franchise obligations (including
29 paying indemnifications),
 - 30 • history of (non)compliance with law (including environmental law with respect
31 to both MSW and hazardous waste),
 - 32 • litigation record (especially by or against public entities or with respect to
33 procurements),
 - 34 • reputation for sound MSW management practices,
 - 35 • references from other public entities , and
 - 36 • other matters relating to Franchisee’s fitness to provide franchise services.
- 37 2. County evaluated that information prior to awarding this Franchise to

1 Franchisee.
2 3. Therefore, and as described in Section 5.03, Franchise services are personal
3 services in nature and County and customers may not receive the full benefit of their
4 bargain if someone else takes over Franchisee's performance obligations.
5

6 **(2) County Consent.** Consequently, Franchisee will not transfer this Agreement, or any
7 rights or duties under it, in whole or in part, whether voluntarily or involuntarily, without
8 County prior consent exercised in County sole discretion. Franchisee will comply with
9 Section 17-86(c) of the County Code.
10

11 Any transfer or attempted transfer of this Agreement or any rights and duties under it,
12 made without County consent, is null and void at County option. All of Franchisee's rights
13 under this Agreement will terminate as provided in Section 17-86(c) of the County Code.
14

15 If County consents, Franchisee will pay County the following amount as compensation for
16 County's loss of bargain and assuming risk of transferee's failure to perform franchise
17 obligations:
18

- 18 1. 10% *times*
- 19 2. the following difference:
 - 20 • Franchisee's average monthly revenue since the franchise date that
 - 21 Franchisee reported to County as basis for calculating the franchise fee,
 - 22 *minus*
 - 23 • any corresponding Franchisee Fees or Solid Waste Program Fees, *times*
- 24 3. the number of months (or partial months) remaining in the franchise term.

"Transfer" means an action (or inaction) that has any of the following direct (or indirect) effects:

1. **Control or Ownership of Franchisee:** changing any or all of the following:
 - the effective control, or
 - ownership interest (actual or constructive) of Franchisee (including buyout, merger, acquisition, consolidation, reorganization, recapitalization, stock (re)issuance, voting trust, pooling agreement, escrow arrangement, dissolution, or liquidation (except to Immediate Family or a trust created primarily to benefit members of the Immediate Family) unless Franchisee proves to satisfaction of County less than 25% of ownership interest has changed;
2. **Control or Ownership of franchise service assets:** changing either of the following:
 - the effective control, or
 - the ownership (actual or constructive) of franchise service assets (except for sales or transfers to the Immediate Family or a trust created primarily to benefit the Immediate Family) unless Franchisee proves to satisfaction of County that less than 20% of the value of franchise service assets has changed ownership, or
3. resulting in someone other than Franchisee performing franchise services or assuming the obligation to provide franchise services (including substitution of someone else by a surety company providing a performance bond, contract assignment, transfer, conveyance, or sublease or licensing).

For purposes of this definition, an action (or inaction) includes assignment by operation of law, such as insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution levied against this Agreement, or appointment of a receiver taking possession of any of Franchisee's tangible or intangible property, or transfer occurring in a probate or other estate proceeding.

"Immediate Family" means parents, grandparents, siblings, children, and grandchildren of individuals having a shareholder or other equity interest in Franchisee as of the Contract.

"Ownership" means the state or fact of being the direct or indirect, actual or constructive owner of property, such as a parent holding corporation owning stock of a subsidiary corporation that in turn owns stock in its own subsidiary corporation or corporations.

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3 **(3) Franchisee Demonstration.** Without obligating the County to give consent to the
4 proposed transfer, Franchisee at a minimum will demonstrate the following to County
5 satisfaction:

- 6 1. The proposed transferee has the same or stronger qualifications described in
7 Franchisee's preceding acknowledgements.
- 8 2. The proposed transferee has the expertise and financial resources necessary to
9 satisfy franchise obligations and provide high quality franchise services.

10
11 **(4) Payment of County Costs.** Franchisee acknowledges the following:

- 12
13 1. County is concerned that transfer of this Agreement could result in significant
14 Rate increases, decline in quality of franchise service (especially during transition to
15 new key personnel and management) and threat to public health and safety.
- 16 2. County might incur significant but presently unknown expenses to investigate
17 whether transfer of this Agreement is in the best interest of public health and safety.
18 Therefore Franchisee will pay County the following expenses.

19
20 (i) ***Transfer Fee and Deposit.*** Franchisee must make any request for
21 County consent to a transfer in the manner prescribed by County. Franchisee will
22 pay County a non-reimbursable fee of \$75,000 plus a refundable Transfer
23 Deposit before County consideration of Franchisee's request. County will return
24 to Franchisee any Transfer Deposit paid in excess of the transfer costs incurred.

25
26 *"Transfer Deposit" means County estimate of the amount of County anticipated*
27 *Transfer Costs over \$75,000.*

28
29 (ii) ***Additional Transfer Costs.*** In the course of County processing
30 Franchisee's request for transfer, Franchisee will further pay County its
31 additional transfer costs in excess of the transfer cost within 30 days of County
32 request therefor, whether or not County consents to the transfer. At
33 Franchisee's request, County will provide Franchisee access to all records
34 evidencing the transfer costs incurred.

“Transfer Costs” means County Reimbursement Costs of considering and reviewing Franchisee request for Transfer, investigating the suitability of the transferee, and determining whether or not to give consent to the Transfer, including fees of consultants and attorneys necessary to analyze the application and to prepare documents to effectuate the Transfer as well as County staff costs.

1
2 (iii) **County Reimbursement Costs of Enforcement.** In addition, Franchisee
3 will pay County Reimbursement Costs for fees and investigation costs that
4 County deems necessary to enjoin the transfer or to otherwise enforce this
5 provision within 30 days of County request.

6
7 (4) Franchisee must remain secondarily liable after the transferee for meeting
8 franchise obligations.

9
10 (5) The transferee must assume all of Franchisee’s franchise obligations (including
11 obligations precedent).

12
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14 **18.02 Amendments to Agreement**

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16 **a. County Manager Changes**

17
18 (1) **Changes to Franchisee Documentation.** County Manager may make changes to
19 Franchisee Documentation.

20 (2) **Notice from Franchisee.** The following changes in the Agreement are effective
21 upon mutual consent of County Manager and Franchisee,
22 1. Changes in Franchise Obligations that do not result in a Rate adjustment,
23 2. Immaterial changes in franchise services (such as changing the date that a report is due),
24 and
25 3. Changing Franchisee Representative.

26
27 **b. County Board Amendments.** The following changes in this Agreement after the
28 franchise date are effective only upon execution of a written amendment to this Agreement,
29 including warranties by the parties under Article 20:

- 30 1. Changes in franchise services that result in a Rate adjustment, and
31 2. Material changes in franchise services (such as County remedies for breach of this
32 Agreement or in the definition of “Events of Default”).
33

34 **18.03 Amendments to Franchisee Documentation.** The parties dated signatures on

1 Franchisee Documentation or other Attachments is deemed evidence that it was duly amended
2 following Notice and/or consent, as it requires. Amended Franchisee Documentation
3 supersedes the prior Franchisee Documentation as of the last dated signature of County
4 Representatives or Franchisee Representative.
5
6

7 **ARTICLE 19. NOTICES, CONSENTS, APPROVALS, ETC.**

8

9 **19.01 Notices, etc..** Parties must give Notices at the following addresses:
10

- 11 1. To Franchisee: At address in Franchisee Documentation.
- 12
- 13 2. To County: XXX
14
15

16 parties may give Notices only by any of the following means:

- 17 1. Email or facsimile followed as soon as possible (but no more than 2 days) by personal or
18 mailed delivery,
- 19 2. personal delivery to Franchisee Representative or County Representative being notified,
- 20 3. deposit in the United States mail first class postage prepaid (certified mail, return
21 receipt requested), or
- 22 4. commercial delivery service providing delivery verification.
23

24 Notice by County to Franchisee of a missed pick-up or other customer problem or complaint
25 may be given to Franchisee orally by telephone to Franchisee Representative or other
26 Franchisee personnel responsible for taking complaints from County or the public.
27

28 Parties may change their address upon Notice to the other Party.
29
30

31 **19.02 Exercise of Options.** Except as otherwise provided, the parties' exercise of any
32 approval, disapproval, option, discretion, satisfaction, determination, election, consent or
33 choice under this Agreement is deemed reasonable, *unless* this Agreement specifically provides
34 otherwise, including in each respective Party's "independent", "sole", "exclusive" or "absolute"
35 "control", "judgment", or "discretion".
36

37 All reports, demands, requests, directions, selections, option exercises, orders, requests,
917 docket draft

1 proposals, reviews, comments, acknowledgments, approvals, agreements, consents, waivers,
2 certifications and other communications made under this Agreement must be in writing *unless*
3 oral communication is explicitly allowed. Explicit reference to “written” or “writing” with
4 respect to any one communication does not imply that other communications without explicit
5 reference to writing may be oral.

6
7

8 **ARTICLE 20 EXECUTION OF AGREEMENT**

9

10 **20.01 Signing Multiple Copies.** The parties may sign any number of copies of the
11 Agreement. All signed copies are deemed to the Agreement.

12
13

14 **20.02 Authority to Sign**

15

16 **a. County.** County warrants that it duly authorized the officers listed below to sign this
17 Agreement on behalf of County.

18

19 **b. Franchisee.** Franchisee warrants that it duly authorized the individuals listed below to
20 sign this Agreement on behalf of Franchisee.

21

22 COUNTY OF SANTA BARBARA,
23 CALIFORNIA, a municipal corporation
24 By: _____
25 Name: _____
26 Title: CHAIR OF THE BOARD
27 Dated: _____

FRANCHISEE
Name: _____
By: _____
Signer’s Name: _____
Title: _____
Dated: _____

28

29 ATTEST:
30 _____
31 COUNTY CLERK
32 Dated: _____

ATTEST:

Dated: _____

33

34 APPROVED AS TO FORM:
35 _____
36 COUNTY ATTORNEY

1 Dated: _____
2
3 _____
4 COUNTY RISK MANAGER
5 Dated: _____
6
7 _____
8 COUNTY AUDITOR-CONTROLLER
9 Dated: _____
10
11
12

1 **ATTACHMENT 2.01FRANCHISEE REPRESENTATIONS AND WARRANTIES**

2 Franchisee represents and warrants as follows:

- 3
- 4 1. **Status.** Franchisee is a corporation duly organized, validly existing and in good
5 standing under the laws of the State and is qualified to do business in the State.
- 6 2. **Authority and Authorization.** Franchisee has full legal right, power and authority to
7 execute and deliver this Agreement and perform its obligations under this Agreement.
8 This Agreement has been duly executed and delivered by Franchisee and constitutes a
9 legal, valid and binding obligation of Franchisee enforceable against Franchisee under its
10 terms.
- 11 3. **No conflicts.** As of the franchise date, neither the execution or delivery by
12 Franchisee of this Agreement, the performance by Franchisee of its Service obligations,
13 nor the fulfillment by Franchisee of the terms and conditions of this Agreement:
- 14 • conflicts with, violates or results in a breach of any law,
 - 15 • conflicts with, violates or results in a breach of any term or condition of any
16 judgment, order or decree of any court, administrative agency or other
17 governmental authority, or any agreement or instrument to which Franchisee or
18 any of its affiliates is a party or by which Franchisee or any of its affiliates'
19 properties or assets are bound, or constitutes a default there under, or
 - 20 • will result in the creation or imposition of any lien, charge or encumbrance
21 of any nature whatsoever upon any of the properties or assets of Franchisee.
- 22 4. **No approvals required.** As of the franchise date, no approval, authorization, license,
23 permit, order or consent of, or declaration, registration or filing with any governmental
24 or administrative authority, commission, board, agency or instrumentality is required
25 for the valid execution and delivery of this Agreement by Franchisee, except as have
26 been duly obtained from its Board of Directors.
- 27 5. **No litigation.** To the best of Franchisee knowledge, s of the franchise date there is
28 no action, suit, proceeding or investigation, at law or in equity, before or by any court or
29 governmental authority, commission, board, agency or instrumentality pending or, ,
30 threatened by or against Franchisee wherein an unfavorable decision, ruling or finding,
31 in any single case or in the aggregate, would materially adversely affect the
32 performance by Franchisee of its franchise obligation or in connection with the
33 transactions contemplated by this Agreement, or which, in any way, would adversely
34 affect the validity or enforceability of this Agreement or any other agreement or
35 instrument entered into by Franchisee in connection with the transactions
36 contemplated by this Agreement.
- 37 6. **Due Diligence.** Franchisee has made an independent investigation, examination and
38 research satisfactory to it of the conditions and circumstances surrounding the
39 Agreement and best and proper method of providing franchise services (including the
40 types of franchise services) and labor, equipment and materials for the volume of

- 1 franchise services to be provided. Franchisee agrees that it will make no claim against
2 County based on any good faith estimates, statements or interpretations made by any
3 officer, employee or agent of County which proves to be in any respect erroneous.
- 4 7. **Compliance with law.** Franchisee fully complied with all law, including without
5 limitation law relating to conflicts of interest, in the course of procuring this Agreement.
- 6 8. **Truth and Accuracy of Application.** As of the date Franchisee submitted to the
7 County its proposal to provide franchise services, t he information provided by
8 Franchisee in its proposal, was true and accurate, without material omissions.
- 9 9. **Truth and Accuracy of Proposal Information.** The information that Franchisee
10 submitted to County in its proposal to provide franchise services is true and accurate.
11 Franchisee will inform County of any change in that information within one week of
12 discovering any untruth or inaccuracy.
- 13 10. **No Prior Agreements.** Neither Franchisee nor any of its affiliates has previously
14 been a party to an agreement with County, that has either expired without Franchisee
15 earning an available extension, or been terminated by County.

1 **EXHIBIT 4.01a** **SERIVCE AREA / ZONE X**

1 **EXHIBIT 4.03 FRANCHISEE TRANSITION PLAN**
2 **(Tasks and Timeline)**
3

4 Franchisee will identify specified tasks and dates in its attached roll-out plan, including the
5 following:

- 6 1. Timeline showing the commencement, duration and completion date of transition,
7 including the following:
- 8 • developing the procedure for residential and commercial customers to select
9 container size(s) and service frequency,
 - 10 • contacting customers to determine subscription levels and consequent number
11 and type of containers,
 - 12 • public education and outreach activities, including holding public workshop on
13 date chosen by County to explain new programs and display new carts,
 - 14 • submitting form of container orders to County for acceptance (including
15 labeling),
 - 16 • ordering containers from manufacturer(s).
 - 17 • ordering trucks,
 - 18 • container delivery and assembly,
 - 19 • delivery of trucks,
 - 20 • hiring and training personnel,
 - 21 • training customer service personnel,
 - 22 • developing and implementing customer service and billing database,
 - 23 • submitting route sheets to County for acceptance,
 - 24 • training drivers on routes,
 - 25 • submitting Customer Orientation Packet to County for acceptance,
 - 26 • delivering containers and Customer Orientation Packets to customers,
 - 27 • collecting and recycling customers' old containers, at their request;
- 28 2. Identifying problems that might arise during transition, together with proposals to
29 prevent those problems and responses to solve them;
- 30 3. Detailing public education strategies to inform customers of all franchise services,
31 and explain how to secure and use those services.

32
33 Franchisee may change this plan if County accepts the changes.^{6'}

⁶**Acknowledgment:** Franchisee has submitted, and County has accepted, the attached
Transition Plan as of the later of the following dates:

1. the franchise date, as evidenced by each of their signatures on the Agreement, or
2. with respect to subsequent changes, the following date, as evidenced by their

signatures :

Date _____

County Representative: _____

Franchisee Representative _____

1 **EXHIBIT 4.04a(8) APPLICATION FOR CARRY-OUT SERVICE:**
2 **QUALIFYING CUSTOMER**

3
4
5
6
7
8

Franchisee may change this application form if County accepts the changes.⁷

[FRANCHISEE, ATTACH FORM].

⁷**Acknowledgment:** Franchisee has submitted, and County has accepted, the attached Application Form **a** as of the later of the following dates:

1. the franchise date, as evidenced by each of their signatures on the Agreement, or
2. with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date_____

County Representative: _____

Franchisee Representative_____

Exhibit 4.04b(2) BUSINESS AND MULTI-FAMILY RECYCLING PLAN

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Franchisee will develop and implement a Business and Multi-family Recycling Plan implementing the following Protocol and Procedure:

1. **Commercial Recycling Program Protocols** with respect to Franchisee, under County Code Chapter 17,
2. **Additional Guidelines and Procedures for Implementing County of Santa Barbara Mandatory Commercial Recycling Program** with respect to Franchisee in form attached to this Exhibit.

Text of the Protocol and Procedure in effect on the franchise date are attached to this Exhibit for convenience of the parties, but references in the Protocol and Procedure to County actions or obligations are not contractual obligations to Franchisee.

Franchisee has attached to this Exhibit its Business and Multi-family Recycling Plan acceptable to County.^{8'}

⁸**Acknowledgment:** Franchisee has submitted, and County has accepted, the attached Multi-Family Recycling Plan as of the later of the following dates:

1. the franchise date, as evidenced by each of their signatures on the Agreement, or
2. with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date _____

County Representative: _____

Franchisee Representative _____

1
2
3 **2-100 Commercial Recycling Program Protocols**
4

5 **2-101-Compliance Protocol**
6

7 The Commercial Recycling Program Protocols (hereinafter “Protocol” or “Protocols”) shall be
8 applicable to and mandatory for all “persons” and “responsible parties” associated with
9 “commercial premises” (hereinafter “Business” or “Businesses”) as these terms are defined in
10 County Code Chapter 17, excluding public and private educational institutions (i.e., schools). A
11 Business will be in compliance with the Protocol if the Business subscribes to the collection
12 services of an authorized collector, or the Business chooses to donate or sell its recyclables to a
13 commercial recycler that does not charge for its service, or the Business provides its own
14 collection and transportation of recyclables services (self-haul to drop-off facilities). Otherwise,
15 the Business must obtain a waiver or exemption as described in Section 2-102 to be in
16 compliance with the Protocol.
17

18 The key component to the recyclables disposal ban is compliance by Business. The following
19 describes the steps for achieving compliance.
20

21 STEP 1 (Visual inspection schedule): Each Business trash and recycling container will be
22 checked by the route driver bi-monthly for the grace period following implementation of the
23 program. The grace period will last from September 1, 2003 through February 29, 2004.
24 Following the grace period, Businesses will be checked semi-annually for compliance. To
25 ensure consistent inspections, a driver will be given a list of Businesses that must be checked
26 for that day. Results of the visual inspections will be written and submitted to the office at the
27 end of the day.
28

29 STEP 2 (Visual inspection process): If recyclables are found in the trash container, the driver will
30 document responses to the following questions:
31

- 32 a. Does the Business have recycling containers?
33 b. Are the containers being used?
34 c. Does the Business need more recycling containers?
35

36 If the answer to question “a” is no, the driver will inform office staff that the Business is in non-
37 compliance. Office staff will make a follow-up phone call to the Business explaining the
38 requirements of the Protocols, options available, and repercussions of non-compliance.
39

1 If the answer to question “b” is no, the driver will inform office staff that the Business needs to
2 be educated on the appropriate use of the containers. If the Business chooses to not use the
3 containers, they will be informed of the non-compliance fee or rate.

4
5 If Business requests an exemption from the Protocols, see Exemption Protocol below.

6
7 If the answer to question “c” is yes, the driver will inform office staff that the Business requires
8 additional recycling containers.

9
10 STEP 3 (County participation): County staff will either ride with drivers or conduct separate
11 audits of each Business annually to ensure compliance. County staff will periodically review
12 materials being tipped at area landfills to gage the quantity of recyclables that continue to be
13 buried from the commercial sector and identify any particular routes that appear to be in non-
14 compliance.

15 16 **2-102 Exemption Protocol**

17
18 The following outlines the procedure a Business shall use to obtain a waiver or exemption from
19 the requirements of the Protocols

20
21 STEP 1: Business expresses an interest in obtaining a waiver or being exempt from participating
22 in the program.

23
24 STEP 2: Hauler gives Business a form developed by the County formally requesting an
25 exemption from the program. For purposes of this section, the Business will have the burden to
26 produce evidence sufficient to allow the County to make the determination that the Business is
27 exempt from the requirements of the Protocol. Business submits waiver/exemption request
28 form to the County. The requirements of the Protocol shall not be applicable to and mandatory
29 for a Business if the County determines that one or both of the following exists:

- 30
31 a. the Business is exempted according to County Code 17-6, and the Director, or his
32 or her designee, after receiving a written application from the Business, finds
33 that the requirements of the Protocol are infeasible or unnecessary to maintain
34 the required level of service, or;
35
36 b. the Business would suffer undue or unreasonable hardship by participating in
37 the Protocol.

38
39 STEP 3: Hauler and County make a site visit.

1 STEP 4: County determines if exemption is granted or not. County shall notify Business by mail
2 or personal service by a public officer of this determination (hereinafter, "Notice of
3 Determination").
4

- 5 a. If the County determines Business is not entitled to the waiver or exemption,
6 Business may appeal by requesting an administrative review hearing of the
7 adverse determination within ten (10) working days of personal service or the
8 date of the mailing of the Notice of Determination.
- 9 b. The Notice of Determination shall contain a statement that if the Business fails
10 to request an appeal of an adverse determination, the Notice of Determination
11 shall be deemed a final administrative order or decision for purposes of Code of
12 Civil Procedure Section 1094.5.
- 13 c. An appeal of the Notice of Determination shall be heard by the Director of Public
14 Works (or his or her designee) as the hearing examiner. The administrative
15 appeal hearing shall be set no sooner than twenty (20) and no later than forty-
16 five (45) days following a request for an appeal hearing. Notice of the appeal
17 hearing shall be mailed at least twelve (12) calendar days before the date set for
18 the hearing. Failure to appear timely will cause the Notice of Determination to
19 become a final order or decision.
- 20 d. After the hearing, the hearing examiner shall uphold, vacate or modify the initial
21 determination of the County. The decision of the hearing examiner shall be
22 deemed a final administrative order or decision for purposes of Code of Civil
23 Procedure 1094.5. The hearing examiner's decision shall be deemed served
24 within two days after the date it was mailed to the address provided by the
25 Business.
26

27 **2-103 Non-Compliance Fee or Non-Compliance Collection Rate for Non-Compliance**

28

29 The following explains the process for collecting the Non-Compliance Fee or the Refuse
30 Collection Rate for Non-Compliance with the Commercial Recycling Program, how the fee or
31 rate is imposed and collected, and the use of the fee or rate funds.
32

33 STEP 1 (Levying fee or rate): If a Business refuses to recycle or receives recycling containers but
34 does not use them appropriately (high levels of contamination or trash), and is not eligible for
35 an exemption, the Business will pay a Non-Compliance Fee or a Refuse Collection Rate for Non-
36 Compliance with the Commercial Recycling Program. This fee or rate will be included in the
37 Business trash bill and will be 20% of the Business's trash collection rate (not including bin
38 rentals). Prior to paying the non-compliance fee or rate, a Business:
39

- 1 a. Will be granted a six-month grace period (September 1, 2003 through February
- 2 29, 2004),
- 3 b. Will be contacted via a letter that introduced the program, and
- 4 c. Will have received follow-up telephone calls from the haulers following visual
- 5 inspections of their containers.
- 6

7 In addition, haulers will advise County staff of non-complying Businesses before levying the fee
8 or rate. County staff will contact the non-compliant Businesses a final time to ensure that they
9 are aware of the Protocol and the repercussions of not participating.

10
11 STEP 2 (Fee or Rate distribution): Each month, haulers will submit a report identifying
12 Businesses that are being assessed the non-compliance fee or rate and shall forward all fee or
13 rate monies to the County. The County will expend funds generated by the fee or rate on
14 recycling education and promotion programs.

15 16 **2-104 Contamination Protocol**

17
18 A significant increase in the contamination of recyclables being collected can negatively impact
19 the quality of all materials collected, increase the cost for processing, and decrease the
20 revenues associated with the sale of the materials. Because of these significant impacts, a
21 protocol for minimizing contamination is very important.

22
23 First, no level of putrescibles will be accepted. Second, there can be no more than 25% overall
24 contamination of the commingled recyclables collected. If putrescibles or more than 25%
25 contamination are found in the recyclables collection containers, the Business will be notified
26 immediately and educational materials will be delivered regarding the appropriate use of the
27 containers. Large stickers will be placed on each container emphasizing that they are for
28 recyclables collection only. If a Business continues to contaminate their containers, the
29 containers will be pulled and the non-compliance fee or rate will be assessed on the Business.

Business and Multi-Family Recycling Program Guidelines

In 2003, the Board of Supervisors approved an ordinance for commercial and multi-family recycling (referred to as the Business Recycling Program). Additionally, the state of California has passed AB 737 further requiring the implementation of recycling programs for businesses and multi-family complexes.

There are two facets of the County program including 1) mandatory recycling for all businesses and recycling service is paid for separately from refuse service, and 2) 30% of a multi-family customer's refuse capacity is provided for recycling and the cost is built into the overall service rate (for example if a complex has 120 gallons of refuse service, it will be provided 40 gallons of additional recycling service).

The following provides more detail regarding requirements that must be fulfilled by the Franchisee in order to implement and maintain the program.

New Business Customer Protocol

1. When a new customer subscribes to collection services, Franchisee will discuss the various refuse and recycling collection options and the costs associated with recycling as well as the potential savings a business can realize by recycling. Franchisee and customer will determine the appropriate types of containers to be used, location of the containers, and frequency of service.
2. When containers are delivered, customer will be provided with information regarding the types of services the customer is eligible for, and flyers and posters that explain the program to the employees and that list the types of materials that can be recycled. Franchisee will include information that, if interested, the customer can contact the County for free indoor recyclables collection containers.

New Multi-Family Customer Protocol

1. When a new multi-family customer subscribes to collection services, Franchisee will discuss the various refuse and recycling collection options available. Customer is entitled up to an additional 30% of the refuse collection capacity for recycling and the cost is built into the refuse collection rate. Franchisee and customer will determine the appropriate types of containers to be used, location of the containers, and frequency of service in order to encourage active participation in the recycling program.
2. When containers are delivered, customer will be provided with information regarding the types of services the customer is eligible for, and flyers and posters that explain the program to the residents and that list the types of materials that can

1 be recycled. Franchisee will include information that, if interested, the customer can
2 contact the County for free indoor recyclables collection containers for its residents.
3

4 **Existing Customers**

- 5 1. Each calendar year, Franchisee will conduct an inventory and assessment of business
6 and multi-family customers and their participation in the recycling program.

7 Franchisee will do the following:

- 8 a. Compare the level of service in the Franchisee customer database to what
9 the customer actually has and document any discrepancies;
10 b. Document any businesses and multi-family customers without recycling
11 service and any reason why not (self-haul, exemption, unknown)
12 c. Note the level of contamination in the recycling containers, if over 25%,
13 document this information and inform office staff for follow-up phone call,
14 offer for additional recycling information, and the possibility for withdrawing
15 the container if contamination does not go down;
16 d. Submit findings from this assessment to the County in Franchisee's Annual
17 Report.
18

19 **Explaining Recycling Options to Business and Multi-Family Customers**

- 20 1. Please ensure that the customer service representatives explain to new
21 commercial and multi-family customers and those customers that are not
22 recycling that they have two options to comply with the County's disposal
23 ban on recyclables (green waste is exempted):
24 b) subscribe to recycling service through its assigned franchise waste hauler or
25 c) collect and self-haul their recyclables to a recycling/buyback center. If this option is
26 chosen, the customer service representative should explain the need for the firm to
27 sort the recyclables by material type; also, the process for notifying the County that
28 the firm will be collecting and self-hauling its recyclables should be explained.
29

30 **Self-Hauling of Recyclables**

31 1. A firm that is going to collect and self-haul its recyclables must send a letter to the
32 Recycling Program Specialist with the County Public Works Department, Resource Recovery &
33 Waste Management Division, at the following address:

34
35 130 East Victoria Street, Suite 100
36 Santa Barbara, CA 93101
37

- 38 2. The letter must contain the following information:
39 a) The types of recyclable materials being collected;
40 b) The name and address of the facility where the recyclables are taken;

- 1 c) The approximate frequency that the recyclables are taken to a recycling/buyback
2 facility;
3 d) The name, title, and telephone number of a contact person.
4
5 3. Upon receipt of the letter, the County will contact the commercial customer to
6 schedule a site visit to verify that the firm's recycling program meets the
7 requirements of the disposal ban;
8 4. The County will complete a form that documents the results of the site visit;
9 5. The County will then send a letter to the commercial customer, confirming the firm's
10 compliance with the mandatory commercial recycling program; a copy of this letter
11 will be provided to the waste hauler;
12

13 **Commercial Customers Not Subject to the Commercial Recycling Program**

- 14 1. The disposal ban or mandatory commercial recycling program implemented by the
15 County of Santa Barbara in September 2003 is applicable to all businesses and owners of multi-
16 family dwellings (i.e. apartments, condominiums, and mobile home parks) in the
17 unincorporated areas of the County;
18 2. Entities currently not subject to the program include governmental agencies, schools,
19 single-family homes using cart service, and single-family homes using bin service.
20 3. Please ensure that a distinction is made between those entities that are not subject to
21 the program and those entities that are subject to the program but wish to obtain
22 approval for an exemption (see Section 2-102, Exemption Protocol of Commercial
23 Recycling Program Protocols); to request an exemption, a commercial customer must
24 claim that the requirements of having to recycle are infeasible or unnecessary or that
25 the commercial customer would suffer undue or unreasonable hardship by participating
26 in the program.
27

28 **Commercial Customers That Share a Recycling Container with Another Commercial Customer**

- 29 1. A commercial customer that does **not** have recycling service through the franchise
30 waste hauler and claims that it shares a recycling container with another firm must take
31 one of two actions:
32
33 a. Have the **firm whose recycling container it is sharing** send a letter to the
34 Recycling Program Specialist with the County Public Works Department,
35 Resource Recovery & Waste Management Division, at the following
36 address:
37

38 130 East Victoria Street, Suite 100
39 Santa Barbara, CA 93101
40

1 This letter must confirm the types of recyclables that the other firm is placing in its
2 recycling dumpster and that it is allowing the other firm to share its recycling dumpster.

3
4 OR

5
6 b. Send a letter to the County confirming the types of recyclables that it is
7 generating and collecting AND have the **firm whose recycling container it**
8 **is sharing** send a letter confirming that it is allowing the other firm to
9 share its recycling dumpster.

10
11 c. Upon receipt of this information, the County will send a letter confirming
12 the firm's compliance with the County's mandatory commercial recycling
13 program.

14
15 **Public Education**

16 The County will design stickers, fliers, and posters to support the Business and Multi-Family
17 Recycling Program. The County will provide this finished product to the Franchisee who will be
18 responsible for producing and distributing the materials to the relevant customers.

1 **EXHIBIT 4.05(2) BUSINESS AND MULTI-FAMILY RECYLCING PLAN**

2

3 See Exhibit 4.04b(2) Business and Multi-family Recycling Plan.

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**ATTACHMENT 4.06a ABANDONED SOLID WASTE COLLECTION /
ROUTE SCHEDULE**
[TO BE ATTACHED BY COUNTY]

- 1 **ATTACMENT 4.06b(1) BUS STOPS**
- 2 [TO BE ATTACHED: LIST OF CONTAINER SET-OUT SITES]

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EXHIBIT 4.10b NON-COLLECTION NOTICE

Franchisee will attach a copy of its Non-collection Notice, in form acceptable to County, including the following information:

- 1. the date and time it is given,
- 2. the complete address of the premises,
- 3. the reason for the non-collection,
- 4. Franchisee telephone number and any other information, and
- 5. the manner in which customer should discard materials.

Franchisee may change this form of notice if County accepts the changes.⁹

⁹**Acknowledgment:** Franchisee has submitted, and County has accepted, the attached Non-Collection Notice as of the later of the following dates:

- 1. the franchise date, as evidenced by each of their signatures on the Agreement, or
- 2. with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date_____

County Representative: _____

Franchisee Representative_____

1
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4
5

EXHIBIT 4.11b CUSTOMER SERVICE POLICY

[FRANCHISEE, ATTACH PROTOCOL]

Franchisee may change this protocol following notice to County.¹⁰

¹⁰ **Acknowledgment:** Franchisee has submitted, and County has received, the attached Customer Service Protocol as of the later of the following dates:

1. the franchise date, as evidenced by each of their signatures on the Agreement, or
2. with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date _____

County Representative: _____

Franchisee Representative _____

1 **EXHIBIT 4.13a** **CUSTOMER ORIENTATION PACKAGE**

2
3

4 Franchisee may change form or content of either or both the Customer Services Summary and
5 Franchise Services Summary if County accepts the changes.¹¹
6 [COUNTY WILL ATTACH FORM]

¹¹**Acknowledgment:** Franchisee has submitted, and County has accepted, the attached documentation as of the later of the following dates:

1. the franchise date, as evidenced by each of their signatures on the Agreement, or
2. with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date _____

County Representative: _____

Franchisee Representative _____

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9

DISCARD AND SET-OUT INSTRUCTIONS

Franchisee will include the following information in the attached instructions:

1. How to discard of refuse, recyclables and green waste in their respect containers (with examples of each)
2. How to store, set-out and bring-in containers, including locations and time.

1 **EXHIBIT 4.16b CUSTOMER BILL FORMAT**

2
3 Franchisee will include the following information on each customer bill:

- 4 1. customer’s level of franchise service,
5 2. Franchisee contact information, and
6 3. due and delinquency dates.

7
8 Franchisee may change this bill format if County accepts the changes.¹²

9
10 [FRANCHISEE, ATTACH BILL FORMAT.]

¹²**Acknowledgment:** Franchisee has submitted, and County has accepted, the attached customer bill format as of the later of the following dates:

1. the franchise date, as evidenced by each of their signatures on the Agreement, or
2. with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date_____

County Representative: _____

Franchisee Representative_____

1 **EXHIBIT 5.03b CONTAINER LABELS**

2
3 Labels must contain the following information:

- 4 1. Franchisee name, telephone number and email address,
5 2. unique container number, such as serial numbers or bar codes,
6 3. container set-out instructions,
7 4. prohibition on discard of hazardous waste and describing proper disposal thereof,
8 including "NO LIQUID, TOXIC OR HAZARDOUS WASTE" in legible letters at least 4 inches
9 high, and compliance with Section 17-8(i) of the County Code,
10 5. prohibition of scavenging (through words and international symbols) that meets the
11 notice requirements of Section 41950(a) of the CA IWM Act, and
12 6. Other information requested by County.

13
14 Franchisee may change labels if County accepts the changes.¹⁴

¹⁴ **Acknowledgment:** Franchisee has submitted, and County has accepted, the attached form of labels as of the later of the following dates:

1. the franchise date, as evidenced by each of their signatures on the Agreement, or
2. with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date _____

County Representative: _____

Franchisee Representative _____

1 **EXHIBIT 5.05c CONTAINER ACQUISITION AGREEMENTS¹⁵**

2
3
4
5

Franchisee will update its container acquisition agreement(s) under Section 5.05c.

[FRANCHISEE, ATTACH AS OF THE FRANCHISE DATE, AND UPDATE IN EACH ANNUAL REPORT.]

¹⁵**Acknowledgment:** Franchisee has submitted, and County has received, the attached container acquisition agreement(s) as of the later of the following dates:

1. the franchise date, as evidenced by each of their signatures on the Agreement, or
2. with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date _____

County Representative: _____

Franchisee Representative _____

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EXHIBIT 5.03d CONTAINERS INVENTORY¹⁶

Franchisee will update its containers inventory under Section 5.03b.

[FRANCHISEE, ATTACH AS OF THE FRANCHISE DATE, AND UPDATE IN EACH ANNUAL REPORT.]

¹⁶**Acknowledgment:** Franchisee has submitted, and County has received, the attached container inventory as of the later of the following dates:

- 3. the franchise date, as evidenced by each of their signatures on the Agreement, or
- 4. with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date _____

County Representative: _____

Franchisee Representative _____

1 **EXHIBIT 5.07 BACK-UP PLAN¹⁷**

2
3 Franchisee will develop a back-up plan to provide uninterrupted franchise service at all times,
4 including during mechanical breakdowns, facility closures, job actions (such as strikes, walk-
5 outs, slow-downs), or emergencies (such as natural disasters), including the following:

- 6 1. provide conveniently located bins or roll-off containers where customers may discard
- 7 refuse and other putrescible solid waste,
- 8 2. offer customers the option of self-hauling refuse and other putrescible solid waste to a
- 9 transfer station or disposal facility/facilities,
- 10 3. inform customers of procedures for handling refuse and other putrescible solid waste,
- 11 preventing litter and discouraging vectors (such as keeping carts in their storage place
- 12 and not at set-out Sites, discarding excess solid waste in closed plastic bags and not
- 13 loose in carts),
- 14 4. describe any customer service charge refund policy for missed franchise services,
- 15 5. provide replacements for drivers and other employees who are not providing collection
- 16 or other franchise services (such as supervisory personnel or management, or
- 17 employees of affiliates or other solid waste management companies) and security for
- 18 those drivers and other employees, and
- 19 6. identify customers that require priority service.

20
21 Franchisee may change its back-up plan. Changes are effective when received by the County.
22 **[FRANCHISEE, ATTACH YOUR BACK-UP PLAN]**

-
- 1. ¹⁷**Acknowledgment:** Franchisee has submitted, and County has received, the attached Back-Up Plan evidenced by each of their signatures on the Agreement, or
 - 2. with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date _____

County Representative: _____

Franchisee Representative _____

1 **EXHIBIT 5.08 HAZARDOUS WASTE HANDLING PROCEDURE**

2
3 Franchisee will attach to this Exhibit, its Hazardous Waste Handling Protocol, including the
4 following provisions:

5 1. **Mandatory Personnel Training:**

- 6 • for all **drivers:** HAZWOPER First Responder, Awareness Level training meeting
7 the requirements of 29 CFR 1919.120(q)(6)(i), including hazard evaluation
8 methods, emergency preparedness, and emergency response plan
9 implementation techniques with the intent that they learn who, what and how
10 to report on the incident,
- 11 • for all **route supervisors:** 24-Hour HAZWOPER General Site Worker training
12 meeting the requirements of 29 CFR 1919.120(e) (hazardous waste Operations
13 and Emergency Response), including hazard recognition and measurement, as
14 well as personal protective equipment and work practices in keeping with the
15 risk level, and
- 16 • for all **employees** specified in 29 CFR 1919.120(e)(8), at least 8 hours of refresher
17 training annually,

- 18 2. means of driver inspection, such as visual inspection during tipping of containers into
19 vehicles,
- 20 3. immediate driver response, such as load segregation and notification procedures,
21 including leaving Non-collection notices, when safe,
- 22 4. driver notification, such as calling Franchisee's dispatcher or route supervisor,
- 23 5. customer notification, including description of proper means to dispose of Unpermitted
24 Waste, by phone call and/or written material,
- 25 6. notification of appropriate local agency or department (with contact phone number),
- 26 7. appropriate action, such as segregation and containerization for manifesting and
27 transport for disposal as required by law or securing services of permitted handling and
28 transport company,
- 29 8. compliance with law, including regulations of the federal Department of Transportation
30 (DOT) (Title 49 CFR) and of the United States Environmental Protection Agency (Title 40
31 CFR), and
- 32 9. form, content and placement of labels on containers that prohibit discard of hazardous
33 waste, special waste and e-waste.

34
35 Franchisee may change this protocol. Changes will be effective when received by the County.¹⁸

¹⁸**Acknowledgment:** Franchisee has submitted, and County has received, the attached
917 docket draft

Hazardous Waste Handling Protocol as evidenced by the following:

1. each of their signatures on the Agreement, or
2. with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date_____

County Representative: _____

Franchisee Representative_____

1 **EXHIBIT 6.03e DIVERSION PLAN**

2

3 Franchisee will attach to this Exhibit its Diversion Plan with respect to the following, containing
4 its strategy to meet the Minimum Diversion Requirement:

- 5 1. refuse
- 6 2. recyclables
- 7 3. green waste
- 8 4. bulky waste
- 9 5. special waste (including e-waste)
- 10 6. manure.

11

12 Franchisee will revise this Diversion Plan upon request of County, and as acceptable to the
13 County¹⁹

¹⁹ **Acknowledgment:** Franchisee has submitted, and County has accepted, the attached Diversion Plan as of the later of the following dates:

- 3. the franchise date, as evidenced by each of their signatures on the Agreement, or
- 4. after the franchise date, the following date following any change, as evidenced by their following signatures :

Date _____

County Representative: _____

Franchisee Representative _____

1 **ATTACHMENT 8.03 EXAMPLES OF APPLIABLE LAW**

2
3 *Examples of applicable law include law relating to the following:*

- 4 **1.** *health*
- 5 **2.** *safety,*
- 6 **3.** *fire,*
- 7 **4.** *mitigation monitoring plans,*
- 8 **5.** *building codes,*
- 9 **6.** *zoning,*
- 10 **7.** *non-discrimination,*
- 11 **8.** *vehicles*
- 12 • *Control Measure for Diesel Particulate Matter from On-road Heavy- Duty*
 - 13 *residential and Commercial solid waste collection vehicles, 13 CCR 2020 et seq.,*
 - 14 • *California Health and Safety Code § 43000 et seq., with respect to air emissions*
 - 15 *(smog checks),*
 - 16 • *California Vehicle Code § 27456b, with respect to tires,*
 - 17 • *California Vehicle Code § 34500 et seq., with respect to documentation through*
 - 18 *its maintenance log or otherwise of a safety compliance report issued under Division*
 - 19 *14.8 of the California Vehicle Code as applicable to each Vehicle, including bi-annual*
 - 20 *"BIT" inspections conducted by the California Highway Patrol, documentation*
 - 21 *through maintenance log or otherwise of a safety compliance report, Vehicle*
 - 22 *highway lighting, flashing and warning lights, clearance lights, and warning flags,*
 - 23 *registration, weight limits, cleaning, enclosure / water-tight beds,*
 - 24 • *Rules and regulations promulgated under the California Vehicle Code with*
 - 25 *respect to Vehicle highway lighting, flashing and warning lights, clearance lights, and*
 - 26 *warning flags,*
 - 27 • *Rules and regulations of the California Department of Motor vehicles with*
 - 28 *respect to vehicle registration,*
 - 29 • *Vehicle weight limits,*
 - 30 • *The appropriate class of drivers' licenses issued by the California Department of*
 - 31 *Motor vehicles,*
 - 32 • *14 CCR 17341, 17342, 17343 and 17344, with respect to equipment construction,*
 - 33 *safety, and parking and identification of operating equipment.*
- 34 **9.** *containers, such as:*
- 35 • *14 CCR 17314, with respect to maintenance and placement for collection,*
 - 36 • *14 CCR 17317, with respect to placing Franchisee's name and telephone number*

on Receptacle,

10.

11. **Environmental Protection:**

- CERCLA
- RCRA;
- Clean Air Act, (42 U.S.C. §1351 et seq., 42 U.S.C. §7401-7642); and California Clean Air Act (Health & Safety Code Sections 1251 et seq. and Health and Safety Code §39000 et seq.);
- California Hazardous Waste Control Act, (California Health & Safety Code, §25100 et seq.);
- California Hazardous Materials Release Response Plan and Inventory Act (California Health & Safety Code, Division 20, Chapter 6.95, §25500 et seq.);
- Carpenter-Presley-Tanner Hazardous Substance Account Act, (California Health & Safety Code §25300 et seq.),
- Emergency Planning and Community Right to Know Act, (42 U.S.C. §11001 et seq.);
- NPPDES Industrial General Permit law, and

12. **Labor, such as:**

- Drug and alcohol testing,
- The Occupational Safety and Health Act, (29 U.S.C. §651 et seq.), including the solid waste disposal facility/facilities Criteria promulgated by the U.S. EPA on October 9, 1991 (40 C.F.R., Parts 257 and 258), and corresponding State requirements,
- employment taxes, withholding and insurance requirements
- Immigration Reform and Control Act of 1986 (PL.99-603),
- Environmental Protection, such as:
 - CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act– Superfund- 42 U.S.C. 9601 et seq.),
 - California hazardous waste Control Act(California Health & Safety Code § 25100 et seq.),
 - California Hazardous Materials Release Response Plan and Inventory Act(California Health & Safety Code, Division 20, Chapter 6.95, § 25500 et seq.), and Carpenter-Presley-Tanner Hazardous Substance Account Act(California Health & Safety Code § 25300 et seq.)
 - RCRA (Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.),

- 1 ▪ *the Clean Air Act, (42 U.S.C. §1351 et seq., 42 U.S.C. §7401-7642) and*
2 *Clean Water Act, and,corresponding State requirements,*
3 ▪ *Emergency Planning and Community Right to Know Act, (42 U.S.C.*
4 *§11001 et seq.),*
5 ▪ *regulations governing the recovery of ozone-depleting refrigerants during*
6 *the disposal of air conditioning or refrigeration equipment, including 40*
7 *C.F.R. Part 82, and*
8 ▪ *any wash-down requirements for containers, trucks or facilities,*
9 **13. County Code,**
10 **14. Civil Rights Act of 1964 (Sub chapter VI or Chapter 21 of Title 42),**
11 **15. customers' privacy rights,**
12 **16. business-related laws, such as taxation, anti-trust, securities and reporting.**

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EXHIBIT 8.03e

PERMITS

Franchisee has attached its permits to this Exhibit, including the following. It will update it in each Annual Report.

1. County **business license**,
2. any **vehicle permits** issued by CA Department of Motor vehicles,
3. application to CalRecycle - Certification Services Branch for **registration to operate a curbside recyclables program**, covering this Agreement, and CalRecycle approval with registration number,
4. CalRecycle Application for **Approval of Covered Electronic Waste Recovery and Recycling Payment System** (Form 186), with approval, if Franchisee will itself recycle CEDs that it Collects,
5. DTSC 1382 **Notice of Intent to Handle Universal Waste Electronic Devices** (UWEDs) and/or Cathode Ray Tube (CRT) Materials,
6. **used tire hauler registration** under California Public Resources Code § 42950 *et seq.*, and
7. NPPDES Industrial General Permit

1 **ATTACHMENT 10.01a: RECORDS**

2
3
4 Franchisee will daily collect and record, at a minimum, the information required in Monthly
5 Reports under Exhibit 10.02a, and the following information, indicating the day of the week and
6 date:
7

8 1. **collection, disposal and Processing:**

- 9 • weight of each vehicle load (gross, tare and net), or volume estimates of green
10 waste and corresponding tonnage equivalents number of tons of refuse, recyclables,
11 green waste and bulky waste Collected and delivered to each MSW Facility,
12 • route number(s),
13 • truck number,
14 • MSW Facility’s certified weight ticket number for each load, and weight of each load
15 (gross, tare and net), or volume estimates of green waste and corresponding
16 tonnage equivalents, as appropriate, disposal and processing costs (per ton and
17 aggregate),
18

19 2. **Accounts Serviced:**

- 20 • list of customers including the following:
21 ○ name,
22 ○ mailing address for bills,
23 ○ address of serviced premise,
24 ○ service subscription (containers type, number capacity)
25 ○ with addresses and Service subscription levels,
26 ○ whether commercial customer has demonstrated that it is self-
27 hauling recyclables or been granted an exemption from the County’s
28 Mandatory Business Recycling Program.
29 • the total number of customers per route number and customers added or deleted,
30 • number of *non-collections* per route, address of each customer where non-collection
31 occurred, and reason for non-collection,
32 • promotional materials distributed-number of copies distributed; description, and
33 route number(s).
34

35 3. **Containers:**

- 36 • number of containers for each capacity:
37 ○ aggregate number,
38 ○ per route,
39 • customer information

- 1 ○ address
- 2 ○ notation of any special service (such as regular Bin service, Roll-out)
- 3 ○ type, number and capacity of containers,
- 4 ○ ID numbers,
- 5 • customer requests to change frequency of franchise services or size of containers,
- 6 including reason,
- 7 • promotional, informational or educational materials distributed (number of copies
- 8 distributed, descriptions and route number(s)),
- 9
- 10 4. **Special franchise services- aggregate number:**
- 11 • regularly scheduled bin service and number of bins,
- 12 • bulky waste collection, and
- 13 • emergency services (and description), including the address of each customer (or
- 14 location of emergency services) and the total number of customers for which
- 15 Franchisee provided the special services,
- 16
- 17 5. **Billing records** for each customer under Section 4.16,
- 18
- 19 6. **green waste** information, including cost, productivity, tons Collected, person hours,
- 20 number of stops, number of participating homes, number of routes and all other data
- 21 on franchise services with respect to green waste,
- 22
- 23 7. any and all ledgers, books of account, invoices, vouchers, canceled checks, and other
- 24 records or documents evidencing or relating to the amounts paid pursuant to this
- 25 Agreement (including the Rate, any fees paid to County, and Solid Waste Program Fees,
- 26 County and Franchisee Reimbursable Costs, Franchisee fees described in Section 13.04,
- 27 damages) or performance of this Agreement, including the following:
- 28 • Minimum Diversion Guaranty,
- 29 • routing,
- 30 • level of each customer's services,
- 31 • customer complaints,
- 32 • employee training,
- 33 • inventory,
- 34 • maintenance logs,
- 35 • a complete customer subscription information,
- 36 • all information required for reports, and
- 37 • sufficient information for County to corroborate the amounts payable by Franchisee
- 38 to County under this Agreement.
- 39

Section	Recording Requirement
4.09b	Leaks
4.11b	Daily customer communications

1

ATTACHMENT 10.02 ANNUAL REPORTS

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[COUNTY FORM TO BE INSERTED]

Franchisee will include the following information:

Section	Information
	Collated summary of the information contained in prior Monthly Reports for that franchise year
	Reconciliation of any adjustments from prior Monthly Reports
	Account information under Attachment 10.01 for each commercial and multi-family customer
4.07a	Certification that all vehicles meet required specifications
5.01	Updated collection route maps
5.05	Updated inventory of carts
6.03	Substantiated calculation demonstrating (non)compliance with the Minimum Diversion Guaranty.
6.03e	description of the protocol for allocating commingled solid waste
Exhibit 8.03	Copies of current permits
8.04	Certificate of testing showing that the vehicles meet the noise requirements under Sections 5.02 and 8.04
10.03	Financial Statement, including the following: 4. representation and opinion by certified public accountant, and 5. statement of Franchisee’s Chief Executive Officer
Article 11	Declaration describing the current status of any criminal or civil litigation pending against either Franchisee's parent company or any subsidiaries of the parent company, if any, which relates to solid waste handling, collection, recycling or disposal.
Article 10	Declarations of the current status of any pending criminal or civil litigation relating to the activities of Franchisee, Franchisee's parent company or any subsidiary naming any current officer of the parent company or any subsidiary company, if any, as a defendant. For these declarations, “current officers” includes individuals who are presently serving or who have served as an officer of the parent company or the subsidiary within the two years immediately preceding the date of the report.
	Information required in reports that County must make under law (such as AB 939, with respect to recycling and diversion of solid waste in County).
	Any other information with respect to franchise services requested by County

ATTACHMENT 10.03 FINANCIAL STATEMENTS

Franchisee will give County financial information in substantially the following form, which County may change:

	Zone 4		
	Residential	Commercial	I
Revenues:			
Operating Revenue			
Recycling Revenue			
Roll off and Temporary Services Revenue			
Miscellaneous Revenue			
Total Revenues			
Operating Costs:			
Disposal & Processing Costs:			
Refuse Disposal			
Recycling Processing			
Green Waste Processing			
Total Disposal and Processing Costs			
Truck Operating Cost:			
Driver Salaries and Employee Benefits			
Other Salaries and Employee Benefits			
Total Operating Salaries and Employee Benefits			
Fuel			
Repair and Maintenance			
Truck Rental/Depreciation			
Other Truck Operating Costs			
Total Truck Operating Cost			
Recycling Operations			
Other Operating			
Total Operating Costs			
Selling, General and Administrative Expense			
Other Expense			
Total Costs and Expenses			
Net Income (Loss)			

1 **3. Automobile Liability Coverage**

- 2 • written on ISO policy forms CA 00 12 pr CA 00 20 (or their equivalent)
- 3 (occurrence) with a combined limit of liability not less than \$3 million for each
- 4 accident,
- 5 • endorsed to delete the pollution and/or the asbestos exclusion and include
- 6 pollution liability (using form CA 99 48 or its equivalent) for accidental spills and
- 7 discharges while transporting and/or processing materials, and
- 8 • covering all vehicles (any auto): owned, non-owned or hired autos.
- 9

10 If Franchisee is subject to federal regulations, Franchisee also will maintain any other

11 coverage necessary to satisfy state or federal financial responsibility requirements.

12

13 **4. Workers' Compensation and Employers' Liability** insurance providing

- 14 • workers' compensation benefits required by the California Labor Code or by any
- 15 other state labor law, and for which Franchisee is responsible, and
- 16 • Employers' Liability coverage with limits of not less than the following:
- 17

18 Each accident:	\$1 million
19 Disease - policy limit:	\$1 million
20 Disease - each employee:	\$1 million

21

22 If Franchisee fails to secure and maintain any Insurance required by this Agreement, at its sole

23 option County may secure and maintain that Insurance without further notice to Franchisee,

24 charge Franchisee any premium costs advanced by County, and draw on the letter of credit

25 provided by Franchisee. If County does not recover its County Reimbursement Costs from the

26 letter of credit, Franchisee will directly pay County its County Reimbursement Costs. This

27 remedy is in addition to County right to declare an event of default and suspend or terminate

28 the Agreement.

29

30 **b. Insurer qualifications.** Franchisee will secure insurance provided by an insurer meeting

31 the following qualifications:

32

- 33 1. is acceptable to County,
- 34 2. is an admitted company in California,
- 35 3. has a size category of VII or larger by A.M. Best Company, Inc., and
- 36 4. has a rating of A or better by A.M. Best Company, Inc.
- 37

1 **c. Insurance Coverage Requirements for Subcontractors.** Franchisee will insure each
2 Subcontractor performing collection by providing evidence that either:

3

- 4 1. Franchisee is maintaining insurance required by this Section protecting Franchisee and
5 County interests against liabilities caused by the acts, errors or omissions of the
6 Subcontractor, or
- 7 2. the Subcontractor is maintaining that insurance itself.

8

9 **d. Evidence of Coverage**

10 **(1) Provision.** Franchisee will provide endorsements, schedules and other evidence of
11 coverage with respect to Franchisee and any Subcontractor requested by and acceptable to
12 County, at the following times:

13

- 14 1. on or before the Agreement Execution Date,
- 15 2. Within one week of a policy's renewal, and
- 16 3. within 10 County business days of County request.

17

18 Neither County failure to obtain, nor County receipt of, or failure to object to a non-complying
19 insurance certificate or endorsement or any other insurance documentation or information
20 provided by Franchisee, Franchisee insurance broker(s) and/or insurer(s), will be construed as a
21 waiver of any obligation under this attachment.

22

23 **d(2)-(5)** Franchisee will give County the documentation required in following Subsections
24 d(2)-(5), attached to this Exhibit, including the following:

- 25 (2) Certificates of insurance with evidence of insurer's qualifications,
- 26 (3) Endorsements,
- 27 (4) Schedules of Broker's letters,
- 28 (5) Signature verification.

1 **EXHIBIT 11.01d(2) Certificates of Insurance**
2

3 Franchisee will provide certificates (or other evidence of coverage) containing at a minimum,
4 the following information with respect to Franchisee and any Subcontractor:

- 5 1. **Agreement name:** explicitly identifying this Agreement (for example, UNDER
6 DESCRIPTION OF OPERATIONS), and if necessary to secure contractual liability coverage
7 as an “insured contract” or otherwise, include a schedule or endorsement that
8 specifically identifies this Agreement,
9 2. **Insured party:** naming the insured party that matches the name of Franchisee,
10 3. **Insurer:** providing the full name of each insurer providing coverage and the insurer’s
11 NAIC (National Association of Insurance Commissioners) identification number,
12 4. **Financial rating** of insurer,
13 5. **Types, policy numbers, policy effective / expiration dates and limits:** explicitly
14 referencing each type and corresponding limit of coverage required under this
15 Agreement, together with the following:
16 • policy number,
17 • effective date and expiration date,
18 • identification of each required ISO policy form or confirmation of its equivalency
19 to ISO policy forms required under this Agreement (such as “auto liability ISO
20 form CA 00 12”). Where the Agreement does not require a specific ISO policy
21 form, the certificate of insurance must specifically reference the required type of
22 coverage (such as “pollution liability” under TYPE OF INSURANCE – OTHER)
23 together with a summary description of its coverage (such as “pollution
24 conditions caused by transported cargo” under SPECIAL PROVISIONS),
25 6. **30 days’ cancellation Notice:** containing the express condition that County must be
26 given written notice by mail at least 30 days in advance of cancellation (10 days, with
27 respect to cancellation for nonpayment of premium) for all policies evidenced on the
28 certificate of insurance. Endorsements cannot contain mere "best effort" modifiers or
29 relieve the insurer from its responsibility to give that Notice. CANCELLATION
30 information on the certificate of insurance must delete language such as “failure to do
31 so shall impose no obligation or liability of any kind upon the insurer, its agents or
32 representatives,”
33 7. **Deductibles and self-insured retentions:** identifying any deductible and self-insured
34 retention. Upon County request, Franchisee will reduce any deduction or self-insured
35 retention (SIR) as it applies to any County Insured or provide a letter of credit, certificate
36 of deposit or other financial assurance acceptable to County guaranteeing payment of
37 all retained losses and related costs and expenses related to investigations, claims

1 administrations, and legal defense. The letter of credit or certificate of deposit must be
2 provided by a bank satisfactory to County. Policies must not obligate County to pay any
3 portion of any deductible or SIR. If anyone makes a claim against Franchisee or any
4 subcontractors exceeding the amount of any deductibles or self-insured reserves,
5 Franchisee will inform the following persons at the following times:

- 6 • the County, within one week of the claim, and
- 7 • the insurer, within the time required under the policy, and

8 8. **Claims made:** if any insurance coverage is written on a claims-made form (such as
9 pollution liability), evidencing that the “retro date” is before the Agreement Execution
10 Date. Franchisee must maintain that coverage for at least 5 years after the Termination
11 Date. Within 2 days of upon County request, Franchisee must provide County with
12 evidence of that coverage. **THIS FRANCHISEE OBLIGATIONSURVIVES THE FRANCHISE**
13 **TERM.**

14
15 [FRANCHISEE, ATTACH COIs AND EVIDENCE OF INSURER’S QUALIFICATIONS TO THIS EXHIBIT.]²⁰

²⁰ **Acknowledgment:** Franchisee has submitted, and County has accepted, the attached documentation as of the following date: _____

County Representative: _____

Franchisee Representative: _____

1 **EXHIBIT 11.01d(4) Schedules or Broker’s Letter.**

2
3 Franchisee must provide schedules or other evidence (such as written confirmation of
4 Franchisee’s broker) that policies comply with this Agreement, including:

- 5 1. Coverage will contain no special limitations on the scope of protection afforded to
6 County Insureds,
7 2. liability policies of Franchisee and any Subcontractor provide contractual liability
8 coverage for Indemnities, such as listing this Agreement as an “insured contract”, and
9 3. Any failure to comply with reporting provisions of policies will not affect coverage
10 provided to County Insureds.

11
12 [FRANCHISEE, ATTACH SCHEDULES OR BROKER’S LETTERS TO THIS EXHIBIT.]²²

County Representative: _____

Franchisee Representative: _____

²² **Acknowledgment:** Franchisee has submitted, and County has accepted, the attached
documentation as of the following date: _____

County Representative: _____

Franchisee Representative: _____

EXHIBIT 11.01d(5) Signature Verification

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At County request, Franchisee must provide documentation verifying that the individual signing or countersigning the certificates, policies, endorsements, or other evidence of coverage of Franchisee and any Subcontractor is authorized to do so and identifies his or her company affiliation and title. County may require complete, certified copies of Franchisee insurance policies at any time.

[FRANCHISEE, ATTACH COIs AND EVIDENCE OF INSURER’S QUALIFICATIONS TO THIS EXHIBIT.]²³

²³ **Acknowledgment:** Franchisee has submitted, and County has accepted, the attached documentation as of the following date: _____

County Representative: _____

Franchisee Representative: _____

- 1 6. Franchisee does not honor an Indemnification,
- 2 7. Guarantor does not honor its Guaranty, or
- 3 8. an event of default.

4
5 **b. Term.** The term of the Letter of Credit must be either of the following:

- 6 1. the same as the franchise term plus 180 days, or
- 7 2. renewable annually or at other period up to the franchise term plus 180 days.

8
9 The Letter of Credit may be released when the Bank²⁶ receives a certificate from County stating
10 the following:

- 11 1. this Agreement has expired, or
- 12 2. this Agreement has been terminated for a period of 180 days or other preference period
- 13 provided under law with respect to bankruptcy or insolvency of Franchisee, or
- 14 3. Franchisee has substituted an alternative letter of credit or other security document
- 15 acceptable to County in County sole discretion, and
- 16 4. Franchisee does not owe County any money.

17
18 **c. Transfer.** The Letter of Credit must be transferable to any successor or assign of County.

19
20 Franchisee may substitute another letter of credit acceptable to County.

21
22 [FRANCHISEE, ATTACH LETTER OF CREDIT TO THIS EXHIBIT.]²⁷

²⁶ **“Bank”** means a financial institution satisfactory to County, having at least one of the following minimum ratings:

- 1. *Moody’s A2 or better LT Issuer Credit and B or better for Bank Financial Strength,*
- 2. *Standard and Poor’s: A or better for LT Issuer Credit,*
- 3. *Bauer Financial: 4 Stars or better,*
- 4. *TheStreet.com Ratings: B or better.*
- 5.

²⁷ **Acknowledgment:** Franchisee has submitted, and County has accepted, the attached documentation as of the following date: _____

County Representative: _____

Franchisee Representative: _____

1 **EXHIBIT 11.04**
2
3
4 [TO BE ATTACHED]

FORM OF PARENT GUARANTY

Date _____

County Representative: _____

Franchisee Representative _____

1
2
3
4
5

ATTACHMENT 13.02a RATE SCHEDULE

[TO BE INSERTED FROM PROPOSALS]²⁹

²⁹Rates will be listed by categories (residential, multi-family, commercial) as required under Section 17-29(a)(1) of the County Code.

Rates will include at least the following components:

Section	Residential franchise service
4.03	basic collection of refuse, recyclables and green waste
4.03	container rollout services
4.03	bin rental
4.03	extra on-call bulky waste collection
4.03	regularly scheduled bin service
13.03	Franchisee Fees

The Rate schedule will separately list the following:

1. Rates, and
2. corresponding Solid Waste Program Fees (which are not part of Franchisee's compensation, but belong to County).

1 **ATTACHMENT 13.02b RATE ADJUSTMENTS**

2
3 **a. Annual Indexed Adjustments.** Each year prior to April 1 Franchisee may request County
4 to adjust (or County may adjust at its option) the maximum Rate effective each July 1, under
5 this Subsection. Rates will be escalated only if no event of default exists. The total adjustment
6 of the Operations Portion of the Rate, whether upward or downward, may not exceed 5% in
7 any one franchise year. If any index is discontinued or revised during the franchise term by the
8 regulatory authority that maintains it, County will substitute another comparable government
9 index or computation.

10
11 The Operations Portion of the Rate will be adjusted by 100% of the average percent change in
12 the CPI index during the period beginning February 1 of the prior calendar year through
13 February 28 of the current calendar year.
14

15
“Operations Portion of the Rate” means the following:

- 1. Rate (which includes Franchisee Fees but excludes Solid Waste Program Fees), *minus*
- 2. Franchisee’s direct cost of disposal or processing at any Identified Waste Management Facility (tipping fees or other unit costs).

16
“CPI index” means the Pacific Cites and U.S. City Average All-Items Index (Los Angeles-Anaheim-Riverside) (All Urban Consumers 1982-84 = 100) compiled and published by the U.S. Department of Labor / Bureau of Labor Statistics (in effect on March 1, whether initial or subsequent release).

17 **b. Adjustments for Change in Law or Franchise Services.** Once each contract
18 year Franchisee may request an adjustment of (or County may adjust) the maximum Rate if
19 Franchisee’s direct costs of providing franchise services (other than direct costs of gate fees
20 charged at a Solid Waste Facility) have increased or decreased due to a change in law or
21 franchise services.

22
23 **c. Adjustment Process**

24
25 **(1) Adjustment Requests, Review, Consent**

1 1. **Information.** Franchisee will attach the following information its request for
2 adjustment in the maximum Rate, or within 5 business days of County’s request
3 for adjustment:

- 4 • the amount of the requested adjustment,
- 5 • the change in CPI Index, law, or and Franchisee’s direct cost of providing
6 new or different franchise service, and [the consequent change in Operations
7 Portion of the Rate.
- 8 • Franchisee’s calculations to support its request, and
- 9 • all financial and other records related to its request.

10 Within 15 days of County request, Franchisee will give County any information
11 from Franchisee or its affiliates reasonably related to adjustment of the
12 maximum Rate initiated by County.

13 2. **Additional Information.** Within 10 days of County request, Franchisee will give
14 County any additional information from Franchisee or Franchisee’s affiliates
15 reasonably related to adjustment of the maximum Rate.

16 3. After County has had a reasonable period of time to request, review, and audit
17 the requested information, it may adjust the Rate limit in its sole discretion,
18 subject to Franchisee dispute under Subsection d(3) below.

19
20 **(2) Calculations.** All calculations are rounded to the nearest 1/100th decimal place
21 (for example, 101.9656% to 101.97%, or 101.9637% to 101.96). The decimal 5 is
22 rounded down (for example, 101.965% to 101.96%).

23
24 Adjustments to the maximum Rate are rounded to the nearest penny (for example,
25 \$25.34).

26
27 **(3) Franchisee Dispute.** Upon Franchisee request, Franchisee may meet with
28 representatives of County (such as Public Works Director or County Manager) to resolve
29 a dispute with respect to maximum Rate. The existing maximum Rate limit will remain
30 in effect until parties resolve the dispute or County terminates this Agreement. If they
31 cannot resolve the dispute, then County may terminate this Agreement effective at a
32 date no sooner than 3 months from the date printed on the Notice of termination, or a
33 shorter time to which Franchisee agrees.

1
2
3
4

EXHIBIT 17.07a

COUNTY REPRESENTATIVE

Name	
Telephone number	
e-mail address	
Mailing address	
Franchisee office address	

5
6
7
8
9

County may change its representative following Notice to Franchisee.³⁰

[COUNTY, ATTACH NAMED REPRESENTATIVE.]

-
3. ³⁰ **Acknowledgment:** County has submitted, and Franchisee has received, the attached documentation on the later of the following dates:
- the franchise date, as evidenced by each of their signatures on the Agreement, or
 - with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date _____

County Representative: _____

Franchisee Representative _____

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7

EXHIBIT 17.07b

FRANCHISEE REPRESENTATIVE

Name	
Telephone number	
e-mail address	
Mailing address	
Franchisee office address	

Franchisee may change any of this information following notice to County.³¹

-
4. ³¹ **Acknowledgment:** Franchisee has submitted, and County has received, the attached documentation s of the later of the following dates:
- the franchise date, as evidenced each of their signatures on the Agreement, or
 - with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date_____

County Representative: _____

Franchisee Representative_____