

Franchise Agreement

Between

**County Of Santa Barbara
And
MARBORG INDUSTRIES, INC.**

For

Residential, Multi-family and Commercial

**Solid Waste, Recyclables, Green Waste
And
Special Waste**

Collection Services in Zone 2

Franchise Date: April 5, 2011

Expiration Date: June 30, 2019

SIGNATURE COPY

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Contract Conventions

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

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

Text is arranged in the following outline:

ARTICLE I, II, III, etc.
Section 1.01, 1.02 etc.
Subsection a, b, c, etc
(1) Subsection etc.
(i) Sub-subsection

Glossary

Defined Term	Definition / Section Cross-Reference
AB 939	CA IWM Act.
abandoned waste	4.06a(1)
affiliates	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: <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 / Attachment 10.02a
Assurance of Performance	11.05
bin(s)	container(s) for storing discarded solid waste that are collected front end loading vehicles, such as 3 yard dumpsters

bulky waste	solid waste that cannot be contained within a cart, but can be lifted by 2 people using a dolly, including the following: <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 “white goods”), 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. See also other types of “solid waste”, as well as “household hazardous waste”, “special waste” and “sharps”.</p>
business day	day on which County Administration building is open for business with the public
Business and Multi-family Recycling Plan	Exhibit 4.05(2)(ii)
CA IWM Act	California Integrated Waste Management Act, Public Resources Code Section 40000 <i>et seq.</i>
CalRecycle	California Department of Resources, Recycling and Recovery
Carry-out Service	4.04a(8)
carts	wheeled containers for storing discarded solid waste that are collected by either semi or fully automated vehicles
C&D Facility	6.03
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 <p>(Conversely, see “residential” (“single family” and “multi-family”).)</p>
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	5.03c

Conversion Facility	any facility described in Section 7.01a and identified by County (See also other “Identified Solid Waste Facilities”)
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 index	Attachment 13.02b
Criminal Conduct	12.01e
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 collection day	4.04a(1) (Contrast “franchise service day”.)
Customer Orientation Packet	4.13a
Customer Service Policy	4.11b and Franchisee Documentation / Exhibit 4.09a
Customer Service Summary	4.13a(1)(i) and Franchisee Documentation / Exhibit 4.13a(1)(i). (Contrast with “Franchise Services Summary”)
day	calendar day
direct costs	13.05
Disposal Facility/Facilities	the facility/facilities described in Section 7.01 and identified by County, including any Conversion Facility (See also other “Identified Solid Waste Facilities”)
diversion	6.03a
event of default	14.02
e-waste	waste that is powered by batteries or electricity (<i>such as computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, videocassette players/recorders, compact disc players/recorders, and calculators</i>), including CEDs (a covered electronic device as defined in California Public Resources Code Section 42463) <i>such as the following:</i> <ol style="list-style-type: none"> 1. <i>cathode ray tube (CRT) device (including television and computer monitor),</i> 2. <i>LCD desktop monitor, laptop computer with LCD display, LCD television,</i> 3. <i>plasma television,</i>

	<p>4. <i>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)</i></p> <p><i>(See also “Universal Waste”, the other type of “Special Waste”.)</i></p>
franchise date	Cover page
franchise fee	13.04a(2) (See “Franchisee Business Fees” and compare “Solid Waste Program Fees”,)
Franchisee Manager(s)	12.01a and Exhibit 12.01a
franchise obligation	Franchisee’s responsibilities and duties under this Agreement (<i>such as keeping records, giving reports, timely responding to County</i>), including franchise services
franchise service day	Monday-Saturday, <i>except</i> holidays <i>(Contrast “customer collection day”.)</i>
Franchise Service Summary	Exhibit 14.13a (Contrast “Customer Service Summary”.)
franchise service(s)	4.01a (See also “franchise obligation”.)
franchise service area	4.01a / Attachment 4.01a
franchise service asset(s)	5.05
franchise term	3.01a
franchise year	County’s fiscal year, July1 – June 30

4.Franchisee Documentation	Exhibit #	Document
	4.03	Transition Plan (Tasks And Timeline)
	4.04a(8)	Application for Carry-Out Service: Qualifying Customer
	4.04b(2)(ii) #3	Business and Multi-family Recycling Plan
	4.11c	Customer Service Policy
	4.10b	Non-Collection Notice
	4.13a	Customer Orientation Packet (for residential single family & multi-family cart and bin
	4.16a #1	Customer Bill Format
	4.18c	Automated Service / Carts for Customers in Zone 3
	5.01	Route Map and Schedules
	5.03a	Container Specifications
	5.03b	Container Labels
	5.03c	Container Acquisition Agreement(s)
	5.03d	Container inventory
	5.06	Key Personnel
	5.07	Back-up Service Plan
	5.08v	Hazardous Waste Handling Protocol
	6.03f	Diversion Plan
	8.03	Permits
	11.01	Insurance
	11.03	Letter Of Credit
	11.04	Parent Guaranty (if any)
	12.01a	Franchisee Managers
	17.07b	Franchisee Representative
Franchisee	Preamble	
Franchisee Business Fees	13.04(a)(1)	
Franchisee contact information	4.12d	
Franchisee Manager(s)	12.01a	
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:	

	<ol style="list-style-type: none"> 1. that is accepted at the Organic Site(s), and 2. that can fit inside the container. <p>As of the Franchise Date, examples of “green waste” <i>include</i> grass, leaves, flowers, ivy and other plants; branches and tree trimmings; and bedding straw, but <i>exclude</i> palm fronds, pampas grass, food, animal waste, and plastic bags or any other type of plastic. <i>See also other types of “solid waste”, as well as “household hazardous waste”, “special waste”, and “sharps”.</i></p>
Guarantor	11.04
Guaranty	11.04
hazardous waste	5.08d
Hazardous Waste Handling Protocol	5.08b / Exhibit 5.08b
<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>Contrast “solid waste”, “special waste” and “sharps”.</i>)
including	“including, without limitation”, “including, but not limited to”
Identified Solid Waste Facility/Facilities	6.03c
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	8.03d / examples in Exhibit 8.03d
liabilities	11.02a(1)
key personnel	5.06a / individuals indentified in Exhibit 5.06a
Minimum Diversion Requirement	6.03b(1)
Monthly Report(s)	10.02a / Attachment 10.02a
MRF(s)	the materials recovery facility described in 6.01a and identified by County (<i>See also other “Identified Solid Waste Facilities”.</i>)
multi-family	used with respect to dwellings other than single family homes, including any or all of 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

	<p>motels),</p> <ol style="list-style-type: none"> 2. each with separate cooking and bathing facilities, and 3. located in the franchise service area <p>(See also "residential" ("multi-family and "single family") and conversely, "commercial".)</p>
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 described in Section 6.01a and identified by County (See also other "Identified Solid Waste Facilities".)
ownership	18.01a(2)
permits	8.03e / Exhibit 8.03e
person	<p>any of the following:</p> <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/entities
Pleas	12.01e
Position of Influence	12.01a
Solid Waste Program Fee	13.04b (Compare "Franchisee Business Fee".)
public container(s)	4.06b(1)
Rates	13.01b / Attachment 13.01b
Rate Schedule	13.02a / Attachment 13.02a
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	<p>solid waste discarded, thrown away or abandoned by the generator or owner thereof, including the following:</p> <ol style="list-style-type: none"> 1. plastic, including polyethylene terephthalate containers ("PET") marked "1" and high density polyethylene containers ("HDPE") marked "2", and #3-7, and bundled plastic bags 2. California redemption containers 3. glass containers 4. ferrous and non-ferrous metals

	<ol style="list-style-type: none"> 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 as well "household hazardous waste", "special waste" and "sharps").</i></p>
refuse	<p>solid waste comprised of rubbish, trash and garbage. As of the franchise date, "refuse" includes food waste.</p> <p><i>(See also other types of solid waste, as well as" household hazardous waste", "special waste" and "sharps".)</i></p>
regulatory authority	14.02 - Table Item 8.03
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. <p><i>(See conversely, "commercial")</i></p>
residential solid waste	any or all types of solid waste (refuse, green waste, recyclables, bulky waste) discarded at residential premises
set-out site	4.10a
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" 2. "recyclables" 3. "green waste", and 4. "bulky waste". <p><i>(See also "household hazardous waste", "special 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"

	<i>(See also "household hazardous waste" and "sharps".)</i>
State	State of California
termination events	events listed in Section 15.01a
Transfer	18.01b(2)
Transfer cost	18.01b(4)
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, such as 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 <p><i>(See also "e-waste", the other type of "Special Waste".)</i></p>
vehicles	5.02b
violation	14.02 Table Item 8.03
year	a calendar year of January 1 through December 31, <i>unless</i> a franchise year is explicitly specified
Zone 1	The area labeled "Zone 1" and described in Attachment 4.18
Zone 3	The area labeled "Zone 3" and described in Attachment 4.18

PREAMBLE

This Agreement between County of Santa Barbara and Franchisee named on the execution page of this Agreement, is dated the franchise date on its cover page.

“County” means either of the following:

1. County of Santa Barbara, a political subdivision of the State of California, or 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.

“Franchisee” means the following:

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

“party means County or Franchisee, and **“parties”** means County and Franchisee.

Recitals

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

Solid waste handling services, including the collection, transportation, storage, transfer, and processing of solid wastes, recyclables and compostables are so closely intertwined with the protection of the health, safety and welfare of the residents of this County that solid waste handling services provided by private solid waste enterprises require government regulation and monitoring.

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

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

AB 939 SOLID WASTE DIVERSION

The County is responsible for meeting AB 939 Diversion requirements. The State of California has found and declared that the amount of Solid Waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from land filling, have created an urgent need for State and local agencies to enact and implement an aggressive new integrated waste management program. Through enactment of the *California Integrated Waste Management Act*, California Public Resources Code at Section 40000, *et seq.*, ("**CA IWM Act**" and often referred to as "**AB 939**"), the State has directed County to promote recycling and to maximize the use of feasible source reduction, recycling and composting options to reduce the amount of Solid Waste that must be disposed of by land disposal; and as of the franchise date, County must divert at from landfills least 50% of solid waste generated in the County. This percent may be increased under pending legislation.

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

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

RATES NOT SUBJECT TO PROPOSITION 218

The County is providing for private, not public, solid waste collection and transportation services. By entering into this Agreement, County meets its obligations under the CA IWM Act in part by contracting with Franchisee to provide collection and transport to County-identified facilities for recycling, processing and disposal of solid waste materials as required under the CA IWM Act.

1. **Private Service: Franchisee bills customers and collects service charges.** Franchisee provides franchise services and charges its customers for those franchise services.

The County is not providing public solid waste collection and transportation services nor is it billing customers and collecting charges for those services. Franchise services are not “public services” within the meaning of CA Constitution Article XIID, Section 2(h).

2. **The County sets only maximum customer rates.** The County is authorizing the Franchisee to charge customers service charges up to the maximum amounts in the Rate Schedule. The Franchisee must charge all customers that receive the same capacity and frequency of collection service, the same, uniform rates.
3. **Rates are paid for franchise services, not as an incident of property ownership.** There is no mandatory solid waste collection service in the franchise service area. Residents and businesses can choose to self-haul solid waste or subscribe to franchise services. (Businesses cannot dispose of recyclables.) The Board of Supervisors has *not* exercised its authority to require that any person or responsible party residing in or occupying any dwelling unit or other premises located within any area of the unincorporated territory of the county which is within urban boundary lines or developed rural areas, as designated in the adopted county general plan as amended from time to time, must subscribe to the service of an authorized collector.

COUNTY AUTHORIZATION

Solid Waste handling is highly regulated by federal and state governments and County is responsible for protection of public health and the environment. The State has not only authorized but required that the County provide Solid Waste handling services to its citizens under Public Resources Code Section 40002, including source reduction, recycling, composting activities and the collection, transfer and disposal of solid waste within County boundaries subject to solid waste handling regulations under Public Resources Code Section 40057.

Under Public Resources Code Section 40059(a)(1), County may determine all aspects of solid waste handling which are of local concern, as provided in this Agreement, including:

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

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

EXCLUSIVE FRANCHISE

State Law Authorization. Public Resources Code Section 40059(a)(2) authorizes County to provide solid waste handling services by means of wholly exclusive franchise, contract, license or permit.

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

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

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

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

COMPETITIVE PROCUREMENT

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

County's Exclusive Franchise Zones. Prior to 1997, County licensed all solid waste haulers doing business in the County. In 1997, County granted exclusive franchises to haulers then doing business in 5 different zones (under 17-29(d) of the County Code) without competitive bidding. County and haulers negotiated the exclusive franchise agreements.

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

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

Article 1 Definitions And Contract Interpretation

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

1.02 Interpretation

a. Gender. Words stated (or implied) in the masculine gender include correlative words of the feminine and neuter genders, and vice versa. For example, *“he” and “she” are used interchangeably*. In addition, words relating to individuals in neuter gender include correlative masculine and feminine gender. *For example “customer” refers to both men and women, whether the related adjective “his” or “her” is used; and “County Representative” includes both male and female staff.*

b. Headings, Font. Any captions or headings following the Attachment, Exhibit, Article, Section, Subsection, Sub-subsection numbers and preceding the operative text of this Agreement is for convenience of reference only and does not control or affect the scope, intent, meaning, construction, interpretation or effect of this Agreement. Any underlined, italicized (such as examples and definitions), bold-faced, upper captioned or other font style are for ease of reading and contract administration only and do not imply relative importance or unimportance of any provision of this Agreement.

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

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

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

1.03 Integration. This Agreement contains the entire agreement between the parties with respect to their rights and obligations under this Agreement, including the enforcement and administration of this Agreement. This Agreement supersedes all prior understandings and agreements between the parties with respect to their rights and obligations, including those contained in proposals and addendums, memorandums, correspondence, telephone calls, field trips, negotiations and Board sessions.

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

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

1. within one week of the ruling, meet and negotiate a substitute for that Agreement Provision and any related changes to other provisions of this Agreement in order to realize the parties' original intent to the greatest extent allowable under law, and
2. apply to the same court that made the original ruling for its judicial construction of the substituted Agreement Provision and any other changes to this Agreement. Franchisee will pay County half of the direct costs of the application within 10 days of County request.

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

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

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

1.06 Interpretation. Franchisee acknowledges the following:

1. It commented on the form of this Agreement.
2. It submitted a proposal to provide franchise services and entered into this Agreement upon its own choice and initiative.
3. In its proposal to provide franchise services it had opportunity to except - and took exception to - provisions of this Agreement, which exceptions County accepted.

Each party represents and warrants as follows:

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

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

1.07 Timely Performance

a. Specified Days on Weekdays

- (1) **Performance**. Where this Agreement requires that an obligation be performed within a specified number of days, If the last day falls on a weekend or holiday, the

obligated party may perform that obligation on the next weekday following the weekend or holiday. *For example, if Franchisee must provide documentation to County within 2 days of County request made on a Friday, Franchisee must give County the documentation by the following Monday.*

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

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

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

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.01 Of Franchisee. Franchisee represents and warrants under Exhibit 2.01.

2.02 Of County. County represents and warrants as of the date it executes this Agreement, under Exhibit 2.02.

ARTICLE 3 TERM OF AGREEMENT

3.01 Term

a. Franchise Term. This Agreement expires on June 30, 2019, subject to extension. If the business license required under Section 17-5 of the County Code remains in effect after the franchise term, Franchisee nevertheless may not provide franchise services or other solid waste services in the franchise service area. THIS PROHIBITION SURVIVES THE FRANCHISE TERM.

“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.

b. Extension Options. County and Franchisee may extend the franchise expiration date one or more times for one or more months, not exceeding 12 months total, by mutual agreement. *For example, they could extend the expiration date by 6 months, 3 months and 3 months.*

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

1. parties' representations, certifications, warranties and acknowledgements,
2. Indemnifications,
3. amounts that Franchisee owes County or customers, including County Reimbursement Costs and damages directly or indirectly payable under this Agreement,
4. record keeping obligations,
5. reporting and financial statement obligations,
6. any other rights and obligations of the parties accrued prior to expiration or termination of this Agreement, and
7. any other rights and obligations of the parties expressly stated to survive the franchise term.

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 solid waste service provider(s) to assure a smooth transition from franchise services to other services, including all of the following:

1. transferring records upon County request,
2. providing reports under this Agreement,
3. allowing customers to use Franchisee's containers for the following times:
 - up to two weeks (with respect to expiration), or
 - if County does not exercise its option upon termination to buy any or all containers, until customers have replacement containers (with respect to termination), and
4. coordinating with County and any subsequent solid waste service provider to transition to new service.

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.

Franchisee accepts this grant.

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

b. Exclusions. The franchise grant excludes the right and privilege to collect the following types of solid waste:

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

FRANCHISE EXCLUSIONS	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: solid waste that owners and occupants of premises remove 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 does both of the following:</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. 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 (for example, 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): 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</p>	<ul style="list-style-type: none"> • resale of bulky waste such as appliances, • donation of recyclables such as aluminum cans to a scout troop,

<p>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>	<ul style="list-style-type: none"> • 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 	

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 \$45,000 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 County Board.

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 under this Agreement will proceed smoothly to the satisfaction of customers. Therefore:

1. Franchisee will implement the Transition Plan 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 upon County request to review implementation progress.

4.04 Residential (Single and Multi-family)

a. Carts. Franchisee will provide the franchise services under this Subsection to residential customers – both single and multi-family - who subscribe to carts. Franchisee will supply the 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 do all of the following:

1. **Supply cart(s)** for discard of refuse:
 - One 32, 64 or 96 gallon cart, as customer requests,
 - additional 32, 64 or 96 gallon carts upon customer request, for additional Rate;
2. **Weekly:** Collect cart(s) weekly from set-out sites on customer collection days; and
3. **Holiday:** Collect up to 96 gallons of refuse discarded on customer collection days next to each refuse cart in bundles, boxes or cans (such as an approximately 32 gallon standard refuse can) from December 26 through January 12.

“customer collection day” means the day on which a customer is scheduled to receive regular collection.

(2) Recyclables. Regular residential franchise services include the collection and transportation of recyclables under Section 17-29 (a) of the County Code.

Franchisee will do all of the following:

1. **Supply cart(s) in any combination** of 32, 64 and 96 gallon capacity, as customer requests, for unlimited discard of recyclables that are generated by the customer on the residential premise receiving franchise services;
2. **Bi-weekly:** collect cart(s) every other week from set-out sites on same day as refuse collection; and
3. **Holiday:** collect up to 96 gallons of recyclables discarded on customer collection days next to the recyclables carts in bundles, boxes or cans (such as an approximately 32 gallon standard refuse can) from December 26 through January 12.

(3) Green Waste. Franchisee will provide green waste services to all of the following customers:

- **Required:** all single family residential customers; and
- **Optional:** multi-family residential customers upon request, for additional Rate.

“green waste services” means the following:

1. **Supplying cart(s)** for discard of green waste:
 - up to and including 96 gallons capacity as customer requests, in any combination of 32, 64 or 96 gallon cart(s), and
 - more than 96 gallons capacity as customer requests, in any combination of 32, 64 or 96 gallon cart(s) upon customer request), for additional Rate;
2. **Weekly:** collecting cart(s) weekly from set-out sites on same day as refuse collection, and
3. **Extra bags or cans:**
 - giving each customer 6 tags designed for extra green waste collection, acceptable to County, at both of the following times;
 - upon commencement of franchise service, and
 - during each following January, and
 - throughout the year, picking up tagged bags or other containers of green waste discarded on customer collection days next to green waste cart(s),
 - emptying green waste from bag(s) for diversion, and
 - separately disposing of bags.

(4) Extra Items. Franchisee will do all of the following:

1. twice each year, collect unlimited amounts of the following items that are generated by customer on the residential premise receiving franchise services and 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, and**
 - **special waste (Universal Waste and e-waste);**
2. 3 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); and
4. deliver items to facilities that provide the following services, in the following order of priority:
 - reuse “as is”,
 - disassembly for reuse or recycling,
 - recycling,
 - disposal.

(5) Batteries. Franchisee will do all of the following:

1. distribute 5 bags to each customer annually for collection of batteries, including labels with discard instructions;
2. collect batteries discarded in plastic bags supplied by Franchisee or clear plastic bags provided by residential customer and laid on top of recyclables carts; and
3. reuse or process batteries (not dispose of them).

(6) Christmas Trees. Franchisee will collect Christmas trees discarded next to green waste carts.

“Christmas Trees” means trees stripped of tinsel, flocking and artificial ornamentation.
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(7) Sharps. Upon residential customer request, Franchisee will provide for disposal of sharps generated through personal (not business or commercial) use, including all of the following:

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

(8) Curbside / Carry-out Service. Franchisee will provide both of the following carry-out services:

1. upon request of a qualifying customer on the form in Franchisee Documentation; and
2. upon request of a customer who is *not* a qualifying customer for an additional Rate.

"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 Variations in Franchise Services. Franchisee may provide customers with franchise services different from the franchise services in this Subsection for different rates, upon consent of County Representative and subsequent approval by the County Board under Section 17.01a(2), such as different collection frequency or materials type. *Examples include:*

1. *collection of refuse but not green waste from single family residences such as condominiums or town houses whose landscape service collects green waste, and*
2. *bi-weekly rather than weekly green waste service.*

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

(1) Refuse. Franchisee will do both of the following:

1. **Supply** 1.5, 2, 3 or 4 cubic yard bins for discard of refuse as customer requests, and
2. **Weekly:** collect bins as frequently as customer requests, at least weekly from set-out sites on customer collection days.

(2) Recyclables. Franchisee will do all of the following:

1. **Supply:** Supply recycling containers in type and capacity as customer requests:
 - 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 service,
 - additional cart(s) or bins for additional Rate.

2. **Weekly:** collect container(s) weekly from set-out sites on same day(s) as refuse collection, and
3. **Business and Multi-Family Recycling Plan:** implement its Business and Multi-family Recycling Plan.

(3) Optional Green Waste for Additional Rate. Franchisee will do both of the following:

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

(4) Extra Items. Franchisee will collect both of the following materials twice each year upon Customer request (who may be the owner or property manager of a multi-family premise):

1. bulky waste, special waste (Universal Waste and e-waste) under Subsection a(4), and
2. batteries under Subsection a(5) laid next to bulky items.

(5) Christmas Trees. Franchisee will collect Christmas trees under Subsection a(6), discarded next to customers' refuse bins,

(6) Sharps. Upon customer request, Franchisee will provide for disposal of sharps under Subsection a(7).

(7) Optional Manure for Additional Rate. Franchisee will do both of the following upon customer request, for the additional Rate:

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

“Manure” means solid waste comprised of animal dung or excrement, including straw or other bedding material.

4.05 Commercial. Franchisee will provide all of the franchise services under this Section to commercial customers.

(1) Refuse. Franchisee will do both of the following:

1. **Supply** the following containers for discard of refuse as customer requests:
 - 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 customer request (but at least weekly) from, set-out sites on customer collection 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 all of the following franchise services to customers for the additional Rate:

1. **Supply Container(s):** supply 32, 64 or 96 gallon recycling cart(s) or 1.5, 2, 3 or 4 cubic yard recycling bins as customer requests.
2. **1-6 Times Weekly:** collect the following from 1 to 6 times each week, as customer requests (but at least weekly) from, set-out sites on customer collection day(s):
 - container(s) supplied by Franchisee, and
 - any compactor provided by customer, and
3. **Business and Multi-family Recycling Plan:** implement its Business and Multi-family Recycling Plan 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.

(iii) State Mandatory Commercial Recycling. Franchisee acknowledges that as of the franchise date, CalRecycle is developing regulations that will require mandatory recycling at commercial premises (and perhaps some or all multi-family premises under this Agreement). Franchisee will assist both customers and County to comply with the regulations.

(3) Optional Green Waste for Additional Rate. Franchisee will do both of the following:

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

4.06 Public Services

a. Illegal Dumping

(1) On-call. Franchisee will collect abandoned solid waste discarded along roads at locations identified by the County, without charge to customers or County, at the following times:

1. **Before Noon:** If County makes its request to Franchisee by noon on a weekday, Franchisee will collect abandoned solid waste that same day.
2. **Afternoon:** If County makes its request to Franchisee after noon on a weekday, Franchisee will collect abandoned solid waste by the end of the following weekday.

Franchisee's obligation to collect abandoned solid waste continues under this Subsection until the earlier to occur of the following during each franchise year:

1. Franchisee has collected 10 tons of abandoned solid waste, and
2. County has made 40 requests.

"Abandoned Waste" means solid waste (other than scattered litter such as paper, plastic bags and food packaging), comprised of:

1. boxes, bags or bundles, and
2. bulky waste.

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

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

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

b. Public Trash Cans

(1) Location and Frequency. Franchisee will provide both of the following franchise services without charge to customers or County:

1. provide containers for the public's discard of refuse, acceptable to County, at the following locations:
 - Metro Transit District bus stops identified on Exhibit 4.06b(1), and
 - No more than 10 additional locations identified by County.
2. collect those containers weekly.

(2) Container Handling, Placement and Bags. Franchisee will do all of the following:

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

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

c. County Facilities. Franchisee will provide all of the following franchise services to the County, without charge, under Attachment 4.06c:

1. supply containers of the type and capacity, and at the facilities, that County requests;
2. collect refuse, recyclables and green waste at the frequency that County requests; and
3. transport refuse to the Disposal Facility/Facilities, recyclables to the MRF(s) and green waste to the Organics Site(s).

As of the franchise date, the type and capacity of containers, facilities and collection frequency is listed under Attachment 4.06c. After the franchise date, County may request any or all of the following changes in franchise service:

1. stopping service at listed facilities,
2. beginning service at facilities located in Zones 1 or 3, or the franchise service area,
3. type of containers; or
4. capacity of containers and frequency of service, up to 7.5% more than the aggregate volume of all containers listed on Attachment 4.06c on the franchise date.

Volume is calculated as follows:

- the capacity of each container (in gallons or cubic yards) is multiplied by the number of times that Franchisee collected that container each week; then
- adding together the volume of all containers, assuming that 1 cubic yard equals 202 gallons.

4.07 Collection Times and Schedules.

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

(1) Residential Areas. Franchisee will provide collection in residential areas only either or both of at the following times:

1. Monday through Friday between 6:00 a.m. and 6:00 p.m., or
2. Saturday between 7:00 a.m. and 6:00 p.m.

(2) Commercial and Industrial Areas. Franchisee will provide collection in commercial and industrial areas only at either or both of the following times:

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

b. Schedule

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

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

“holiday(s)” means holidays designated by County, comprised on the franchise date any (or all) of the following: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.

(2) Changed Schedule. Franchisee will notify each customer of any change in the customer collection day in each and all of the following manners:

1. on a tag attached to each residential customer’s container on the customer 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 all 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 tags for residential cart customers, and
3. sharps containers, boxes and labels for residential cart and bin 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 service day after customer request and ensure that each customer has a container for solid waste discard during the days remaining prior to the next customer 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 collection day after customer request to terminate service or change service levels.

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

d. Annual Cleaning of Commercial Bins. Franchisee will clean bins at commercial premises at both of the following times:

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

e. Collection and Emptying of Containers. After emptying each container Franchisee will replace it at its set-out site.

4.09 Service Standards.

a. General. Franchisee will perform all franchise services in a prompt, thorough, comprehensive, reliable, courteous and professional manner so that customers receive high-quality franchise service at all times. Franchisee will comply with its Customer Service Policy. Franchisee must perform franchise services regardless of weather conditions and regardless of difficulty of collection, subject to the exceptions under Section 4.10. Particular specifications in this Agreement do not relieve Franchisee of its duty and obligation to accomplish all other aspects of franchise services in the manner provided in this Subsection, whether or not those other aspects are also addressed elsewhere in this Agreement.

b. Litter and Leaks

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

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

(2) Franchisee

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

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

(ii) *Liquids.* Franchisee will not allow hydraulic fluid or other liquid to leak from any vehicle. Franchisee will immediately clean up all leaks and spills occurring while providing franchise services. Franchisee will keep a record of leaks including type, amount and action taken to clean it up.

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

Franchisee will pay all fines for improperly covering loads, including those assessed by the operator of an Identified Solid Waste Facility.

c. Respect for Property

(1) Private Property. Franchisee will do all of the following:

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

Within 2 days of receiving customer notice (oral or written) of any damage, Franchisee will determine whether or not the damage to customer's property was caused by the inattention, carelessness or negligence of Franchisee's employees. Within 3 days of making its determination that it was responsible for the damage, Franchisee will reimburse customer her direct costs of repairing or replacing damaged property. However, Franchisee may request the customer to give Franchisee a waiver of damage liability and/or Indemnification acceptable to the County if customer specifically directs Franchisee to drive on private driveways or pavement in the course of providing franchise service.

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

(2) Containers

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

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

(3) Pavement and Utilities

(i) Pavement. Franchisee is responsible for damage to driving surfaces, other than ordinary wear and tear, when County or customer can demonstrate to satisfaction of County either or both of the following:

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

(ii) Utilities. Franchisee is responsible for damage to public and private utilities, whether located on public or private, streets or property, when County or customer can demonstrate to satisfaction of County that damage is the result of the inattention, carelessness or negligence of Franchisee.

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

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

In either event, Franchisee will reimburse customer his or her direct costs of repair or replacement and County its County Reimbursement Costs of repair or replacement.

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

4.10 Service Exceptions and Non-Collection Notices

a. **Non-collection.** Franchisee is *not* required to collect solid waste in any of the following events, when it must take all of the following actions:

Collection Exception	Actions: Non-Collection Notice
<p>Contaminated materials: customer has discarded materials <i>other</i> than the following:</p> <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 process green waste mixed with manure). 	<ol style="list-style-type: none"> 1. Attach a non-collection notice, together with 2. information listing examples of recyclables or green waste, and how to discard them.
<p>Setting container out on wrong day (for example, setting out a recyclables cart on the week when Franchisee does not collect recyclables)</p>	<p>Attach a non-collection notice, marked to explain the reason for non-collection</p>
<p>Uncontainerized Solid Waste: solid waste discarded outside a container <i>unless</i> allowed under this Agreement, including all of the following:</p> <ol style="list-style-type: none"> 1. bulky waste, 2. bags of green waste, and 3. Christmas trees. 	<ol style="list-style-type: none"> 1. Attach notice to uncontainerized materials or customer’s adjacent container, together with 2. together with a Franchise Service Summary that explains when, where and what uncontainerized materials customer may discard
<p>Excess Weight: container in excess of weight limits posted on container</p>	<p>Attach notice to container marked to explain the reason for non-collection.</p>

<p>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)</p>	<ol style="list-style-type: none"> 1. implement Hazardous Waste Protocol, 2. attach notice to container 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.
<p>Improper Set-out Site: container is not placed in either of following locations:</p> <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. 	<p>Attach notice to improperly placed container</p>
<p>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.</p>	<p>Immediately notify the customer. Upon County authorization, Franchisee will discontinue collection until the threat is eliminated.</p>

b. Notice. Franchisee will include the preceding information in the Non-Collection Notice. When Franchisee leaves a Non-Collection Notice, it will mark the reason that it did not collect the solid waste.

"Non-Collection Notice" means the notice prescribed in this Section and in Franchisee Documentation, acceptable to County.

c. Report. Franchisee will report the non-collection to the County in its Monthly Report or, upon County request, by the next franchise service day.

4.11 Missed Pickups and Other Complaints. Franchisee acknowledges that County determined to procure and enter into this Agreement with Franchisee for reasons that include providing high quality customer service, relations and satisfaction.

a. Timeliness. On the next franchise service day after customer or County complaint (such as a missed pickup), Franchisee will resolve the complaint acceptably to customer or County (including providing a special pickup).

b. Customer Service Policy

(1) Records. Franchisee will maintain a daily written record of communications between customers and Franchisee related to franchise service, including orders, complaints and disputes. Franchisee will maintain information requested by County, including all of the following:

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

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

1. at Franchisee office, or
2. electronically.

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

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

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

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

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

4.12 Means of Communicating with Customers and County

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

b. E-mail

(1) Franchisee's. Franchisee will maintain an email address for both of the following purposes:

1. correspondence with customers and County, including placing subscription orders (such as selecting cart size), and
2. paying bills on line.

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

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

(1) Phone Hours. Franchisee will answer the telephone at both of the following times ("**Franchisee phone hours**"):

1. at least during Franchisee office hours, and
2. if Franchisee provides collection on Saturday, from 8:00 a.m. to noon on Saturdays.

Franchisee will provide an answering machine or answering service to take messages of calls received outside of Franchisee phone hours. Franchisee must respond to messages no later than the following franchise service day.

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

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

(4) **Response Standards.** Franchisee will comply with all of the response standards under this Subsection.

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

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

(ii) ***Answer Time.*** Franchisee will answer all incoming calls either or both of the following ways:

1. 90% by a live operator within 4 rings, or
2. giving the caller the option of leaving a voice mail message. Franchisee will respond to all messages left during Franchisee's phone hours that same day.

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

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

County may evidence Franchisee's compliance with - or breach of - these phone response obligations based on either or both the following:

1. the phone logs, or
2. County's check:
 - at least 3 calls within one week, or
 - at least 10 calls within one month.

d. Posting Contact Information. Franchisee will post its Contact Information on all of its written communications with customers, including all of the following:

1. bills,
2. Customer Service Summary,
3. Franchise Service Summary,
4. non-collection notices, and
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, and
3. Franchisee’s web site and email address.

4.13 Education and Public Relations

a. Customer Orientation Packet

(1) Service Commencement. Franchisee will produce the Customer Orientation Packet and attach it to a container in a clear bag when Franchisee delivers container(s) to a new customer. Franchisee will prepare a separate Customer Orientation Packet for each and all of the following franchise services:

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

“Customer Orientation Packet” means the information under Exhibit 4.13a.

(2) Annually. Annually, Franchisee will give each customer both of the following in the same way that Franchisee sends bill to that customer:

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

b. Educational Materials

(1) Newsletter. Franchisee will produce and mail a newsletter designed to promote safe waste handling, recycling and diversion at both of the following times:

1. twice each year to all residential customers, and
2. once each year to all commercial customers.

Franchisee will email the newsletter to each of the following customers who:

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

(2) Additional Information. Franchisee will produce and distribute additional materials relating to franchise services and solid waste management upon County request.

(3) Mandatory Business Recycling. Franchisee will annually produce and distribute information to all its commercial and multi-family customers describing the County's Mandatory Business Recycling Program and the benefits of recycling, under the Franchisee's Business and Multi-family Commercial Recycling Plan in Franchisee Documentation.

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, including options for cart sizes,
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 Universal Waste and 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' privacy rights under this Section and law.

a. Customers' Identity and Solid Waste. Franchisee will not reveal information identifying individual customers or the composition or contents of a customer's waste stream to anyone *except* upon request of any or all of the following:

1. the County,
2. a regulatory authority, as required by law, or
3. 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 any or all of 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.

4.16 Franchisee Billing

a. Schedule

1. Presentment

- **Timing.** Franchisee will calculate each customer's bill based on the Rates for that customer's franchise service and present it at the following times:
 - residential cart customers, bi-monthly in advance,
 - all other customers (whether bin or cart), monthly in arrears.Franchisee will present the bill no sooner than the first day of the billing period.*(For example, a residential bill dated January 1 is for the upcoming month of January and February.)*

- **Means.** Franchisee will offer customers the option of receiving and paying bills by postal service or on-line at the postal or e-mail address printed on bills.
 - **County Sample.** At the same time it presents customers' bills, Franchisee will send County a sample bill copy, including inserts or announcements.
 - **Format.** Franchisee will distribute bills in the format in Franchisee Documentation.
2. **Payment.** Bills must be payable only to the order of Franchisee, and no one else, including affiliates. Bills payable in advance must be paid on the last day of the service period after presentation (*for example, a residential bill dated January 1, is payable by February 28*). County is not liable for paying any customer's bill or delinquencies. Franchisee releases County from any liability to compensate Franchisee for providing franchise service to any customer.
3. **Delinquency**
- Residential bills for cart service paid in advance may not become delinquent until after the date payment is due, upon prior notice to customer (*for example, if the residential bill is dated January 1, after January 31*).
 - Bills paid in arrears may not become delinquent sooner than 30 days after presentment, *unless* County accepts an earlier date (*for example, if the commercial bill is dated January 1, after February 28*).
 - **Late Payment Charges.** Franchisee may charge a customer a late payment fee in the amount of 1.5% per month (not compounded) on all or a part of invoiced but unpaid amounts from the due date until the date paid, *including* on amounts that customer withheld pending resolution of a dispute with Franchisee but which Franchisee subsequently determined the customer owed to Franchisee.

4. **Suspension of Service**

Franchisee may suspend or terminate franchise service for failure to fully pay bills at the following times:

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

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

Franchisee will suspend or reduce franchise service to a customer on customer request for no less than one month or more than 6 months. Franchisee will pro-rate that customer's bill to reflect the number of days service is suspended.

5. **Refunds.** Franchisee will refund to customer overcharges within 30 days of either of the following times:

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

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

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

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

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

1. communication with customers (including the Customer Service Summary, Franchise Service Summary, franchise service bill or other correspondence) or
2. public posting .

4.17 Customer Satisfaction Survey. County may conduct customer service satisfaction surveys. Franchisee may review and comment upon the survey form and content. Franchisee will cooperate with County and its surveyor. Franchisee may obtain a copy of the survey results.

4.18 Universal Service

a. Contract Extensions. If prior to June 1, 2011, County extends the terms of its Zone 1 and Zone 3 agreements with Franchisee to June 30, 2015, Franchisee will provide the additional services under this Section. In addition to franchise services, Franchisee will begin providing these additional services in Section in Zones 1 and Zone 3 at the same time as it provides the corresponding franchise services to customers under this Agreement, *except* for subsection c.

“Zone 1 and Zone 3 agreements” means the franchise agreements between the County and Franchisee entitled “AMENDED AND RESTATED AGREEMENT FOR EXCLUSIVE SOLID WASTE, RECYCLABLES AND ORGANICS COLLECTION AND TRANSPORTATION TO DISPOSAL AND PROCESSING FACILITIES AND ORGANICS SITES” for Zone 1 and Zone 3, respectively.

b. Extra Services. Franchisee will provide all of the residential customers – both single family and multi-family - who subscribe to cart service under Zone 1 and Zone 3 agreements the services described in all of the following sections of this Agreement:

1. **Extra Items:** 4.04a(4),
2. **Batteries:** 4.04a(5),
3. **Sharps:** 4.04a(7),
4. **County-approved Variations in Franchise Services:** 4.04a(9).

c. Automated Service / Carts for Selected Customers in Zone 3 Adjacent to Goleta. Beginning November 1, 2011, Franchisee will provide all of the residential customers – both single family and multi-family- who subscribe to service under the Zone 3 agreement and reside in the area described in Exhibit 14.18c, the automated services described in the following sections of this Agreement, for the rates listed in Attachment 14.08c:

1. **Refuse:** 4.04a(1),
2. **Recyclables:** 4.04a(2),
3. **Green Waste:** 4.04a(3)
4. **Christmas Trees:** 4.04a(6), and
5. **Curbside / Carry-out Service:** 4.04a(8).

d. Extra Green Waste Collection for Cart Customers. Franchisee will provide all of the residential customers – both single family and multi-family- who subscribe to service under Zone 1 and Zone 3 agreements in carts, extra green waste collection service under 4.04a(3) item 3. Franchisee is *not* obligated to provide extra green waste collection service to those customers who subscribe to service in bins.

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 either or both of the following documentation:

1. maps showing Franchisee's refuse, recyclables and green waste collection routes, maps showing Franchisee's routes for each type of vehicle (side-loaders, front-end loaders, pup / satellite trucks); or
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.

b. Route Audits. Franchisee will cooperate with County route audits of vehicles that collect solid waste in County, including both of 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 collect solid waste (*except* solid waste collected on flat bed trucks, and satellite trucks used on roads inaccessible to automated side-loaders) only in vehicles that meet the State's 2010 emission standards for new heavy duty diesel vehicles, including both of the following:

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

If Franchisee replaces satellite trucks after the franchise date, it will procure trucks that meet those standards.

b. Noise

(1) Limits. Franchisee will ensure that its vehicles do not generate noise during stationary compaction in excess of either 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 prior to submitting its Annual Report.

Franchisee will give County a written copy of the test 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 both of 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.

***"vehicle(s)"** means all trucks (including trucks providing refuse, recyclables, green waste, bulky waste and litter pickup, as well as field supervisor's 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 all of 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) *Permissible.* 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 presents 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.

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

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

e. **Safety.** Franchisee will install and maintain, at a minimum the following cameras:

1. on **automated side-loader** trucks, 4 cameras (1 at rear for rear view, 2 at rear for side views when backing, 1 on left side for street view when driving, and 1 inside the hopper for view of material when tipping);
2. on **rear-loader** trucks staffed with driver and helper(s), a rear-view camera; and
3. on **satellite and front-end loader** trucks, 3 cameras (at center, left and right rear view).

f. **Records.** Franchisee will install and maintain On-Board Computers on each collection vehicle capable of recording information such as the following:

1. on computers acquired prior to the franchise date, registering lift and tipping of containers manually, by driver,
2. on computers acquired after the franchise date installed in side and front-loader trucks, registering lift and tip of containers for each customer,
3. uncollected and tagged containers (and reasons for non-collection, such as blocked access),
4. all route activity, including current and past GPS locations and times of truck stops,
5. driver's speed, and
6. tagged, extra green waste set-out.

5.03 Containers

- a. Specifications.** Franchisee will acquire containers meeting specifications listed in Franchisee Documentation. Prior to submitting orders for new containers to the manufacturer, Franchisee will give County copies of container orders (including text of labels) for County review and acceptance.
- b. Labels.** Franchisee will label each container with the information listed in Franchisee Documentation acceptable to County.
- c. Container Acquisition Agreements.** Franchisee acknowledges that County must have full use and possession of containers in order to secure its rights under this Agreement, including both of the following:
1. providing substitute franchise service, and
 2. purchasing containers upon termination of this Agreement.

Therefore, if Franchisee does not own containers outright without encumbrance, any Container Acquisition Agreement must allow the Guarantor, County or County designee to do all of the following:

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

“Container Acquisition Agreement” means an instrument establishing a security interest in the containers or that otherwise 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.

- d. Inventory.** Franchisee will store unused containers in a secure location. Franchisee will update its container inventory at both of the following times:
1. in each Monthly Report and Annual Report, and
 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 all of 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 roads, streets and alleys,
6. direct drainage from cleaning facilities with paved and curbed areas to a catch basin connected to a sanitary sewer system or a holding tank, and prevent drainage to surrounding areas, and
7. maintain County's Green Business certification.

b. County Entry Rights. Franchisee will allow County to enter Franchisee's operation and maintenance facilities during Franchisee office hours upon 2 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).

d. ABOP / Buy-back Facilities. Franchisee will accept at both of its facilities located at

- 20 David Love Place in Goleta, and
- 725 Cacique Street in Santa Barbara,

all of the following materials from residential customers (and as permitted by law, commercial customers who are small quantity generators), without charge:

1. anti-freeze, batteries, oil and latex paint (without charge);
2. "covered electronic waste", as defined by CalRecycle in its CEW Recovery and Recycling Payment System, such as televisions, computers and monitors, and
3. appliances, including those containing hazardous materials (such as PCBs, CFCs and other refrigerants, and mercury switches) as permitted by the CA Environmental Protection Agency, Department of Toxic Substances Control (Consumer Projects Unit).

At those facilities Franchisee will purchase recyclable materials such as glass, cardboard and metal at either of the following prices:

1. the price set by the California Redemption Values established by the State, if any, or
2. if the State does not establish a price, the price set by Franchisee reflecting the current recyclables market.

5.05 Franchise Service Asset Requirements.

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

“franchise service asset(s)” means all property of Franchisee used directly or indirectly in performing franchise services, including all of 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.

b. Inventory

(1) County Request. Within one week of County request, Franchisee will give County an inventory of containers that it has updated as recently as County requests.

(2) Annual Report. In its Annual Report, Franchisee will include an inventory of containers that it updated within one month prior to the date Franchisee gives its Annual Report to County.

5.06 Personnel

a. Key Personnel. Franchisee acknowledges that providing franchise services are personal in nature, since it requires continuous and extensive communication between Franchisee's personnel and County staff, and knowledge of County streets, terrain, and contract requirements under this Agreement (including reporting). Therefore, no later than 30 days prior to change in any or all of the following personnel identified by name in Franchisee Documentation, Franchisee will use reasonable business efforts to notify County:

1. Franchisee Representative,
2. Route Supervisor,
3. County liaison in Franchisee's financial accounting department responsible for submitting reports with respect to franchise fees, or
4. County liaison responsible for submitting reports with respect to Franchisee's diversion of solid waste in County.

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

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

b. Driver. Franchisee will take all of the following actions:

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

- c. Field Route Supervisor.** Franchisee will assign qualified personnel to supervise field operations in the franchise service area, including all of the following:
1. checking that collection meets program specifications under this Agreement,
 2. making collection improvements,
 3. resolving field problems (*such as reports of commingling green waste or recyclables with refuse*), and
 4. responding to complaints of customers in person or by telephone (*such as missed pickups, noise, litter*).

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

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 labor law, including keeping records of compliance with the Federal Immigration and Control Act of 1986. Failure to comply with law (such as 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 Service Plan. If franchise service is interrupted, within 24 hours of County request Franchisee will implement its back up service 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 into the vehicle.
- b. Hazardous Waste Handling Protocol.** Franchisee will follow its Hazardous Waste Handling Protocol.
- c. Inadvertent Delivery of Hazardous Waste.** If Franchisee inadvertently delivers to any facility materials that comprise hazardous waste, Franchisee will take all of the following actions:
1. make a good faith, best effort to identify and contact the customer that discarded the hazardous waste, and recover the hazardous waste handling costs, and
 2. cooperate with the facility owners or operators to arrange for proper disposal under law.
- d. Definitions**

“Hazardous Waste” is

1. *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, and*
2. *any waste that is regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under law, including:*
 - **State law:**
 - *“Hazardous Waste” defined in Section 40141 of the California Public Resources Code,*
 - *materials regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code (CA H&SC),*
 - *all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste under Sections 25110.02, 25115, and 25117 of the CA H&SC (the California Hazardous Waste Control Act),*

- Section 25100 et seq. of the CA H&SC, and
- 23 California Code of Regulations Sections 2521 and 2522,
- **RCRA:** materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., (including the Solid Waste Disposal Act Amendments of 1980), and related federal, State and local laws and regulations,
- **Toxic Substances:**
 - materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq.
 - California Toxic Substances Account Act, CA H&SC 25300 et seq.,
- **CERCLA:** materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq.,
- materials regulated under any future additional or substitute laws pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or hazardous waste, and
- Household Hazardous Waste.

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 more stringent definition is employed under this Agreement.

"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.

ARTICLE 6 DIVERSION

6.01 MRF(S) and Organics Site(s)

a. Identified Diversion Facilities. Franchisee will do both of the following:

1. transport and deliver the following materials to the corresponding Identified Solid Waste Facility, and
2. comply with Section 17-11(b) of the County Code (“Scavenging Prohibited”).

As of the franchise date:

Including Following SECTIONS	Residential, Commercial & County, SOLID WASTE MATERIAL / CONTAINER	IDENTIFIED SOLID WASTE FACILITY	DISTANCE FROM CENTRIX
		MRF(s)	
4.04a(2) 4.05(2)(ii) 4.06c	Recyclables / carts	County’s South Coast Recycling & Transfer Station	13 miles From: 728 E. Yanonali, Santa Barbara 93110 To: 4430 Calle Real, Santa Barbara 93110
4.04b(2) 4.05(2) (ii) 4.06c	Recyclables / bins	Either: 1. 20 David Love Place in Goleta, or 2. Franchisee’s C&D Facility,	shortest distance at legal weight limits From: either #1 or #2 To: newly identified facility
6.03b(3)	high content recyclables in refuse / bins	C&D Facility	shortest distance at legal weight limits From: C&D Facility To: newly identified

			facility
		ORGANICS SITE(S)	
4.04a(3) 4.05(3) 4.06c	Green waste / carts	Tajiguas landfill	27.3 miles From: 728 E. Yanonali, Santa Barbara 93103 To: 14470 Calle Real, Santa Barbara 93117
4.04a(6)	Christmas trees	Tajiguas landfill	27.3 miles (see above)
4.04b(3) 4.05(3) 4.06c	Green waste / bins	C&D Facility	Shortest distance (see above)
6.03a(3)	Dirty green waste /	Franchisee's C&D Facility	Shortest distance (see above)
4.04a(4) 6.03a(4)	Bulky waste	C&D Facility	Shortest distance (see above)
4.04a(4)	Special waste (universal and e-waste)	Either: 1. 20 David Love Place in Goleta, or 2. Franchisee's C&D Facility,	shortest distance at legal weight limits From: either #1 or #2 To: newly identified facility
4.04b(7)	manure	Identified by Franchisee, acceptable to County	determined upon identification

"MRF(s)" means the materials recovery facility/facilities identified by County for either or both sorting and processing recyclables (whether source separated or commingled).

"Organic Site(s)" means the site or facility identified by County for processing green waste.

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

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

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

6.02 Diversion Defense and Indemnification

a. Defense. Franchisee will contribute up to a maximum of \$10,000 of County direct costs in any or all of the following events:

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

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 by County, to the total amount of solid waste collected in County.*

b. Indemnification

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

1. **Failure to divert or report:** Franchisee fails to meet its Minimum Diversion Requirement, to timely submit reports under Section 10.02, or within 2 days of County request, give County records that contain information that must be included, directly or indirectly, reports required to be timely submitted by County under the California Public Resources Code,
2. **SRRE / PRC 40059.1(c)(1):** the fine or penalty is not based solely upon the failure of County to establish and maintain a Source Reduction and recycling Element as required by Public Resources Code Section 40059.1(c)(1), as established, recited, declared, found or determined by CalRecycle, and
3. **Administrative relief / PRC 40059.1(c)(5):** County has affirmatively sought in good faith, all administrative relief available pursuant to Chapter 6 (commencing with Section 47680) and Chapter 7 (commencing with Section 41800) of part 2 of the Public Resources Code, *unless* County demonstrates good cause, based on substantial evidence in the record, for not pursuing that administrative relief. The parties agree that good cause includes County estimate that County Reimbursement Costs of seeking administrative relief exceed fees that County budgeted to fund implementation of County Source Reduction and Recycling Element.

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

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

If CalRecycle does not apportion the percentage of relative fault, Franchisee fault is Franchisee Allocable Fault.

(3) Causation Limitation / PRC 40059.1(c)(4): Franchisee's indemnity obligation for fines and penalties is limited to the portion of fines and penalties caused by Franchisee's breach of or non-compliance of an express obligation or requirement. If CalRecycle does not make any determination with respect to causation, but Franchisee did breach an express provision of this Agreement (such as the Minimum Diversion Requirement) or fail to comply with an express requirement (such as provisions of County Code) the portion is Allocable Fault.

c. Survival. FRANCHISEE'S DEFENSE AND INDEMNIFICATION OBLIGATIONS PROVIDED IN THIS SECTION SURVIVE THE FRANCHISE TERM.

6.03 Diversion

a. Maximizing Diversion

(1) **All Solid Waste.** Franchisee will use reasonable business efforts to maximize recycling, processing, marketing and diversion of all solid waste that it collects.

“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.

(2) **Solid Waste from Wet-Dry / Low-High Content Routes.** Franchisee will operate routes designed to collect solid waste from refuse bins that contain an average of at least 50% recyclable, by weight. Franchisee will separate those recyclables from refuse at its C&D Facility and use reasonable business efforts to divert them from disposal.

“C&D Facility” means Franchisee’s facility located at 131 Quarantina Street in Santa Barbara.

(3) **Dirty Green Routes.** Franchisee will operate routes designed to collect solid waste from bins that contain mostly green waste or manure. Franchisee will separate that green waste or manure from refuse at its C&D Facility and divert them from disposal.

(4) **Bulky Waste.** Franchisee will process all bulky waste that it collects at its C&D Facility and use reasonable business efforts to divert it from disposal.

b. Minimum Diversion Requirement

(1) **Percentage.** *Each franchise year Franchisee must divert at least 50% by weight of all solid waste that it collects under this Agreement (the “Minimum Diversion Requirement”).*

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

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

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

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

“Identified Solid Waste Facility” means a facility defined in Section 40194 of the California Public Resources Code, including any or all of the following:

1. *the MRF(s),*
 2. *the Organics Site(s),*
 3. *any Conversion Facility, or*
 4. *the Disposal Facility/Facilities,*
- any other facility or site identified under Section 6.01, such as a manure and Universal Waste and e-waste processing facility/facilities .*

“conversion” means “conversion” defined in 40201 PRC, that qualifies for diversion.

d. 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 Solid Waste 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.

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

1. weigh tickets,
2. invoices,
3. bills of lading, or
4. receipts.

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

e. Determination of Collected Materials

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

1. **Facility Data:** Identified Solid Waste Facility Tonnage; and
2. **Reconciled Data (DRS):**
 - Identified Solid Waste Facility Tonnage, reconciled with
 - County DRS Tonnage reviewed and reconciled under Subsections (d)(2) and (3).

***“Identified Solid Waste Facility Tonnage”** means County’s allocable portion of solid waste tonnage that Franchisee delivers to each Identified Solid Waste Facility, including either of the following:*

1. *tonnage that each Facility reports to Franchisee, or other tonnage agreed to between each Facility and Franchisee.*

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

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

Franchisee will request each Identified Solid Waste Facility not owned or operated by County to send Franchisee a copy of tonnage that the Facility submits to the DRS before or simultaneously with submission to the DRS.

(3) Reconciliation of Discrepancies

(i) *County Request.* County may request Franchisee to report on tonnage discrepancies, including either or both of the following:

1. discrepancies *within* one of Franchisee's reports to County, or
2. discrepancies *between* Franchisee's reports to County and records from any Identified Solid Waste Facility or the DRS.

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

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

(iii) *Franchisee Reconciliation.* Franchisee will resolve the discrepancy within 45 days of County's request under Subsection d(3)(i).

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

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

(4) County Reimbursement Costs. Within one week of County request, Franchisee will pay County its County Reimbursements Costs incurred with respect to correcting Franchisee reporting errors, including both of the following:

1. errors that Franchisee did not correct in the County DRS Tonnage data that the Identified Solid Waste Facility submits to the Franchisee for review under Subsection (d)(2), and
2. discrepancies that Franchisee did not timely identify or resolve under Subsection (d)(3).

County Reimbursement Costs include preparing and sending both of the following:

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

f. Allocation of Commingled Materials. If Franchisee commingles any type of solid waste with materials generated or collected outside the franchise service area, Franchisee will allocate solid waste to County under a protocol satisfactory to County, at both of the following times,

1. in Annual Reports, and
2. in any Annual Report for succeeding calendar years, if different than the protocol applied in the previous calendar year.

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

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

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

g. Diversion Plan. Franchisee will implement its Diversion Plan in Franchisee Documentation. Franchisee will revise its Diversion Plan in conjunction with any change in scope of franchise services (for example, addition of a new program in response to increased State diversion requirements).

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

6.05 No Commingling. Franchisee will not mix refuse, recyclables or green waste. Parties acknowledge that customers might not cooperate with collection programs and might discard refuse, recyclables or green waste together in the same container.

6.06 CRV Payments to County. Franchisee will annually pay 100% of the CRV payments that Franchisee reports to CalRecycle under its registration to operate a curbside recyclables program and receives from the California Department of Conservation for recyclables that Franchisee collected in the franchise service area, calculated in a manner acceptable to the County.

ARTICLE 7 DISPOSAL

7.01 Transportation to Disposal Facility/Facilities.

a. Identification. Franchisee will transport refuse to the Disposal Facility/Facilities identified by County. As of the franchise date, the Disposal Facility is Tajiguas Landfill.

b. Compliance. Franchisee will observe and comply with all regulations in effect at the Disposal Facility/Facilities and cooperate with the operator thereof with respect to operations thereat, including directions to unload collection vehicles in designated areas, accommodating construction and maintenance, and hazardous waste exclusion programs. Franchisee will at all times operate according to safe industry practices.

ARTICLE 8 MISCELLANEOUS SERVICE PROVISIONS

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

Franchisee will charge County the lesser of the following amounts:

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

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

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

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

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

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

8.03 Compliance with Law.

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

b. Compliance With More Stringent Contract Provisions. If any provision of this Agreement is more stringent than comparable provisions of law, the provisions of this Agreement apply.

c. Amendments, Recodification. Reference to specific provisions of law (such as statutes) include both of the following:

1. future amendments to or recodification of those provisions, and
2. other law (such as regulations, rules and guidelines) promulgated under the authority of those provisions.

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 other requirements.

Examples of applicable law are listed in Attachment 8.03.

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

“permit(s)” means any or all permits, orders, licenses, approvals, authorizations, consents and entitlements that are required under law with respect to franchisee administration and operations, and franchise service.

8.04 Cooperation with Waste Studies. Franchisee will cooperate with County on waste characterization or composition studies conducted no more frequently than once each franchise year, at no additional cost to County, including all of the following:

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

8.05 Service Materials Belong to County. Reports, public education and community relations materials prepared under this Agreement and all work product (whether computerized, written, printed or photographic) developed by Franchisee in connection with franchise services, becomes the property of County without limitation or restriction on the use of the materials by County. Franchisee will not use the materials in connection with any project not connected with this Agreement without the prior consent of County.

8.06 Environmentally Responsible Operations

- a. **Carts, Paper.** Franchisee will procure both of the following:
1. carts that are recyclable, and
 2. paper products for all publicity, billing and other management and operational franchise services having not less than 20% recycled paper content, including at least 10% post-consumer recycled paper content.
- b. **Other Supplies.** Franchisee will use reasonable business efforts to procure supplies with post-consumer recycled content under County Recycled Content Procurement Policy adopted by County pursuant to Resolution 00-44 and appended to this Agreement for convenience of the parties.
- c. **Green Business Program.** Franchisee will obtain certification under the County's Green Business Program within one year from the franchise date.

8.07 News Media Relations

- a. **Requests for Interviews or Inquiries.** Before responding to any inquiries from news media related to franchise services or County, Franchisee will discuss Franchisee's proposed response with County. Franchisee will use reasonable business efforts to inform County by telephone followed by printed copy of all requests for interviews, comment, or information related to franchise services or County within 24 hours of Franchisee's receipt of the request.
- b. **Franchisee News Releases.** Franchisee will not release or submit news releases or proposed trade journal articles that reference the County or franchise services *unless* they are acceptable to County.
- c. **County Copies.** Within 5 days after publication or broadcasting, Franchisee will give County copies of text (by hard copy or e-text) or transcript mentioning franchise services or County, including the following:
1. Articles following media inquiries,
 2. texts of interviews,
 3. Franchisee's news releases.

8.08 County Review of Printed Materials. Prior to distributing any printed material to either or both of the following:

1. customers (other than correspondence related to a specific customer’s service), or
2. the public

by any means (including written and electronic), Franchisee will give County a copy to review, comment, and accept or reject by each of the following times:

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)	material requested by County	10
4.13b(3)	description of County’s Mandatory Business Recycling Program	10
8.07b	news releases	5
13.02b	Notice to customers of rate adjustment	5
throughout	other	10

8.09 Responsiveness to County

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

b. Meetings. Franchisee will meet with County at County offices within one week of County request.

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

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

1. with respect to mail that confirms earlier phone, meeting or email correspondence, within the time required for phone, meeting or email response in this Subsections a, b or c, or
2. within one week of receiving the mail, or
3. other time specified by County.

ARTICLE 9 CHANGE IN SCOPE OF FRANCHISE SERVICES

9.01 Change in Scope of Franchise Services

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

b. Upon Franchisee Proposal. Franchisee may propose to County a change in the scope of franchise services, including any or all of the following:

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

9.02 Review and Comment

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

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

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

b. Franchisee Proposal. Franchisee will submit its proposal (including a time line) described in Subsection (a) at either of the following times:

1. within 10 days of receiving County request for a plan (or a longer period that County may request in light of the complexity or magnitude of the change directed by County),
or
2. in conjunction with its own proposal.

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

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

If both of the following occur:

1. County changes an Identified Solid Waste Facility, and
2. the change results in a different distance (greater or less) from the center named in Sections 6.01 or 7.01 measured by the shortest available route on roads that collection vehicles may travel,

then Franchisee will describe the extent to which the change would add additional route time and the associated additional costs, if any.

c. Proposal Implementation. Upon County request, Franchisee will diligently provide the changes in franchise services under the timeline accepted by County under Subsection (a).

ARTICLE 10 RECORDS AND REPORTING

Franchisee acknowledges County right to review records and receive reports provided in this Article, for reasons including all of the following:

1. determining compliance with the Minimum Diversion Requirement,
2. enforcing customers' rights,
3. evaluating Franchisee's performance under this Agreement
4. exercising County rights to perform, or cause a third person to perform, franchise services in certain events of default and uncontrollable circumstances,
5. corroborating the amount of any fees or other amounts due and payable to County, and
6. corroborating the tons of solid waste reported to the County.

10.01 Records Maintenance, Retention, Inspection and Audit.

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

1. with respect to franchise services provided by Franchisee and any of its affiliates, separately from Franchisee's and its affiliates' other operations, and
2. with respect to all of Franchisee's operations, combined as an entity.

Franchisee will back up all electronic records somewhere other than the place where Franchisee keeps its records.

b. Retention

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

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

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

c. County Inspection and Audit

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

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

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

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

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

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

(6) **Dispute Resolution.** Upon Franchisee request, Franchisee may meet with representatives of County (such as Public Works Director or County Manager) to resolve the dispute.

10.02 Reports

a. **Timing.** Franchisee will submit reports to County at the following times:

1. Monthly Reports no later than the 20th day of each month,
2. Annual Reports on or before each July 20.

"Monthly Report" means the report including the information listed in Attachment 10.02 "Monthly Reports", for the preceding calendar month.

"Annual Report" means the report including the information listed in Attachment 10.02 "Annual Report", for the preceding contract year.

- b. Submission and Correction.** Franchisee will do all of the following:
1. provide complete and accurate reports by required submission dates,
 2. incorporate County comments on, and corrections in, reports within 5 days of receiving them,
 3. provide copies of corrected reports or additional information submitted to any regulatory authority (such as tonnage information to the State DRS) as soon as possible, and no later than 5 days after submission, and
 4. provide additional complete and accurate information requested by County by the date specified by County.
- c. AB 939 reports.** Contractor will assist County in preparing state-mandated documents and implementing measures and recordkeeping to achieve County's integrated solid waste management goals as mandated by CA IWM Act and authorized under Section 17-3(e) of the County Code.
- d. Survival.** FRANCHISEE'S OBLIGATION TO SUBMIT ITS ANNUAL REPORT SURVIVES THE FRANCHISE TERM. Franchisee will submit its Annual Report for the final contract year of this Agreement at the time required in Section 10.02.

10.03 Financial Statements.

- a. Preparation.** Franchisee will cause an independent certified public accountant to prepare both of the following financial statements:
1. Franchisee's financial statements with respect to franchise services for each of its fiscal years, and
 2. Guarantor's financial statements for each of its fiscal years.

Franchisee will attach to the financial statements all of the following:

1. the **accountant's representation** that he has audited either or both Franchisee's and Guarantor's financial statements in accordance with Generally Accepted Auditing Principles,
2. the **accountant's opinion**:
 - that the statements have been prepared in accordance with Generally Accepted Accounting Principles consistently applied, and
 - the statements fairly present the financial position, the results of operations and the cash flows of either or both the Franchisee and Guarantor, and

3. either of the following **statements of Franchisee's Chief Financial Officer**:
 - that no events subsequent to the preparation of the last financial statement submitted under this Agreement have materially changed Franchisee's financial status or condition, or
 - describing any material changes in Franchisee's financial status or condition since the preparation of the last financial statement.

b. Annual Delivery to County. Franchisee will give County 3 copies of the financial statements in substantially the form attached as Exhibit 10.03, acceptable to the County, together with attachments required under Subsection (a) on the earlier of the following dates:

1. 150 days after the close of the Franchisee's and Guarantor's fiscal year, or
2. within one week of any statement's release,

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

c. County Review. Franchisee will allow County and its representatives review the audit plan and work papers of the independent certified public accountant(s) who audited and opined on either or both of Franchisee's and Guarantor's financial statements. Within 2 weeks of County request, Franchisee and its accountant(s) will meet with the County and its representatives to discuss County's concerns and answer its questions. **FRANCHISEE'S OBLIGATIONS UNDER THIS SUBSECTION SURVIVE THE FRANCHISE TERM.**

10.04 Proprietary Records and Reports

a. Notice of Request. If County receives a request from a third person to review or copy material which Franchisee has marked "confidential", County will inform Franchisee and allow Franchisee to present arguments and facts to County in support of Franchisee's position that the material is entitled to an exemption from disclosure under the State Public Records Act and should not be released.

b. Notice of Release. If County determines that the material is *not* entitled to an exemption under this Agreement and that it must be released, before releasing that material so County will inform Franchisee and Franchisee may seek a court order enjoining that release.

c. Notice of Legal Action. If County determines that the material is entitled to an exemption, and the person who requested the information files a legal action seeking its release, County will inform Franchisee and will not oppose a motion by Franchisee to intervene in the action. Franchisee must either intervene or accept the release of the material. County is not obligated to defend the action and may release the material sought without any liability.

ARTICLE 11 FINANCIAL ASSURANCES

11.01 Insurance

a. Required coverage. Franchisee will do both of the following:

1. carry insurance meeting the requirements in Exhibit 11.01, and
2. comply with Section 17-20(c) of the County Code.

If Franchisee does not carry insurance under this Agreement, in addition to any other rights and remedies County may have, at its sole option County may do any or all of the following:

1. secure and maintain that insurance without further notice to Franchisee,
2. charge Franchisee any premium costs advanced by County, or
3. draw on the letter of credit provided by Franchisee.

If County does not recover its County Reimbursement Costs from the letter of credit, Franchisee will directly pay County its County Reimbursement Costs.

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

1. Franchisee, or
2. any subcontractor of Franchisee,

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

c. Monitoring System. Franchisee will institute a comprehensive accounting system satisfactory to County to monitor all insurance requirements under this Agreement, including those of its subcontractors.

d. Franchisee Compliance. Franchisee will comply with all requirements of its insurance policies and insurers.

11.02 Franchisee Indemnification

a. Franchisee Conduct Included

(1) Indemnity, Release and Hold Harmless, Defense

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

(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 Insureds".

“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*
 - *other detriments of every nature and description whatsoever, whether under State of California or federal law.*

Reference to ***“Indemnification”*** or ***“Indemnity”*** in this Agreement includes the indemnification, release, hold harmless or defense under this Section, or all of them.

(2) Scope of Liabilities. For purposes of this Indemnification, 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 any or all of 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 customers or collected from premises other than customers' premises, or
3. **Failure to Comply With Hazardous Waste Protocol:** Franchisee’s failure to undertake hazardous waste training procedures required by law with respect to its employees or any subcontractors' or the Hazardous Waste Handling Protocol, whichever is more stringent, or

4. **Franchisee-identified Hazardous Waste:** Franchisee's improper or negligent collection, handling, delivery, processing, recycling, composting or disposal of hazardous waste that it collects and identifies.

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

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

c. Statutory Agreement. The Indemnity in this Section is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify County from liability. It includes the specific actions or inactions of Franchisee described in Items 1 – 4 of Subsection a(2), such as a driver accepting a customer bribe and illegally disposing of hazardous waste that upon identification thereof, must be segregated and transported under law.

11.03 Letter of Credit. Franchisee will give County a Letter of Credit acceptable to County.

11.04 Guaranty Agreement. If Franchisee has any affiliates, Franchisee will provide a 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 rights and 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 any or all of 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 Identified Solid Waste 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; or
4. In the County's judgment, the occurrence of either of the following events jeopardizes Franchisee's ability to timely and fully meet 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.

"Assurance of Performance" means any or all of the following actions, as County requests:

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) Franchisee Representative etc. Franchisee will immediately inform County of any Convictions or Pleas with respect to Criminal Conduct by any Franchisee manager described in Items 1-4 of the definition of "Franchisee Managers".

(2) Other Franchisee Managers. Franchisee will use reasonable business efforts to immediately inform County of any Convictions or Pleas with respect to Criminal Conduct by any Franchisee Manager described in Item 5 of the definition of "Franchisee Managers".

“Franchisee Manager(s)” means any or all of the following

1. *Franchisee,*
2. *Franchisee Representative*
3. *Franchisee officers and directors,*
4. *the officers and directors of any direct or indirect parent corporation of Franchisee, or*
5. *anyone in a Position of Influence*

“Position of Influence” the authority or responsibility to directly or indirectly administer, manage, direct, supervise, monitor or oversee franchise services or this Agreement, including any or all of the following:

1. *reviewing or negotiating Franchisee’s contracts (including this Agreement),*
2. *providing in-house legal services with respect to franchise services or this Agreement,*
3. *preparing or overseeing Franchisee’s operating and capital budget, or establishing policies and procedures related to the Criminal Conduct.*

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

1. terminate from employment or remove from office the offending Franchisee manager who is an individual (or, with respect to a Franchisee manager that is Franchisee or an affiliate, the individual or individuals responsible for the Criminal Conduct), *unless*:
 - otherwise directed or ordered by regulatory authority of competent jurisdiction and/or authority, or
 - termination would subject Franchisee, an affiliate or any of its Franchisee Managers to substantial liability for breach of any labor agreement entered into after the franchise date, and
2. eliminate the participation by that Franchisee manager who is an individual (or with respect to a Franchisee manager that is Franchisee or an affiliate, the individual or individuals responsible for the Criminal Conduct), holding a Position of Influence.

c. County Remedy. County in its sole discretion may terminate the Agreement or may impose other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper, in the following events:

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

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

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 Franchisee Manager.

e. Definitions

“Criminal Conduct” means any or all 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 ,
2. **bribery** or attempting to bribe a public officer or employee of a local, state, or federal agency by Franchisee or by any Franchisee Manager in that Franchisee Manager’s official capacity,
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,
4. **unlawful disposal of hazardous or special waste**, the occurrence of which Franchisee or any of its Franchisee Managers knew or should have known,
5. **violation of antitrust laws**, including laws relating to price-fixing, bid-rigging and sales and market allocation, or
6. **violation of unfair and anti-competitive trade practice laws**, including the inflation of waste collection, hauling or disposal fees.

“Conviction” means any or all 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 Conduct.

“Pleas” means either or both of the following,

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

to either or both of the following Criminal Conduct:

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

ARTICLE 13 CUSTOMER RATES

13.01 Franchisee Compensation.

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

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

1. an “additional Rate”, or
2. “Franchisee’s Reimbursement Cost”.

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

13.02 Rates

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

Franchisee will set Franchisee's charges to customers for franchise services no greater than the maximum amount approved by County on the Rate Schedule, including for variations in franchise services and Rates under Section 4.04a(9). Franchisee will charge uniform Rates to all customers for each franchise service component.

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

c. Customer Notice of Changes. Franchisee will give affected customers notice acceptable to County of any change in Rates in their first bill following change.

13.03 Security Deposit. Franchisee may not charge customer any security deposit, container rental or other amounts not listed on the Rate Schedule except under Section 4.16.

13.04 Fees

a. Franchisee Business Fees

(1) Franchise Fee etc. Franchisee will pay County all fees, taxes and assessments that County may establish from time to time, including any or all of the following:

1. the franchise fee.
2. a business tax, or
3. a permit or license fee.

Franchisee acknowledges both of the following:

1. that these are costs of Franchisee doing business and providing franchise services, and
2. *they are liabilities of Franchisee and not customers.*

<p><i>These fees are referred to in this Agreement as “Franchisee Business Fees”.</i></p>
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(2) Franchise Fee Payment. In consideration for granting this franchise and entering into this Agreement, Franchisee will pay County the franchise fee established from time to time by County

(i) *Amount.* As of the franchise date , Franchisee will pay County a franchise fee equal to a portion of Franchisee’s gross receipts under this Agreement received during the previous month, as determined by the County Board.

(ii) *Payment.* As of the franchise date, the franchise fee to the County by the 20th of each month.

(iii) *County Right to Change.* County in its sole discretion may change the franchise fee at any time, including the amount, manner of calculation and time of payment.

b. Solid Waste Program Fees

(1) **Current and Future Fees.** Franchisee acknowledges both of the following:

1. County currently charges a solid waste program fee established from time to time by the County, and
2. County in its sole discretion may impose different or additional fees payable by customers and authorized under law (such Public Resources Code Section 40900, commonly referred to as “AB 939” fees; and County Code 17.29) directly on customer, to reimburse County’s costs, such as the following:
 - administering and enforcing this Agreement, and monitoring Franchisee’s performance,
 - implementing its Solid Waste Program Plan under law,
 - maintaining, repairing and replacing County’s infrastructure (such as roads) that are worn or damaged by providing franchise services , and
 - providing solid waste, hazardous waste and special waste handling services that protect public health, safety and welfare,

These fees are referred to in this Agreement as “Solid Waste Program Fees”.

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

(3) **Remitting County Money.** By the 20th day of each month, Franchisee will pay County the aggregate of any Solid Waste Program Fees and give County documentation acceptable to County supporting the calculation of those fees.

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

1. **damages:** including under Section 14.01,
2. **fees:** including under Section 13.04,
3. **CRV revenues** under Section 6.06,
4. **Deposits** under 18.01b(4), or
5. **County Reimbursement Costs:** including any or all of the following:

Section	County Reimbursement Cost
4.09c	repair of damaged property
11.01a	insurance premiums
14.10f(2)	substitute performance costs
18.01b(4)	Transfer costs

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

“direct costs” means the sum of the following:

1. payroll costs directly related to the performance, or management or supervision of any obligation under this Agreement, including compensation and fringe benefits, such as vacation, sick leave, holidays, retirement, workers compensation insurance, federal and state unemployment taxes; and 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.

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 cures the breach. (Franchisee nevertheless might have the opportunity to cure the breach before it becomes an event of default under Section 14.02.)

Section¹	Failure to Meet Franchise Obligations	Liquidated Damages (per failure in each Franchise Year)
4.03	Comply with Transition Plan	\$1,000 / failure
4.04, 4.05, 4.06b	Collect any customer container or public container of discarded refuse, recyclables or green waste regardless of whether Franchisee subsequently remedied the missed collection	1-15 / \$100 11-15 \$200 Over 15 \$500
4.06a	Collect abandoned waste upon 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, replacement, delivery or pick up of container	1-15 / \$15 Over 15 / @200 (per container)
4.08e	Return container to set-out site	1-15 / \$50 Over 15 / \$200
4.09a	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 or leak	1-5 / \$250 Over 5 / \$500
4.09c	Timely determination of damage causation / repair or replace damaged property, or reimbursement of repair or replacement cost	1-5 / \$100 Over 5 / \$500
4.09d	Excess noise levels	1-3 / \$100 Over 3 / \$500 (per reported incident, as confirmed by County)

¹ Citation for convenience of parties, but not necessarily the exclusive citation for applicable franchise obligations

4.04-4.06 4.11a 4.12c(1)	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
4.16a Item 1 13.02	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
5.03b	Label containers	Over 5 / \$100 per container per day
6.01 7.01	Deliver: <ol style="list-style-type: none"> recyclables to MRF(s), green waste to Organics Site(s), refuse to Disposal Facility/Facilities manure to the identified site, and universal waste and e-waste to the identified facilities 	1-5 / \$1,000 per failed delivery Over 5 / \$5,000 (+ compensatory damages = County Reimbursement Cost of monitoring or confirming compliance)
6.05	Mixing refuse, recyclables or green waste	1-3 / \$5,000 per truck Over 3 / \$10,000
8.09 & throughout	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 Business Fees, Solid Waste Program Fees, and County Reimbursement Costs	\$500/day
	Any other franchise obligation	1-5 / \$100 Over 5 / \$500

b. Contest. Franchisee may contest imposition of damages by Notifying County within 10 days of receiving County assessment, 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 all of 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 the quality of its service in entering into this Agreement, and Franchisee's breach of its franchise obligations represents a loss of bargain to County;
3. Quantified standards of performance are necessary and appropriate to ensure the consistent and reliable franchise service, and if Franchisee fails to meet franchise obligations referenced in this Section above, County will suffer damages (including the following:
 - customers' inconvenience,
 - potential political pressure, criticism and complaint by customers,
 - lost County Board and staff time, and
 - loss of bargain; and
4. It is and will be impracticable and extremely difficult to ascertain and determine the value of damages.

d. Reasonable Estimate. Therefore, each party acknowledges that the above liquidated damages represent a reasonable estimate of the amount of the damages, considering all of the circumstances existing on the franchise date, including both of the following:

1. relationship of the sums to the range of harm to County that reasonably could be anticipated, and
2. anticipation that proof of actual damages would be costly, time-consuming or inconvenient.

d. Confirmation. In signing this Agreement, each party specifically confirms both of the following:

1. the accuracy of the statements made in this Section, and
2. it had ample opportunity to consult its legal counsel for an explanation of this liquidated damage provision.

14.02 Defaults. Each of the following is an event of default (“**event of default**”) under this Agreement:

SECTION	EVENT OF DEFAULT	EFFECTIVE TERMINATION DATE
FRANCHISE SERVICE DEFAULTS		
4.04, 4.05, 4.06	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 Solid Waste Facility: subject to uncontrollable circumstances, more than 3 times during any franchise year or 25 times over the Term, Franchisee fails to deliver: <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 MRF(s), 4. manure to an identified site, or 5. universal waste or e-waste to identified facility/facilities 	Franchisee’s receipt of Notice of failure
6.03b(3)	Failure to meet Minimum Diversion Requirement , subject to uncontrollable circumstances.	Franchisee's receipt of Notice of failure
8.03	Failure to Comply With Law within 20 days' notice of violation by a regulatory authority. <i>“violation” means any written notice, assessment or</i>	Franchisee's receipt of Notice of failure, subject to both of the following:

	<p><i>determination of non-compliance with 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 any or all of the following:</i></p> <ol style="list-style-type: none"> <i>1. promulgates law</i> <i>2. regulates franchise services or operations of Franchisee, or</i> <i>3. enforces law applicable to franchise services or operations of Franchisee, including:</i> <ul style="list-style-type: none"> <i>• CA DOT, CA DMV and other units that regulate transportation or enforce transportation laws,</i> <i>• CalRecycle, AQMD, water board and other units that regulate operations or enforce environmental laws,</i> <i>• EDD, U.S. Immigration and Naturalization Services, federal and state departments of labor and other units that regulates employment or enforces labor laws,</i> <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> 	<ol style="list-style-type: none"> 1. Franchisee contests the notice in good faith, and 2. The regulatory authority enters a final decision adverse to Franchisee.
Any provision	<p>Breach of Agreement</p> <ol style="list-style-type: none"> 1. Failure: Franchisee fails to meet any franchise obligation (other than a franchise obligation listed in this table as an event of default). 	20 days (or other County-prescribed period) following Franchisee’s receipt of County Notice of

	<p>2. County Notice: County Notifies Franchisee as follows:</p> <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. <p>3. Franchisee Proposal: 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:</p> <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. <p>4. County Actions: County, in its sole discretion, may do any of the following:</p> <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>	failure
12.01	Criminal Conduct: The failure to timely terminate and/or replace any employee, officer or director upon the occurrence of any conduct proscribed in Section 12.01	Franchisee's receipt of Notice of failure
PERFORMANCE ASSURANCE DEFAULTS		
Article 11	Failure to provide any of the following:	Immediately following the public hearing required under Section 17-86(b) and (c)(1) of the County Code
	<ol style="list-style-type: none"> 1. insurance, 2. performance bond, 3. Guaranty, or 4. letter of credit 	
11.05	Failure to provide assurances of performance within 30 days of County request	Franchisee's receipt of Notice of failure

13.05	Failure to pay money owed County	Franchisee's receipt of Notice of failure
18.01	Transfer without County consent	Franchisee's receipt of Notice of failure
	<p>Seizure, Attachment: In the opinion of County, a seizure, attachment (other than a pre-judgment attachment) or levy upon any franchise service asset:</p> <ol style="list-style-type: none"> 1. substantially impairs Franchisee's ability to meet any obligation under this Agreement, and 2. cannot be released, bonded or otherwise lifted within 48 hours, excepting weekends and holidays. 	Franchisee's receipt of Notice of failure
	<p>Insolvency, Bankruptcy, Liquidation:</p> <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, • 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 assets 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 Franchisee's property, • makes any general assignment for the benefit of Franchisee's creditors, • fails generally to pay Franchisee's debts as they become due, or • takes any action in furtherance of any of the foregoing. 	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>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
	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.	Franchisee's receipt of Notice of failure
Attachment 2.01 & through-out Agreement	<p>False Representations, Breach of Representations or Warranties: Franchisee makes a representation, certification or warranty under 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

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 or all of the following events:

1. *riots, war, or emergency affecting the Country declared by the President of the United States, 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 of 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*

the failure of any public or private utility provider to provide water or electricity to the Franchisee office or maintenance facility.

“Change in Law” means any or all 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);*
2. *any order or judgment of any regulatory authority issued after the franchise 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;*
 3. *a regulatory authority 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 authority does either or both of the following after the franchise date:*
 - *fails to issue or renew permit,*
 - *suspends, interrupts or terminates any permit**and the regulatory authority's actions is not also the result of the willful misconduct or negligent action or inaction of either or both of the following:*
 - *the party relying thereon, or*
 - *anyone for whom that party is directly responsible.*

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 to which 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 the Transition Plan.

c. County Rights

- (1) **Provide Franchise Services.** Even though Franchisee's breach is not event of default, County in its sole discretion may perform any franchise obligation under Section 14.10 if Franchisee does not cure the breach within 48 hours of County Notice.
- (2) **Contract Remedies.** If Franchisee's breach continues for 30 days, County may exercise any or all remedies under this Agreement.

14.04 Remedies Upon Default

a. **Types.** In an event of default, County may exercise any or all of the following remedies in event of default in its sole discretion:

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

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

1. the urgency of timely, continuous and high-quality franchise service, including collection, transportation and/or transfer for disposal of putrescible wastes which constitute a threat to public health;
2. the long time and significant investment of money and personnel (both County staff and private consultants, including financial advisors, procurement counsel and elected County officials) required to request and evaluate qualifications and proposals for alternative service comparable to franchise service for the price under this Agreement, and to negotiate new agreements for comparable service;
3. County reliance on Franchisee's technical solid waste management expertise;
4. Franchisee's failure to transport and deliver solid waste to an Identified Solid Waste Facility ("**Delivery Default**") may increase County risk of liability for environmental damage due to release or threatened release of hazardous or toxic substances, petroleum products and other materials, including any or all of the following:
 - water or ground water contamination from those Facilities,
 - replacement or restoration of natural resources, or
 - repair, cleanup or detoxification of the solid waste management facility and any related removal, remedial, response, closure or other plan, whether under Section 107(e) of CERCLA Section 9607(e). California Health and Safety Code Section 25364 or other law;
5. a Delivery Default may adversely affect County ability to measure the Minimum diversion Requirement and secure AB 939 compliance; or
6. a Delivery Default is not in the best economic, health and safety interest of customers.

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

14.05 Remedies Not Exclusive. Each party's rights and remedies under this Agreement are not exclusive. A party's exercise of one right or remedy (including liquidated damages under Section 14.01), is not an election of rights or remedies. It is cumulative with any other available rights and remedies.

14.06 Waivers

a. County Waiver of Breaches or Events of Default

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

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

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

b. Franchisee Waiver of Certain Defenses. Franchisee acknowledges that it is solely responsible for providing franchise services. Franchisee irrevocably and unconditionally waives defenses to the satisfaction of its franchise obligations based upon any of the following:

1. failure of consideration,
2. contract of adhesion,
3. impossibility or impracticability of performance,
4. commercial frustration of purpose, or
5. the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of Franchisee with regard to any provision of this Agreement.

Franchisee does *not* waive any defenses of uncontrollable circumstances.

14.07 Jurisdiction, Venue, Service of Process

- a. Exclusive State Court Jurisdiction.** Parties will bring any lawsuits arising out of this Agreement in State courts, which will have exclusive jurisdiction over the lawsuits.
- b. Venue.** Venue is made in and will be performed in courts sitting in County of Santa Barbara.
- c. Location.** Parties will conduct any other hearing or action, whether arbitration or non-judicial, of whatever nature or kind regarding this Agreement, in County of Santa Barbara.
- d. Service of Process.** Franchisee will accept service of process at the address where it receives Notices.

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

14.09 reserved

14.10 County Right to Provide Franchise Services

- a. Events.** County may provide, or contract for provision of, any or all franchise services in either or both of the following events:
 - 1. County in its sole discretion determines that Franchisee's failure to satisfy any franchise obligation for a period of 48 consecutive hours poses a danger to public health, safety or welfare, or
 - 2. County suspends or terminates all or any part of this Agreement.

This right is in addition to all other County rights and remedies.

County has no obligation to continue providing franchise services. At any time, County in its sole discretion may stop providing franchise services. However, County may continue to provide franchise services until either of the following times:

- 1. Franchisee can demonstrate to County satisfaction that Franchisee is ready, willing and able to timely and fully satisfy all franchise obligations, or
- 2. County provides services comparable to franchise services in scope and price, which may include contracting with another service provider.

b. Notice. County may give Franchisee 24-hour oral notice that County is exercising its right to provide any or all franchise service, effective immediately. Within those 24 hours, County will give Franchisee a written Notice of confirmation.

c. Containers. Franchisee is deemed to give County possessory interest in any or all containers necessary or convenient to provide franchise services, effective when County gives oral notice. County may use containers to provide all or a part of franchise services. County will have absolute and exclusive control over containers as though County were the absolute owner thereof, subject to actual possession by customers.

d. Personnel. Immediately upon giving Franchisee oral notice under Subsection (b), County may hire personnel necessary or convenient to provide all or a part of franchise services, including any or all of the following:

1. County municipal employees,
2. Franchisee's current or prior employees such as:
 - key personnel and other management,
 - drivers,
 - route superintendents,
 - customer service representatives, and
 - billing, accounting and other office staff, and
3. any other person.

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

f. Franchisee Payment or County Reimbursement

(1) Uncontrollable Circumstances. If events listed in Subsection (a) are due to uncontrollable circumstances, then County will pay Franchisee the following costs so long as Franchisee is not being compensated for franchise services through charging and collecting Rates from customers (*for example, residential Rates for franchise service in carts that are paid in advance*):

1. rental fees for County use and possession of carts and bins equal to their fair market as determined by an independent appraiser selected by the parties, and
2. Franchisee's direct cost of making its personnel available to County under Subsection (d).

(2) Franchisee Breach or Event of Default. If events listed in Subsection (a) above are *not* due to uncontrollable circumstances, then within 10 days of County request, Franchisee will pay County its County Reimbursement Costs incurred in performing franchisee services. If Franchisee does pay within 10 days, County may draw upon any letter of credit, guaranty or other security provided under this Agreement.

g. Insurance. Franchisee will maintain all insurance required under this Agreement while County exercises its rights under this Section.

h. Stipulations. Franchisee agrees and stipulates that County exercise of rights under this Section:

1. is not a taking of private property for which County must compensate Franchisee,
2. will not create any liability on the part of County to Franchisee, except for rental under Subsection (f)(1), and
3. does not exempt Franchisee from any Indemnifications, which Franchisee acknowledges apply to this Section, *except* with respect to liabilities arising from either or both of the following:
 - the negligence of County officers and employees (other than employees of Franchisee at the time County commenced performing the franchise services), or
 - 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 in whole or 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 for 30 days or more, or
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.

b. Suspension Events. County may in its sole discretion suspend all or part of this Agreement for up to 30 days upon the occurrence of any event listed in Subsection (a). 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 satisfy all of its franchise obligations. If County determines that Franchisee can satisfy all of its franchise obligations, County's right to suspend or terminate the Agreement will cease and Franchisee may resume providing franchise service. If County does *not* make that determination, 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.

d. Suspension, Termination of a Portion of Franchise Services. If County suspends or terminates a part of this Agreement, Franchisee will do both of the following:

1. continue to fully and timely satisfy its remaining franchisee obligations, and
2. within two weeks, give customers written notice of reductions in franchise services.

For example, if County suspends franchisee obligations with respect to residential recyclables collection, Franchisee would be obligated to fully perform its other franchise obligations, such as residential refuse and green waste collection.

15.02 Franchisee Obligations Upon Termination. FRANCHISEE'S OBLIGATIONS AND COUNTY'S RIGHTS UNDER THIS SECTION SURVIVES THE FRANCHISE TERM. Upon termination of this Agreement, County has all the following rights and Franchisee all the corresponding obligations. County may exercise these rights no later than the day that Franchisee receives County's Notice of termination.

- 1. Use of Franchise Service Assets.** If County requests, Franchisee will give County possession of franchise service assets (including vehicles) to provide franchise services. Franchisee will transfer or assign to County all rights necessary to give County possession and use of franchise service assets. County may keep those franchise service assets until the County purchases or otherwise acquires replacement assets or secures the use of replacement assets. Franchisee will comply with Section 17-86(c)(2) of the County Code.
- 2. Receipt of Customers' Franchise Service Payments.** Franchisee will give County immediate access to Franchisee's service subscription and billing records. By entering into this Agreement, Franchisee authorizes County to bill, collect and keep customer service charges. Franchisee will comply with Section 17-86(c)(2) of the County Code.
- 3. Option to Purchase Containers.** County *may* purchase some or all containers at a price equal to their book value amortized straight-line over a 7 year life. Franchisee will transfer or assign to County all rights necessary to give County ownership, possession and use of carts, including under any Container Acquisition Agreement.

4. **Removal of Carts.** County does *not* purchase carts, upon County request Franchisee will pick up those carts at its customers' cart set-out site on the date specified by County. Franchisee will recycle rather than dispose of carts.

ARTICLE 16 [RESERVED]

16.01 RESERVED

ARTICLE 17 THE PARTIES

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

17.02 Parties In Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights on anyone other than the parties and their representatives, successors and permitted assigns.

17.03 Binding On Successors. The provisions of this Agreement will inure to the benefit of and be binding on the successors and permitted assigns of the parties. This Section does not imply that County consents to the Transfer of this Agreement.

17.04 Further Assurances. Each party will execute and deliver any instruments and perform any acts as may be necessary or requested by the other in order to give full effect to this Agreement.

17.05 Actions of County In Its Governmental Capacity. Nothing in this Agreement can be interpreted as limiting the rights and obligations of County in its governmental or regulatory capacity. However, the parties intend that County designation of any Identified Solid Waste Facility is an exercise of County contractual rights and not a governmental or regulatory action.

17.06 Reserved.

17.07 Parties' Representatives

a. County Representative

(1) **Named.** County Representative is the Deputy of the Public Works Department (Resource Recovery and Waste Management Division) *unless* County names someone else by 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.

"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,
4. approving Rates, including Rate adjustments for variations in franchise services under Section 4.04a(9), and
5. 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 must have at least 5 years experience providing solid waste collection services.

"Franchisee Representative" means the Person named by Franchisee under this Section.

17.08 Due Diligence. Franchisee acknowledges both of the following:

1. that County may be subject to statutory fines for failure to achieve mandated diversion levels, and
2. that solid waste management is a public health and safety concern.

Franchisee agrees that it will exercise due diligence in providing franchise services.

17.09 No Use of County Name. Franchisee will not do business as or use a corporate, partnership, venture or other formal name containing the words "Santa Barbara County" or implying municipal ownership. However, upon County request, Franchisee will use County name in any of the public relations materials.

ARTICLE 18 TRANSFER AND AMENDMENTS

18.01 Transfer

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

b. Franchisee Transfer

(1) Franchisee Acknowledgments. Franchisee acknowledges all of the following:

1. In Franchisee's proposal to provide franchise services Franchisee submitted information with respect to Franchisee's:
 - experience in providing services similar to franchise services in a timely, safe and effective manner,
 - financial strength and creditworthiness to meet franchise obligations (including paying Indemnifications),
 - history of (non)compliance with law (including environmental law with respect to both solid waste and hazardous waste),
 - litigation record (especially by or against public entities or with respect to procurements),

- reputation for sound solid waste management practices,
 - references from other public entities , and
 - other matters relating to Franchisee’s fitness to provide franchise services.
2. County evaluated that information prior to awarding this Franchise to Franchisee.
 3. Therefore, and as described in Section 5.06, Franchise services are personal services in nature and County and customers may not receive the full benefit of their bargain if someone else assumes Franchisee’s performance obligations.

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

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

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

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

However, Franchisee is not obligated to pay County this compensation if all of the following occur:

1. the County consents to the Transfer,
2. the Transfer is to an affiliate, and
3. the Guarantor does not change.

"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 of Franchisee, or
 - ownership interest 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 or both 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, franchise assignment, transfer, conveyance, 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, 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 franchise date.

"ownership" means the state or fact of being the direct (or indirect), actual (or constructive) owner of property, including a parent holding corporation owning stock of a subsidiary corporation that in turn owns stock in its own subsidiary corporation(s).

(3) Franchisee Demonstration. Without obligating the County to give consent to the proposed Transfer, Franchisee at a minimum will demonstrate both of the following to County satisfaction:

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

(4) Payment of County Costs. Franchisee acknowledges both of the following:

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

(i) Transfer Application Fee and Transfer Deposit. Franchisee must make any request for County consent to a Transfer in the manner prescribed by County. Franchisee will pay County a non-reimbursable application fee of \$75,000 plus a refundable Transfer Deposit before County consideration of Franchisee's request. County will return to Franchisee any Transfer Deposit paid in excess of the Transfer costs County incurs.

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

(ii) Additional Transfer Costs. In the course of County considering Franchisee's request for Transfer, Franchisee will further pay County its additional Transfer costs in excess of the Transfer Deposit within 30 days of County request therefor, whether or not County consents to the Transfer. At Franchisee's request, County will provide Franchisee access to all records evidencing the Transfer costs incurred.

"Transfer Costs" means County Reimbursement Costs for any or all of the following:

1. considering and reviewing Franchisee request for Transfer,
2. investigating the suitability of the transferee, or
3. 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.

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

(5) Franchisee must remain secondarily liable after the transferee for meeting franchise obligations.

(6) The transferee must assume all of Franchisee's franchise obligations (including obligations precedent).

18.02 Changes and Amendments to Agreement

a. Changes by Parties' Representatives

(1) Changes to Franchisee Documentation. The County Representative and Franchisee Representative may make or accept changes to Franchisee Documentation and, with respect to the County Representative, changing the person who is the County Representative.

(2) Non-Rate or Immaterial Changes. Either or both of the following changes in the Agreement are effective upon mutual consent of County Manager and Franchisee,

1. changes in franchise obligations that do not result in a Rate adjustment, and
2. immaterial changes in franchise services (such as changing the date that a report is due).

b. Amendments by County Board and Franchisee. The Parties may make both of the following changes in this Agreement after the franchise date, effective only upon execution of a written amendment to this Agreement, including warranties by the parties under Article 20:

1. Changes in franchise obligations that result in a Rate adjustment, *except* for variations in franchise service under Section 4.04a(9), and
2. Material changes in franchise obligations (such as County remedies for breach of this Agreement or the definition of "Events of Default").

18.03 Amendments to Franchisee Documentation. The parties dated signatures on Franchisee Documentation or other Attachments is deemed evidence that it was duly amended following either or both Notice or consent, as it requires. Amended Franchisee Documentation supersedes the prior Franchisee Documentation as of the last dated signature of County Representatives or Franchisee Representative.

ARTICLE 19. NOTICES, CONSENTS, APPROVALS, ETC.

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

1. To Franchisee: At address in Franchisee Documentation.
2. To County: At the County Representative's office address in Attachment 17.07

Parties may give Notices only by any of the following means:

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

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

Parties may change their address upon Notice to the other party.

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

19.03 Writing. All of the following with respect to exercise of explicit rights or obligations under this Agreement must be in writing *unless* oral communication is explicitly allowed:

1. requests, demands, orders, directions,
2. acceptances, consents, approvals, agreements,
3. waivers,
4. exercise of options or rights, selections,
5. proposals,
6. reports, and
7. acknowledgments, certifications, representations and warranties.

Explicit reference to “written” or “writing” with respect to any one communication does not imply that other communications without explicit reference to writing may be oral.

ARTICLE 20 EXECUTION OF AGREEMENT

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

20.02 Authority to Sign

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

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

COUNTY OF SANTA BARBARA

ATTEST:
CLERK OF THE BOARD

By: _____
Deputy Clerk

By: _____
Chair, Board of Supervisors

Date: _____

APPROVED AS TO FORM:
DENNIS MARSHALL
COUNTY COUNSEL

By: _____
Deputy County Counsel

APPROVED AS TO FORM:
ROBERT W. GEIS, C.P.A.
AUDITOR-CONTROLLER

By: _____
Assistant Auditor-Controller

APPROVED AS TO FORM:
RAY AROMATORIO
RISK MANAGER

By: _____

FRANCHISEE
MARBORG INDUSTRIES, INC.

By: _____

Title: _____

Date: _____

ATTACHMENT 2.01 FRANCHISEE REPRESENTATIONS AND WARRANTIES

Franchisee represents and warrants as follows:

1. **Status.** Franchisee is a corporation duly organized, validly existing and in good standing under the laws of the State and is qualified to do business in the State.
2. **Authority and Authorization.** Franchisee has full legal right, power and authority to execute and deliver this Agreement and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by Franchisee and constitutes a legal, valid and binding obligation of Franchisee enforceable against Franchisee under its terms.
3. **No conflicts.** As of the franchise date, neither the execution or delivery by Franchisee of this Agreement, the performance by Franchisee of its Service obligations, nor the fulfillment by Franchisee of the terms and conditions of this Agreement:
 - conflicts with, violates or results in a breach of any law,
 - conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which Franchisee or any of its affiliates is a party or by which Franchisee or any of its affiliates' properties or assets are bound, or constitutes a default there under, or
 - will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Franchisee.
4. **No approvals required.** As of the franchise date, no approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by Franchisee, except as have been duly obtained from its Board of Directors.
5. **No litigation.** To the best of Franchisee knowledge, as of the franchise date there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, , threatened by or against Franchisee wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Franchisee of its franchise obligation or in connection with the transactions contemplated by this Agreement, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by Franchisee in connection with the transactions contemplated by this Agreement.
6. **Due Diligence.** Franchisee has made an independent investigation, examination and research satisfactory to it of the conditions and circumstances surrounding the

Agreement and best and proper method of providing franchise services (including the types of franchise services) and labor, equipment and materials for the volume of franchise services to be provided. Franchisee agrees that it will make no claim against County based on any good faith estimates, statements or interpretations made by any officer, employee or agent of County which proves to be in any respect erroneous.

7. **Compliance with law.** Franchisee fully complied with all law, including without limitation law relating to conflicts of interest, in the course of procuring this Agreement.
8. **Truth and Accuracy of Application.** As of the date Franchisee submitted to the County its proposal to provide franchise services, the information provided by Franchisee in its proposal, was true and accurate, without material omissions.
9. **Truth and Accuracy of Proposal Information.** The information that Franchisee submitted to County in its proposal to provide franchise services is true and accurate. Franchisee will inform County of any change in that information within one week of discovering any untruth or inaccuracy.
10. **No Prior Agreements.** Neither Franchisee nor any of its affiliates has previously been a party to an agreement with County, that has either expired without Franchisee earning an available extension, or been terminated by County.

ATTACHMENT 2.02

COUNTY REPRESENTATIONS AND WARRANTIES

1. **Status.** County is a political subdivision of the State, duly organized and validly existing under the Constitution and laws of the State.
2. **Authority and Authorization.** County has full legal right, power and authority to execute, deliver, and perform its obligation under this Agreement. This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County enforceable against County under its terms.
3. **No Warranty Regarding Waste Characterization.** County makes no warranties with respect to the waste characterization within County including any waste disposal characterization study or projections by material type with respect to waste in County. County expressly disclaims any warranties, either express or implied, as to the merchantability or fitness for any particular purpose of solid waste Collected by Franchisee.

EXHIBIT 4.01a
FRANCHISE SERVICE AREA / ZONE 2

Land Description for
Solid Waste Collection Zone Two

Resource Recovery and Waste Management Division
Santa Barbara County Public Works Department
3/16/2011

That portion of land situated in the County of Santa Barbara, State of California, described as follows:

Beginning at the northwesterly corner of the land described in *City of Santa Barbara Ordinance 2053*, effective January 19th, 1946, also known as the Ontare Annexation, said point being the northwesterly corner of Northridge Estates as shown on *Book 40, Page 81 of Maps* in the Office of the County Recorder of said County, noted as a point an exhibit attached; thence,

- 1st Northwesterly along a straight line to the northeasterly corner of *Tract No. 13,711* as shown on *Book 152, Page 2 of Maps*, also known as Shadow Hills; thence,
- 2nd Northerly, northwesterly, northeasterly, southeasterly, northeasterly, northwesterly and northerly, along the westerly right-of-way of State Highway 154 to the southerly line of Los Padres National Forest; thence,
- 3rd Westerly, southerly, westerly, northerly, westerly, southerly and westerly, along the Los Padres National Forest boundary to northwest corner of the southeast $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 34, township 5 north, Range 29 west, S.B.B.M.; thence,
- 4th Southerly along a straight line, to a point at the end of the 161st course described in *LAFCO 99-20 – Incorporation of the City of Goleta*, recorded February 11th, 2002, as *2002-0013744, Official Records*, said point being the southwest corner of Parcel 3 as shown on a map entitled *Amended Map of the Partition of Property of Francis G. Doty and Russell E. Doty, Ellwood Ranch*, recorded in *Book 28 of Records of Surveys, Page 28*, in the office of said County Recorder; thence,
- 5th Thence northeasterly, easterly, northeasterly, southerly, easterly, northeasterly, northerly, easterly, northerly, easterly, southerly, easterly, southerly and

westerly, along the boundary of the City of Goleta, along all the courses thereof, to the to the northerly right-of-way of the 101 Freeway; thence

- 6th Easterly along the northerly right-of-way of the 101 Freeway to the southwesterly corner of the land described in *LAFCO 02-9 – St. Vincent's Reorganization: Annexation to the City of Santa Barbara*, recorded October 24th, 2002, as 2002-0107674, *Official Records*; thence
- 7th Northeasterly, southwesterly, southeasterly, southerly, westerly and southerly along the boundary of the City of Santa Barbara to the southwesterly corner of the land described in *Ordinance No. 2052* of said City, effective December 31st, 1945, also known as the Braemar Tract Annexation; thence
- 8th Southeasterly, along the boundary of said annexation to the southeasterly corner thereof; thence
- 9th North 15° 44' 30" east 528 feet, along the easterly boundary of the land described in said Ordinance; thence
- 10th Northeasterly, following the northeasterly prolongation of the previous course to its intersection with the centerline of Cliff Drive; thence
- 11th Northeasterly, along the centerline of Cliff Drive to the centerline of Las Positas Road; thence,
- 12th Northerly, along the centerline of Las Positas Road to the centerline of State Street; thence,
- 13th Northerly, along the centerline of San Roque Road to the centerline of State Highway 192; thence,
- 14th Northwesterly, along the centerline of State Highway 192 to a point on the southwesterly prolongation of the westerly boundary of the land described in said *City of Santa Barbara Ordinance No. 2053*; thence
- 15th Northeasterly, along the southwesterly prolongation of the westerly boundary of the land described in said Ordinance; thence
- 16th Northeasterly along the westerly boundary of the land described in said Ordinance, to the point of beginning.

Excepting therefrom the incorporated areas of the County of Santa Barbara (the cities of Goleta and Santa Barbara).

EXHIBIT 4.03
FRANCHISEE TRANSITION PLAN
(Tasks and Timeline)

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

1. Timeline showing the commencement, duration and completion date of transition, including the following:
 - developing the procedure for residential and commercial customers to select container size(s) and service frequency,
 - contacting customers to determine subscription levels and consequent number and type of containers,
 - public education and outreach activities, including holding public workshop on date chosen by County to explain new programs and display new carts,
 - submitting form of container orders to County for acceptance (including labeling),
 - ordering containers from manufacturer(s).
 - ordering trucks,
 - container delivery and assembly,
 - delivery of trucks,
 - hiring and training personnel,
 - training customer service personnel,
 - developing and implementing customer service and billing database,
 - submitting route sheets to County for acceptance,
 - training drivers on routes,
 - submitting Customer Orientation Packet to County for acceptance,
 - delivering containers and Customer Orientation Packets to customers,
 - collecting and recycling customers' old containers, at their request;
2. Identifying problems that might arise during transition, together with proposals to prevent those problems and responses to solve them;
3. Detailing public education strategies to inform customers of all franchise services, and explain how to secure and use those services;
4. Describing how Franchisee will use reasonable business efforts to hire qualified people who provided solid waste services in the franchise service area prior to the franchise date, if Franchisee cannot provide franchise services using its existing employees as of the franchise date.

Franchisee may change this plan if County accepts the changes.

The implementation plan described below is based on the predicted timeline released by the County in the Request for Proposals. The timeline of this plan is subject to changes due to adjustments in the County's schedule, specifically regarding the timing of the award of agreements. The County will be consulted regarding any changes to this plan, and will receive weekly written status reports regarding the implementation of MarBorg service in Zone 2.

Acquiring necessary personnel and equipment

Hiring and Training Personnel

As we increase our service area to include Zone 2, we anticipate that some of the positions will be filled by current employees who are moving from two-man routes to one-man routes in other areas. We also anticipate hiring four additional employees. MarBorg Industries intends to give current Allied Waste employees the first opportunity for new job openings at MarBorg due to the County contract reassignment. This hiring process will begin in April, and will be a collaboration between our Human Resources Department and the Residential and Commercial Route Supervisors. All new and current employees to work in Zone 2 will begin a paid training program in April.

In addition to hiring new personnel, current Customer Service Representatives will be trained on all new services and procedures for the new service area. This training will be provided by the Customer Service Supervisor, and will be conducted throughout the month of April.

Vehicles

MarBorg will require one new CNG front-loader collection vehicle, three new CNG automated side-loader collection vehicles, three new CNG rear-loader collection vehicles, and three new satellite trucks. Orders will be placed in April, or immediately upon the awarding of the contract. These vehicles will be tested and ready for service no later than June 1. Throughout the month of June, these vehicles will be equipped with the necessary on-board computers to interface with the customer service software.

Bins

MarBorg Industries will contract with Consolidated Fabricators to supply the required number of bins as set forth in this proposal. Based on the information provided by the County, MarBorg will require the quantities of bins set forth in

Table 1. A combination of metal and hybrid bins will be ordered to fill the needs for these containers, based on what we foresee to be the noise-sensitive areas and those areas that would benefit from lighter-weight bins. In general, multi-unit complexes will have greater

sensitivities to noise than commercial areas. Therefore, MarBorg will purchase 22 2-yd, 10 3-yd, and 4 4-yd hybrid trash bins, and one 2-yd hybrid recycle bin. The remainder of the bins will be purchased in metal.

	1.5 Cubic Yards	2 Cubic Yards	3 Cubic Yards	4 Cubic Yards
Trash	0	32	27	29
Recycle	0	12	8	18
Green Waste	0	0	0	2

Table 1: Quantities of Bins Required

Based on information provided by the County, MarBorg will require the above quantities of bins to service Zone 2. MarBorg will purchase additional bins in each size and waste stream combination to account for any increase in services or change in container sizes requested by customers.

All bins will be purchased new for this contract. Any bins in inventory will be used in case of increases in bin counts so that the appropriate containers may be delivered without delay. We also anticipate increasing the current recycling bin count, due to lower recycling rates. Orders for these bins will be placed in April when the contract is awarded. MarBorg has successfully contracted with Consolidated Fabricators in the past and is guaranteed to receive bins by the end of June, in time for the July 1 transition.

Carts

MarBorg Industries will contract with Rehrig Pacific to supply the required number of carts and cans as set forth in this proposal. Based on the information provided by the County, MarBorg will require the quantities of carts set forth in Table 2.

	35 Gallon	65 Gallon	95 Gallon
Trash	1860	1877	622
Recycle	91	1183	2735
Green Waste	1670	1440	275

Table 2: Quantities of Carts Required

Based on information provided by the County, MarBorg will require the above quantities of carts to service Zone 2. MarBorg will purchase additional carts in each size and waste stream combination to account for any increase in services or change in container sizes requested by customers.

All carts will be purchased new for this contract. MarBorg will also increase the number of recycle and green waste carts by 10% to account for the expected increase in these services when free service is offered along with the trash service. Any carts currently in inventory will be used in the case of dramatic increases in cart requirements, so that any cart requests can be met without delay. Orders for these carts will be placed in April when the contract is awarded. MarBorg has successfully contracted with Rehrig Pacific in the past and is guaranteed to receive carts by June, in time for the July 1 transition.

Storage and maintenance facilities

Storage Facilities

The principals of MarBorg Industries own sufficient properties in Santa Barbara, along Quarantina, Cacique and Powers Streets, to properly store all equipment as may be necessary for this contract and its implementation. MarBorg also leases 86,600 square feet of property on Overpass Road at Patterson Ave, adjacent to Zone 2, that is available for the storage and staging of equipment for this contract.

Maintenance Facilities

MarBorg Industries operates maintenance facilities at 136 N. Quarantina St. in Santa Barbara that are sufficient to maintain all equipment required for this contract.

Customer Relation Materials

Collection Schedules and Route Maps

MarBorg Industries would like to keep the collection schedules as simple as possible for our customers. Whenever practical, we would like for our customers to have the same collection day under the new system as they currently have. In order to accomplish this goal we need to have the current routing for all customers in Zone 2. MarBorg would like to have this information by April 11, 2011.

Additionally, we will require a digital copy of all customers' billing information from the County and all customer service information from Allied Waste so we may incorporate these new customers in our customer service software. We will need general customer information such as name, service address, billing address, phone number, e-mail, and current billing amount, in addition to service levels and routing information. This information will be necessary to communicate with all customers to send them educational and information materials and to ensure consistent service beginning July 1. We would like to have this information by April 11, 2011 so we can program a pathway for the information into our computer system.

Finally, on June 13, 2011 we will need a final transmittal of any updated customer service and billing information that may have changed since the first delivery of information. After we receive the necessary information from Allied Waste and the County we will produce sample collection schedules and route maps.

Written Customer Communication

Upon receiving the contract, MarBorg Industries will send a welcome packet to every customer in Zone 2 of the County. This packet will be mailed in May, assuming that the customer information is received on April 11. Each customer will receive a version of the packet that is relevant to their specific service type. Included in this packet will be a letter introducing the Company and outlining the new collection services that each customer will be entitled to, such as unlimited recycling, sharps and battery collection, and automated service. This letter will include the current service level for the customer, and the service rate under the new contract. This packet will contain a mail-in postcard where each customer may select a new service level if they choose to make any changes. Customers may select a new service level on this postcard, or by online form, e-mail, or phone call to the office. Residential customers will have the opportunity to change their container counts and sizes, while commercial customers will also have the opportunity to change their collection frequency. The rates for all services will be included in the packet so that customers may make informed decisions regarding potential service level changes. For the convenience of the customers, this letter will include both English and Spanish.

After the first introduction letter, on June 1, MarBorg will send a second letter to each customer informing them of any schedule changes and outlining the dates and procedures for the exchange of containers and for the transition to automated service. This letter will also contain a reminder of all new services available, and invite each customer to contact us with any last-minute changes. This letter will also include both English and Spanish.

One week before service is to begin, MarBorg will send a postcard to each customer reminding them of the service change and of any change to their collection day. This postcard will be sent on June 24.

Immediately after the transition, MarBorg will send each customer a newsletter reiterating all new collection services. This newsletter will also detail additional programs now available to Zone 2 customers, such as free biannual clean-ups, free Christmas tree collection, and e-waste services. MarBorg will continue to send each customer a quarterly newsletter, detailing any new services available and providing helpful recycling and waste reduction tips.

Verbal Customer Communication

Throughout the first month of service, MarBorg will have a variety of services in place to answer customer questions regarding any service changes. MarBorg's main office, which generally closes at 5:30 pm on weekdays, will remain open until 6:00 pm. This will allow customers more time to call the office if they have any questions about their service upon returning home from work. The office will continue to open at 7:00 am, and will remain open on Saturdays from 7:00 am to 3:00 pm.

MarBorg will also hold information workshops on every Saturday for the month of July. These workshops will consist of information booths set up throughout Zone 2 where customers can personally meet with customer service representatives from MarBorg's office. These representatives will answer questions, provide information, and train customers in the new methods of service. Each booth will also be equipped with a television where customers can watch the automated service video. While this video will be posted on the website, it may be useful for customers to watch this video in the presence of representatives who can answer questions throughout the viewing.

Between the distributed written materials, MarBorg's new website, open telephone communication, and the above information workshops, it is MarBorg's sincere hope that customers will find that all of their questions have been answered. However, MarBorg understands that some customers may have specific questions regarding their properties that can only be answered with a site visit. The most common such question that MarBorg anticipates is from customers who are not sure where to place their containers for automated service if their lot is narrow, or obstructed by cars, driveways, or mailboxes. Commercial customers may also have questions regarding the specifics of how their accounts will be serviced. MarBorg will send a company representative to meet with these customers at their properties to resolve any perceived issues and arrange a service location that meets the needs of both MarBorg and the customer.

Delivery Procedures

Cart Delivery

MarBorg Industries will exchange all carts within the first month of service, from July 1 – July 30. On service days throughout the first month, a cart delivery crew in two flat-bed trucks will follow the collection crew and replace all containers after they are emptied. The old containers will be collected at the same time, and delivered to the previous hauler's local yard.

Bin Delivery

MarBorg Industries will exchange all bins within the first week of service, from July 1 – July 7. On each of the first six service days, a bin delivery crew in a flat-bed truck will follow the collection crew and replace all containers after they are emptied. The old containers will be collected at the same time, and delivered to the previous hauler’s local yard.

Additional Container Delivery

Six extra green waste tags will be delivered in each customer’s welcome packet, and new tags will be delivered each January. Five battery collection bags will be delivered in each welcome packet as well. Sharps containers will be delivered to each customer when they request one. The container will be delivered to their door within one business day.

Transition to Automated Service

In addition to transitioning to a new hauler, customers in Zone 2 will also be transitioning to a new type of collection service. MarBorg will have two employees on every automated route for a minimum of 60 days after the new contract begins. While one driver is sufficient for operating the vehicle and emptying carts located at the curb, this second employee will be available for a variety of tasks that will allow the transition to automated service to proceed more smoothly. The second employee will reposition containers, bring containers out from incorrect areas, attach correction notices to improperly used containers, answer questions or otherwise assist customers who may be present, and do any other activities that are deemed necessary or helpful for this process. This employee will also distribute flyers regarding the correct placement of carts for automated service. Correction notices will be attached to containers, but the material inside each container will be collected regardless. Throughout July and August, MarBorg employees will also identify any problematic areas or customers who may need additional assistance in converting to automated service. By September 1, 2011, customers will have had two months to acclimate to MarBorg and to automated service.

Timeline of Transition

Date	Activity
April	Place orders for vehicles, carts, and bins
April 11	Acquire digital customer information from Allied Waste with the assistance of the County
April 11-30	Input customer information into our database
April-May	Route collection service
May	Mail first packet of information to customers
June 1	Send second letter to each customer

June 13	Receive updated customer information from Allied Waste
June 20	Finalize routing and services
June 1 - 30	Accept delivery of all bins
June 1 - 30	Accept delivery of all carts
June 24	Send reminder postcard for schedule changes
July 1	Begin service in Zone 2
July 1 - 7	Exchange bins
July 1 - 30	Exchange carts
September 1	Transition complete

Transitions for Zones 1 and 3:

All new services offered in Zone 2 will also be available to MarBorg’s current customers in Zones 1 and 3. These services will be offered as of July 1, and include battery collection, sharps collection, and two bulky item collections per year instead of one. When flyers regarding these programs are sent to MarBorg’s new customers in Zone 2, they will also be sent to current Zone 1 and 3 customers.

The Goleta Valley of Zone 3 will also transition to automated collection service, although not until September 1. As a result, rates in that area will decrease, and customers will be informed of this decrease through mailings corresponding to those sent to Zone 2 customers. These rates will decrease as of July 1, even though the automated transition will not take place until two months later. Prior to the transition to automated service, MarBorg will send the same information to the affected customers as was sent to Zone 2 customers.

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 _____

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

I hereby certify that I am unable to bring my refuse containers to the curb for service, and that there is no one residing at my household who is able to bring my refuse containers to the curb. I therefore request that MarBorg employees retrieve my containers from a designated location and return my containers to the same location after they have been serviced.

Name: _____

Signature: _____

Date: _____

Service Address: _____

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

Acknowledgment

Franchisee has submitted, and County has accepted, the attached **Application** 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 4.05(2)(ii)
BUSINESS AND MULTI-FAMILY RECYCLING PLAN:
County Protocol and Procedure

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 Exhibit 4.04(2)(ii).

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.

2-100 Commercial Recycling Program Protocols

2-101-Compliance Protocol

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

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

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

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

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

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

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

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

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

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

2-102 Exemption Protocol

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

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

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

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

STEP 3: Hauler and County make a site visit.

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

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

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

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

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

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

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

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

2-104 Contamination Protocol

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

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

be recycled. Franchisee will include information that, if interested, the customer can contact the County for free indoor recyclables collection containers for its residents.

Existing Customers

1. Each calendar year, Franchisee will conduct an inventory and assessment of business and multi-family customers and their participation in the recycling program.

Franchisee will do the following:

- a. Compare the level of service in the Franchisee customer database to what the customer actually has and document any discrepancies;
- b. Document any businesses and multi-family customers without recycling service and any reason why not (self-haul, exemption, unknown)
- c. Note the level of contamination in the recycling containers, if over 25%, document this information and inform office staff for follow-up phone call, offer for additional recycling information, and the possibility for withdrawing the container if contamination does not go down;
- d. Submit findings from this assessment to the County in Franchisee's Annual Report.

Explaining Recycling Options to Business and Multi-Family Customers

1. Please ensure that the customer service representatives explain to new commercial and multi-family customers and those customers that are not recycling that they have two options to comply with the County's disposal ban on recyclables (green waste is exempted):
 - b) subscribe to recycling service through its assigned franchise waste hauler or
 - c) collect and self-haul their recyclables to a recycling/buyback center. If this option is chosen, the customer service representative should explain the need for the firm to sort the recyclables by material type; also, the process for notifying the County that the firm will be collecting and self-hauling its recyclables should be explained.

Self-Hauling of Recyclables

1. A firm that is going to collect and self-haul its recyclables must send a letter to the Recycling Program Specialist with the County Public Works Department, Resource Recovery & Waste Management Division, at the following address:

130 East Victoria Street, Suite 100
Santa Barbara, CA 93101

2. The letter must contain the following information:
 - a) The types of recyclable materials being collected;
 - b) The name and address of the facility where the recyclables are taken;

- c) The approximate frequency that the recyclables are taken to a recycling/buyback facility;
 - d) The name, title, and telephone number of a contact person.
3. Upon receipt of the letter, the County will contact the commercial customer to schedule a site visit to verify that the firm's recycling program meets the requirements of the disposal ban;
 4. The County will complete a form that documents the results of the site visit;
 5. The County will then send a letter to the commercial customer, confirming the firm's compliance with the mandatory commercial recycling program; a copy of this letter will be provided to the waste hauler;

Commercial Customers Not Subject to the Commercial Recycling Program

1. The disposal ban or mandatory commercial recycling program implemented by the County of Santa Barbara in September 2003 is applicable to all businesses and owners of multi-family dwellings (i.e. apartments, condominiums, and mobile home parks) in the unincorporated areas of the County;
2. Entities currently not subject to the program include governmental agencies, schools, single-family homes using cart service, and single-family homes using bin service.
3. Please ensure that a distinction is made between those entities that are not subject to the program and those entities that are subject to the program but wish to obtain approval for an exemption (see Section 2-102, Exemption Protocol of Commercial Recycling Program Protocols); to request an exemption, a commercial customer must claim that the requirements of having to recycle are infeasible or unnecessary or that the commercial customer would suffer undue or unreasonable hardship by participating in the program.

Commercial Customers That Share a Recycling Container with Another Commercial Customer

1. A commercial customer that does **not** have recycling service through the franchise waste hauler and claims that it shares a recycling container with another firm must take one of two actions:
 - a. Have the **firm whose recycling container it is sharing** send a letter to the Recycling Program Specialist with the County Public Works Department, Resource Recovery & Waste Management Division, at the following address:

130 East Victoria Street, Suite 100
Santa Barbara, CA 93101

This letter must confirm the types of recyclables that the other firm is placing in its recycling dumpster and that it is allowing the other firm to share its recycling dumpster.

OR

- b. Send a letter to the County confirming the types of recyclables that it is generating and collecting AND have the **firm whose recycling container it is sharing** send a letter confirming that it is allowing the other firm to share its recycling dumpster.
- c. Upon receipt of this information, the County will send a letter confirming the firm's compliance with the County's mandatory commercial recycling program.

Public Education

The County will design stickers, fliers, and posters to support the Business and Multi-Family Recycling Program. The County will provide this finished product to the Franchisee who will be responsible for producing and distributing the materials to the relevant customers.

EXHIBIT 4.05(2)(ii) #3

FRANCHISEE'S BUSINESS AND MULTI-FAMILY RECYCLING PLAN

Franchisee will include the following in its plan:

1. Out-reach to individual tenants;
2. Delivery of recycling tool kit to both tenants and property managers,
3. Inclusion in its semi-annual newsletter, ways that recycling can lower customers' franchise service charges;
4. Wet/ dry – high content recyclables routing,
5. Annual newsletter, including the following information:
 - Available franchise services,
 - Rates,
 - Best diversion practices and tips;
6. Annual distribution of the following information:
 - summary of County's Commercial Recycling Protocols under County Code Chapter 17,
 - listing of benefits of enhancing or expanding recycling services,
 - abels, guidelines and incentives to maximize diversion and minimize cost, and
 - offering waste and recycling audits, without charge.

Acknowledgment

Franchisee has submitted, and County has accepted, the attached **Business and 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 _____

**ATTACHMENT 4.06b(1)
BUS STOPS**

Intersections to be serviced:

- State St. 154
- Calle Real El Sueno
- Calle Real El Sueno
- Hollister Turnpike
- Hollister San Marcos
- Hollister Walnut

County may amend this list following Notice to Franchisee.

Acknowledgment
<p>County has delivered, and Franchisee has received, the attached List on the later of the following dates:</p> <ul style="list-style-type: none">• the <i>franchise date</i>, as evidenced by each of their signatures on the Agreement, or• with respect to subsequent changes, the <i>following date</i>, as evidenced by their following signatures :
Date _____
County Representative: _____
Franchisee Representative _____

ATTACHMENT 4.06c
COUNTY FACILITIES

County may amend this list following Notice to Franchisee. (See next page)

Zone 2 County Services

Building Code	County Department	Site Address	type	#	SIZE	TIMES PER WEEK
D48000	Parks	Toro Canyon Park Rd	Trash	2	4 cubic yard	1
			Recycling	2	32 gallons	1
			Recycling	2	64 gallons	1
D50000	Parks	Lookout Park Rd	Trash	1	4 cubic yard	3
			Recycling	2	96 gallons	1
			Trash	1	3 cubic yard	2
D43000	Parks	Manning Park	Trash	1	4 cubic yard	2
			Green Waste	1	4 cubic yard	1
			Recycling	1	3 cubic yard	1
J02014	Public Health	345 Camino Del Remedio	Recycling	1	96 gallons	1
C12001	Fire	5330 Calle Real	Recycling	1	96 gallons	2
J03035	Sheiff	4434 Calle Real	Trash	1	3 cubic yard	1
D46000	Parks	805 San Antonio Creek Rd	Recycling	4	96 gallons	1
C12001	Fire	5330 Calle Real	Trash	4	32 gallons	2
J05001	Fire	4410 Cathedral Oaks Rd.	Trash	3	32 gallons	1
J02002	General Services, Public Health, Human Resources	260 N San Anotonio Rd.	Trash	1	4 cubic yard	1
			Recycling	1	4 cubic yard	1
J02000	Public Health, Public Works	300 San Antonio Rd.	Recycling	8	96 gallons	1
J02020	AG&Cooperative Ext	263 Camino Del Remedio	Trash	1	3 cubic yard	1
			Recycling	1	3 cubic yard	1
J05001	Fire	4410 Cathedral Oaks Rd.	Trash	2	3 cubic yard	1
			Recycling	1	3 cubic yard	1
J02030	General Services	4444 Calle Real	Recycling	1	3 cubic yard	1
J02016	Public Health, ADMHS, Treasurer Tax Collector	4444 Calle Real	Trash	1	4 cubic yard	6
J03035	Sheiff	4434 Calle Real	Trash	1	4 cubic yard	3
			Recycling	1	4 cubic yard	1
J04001	Sheiff	315 Camino Del Remedio	Trash	1	3 cubic yard	1
J02030	General Services	4444 Calle Real	Trash	1	3 cubic yard	2
D46000	Parks	805 San Antonio Creek Rd.	Trash	2	4 cubic yard	2
			Recycling	1	4 cubic yard	1
J03010	Sheriff, GS	4436 Calle real	Trash	1	32 gallons	1
J01005	Social Service, Sheriff	66 S San Antonio Rd.	Trash	2	32 gallons	1
X01008	Public Health	4711 Highway 166	Trash	4	32 gallons	1
C41001	Fire	41 Newsome St.	Trash	1	2 cubic yard	1
D61000	Parks	Escuela St.	Trash	1	3 cubic yard	1
C15001	Fire	2491 Foothill Rd	Trash	1	1.5 cubic yard	1
			Recycling	1	96 gallons	1
F05003	Sherrif	6504 Trigo Rd	Trash	1	2 cubic yard	1
C18001	Fire	17200 Calle Mariposa Rein	Trash	1	1.5 cubic yard	1
			Recycling	1	1.5 cubic yard	1
J01011	Fire, Sheriff	4560 Hollister AVE A/B	Trash	1	2 cubic yard	1
D44000	Parks	610 Mission Canyon Rd	Trash	1	4 cubic yard	2
			Recycling	6	64 gallons	1
H01001	Public Health	5473 Overpass Rd.	Trash	1	3 cubic yard	3
			Recycling	1	64 gallons	1
J01018	Probation	4500 Hollister Ave	Trash	1	4 cubic yard	6
			Recycling	4	64 gallons	1
			Recycling	1	3 cubic yard	1
L02001	Probation	3900 Paradise Rd	Trash	6	4 cubic yard	1

Acknowledgment

County has delivered, and Franchisee has received, the attached **List** 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 _____

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.

	MarBorg Industries P.O. Box 4127 Santa Barbara, CA 93140 (805) 963-1852	805-963-1852 www.marborg.com																																		
RE: TRASH COLLECTION M T W T H F S																																				
Dear Customer, We are eager to provide you with good service. However:																																				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> <input type="checkbox"/> We were NOT able to provide your regular service today due to the reasons below. </td> <td style="width: 50%; border: none; vertical-align: top;"> <input type="checkbox"/> We serviced today, but this condition must be corrected prior to your next collection day. </td> </tr> </table>			<input type="checkbox"/> We were NOT able to provide your regular service today due to the reasons below.	<input type="checkbox"/> We serviced today, but this condition must be corrected prior to your next collection day.																																
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<table style="width: 100%; border: none;"> <tr> <td style="width: 15px;"><input type="checkbox"/></td> <td style="border: none;">1. Container(s) not out.</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">2. Gate/Door locked.</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">3. Menacing dog.</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">4. Container(s) blocked by _____ (vehicle/license #)</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">5. Container(s) too heavy. (60 lb. limit per 35 gallons)</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">6. Container(s) overloaded.</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">7. Container(s) packed too tightly. (For safety reasons, collectors are not allowed to reach into filled containers.)</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">8. Too much trash on or around container(s).</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">9. Too many items. Only pay for _____.</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">10. Improper container(s). Containers must be automated carts provided by MarBorg.</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">11. Special pick up needed. Please call office.</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">12. Need more service. Please call office.</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">13. Conditions unsafe: _____.</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">14. Hazardous or unacceptable materials.</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">15. Contaminated Yard Waste container(s).</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">16. Contaminated Recycling container(s).</td> </tr> <tr> <td><input type="checkbox"/></td> <td style="border: none;">17. Other _____.</td> </tr> </table>			<input type="checkbox"/>	1. Container(s) not out.	<input type="checkbox"/>	2. Gate/Door locked.	<input type="checkbox"/>	3. Menacing dog.	<input type="checkbox"/>	4. Container(s) blocked by _____ (vehicle/license #)	<input type="checkbox"/>	5. Container(s) too heavy. (60 lb. limit per 35 gallons)	<input type="checkbox"/>	6. Container(s) overloaded.	<input type="checkbox"/>	7. Container(s) packed too tightly. (For safety reasons, collectors are not allowed to reach into filled containers.)	<input type="checkbox"/>	8. Too much trash on or around container(s).	<input type="checkbox"/>	9. Too many items. Only pay for _____.	<input type="checkbox"/>	10. Improper container(s). Containers must be automated carts provided by MarBorg.	<input type="checkbox"/>	11. Special pick up needed. Please call office.	<input type="checkbox"/>	12. Need more service. Please call office.	<input type="checkbox"/>	13. Conditions unsafe: _____.	<input type="checkbox"/>	14. Hazardous or unacceptable materials.	<input type="checkbox"/>	15. Contaminated Yard Waste container(s).	<input type="checkbox"/>	16. Contaminated Recycling container(s).	<input type="checkbox"/>	17. Other _____.
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<input type="checkbox"/>	16. Contaminated Recycling container(s).																																			
<input type="checkbox"/>	17. Other _____.																																			
We did empty _____ carts today. 805-963-1852 www.marborg.com																																				
Detach this portion and return to office. <table border="1" style="float: right; border-collapse: collapse;"> <tr> <td style="width: 50px; text-align: center;">ROUTE #</td> <td style="width: 50px; text-align: center;">DATE</td> </tr> </table>			ROUTE #	DATE																																
ROUTE #	DATE																																			
Picked up: _____ Did not pick up: _____																																				
Address: _____																																				
Comments: _____																																				

Franchisee may change this form of notice if County accepts the changes.

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 _____

EXHIBIT 4.11b

CUSTOMER SERVICE POLICY

All customer complaints and misses are recorded in the customer's notepad file within their i-Pak account. It is MarBorg's policy to respond to all complaints and misses within 24 hours, and the resolutions to these problems are also recorded in that same file. This leaves a permanent record of all issues, which is summarized monthly for each jurisdiction.

Missed Service

If a customer indicates that their service was missed, a driver is usually dispatched to that location while the customer is still on the phone. If the regular route driver is not in the area that day, the nearest driver is sent in their place. This allows the customer service representative to provide the customer with an estimate of when the driver will be there to collect the missed container.

Noise Complaints

Occasionally, customers complain about the noise of the collection vehicles occurring too early in the morning. In those cases, the appropriate route supervisor is informed. If possible, routes will be rearranged so as to pass by the sensitive area at a different time of day.

Spills and Litter

All drivers are trained to respond properly in the event of spills. Each vehicle is equipped with an absorbent spill kit, and the drivers report all spills to either their route supervisor or MarBorg's safety manager. This spill kit contains 16 absorbent spill pads. Each pad is 16" x 18" and can absorb acids, bases, solvents, water-based fluids, gasoline and more. Drivers are also trained to collect any litter that results from collection. In the case of overloaded bins, the customer is called and informed that their bin was overflowing, and the situation is monitored to determine if the customer needs to add more service. MarBorg also owns and operates a street sweeper to handle large amounts of litter, particularly by the sides of roadways.

Damaged or Missing Containers

Reports of broken, missing, or graffiti-covered containers may come from the customer, or from the driver who observes a problem along their route. In either case, an order to exchange or replace the container is dispatched by the following day, through the work order procedures outlined above. The customer is not charged for this service or for the new container.

Collection Schedule Changes

Rarely, collection schedules must be changed for various reasons. The customer is always informed by mail at least one month before the change. For the first week after the change,

the customer is also not charged if drivers are required to go back due to containers not being placed out for service.

On service weeks that contain one of the six holidays observed by MarBorg (New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving, and Christmas), residential service is delayed by one day following the holiday. An e-mail reminder for this schedule change is sent to all affected customers in the week prior to the holiday. This information is also published on our website, and provided in a newsletter that is regularly mailed to our residential customers. Commercial accounts are generally not affected by holidays, with the exception of service that is scheduled on Thanksgiving Day or Christmas Day. For any businesses that are closed for a holiday and therefore unable to provide access to their containers, the route supervisor works with the businesses and the appropriate drivers to ensure that the containers are serviced as soon as is practical.

Other Complaints

All other issues are reported directly to the appropriate manager for resolution. If needed, the route supervisors or safety manager will meet with the complaining party to see the problem first-hand and develop a solution.

Franchisee may change this protocol following notice to County.

Acknowledgment
Franchisee has submitted, and County has received, the attached Customer Service Policy as of the later of the following dates:
1. the <i>franchise date</i> , as evidenced by each of their signatures on the Agreement, or
2. with respect to subsequent changes, the <i>following date</i> , as evidenced by their following signatures :
Date_____
County Representative: _____
Franchisee Representative_____

EXHIBIT 4.13a

CUSTOMER ORIENTATION PACKET

Franchisee will provide the Customer Orientation package in both Spanish and English.

Franchisee will include both of the following:

1. a summary of available franchise services, and
2. discard / set-out instructions.

Franchisee may change form or content of the Customer Orientation package if County accepts the changes.

Upon commencement of service with MarBorg, each customer will be provided with a new customer orientation packet. Each packet will contain general information about the Company, as well as specific information relevant to their particular service type: residential customers with carts, residential customers with bins, and commercial customers.

This packet will contain a welcome letter personalized to each customer. The welcome letter will be intended to provide an overview of the services offered by MarBorg, and specific information regarding each program will be provided in the packet in other formats. Customers who wish to change their service level will be invited to submit a postcard indicating their new subscription level. This packet will include a rate sheet for the area so that customers may make informed decisions regarding their subscription choices. Flyers about each of the available services will be included for each relevant customer type. Flyer topics will include cart placement for automated service, what materials may be disposed of in each type of container, how to sign up for online billing or payments, biannual clean-up guidelines, battery and sharps collection, and Christmas tree collection.

Welcome Letter

Each packet will contain a letter with a list of the services available to that customer, as well as their specific service level and schedule. The exact wording of this letter will be approved by the County prior to distribution of these packets, but the language will follow this general guide:

SAMPLE LETTER

Dear Tom and Nancy,
RE: Your property at 123 MAIN ST, SANTA BARBARA

As a result of the County of Santa Barbara's solid waste services bid process, MarBorg Industries is proud to have been chosen as your new solid waste services provider. MarBorg will begin serving your area on July 1, 2011. We have been serving residents and businesses in Santa Barbara County for 75 years, and we are excited to welcome you to the MarBorg family. We are pleased to bring you a variety of new and enhanced services, including:

- Residential service rates will decrease XX% from your current rates
- Up to 96 gallons of weekly greenwaste disposal at no additional charge
- Unlimited recycling containers will be provided at no additional charge
- New trash, recycling, and greenwaste containers will be provided to you
- Free curbside household battery collection
- Free curbside household sharps collection
- Access to free recycling drop-off centers
- Free biannual curbside bulky waste collection
- Fully automated collection service

All of these services have been added or enhanced for your convenience, and many of these enhancements have the additional benefit of diverting material from our local landfill and increasing recycling in the County of Santa Barbara.

Our records indicate that your current service level is:

- 1-64 gallon trash cart, collected on Mondays
- 1-64 gallon greenwaste cart, collected on Mondays
- 1-96 gallon recycling cart, collected every other Monday

For this level of service, your new monthly charge will be: **\$XX.XX**
You will be billed every two months for this service, and payment will be due at the end of the two month period. MarBorg offers a variety of convenient billing and payment options, including paperless billing and automatic payment arrangements. These options are detailed both on our website and in this packet.

Please be advised that all service in your area is now automated. This means that we will be driving down your street with a special collection vehicle, and your containers must be placed appropriately so that they can be properly collected. Please see the enclosed flyer regarding proper cart placement, and refer to our website for more information including an instructional video. Backyard service is still available for an additional charge.

We encourage you to review the enclosed information, and also to visit our website at www.marborg.com. If you have any questions about your new service, please ask.


As we transition from your current hauler to MarBorg Industries, we will make the process as smooth as possible. No action is required from you, though we invite you to contact us regarding anything that you might need. It will be our pleasure to serve you in all your solid waste needs.


Sincerely,
Mario Borgatello
President
MarBorg Industries
805-963-1852
www.marborg.com

This letter will be specific to each customer, and will also be adapted to the type of account. The example above will be sent to residential customers with carts, and we will send equivalent letters to residential customers with bins, and to commercial customers. In each case, the list of services will be adjusted to accurately reflect the services available to that account type. This letter will also be translated into Spanish, and a letter in each language will be distributed to each customer to ensure that all information is received and understood.

Mail-In Postcards

Each packet will also include a postcard that the customer may mail in if they wish to make changes to their service level. Residential customers will have the opportunity to change their container counts and sizes (top postcard), while commercial customers will also have the opportunity to change their collection frequency and schedule (bottom postcard). The rates for all services will be included in the packet so that customers may make informed decisions regarding potential service level changes.

Name: _____	
Service Address: _____	
Phone Number: _____	
Account Number: _____	
Please change my service level! I would like:	
Trash Cart(s):	
___ 35 gallon ___ 65 gallon ___ 95 gallon (prices included above)	
Green Cart(s):	
___ 35 gallon ___ 65 gallon ___ 95 gallon (first 95 gallons are free)	
Recycle Cart(s):	
___ 35 gallon ___ 65 gallon ___ 95 gallon (no charge)	
Please indicate the quantities and sizes of each type of container.	

Name: _____	
Service Address: _____	
Phone Number: _____	
Account Number: _____	
Please change my service level! I would like:	
Trash:	
___ 35 gallon M T W TH F S ___ 1.5 yd M T W TH F S	
___ 65 gallon M T W TH F S ___ 2 yd M T W TH F S	
___ 95 gallon M T W TH F S ___ 3 yd M T W TH F S	
	___ 4 yd M T W TH F S
Green:	
___ 35 gallon M T W TH F S ___ 1.5 yd M T W TH F S	
___ 65 gallon M T W TH F S ___ 2 yd M T W TH F S	
___ 95 gallon M T W TH F S ___ 3 yd M T W TH F S	
	___ 4 yd M T W TH F S
Recycle:	
___ 35 gallon M T W TH F S ___ 1.5 yd M T W TH F S	
___ 65 gallon M T W TH F S ___ 2 yd M T W TH F S	
___ 95 gallon M T W TH F S ___ 3 yd M T W TH F S	
	___ 4 yd M T W TH F S
Please indicate the quantities and sizes of each type of container, and circle the requested service day(s).	

Flyers

This packet will also include flyers detailing the services and procedures appropriate to each type of customer. Flyer topics will include proper placement of containers for automatic collection, what materials can go in each container, and how to sign up for online billing and the different billing and payment options available. Examples of these flyers can be seen in below. The most recent MarBorg newsletter will be included in this packet as well.

Recycle Schedule Magnets

Because residential recycling collection is a biweekly service, as specified by the County, MarBorg will provide each residential customer with a schedule by which they can easily identify their collection days. These schedules will be printed in brown ink on convenient refrigerator magnets, and will display the schedule for the entire year (right). A new magnet will be sent to each customer annually.

YOUR RECYCLING PICKUP DAY IS MONDAY			
JANUARY	FEBRUARY	MARCH	APRIL
11 25	8 22	8 22	5 19
MAY	JUNE	JULY	AUGUST
3 17	1 14 28	12 26	9 23
SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
7 20	4 18	1 15 29	13 27

JANUARY 2011 PICKUP ON THE 10TH & 24TH, FEBRUARY 2011 PICKUP ON THE 7TH & 21ST

MarBorg
INDUSTRIES

2010 (805) 963-1852

B

Extra Green Waste and Battery Bags

In each welcome packet for residential customers, MarBorg will provide six green waste tags. MarBorg will also provide five battery collection bags.

Quarterly Newsletters

MarBorg will send each residential customer a quarterly newsletter detailing any new services available and providing helpful recycling and waste reduction tips. This and all written communication will be provided to the County for approval prior to distribution.



AUTOMATED CART SERVICE

Your service will be automated. On each service day...



- Place your containers at the curbside by 6 am.
 - Leave **at least** one foot (12 inches) of space between your containers and any other obstacles (cars, trees, etc.).
- Place your containers with the handles facing your house, so the lid opens facing the street.
 - Leave enough space around your mailbox for the post office to deliver your mail.
- Make sure your cart lids fully close – don't overfill the containers.

**QUESTIONS? CALL 963-1852 OR VISIT
WWW.MARBORG.COM**



RESIDENTIAL CART SERVICE

WHAT CAN I PUT IN EACH CONTAINER?

RECYCLING COLLECTION

What's Recyclable? To learn more, visit: www.lessismore.org | County of Santa Barbara | (805) 882.3600



ALL PLASTIC (Todo Plástico)
NO Styrofoam or packing peanuts.
NO plastic bags or bubble wrap.



GLASS BOTTLES & JARS (Botellas y Tarros de Vidrio)
NO window glass or drinking glasses.



ALL METAL (Todo Metal)
NO full or partly-full containers.
NO oil filters.



PAPER & CARDBOARD (Papel y Cartón)
NO paper plates, towels, napkins.
NO waxed boxes.



GREEN WASTE RECYCLING

As a reminder, the following are DO's and DO NOT's for your green waste containers:



YES Grass, leaves, flowers, yard trimmings, ivy, plants and small branches.

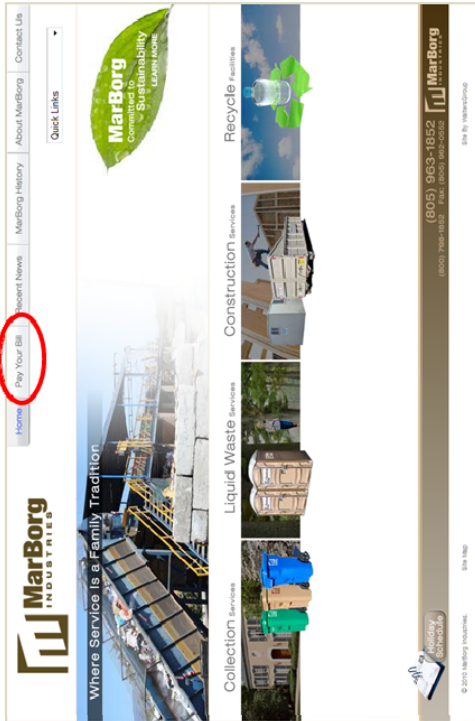


NO Palm fronds, pampas grass, food, animal waste, plastic bags, nursery pots, dirt, rocks or smelly socks!

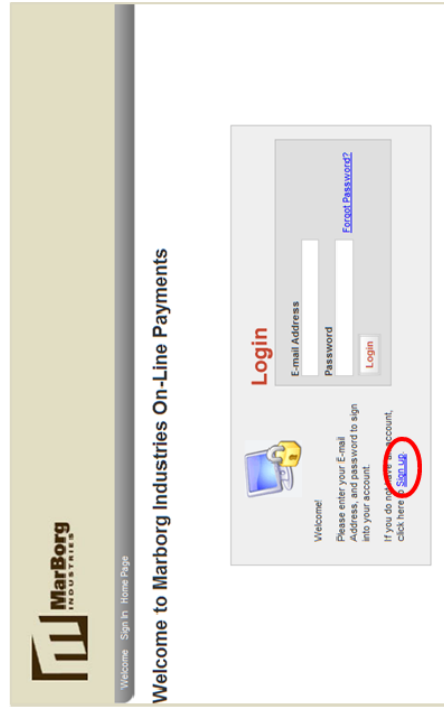
**QUESTIONS? CALL 963-1852 OR VISIT
WWW.MARBORG.COM**

Sign up for Online Billing and Payments!

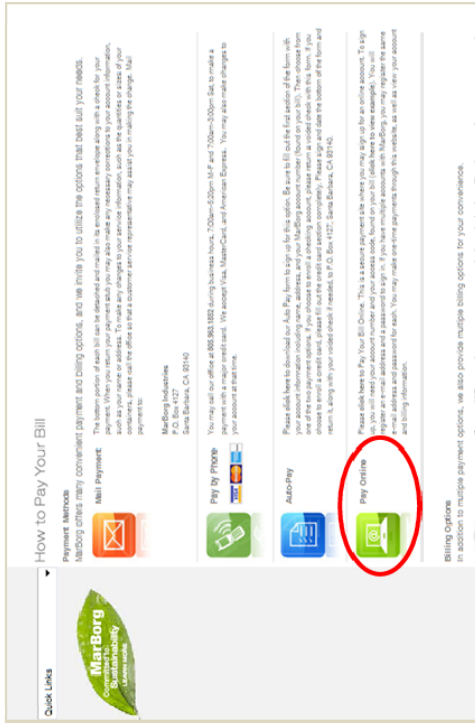
Step 1: Go to www.marborg.com and click "Pay Your Bill"



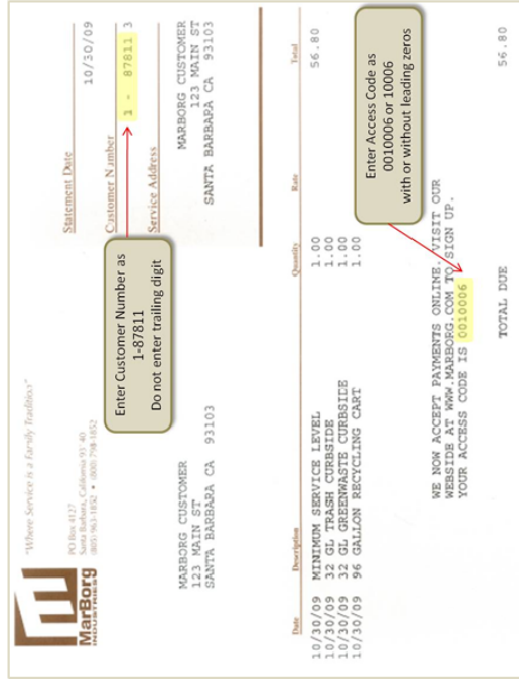
Step 3: On the online payment site, click "Sign up". You will register for your account with an e-mail address and password of your choice, and the last four digits of your social security number for future verification purposes.



Step 2: Click on the green icon for "Pay Online"



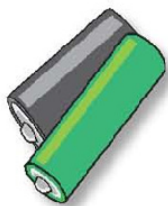
Step 4: Enter your account number and your access code, which can be found on your bill.





SAFE DISPOSAL OF BATTERIES AND SHARPS!

HOUSEHOLD BATTERY RECYCLING



Put batteries in a zip-top plastic bag.

Tape the ends of each battery with electrical, masking, or duct tape so that the battery poles are not exposed.

Place the bag on top of (not inside) your recycling container on your recycling collection day.



SHARPS CONTAINER COLLECTION



Call or e-mail the office to request a sharps container, which will be delivered to you.

When you request this container, we will provide you with more information regarding our sharps collection program.

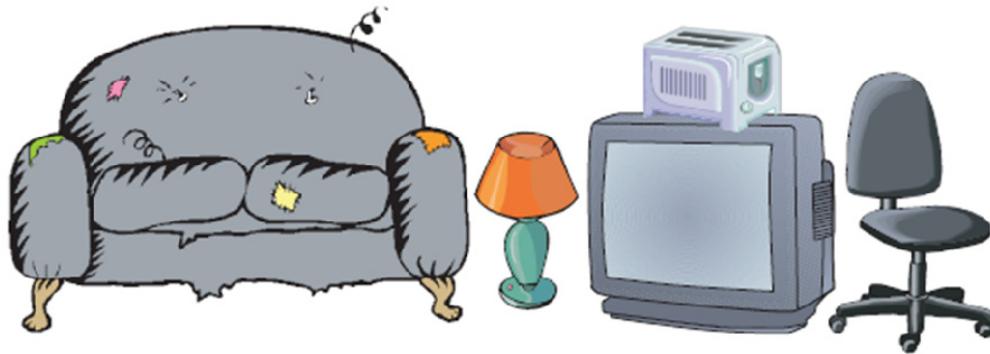


**QUESTIONS? CALL 963-1852 OR VISIT
WWW.MARBORG.COM**



EXTRA ITEM CLEAN-UPS

Bulky waste, electronics, and more!



- Two times per calendar year (Jan-Dec)
- Scheduled any Wednesday of your choice
- Have the items at your curbside by 6 am
- Loose items must be bagged, boxed, or bundled
- Green waste must be bundled
- No construction or remodeling debris
- No hazardous waste

**QUESTIONS? CALL 963-1852 OR VISIT
WWW.MARBORG.COM**

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 respective containers (with examples of each)
2. How to store, set-out and bring-in containers, including locations and time.

Acknowledgment

Franchisee has submitted, and County has accepted, the attached **Customer Orientation Packet** 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 4.16a(1)
CUSTOMER BILL FORMAT

Franchisee will include the following information on each customer bill:

1. customer's level of franchise service,
2. Franchisee contact information, and
3. due and delinquency dates.

Franchisee may change this bill format if County accepts the changes.

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 _____



"Where Service is a Family Tradition"

PO Box 4127
Santa Barbara, California 93140
(805) 963-1852 • (800) 798-1852

Billing Period: MARCH & APRIL 2009

AUTO3-DIGIT 931 15 PS3 51839SA03-A-2
3562 1 AT 0.346



[Redacted]
SANTA BARBARA CA 93190-1528

Statement Date 2/28/09

Customer Number 1 - 28111 0

Service Address [Redacted]
730 LILAC DR
SANTA BARBARA CA 93108

MARBORG INDUSTRIES

Date	Description	Quantity	Rate	Total
2/28/09	BASIC SERVICE LEVEL	1.00		120.08
2/28/09	32 GL TRASH CAN # P/U: 01	4.00		
2/28/09	96 GALLON RECYCLING CART P/U: 01	2.00		
2/28/09	BACKYARD CART SERVICE	2.00	8,280	33.12
2/28/09	64 GL GREEN WASTE CURBS # P/U: 01	4.00		
2/28/09	EXTRA TRASH CAN CHARGE	2.00		28.96
2/28/09	EXTRA GREEN CAN CHARGE	6.00		79.08
			TOTAL DUE	\$261.24

DO NOT PAY ** AUTO PAY BY MASTERCARD **
YOUR BUSINESS IS GREATLY APPRECIATED
YOUR PAYMENT IS DUE BY 04/30/09

Current	30 Days	60 Days	90 Days
261.24	0.00	0.00	0.00

Please detach here and return bottom portion with your payment.

Payment Coupon

Check box for change of address

Total Due \$261.24

Amount Enclosed \$ _____

Check # _____

MC/Visa # _____ Exp. _____



PO Box 4127
Santa Barbara, California 93140
(805) 963-1852 • (800) 798-1852

Statement Date 2/28/09

Customer Number 1 - 28111 0

Service Address [Redacted]
730 LILAC DR
SANTA BARBARA CA 93108

09 228010028111000000261240000000



EXHIBIT 4.18
SERVICED AREA / ZONES 1 & 3

Land Description for

Solid Waste Collection Zone Two

*Resource Recovery and Waste Management Division
Santa Barbara County Public Works Department
3/16/2011*

That portion of land situated in the County of Santa Barbara, State of California, described as follows:

Beginning at the northwesterly corner of the land described in *City of Santa Barbara Ordinance 2053*, effective January 19th, 1946, also known as the Ontare Annexation, said point being the northwesterly corner of Northridge Estates as shown on *Book 40, Page 81 of Maps* in the Office of the County Recorder of said County, noted as a point an exhibit attached; thence,

- 17th Northwestery along a straight line to the northeasterly corner of *Tract No. 13,711* as shown on *Book 152, Page 2 of Maps*, also known as Shadow Hills; thence,
- 18th Northerly, northwesterly, northeasterly, southeasterly, northeasterly, northwesterly and northerly, along the westerly right-of-way of State Highway 154 to the southerly line of Los Padres National Forest; thence,
- 19th Westerly, southerly, westerly, northerly, westerly, southerly and westerly, along the Los Padres National Forest boundary to northwest corner of the southeast $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 34, township 5 north, Range 29 west, S.B.B.M.; thence,
- 20th Southerly along a straight line, to a point at the end of the 161st course described in *LAFCO 99-20 – Incorporation of the City of Goleta*, recorded February 11th, 2002, as *2002-0013744, Official Records*, said point being the southwest corner of Parcel 3 as shown on a map entitled *Amended Map of the Partition of Property of Francis G. Doty and Russell E. Doty, Ellwood Ranch*, recorded in *Book 28 of Records of Surveys, Page 28*, in the office of said County Recorder; thence,

- 21st Thence northeasterly, easterly, northeasterly, southerly, easterly, northeasterly, northerly, easterly, northerly, easterly, southerly, easterly, southerly and westerly, along the boundary of the City of Goleta, along all the courses thereof, to the to the northerly right-of-way of the 101 Freeway; thence
- 22nd Easterly along the northerly right-of-way of the 101 Freeway to the southwesterly corner of the land described in *LAFCO 02-9 – St. Vincent's Reorganization: Annexation to the City of Santa Barbara*, recorded October 24th, 2002, as *2002-0107674, Official Records*; thence
- 23rd Northeasterly, southwesterly, southeasterly, southerly, westerly and southerly along the boundary of the City of Santa Barbara to the southwesterly corner of the land described in *Ordinance No. 2052* of said City, effective December 31st, 1945, also known as the Braemar Tract Annexation; thence
- 24th Southeasterly, along the boundary of said annexation to the southeasterly corner thereof; thence
- 25th North 15° 44' 30" east 528 feet, along the easterly boundary of the land described in said Ordinance; thence
- 26th Northeasterly, following the northeasterly prolongation of the previous course to its intersection with the centerline of Cliff Drive; thence
- 27th Northeasterly, along the centerline of Cliff Drive to the centerline of Las Positas Road; thence,
- 28th Northerly, along the centerline of Las Positas Road to the centerline of State Street; thence,
- 29th Northerly, along the centerline of San Roque Road to the centerline of State Highway 192; thence,
- 30th Northwesterly, along the centerline of State Highway 192 to a point on the southwesterly prolongation of the westerly boundary of the land described in said *City of Santa Barbara Ordinance No. 2053*; thence
- 31st Northeasterly, along the southwesterly prolongation of the westerly boundary of the land described in said Ordinance; thence
- 32nd Northeasterly along the westerly boundary of the land described in said Ordinance, to the point of beginning.

Excepting therefrom the incorporated areas of the County of Santa Barbara (the cities of Goleta and Santa Barbara).

EXHIBIT 4.18c
AUTOMATED SERVICE / CARTS FOR CUSTOMERS IN ZONE 3
ADJACENT TO GOLETA

INSERT BOUNDARIES OF NEW AUTOMATED SERVICE.
INSERT REDUCED RATES.

EXHIBIT 5.01
ROUTE MAPS AND SCHEDULES

Franchisee may change maps and schedules after submitting them to County.

Acknowledgment

Franchisee has submitted, and County has received, the attached **route maps and schedules** 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 5.03a
CONTAINER SPECIFICATIONS

Containers must meet all of the following requirements. They must be:

- 1. colored to differentiate refuse, recyclables and green waste,
- 2. of high quality and durable (with 5 year general warranty on carts, at a minimum),
- 3. labeled as required under this Agreement, with printing embedded in carts,
- 4. ultraviolet light stabilized (with respect to carts), and
- 5. painted or galvanized metal (with respect to bins).

Franchisee will identify by location or customer list, which cart customers will retain their existing carts and which ones will receive new carts, as of the franchise date.

Franchisee may use hybrid plastic bins, if a customer complains that collection of metal bins is noisy.

Franchisee may change these specifications if County accepts the changes.

Acknowledgment
Franchisee has submitted, and County has accepted, the attached container specifications as of the later of the following dates:
<ul style="list-style-type: none">1. the <i>franchise date</i>, as evidenced by each of their signatures on the Agreement, or2. with respect to subsequent changes, the <i>following date</i>, as evidenced by their following signatures :
Date _____
County Representative: _____
Franchisee Representative _____

Date _____

County Representative: _____

Franchisee Representative _____

[FRANCHISEE, GIVE CART ORDER TO COUNTY FOR REVIEW AND ACCPTANCE, AND ATTACH
PRIOR TO ORDERING CARTS]

Environmental

**Rehrig Pacific
Company**
SINCE 1922

Proven to withstand the rigors of today's collection systems, Rehrig Pacific's Husky Lite Roll-out Carts are setting new industry standards for durability and efficiency. Available in 18 gallon through 95 gallon models, for nearly any curbside application, these carts roll easily even with heavy loads. The continuous one-piece handle provides a strong gripping area and the wide wheelbase makes maneuvering easy.

Husky Lite carts are flexible, yet hold their shape even after years of service. A reinforced top lip adds strength and rigidity as do the double drag rail and reinforced bottom. The specially designed wide ground-hugging base helps keep these carts upright and stable.

Options for the Roll-out Carts include internal and external locking lids, which can be made with slots for collecting confidential documents or cutouts for recyclable beverage containers. Wheel options include blow-molded wheels or quiet treaded snap-on wheels that install in seconds.

Roll-out Carts are shipped with lids already attached, saving additional assembly time.

Rehrig Pacific Roll-out Carts



ROC-65NB

ROC-35MB

ROC-18/20



ROC-95NB

ROC-95U

ROC-95FA



Environmental



Roll-Out Carts

Features and Options

- For Semi-Automated or Automated Collection of Household Refuse, Recyclables and Organic Wastes
- Universal Cart Models Available in All Sizes. Fully-Automated ROC-95EA Cart also Available
- Constructed of High Quality, Resilient UV-Stabilized HDPE Resin. Available in a Wide Range of Colors
- Rotating Metal or Molded-In Catch Bins
- Hot-Stamp Branding of Logos and Recycling Slogans, Bar Coding, Sequential Numbering and Multi-Color In-Mold Labeling Options
- RFID Integration Available for Use in Asset and Participation Tracking Programs
- Divider Option for Two-Stream Collection
- Optional European Lip
- Lid Cutouts for Recyclables Available
- Lid Opening Options Include 90° or 110° Steps
- Blow Moulded or Quiet Tread Wheels Available in Center Pin, End Cap or Snap-on Styles
- Optional Features for Confidential Document Destruction Carts
 - Lids with Internal Key Lock or External Tongue Plate and Padlock
 - Slotted Openings with Anti-Fish Option
- See Organic Waste Container Specification Sheet for Additional Features and Options

**Rehrig Pacific Roll-out Carts
Product Information**

Dimensions ¹ (in.)	ROC-18/20	ROC-35 ²	ROC-65	ROC-95
Height w/Lid	37.60	39.13	40.38	45.13
Width	19.80	20.20	26.70	28.50
Depth	8.00	22.98	28.11	33.75
ANSI Load Rating, ³ (lb)	70.00	122.50	227.50	332.50

Trackload Quantities:	ROC-18	ROC-30	ROC-35	ROC-65	ROC-95
Stack Size	7 high	Inquire	9 high	9 high	8/9 high
48' Trailer	720	Inquire	864	504	384/432
53' Trailer	825	Inquire	1,080	648	432/486

¹Dimensions vary depending on wheel and lid options
²ANSI 2245.30 - 2008
³20 gallon insert available



ROC-18 Carts Stacked



European Lip



Branded ID Number and Bar Code



Gravity Lock



Internal Lock with Key



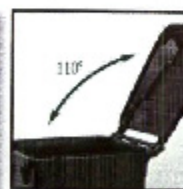
External Lock (padlock not included)



Multi-Color In-Mold Label (IML)



Optional Openings for Recyclables



Optional 90° or 110° Lid Steps

A FAMILY TRADITION OF GROWTH, SERVICE AND INNOVATION

Headquarters: 803 East 26th Street, Los Angeles, California 90058 (213) 347-5145 (800) 421-6266 FAX: (213) 267-6506
 Erie, PA (800) 688-0800 • Atlanta, GA (800) 261-9999 • Dallas, TX (800) 425-5103 • Seattle, WA (800) 534-0117
 De Soto, GA (800) 272-5151 • Orlando, FL (800) 998-2828 • Canada (877) 456-8086 • Mexico (914) 258-2800
www.rehrigpacific.com • info@rehrigpacific.com

© 2008 Rehrig Pacific Company. All rights reserved. All other trademarks are the property of their respective owners. Rehrig Pacific Company reserves the right to change materials, designs, and specifications without notice or obligation.

Certification of Recycled Content

Rehrig Pacific Company will manufacture HuskyLite® containers with up to 30% recycled content for the production of Marborg's containers. If you would like to introduce a higher percentage or have any other questions, please contact me. Thanks again for considering Rehrig Pacific Company for the supply of Marborg's cart needs.

Justin Follhauer

Justin Follhauer
Sales Manager
Rehrig Pacific Company
4010 East 22nd Street
Los Angeles, CA 90058



A FAMILY TRADITION OF GROWTH, SERVICE AND INNOVATION

Statement of Recycle Ability

Rehrig Pacific Company certifies that all material used to manufacture our 35, 65, and 95-gallon containers are 100% recyclable, including plastic resin and steel. When the timing is right, we can assist you in order to close the loop on recycling.

Lisa Perkins

Lisa Perkins
Municipal Contract Manager



A FAMILY TRADITION OF GROWTH, SERVICE AND INNOVATION

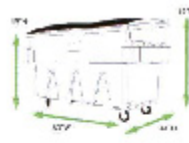


Waste & Recycling Plastic Containers, Inc

WRPC's Hybrid Commercial Container Line



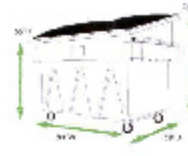
▲ 2 YARD RL



▲ 2 YARD FL



▲ 3 YARD FL



▲ 4 YARD FL



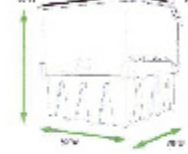
▲ 6 YARD FLAT TOP



▲ 6 YARD SLANT TOP



▲ 8 YARD FL SLANT TOP



▲ 8 YARD FL FLAT TOP

▼ Container Specifications

Compactors and Side-loads if so available

MODEL	WIDTH	FRONT HEIGHT	DEPTH	MAX. HEIGHT	LOAD RATING
2 YARD RL	78"	51"	44"	51"	1000 LBS
2 YARD COMPACTOR	63"	51"	47.5"	51"	1000 LBS
2 YARD FL	80"	49"	41"	55"	1000 LBS
3 YARD FL	80"	53"	49"	64"	1500 LBS
4 YARD FL	80"	55"	59"	70"	2500 LBS
6 YARD FL FLAT TOP	80"	60"	78"	64	3500 LBS
6 YARD FL SLANT TOP	80"	61"	78"	64"	3500 LBS
8 YARD FL FLAT TOP	80"	80"	78"	82"	5000 LBS
8 YARD FL SLANT TOP	80"	61"	78"	82"	5000 LBS

▼ Shipping Information

Height weights correct. Width includes pockets or handles etc. Measurements reflect maximum of stacks to be used on flat bed or 53' TL QTY TRAILER

MODEL	ASSEMBLY	STACK HEIGHT	53' TL QTY TRAILER	53' TL QTY FLATBED
2 YARD RL	300 LBS	4 - 5 HIGH	61	80"
2 YARD COMPACTOR	300 LBS	4 - 5 HIGH	61	75"
2 YARD FL	270 LBS	3 - 4 HIGH	45	60"
3 YARD FL	365 LBS	3 HIGH	45	45
4 YARD FL	445 LBS	2 - 3 HIGH	20	30"
6 YARD FL FLAT TOP	580 LBS	2 HIGH	15	15"
6 YARD FL SLANT TOP	580 LBS	2 HIGH	15	16"
8 YARD FL FLAT TOP	640 LBS	1 HIGH	8	8
8 YARD FL SLANT TOP	640 LBS	2 HIGH	14	14"

For exact dimensions please specify when assembly required.
*Weights remove

Waste & Recycling Plastic Containers, Inc
16310 Bratton Lane
Building 2 Suite 200
Austin TX, 78728
WWW.WRPCONTAINERS.COM

Innovation in commercial hybrid containers





Waste & Recycling Plastic Containers, Inc

WRPC's Hybrid Commercial Container Line



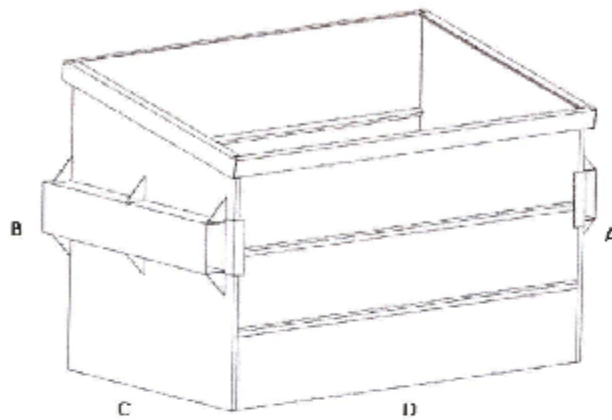
- Hybrid containers are rotationally molded with thicker plastic in key structural areas and powder-coated steel reinforcement in high stress sections (fork pockets, caster plates, lid bar).
- Easy to maneuver - up to 30% lighter than same size metal containers
- Quiet - Up to 50 decibels quieter than comparable metal containers
- Low maintenance - will never have to perform weld repairs or repaint
- Great for food waste programs - smooth interior surfaces do not hold waste and odors
- Ideal for humid coastal communities - plastic body will not rust or corrode
- Containers accommodate industry standard lids and casters
- High quality stainless steel hardware used to attach metal to container
- Caster pads are quick release, allowing them to be changed in the field
- Containers are nestable allowing for high shipping densities
- 8 standard colors - custom colors available
- Various options available - trainable package, recycling lids, 8" casters, in-mold logos, serial numbers, etc. and blow molding methods.
- WRPC is Family owned and operated

Waste & Recycling Plastic Containers, Inc
16310 Bratton Lane
Building 2 Suite 200
Austin TX, 78728
WWW.WRPCONTAINERS.COM

Innovation in commercial hybrid containers



Metal Bin Dimensions



PRODUCT #	SIZE	FRONT HEIGHT	BACK HEIGHT	WIDTH	LENGTH
		A*	B*	C	D**
9001	1.5 YD	29.5"	34.5"	29.5"	72"
9002	2 YD	34.5"	41.5"	34.5"	72"
9005	3 YD	41.5"	50.5"	41.5"	72"
9007	4 YD	46"	57"	50.5"	72"

* Casters add 8" to height

** End loader = 80"

Roll-Off Dimensions

SIZE	CUBIC YDS	SIZE	CUBIC YDS
14x2	7.64	20x2	10.97
14x3	11.46	20x3	16.46
14x4	15.28	20x4	21.94
14x5	19.1	20x5	27.43
14x6	22.92	20x6	32.92
14x7	26.74	20x7	38.4
14x8	30.56	20x8	43.89
16x2	8.75	22x2	12.08
16x3	13.13	22x3	18.13
16x4	17.5	22x4	24.17
16x5	21.88	22x5	30.21
16x6	26.25	22x6	36.25
16x7	30.63	22x6.5	39.27
16x8	35	22x7	42.29
		22x8	48.33
18x2	9.86		
18x3	14.79	24x2	13.19
18x4	19.72	24x3	19.79
18x5	24.65	24x4	26.39
18x6	29.58	24x5	32.99
18x7	34.51	24x6	39.58
18x8	39.44	24x7	46.18
		24x8	52.78

*Highlighted dimensions represent those containers offered by MarBorg Industries.

EXHIBIT 5.03b CONTAINER LABELS

Labels must contain the following information:

1. Franchisee name, telephone number and email address,
2. unique container number, such as serial numbers or bar codes,
3. container set-out instructions,
4. prohibition on discard of hazardous waste and describing proper disposal thereof, including "NO LIQUID, TOXIC OR HAZARDOUS WASTE" in legible letters at least 4 inches high, and compliance with Section 17-8(i) of the County Code,
5. prohibition of scavenging (through words and international symbols) that meets the notice requirements of Public Resources Code Section 41950(a), and
6. Other information requested by County.

Franchisee may change labels if County accepts the changes.

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 _____

EXHIBIT 5.03c
CONTAINER ACQUISITION AGREEMENTS

Franchisee warrants as follows:

1. Franchisee owns all containers,
2. there are no encumbrances on any containers,
3. there are no container acquisition agreements that restricts Franchisee's ability to transfer ownership of any container to County, and
4. Franchisee can transfer ownership of any container to County without consent from any third party, such as a lender or capital lessor.

Franchisee will update and submit any subsequent container acquisition agreement(s) under Section 5.05c and in Annual Reports.

EXHIBIT 5.03d
CONTAINERS INVENTORY

Franchisee will update its containers inventory under Section 5.03b.

FRANCHISEE, ATTACH INVENTORY OF EXISTING CARTS AS OF THE FRANCHISE DATE.
ATTACH INVENTORY OF NEW CARTS UPON DELIVERY.

UPDATE IN EACH ANNUAL REPORT.

Acknowledgment

Franchisee has submitted, and County has received, the attached container **inventory** 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 5.06a
KEY PERSONNEL.

Franchisee may change this list following notice to County.

Acknowledgment

Franchisee has submitted, and County has received, the attached **list of key personnel** 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 _____

KEY PERSONNEL

POSITION	PERSONNEL
President	Mario Borgatello
Vice President	David Borgatello
Manager C&D Division	Brian Borgatello
Operations Manager (<u>diversion reporting</u>)	Derek Carlson
Human Resources Manager	Elizabeth Casteneda
Controller (<u>RE franchise fees</u>)	Robert Caldwell
Customer Service Manager	Alma Alvarez
Maintenance Manager	Glenn Aigner
Public Education Specialist	Dena Philips
Commercial <u>Route Supervisor</u>	Clemente Esgarcega
Residential <u>Route Supervisor</u>	Danny Mayorga
Safety Manager	Cesar Medina

Route Supervisor

Name	
Telephone number	
e-mail address	
Mailing address	
Franchisee office address	

County liaison in Franchisee's financial accounting department responsible for submitting reports with respect to franchise fees

Name	
Telephone number	
e-mail address	
Mailing address	
Franchisee office address	

County liaison responsible for submitting reports with respect to Franchisee's diversion of solid waste in County.

Name	
Telephone number	
e-mail address	
Mailing address	
Franchisee office address	

EXHIBIT 5.07
BACK-UP SERVICE PLAN²

Franchisee will develop a back-up plan to provide uninterrupted franchise service at all times, including during mechanical breakdowns, facility closures, job actions (such as strikes, walk-outs, slow-downs), or emergencies (such as natural disasters), including the following:

1. provide conveniently located bins or roll-off containers where customers may discard refuse and other putrescible solid waste,
2. offer customers the option of self-hauling refuse and other putrescible solid waste to a transfer station or Disposal Facility/Facilities,
3. inform customers of procedures for handling refuse and other putrescible solid waste, preventing litter and discouraging vectors (such as keeping carts in their storage place and not at set-out Sites, discarding excess solid waste in closed plastic bags and not loose in carts),
4. describe any customer service charge refund policy for missed franchise services,
5. provide replacements for drivers and other employees who are not providing collection or other franchise services (such as supervisory personnel or management, or employees of affiliates or other solid waste management companies) and security for those drivers and other employees, and
6. identify customers that require priority service.

Franchisee may change its back-up plan. Changes are effective when received by the County.

²**Acknowledgment:** Franchisee has submitted, and County has received, the attached Back-Up Service Plan as of the later of the following date:

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 _____

MarBorg understands the importance of continuing refuse collection service at all times, including during mechanical breakdowns, facility closures, job actions (such as strikes, walk-outs, slow-downs), or emergencies (such as natural disasters). The Santa Barbara area is vulnerable to a variety of natural disasters, the most common of which is forest fires. Floods, mudslides, and earthquakes are also real possibilities here, as well as unforeseen and unanticipated disasters. Though each emergency situation is unique, any organization can be better prepared if it plans carefully for all contingencies, puts multiple emergency procedures in place, and practices for situations of all kinds. It is MarBorg's sincere hope that these procedures will never be called upon, and that the results of these preparations will never be realized. The emergency procedures described below can be initiated as needed, in any combination. While it is unlikely that all of these services would be required at once, having a large arsenal of procedures and equipment available increases the chances that MarBorg can respond appropriately in the face of any type of emergency that may occur.

MarBorg Industries understands the importance of maintaining public health and safety in the event of a disaster. Waste-hauling duties may not be suspended, and MarBorg will go above and beyond the standard services covered in the franchise agreement to assist the County in all disaster management operations and customer communications. MarBorg commits to modifying regular services as needed, keeping our facilities operational, and supplying equipment and labor.

Regular Service Modification

During a time of disaster it may be necessary to modify regular service schedules in order to overcome shortages of fuel, equipment or labor. The most important scheduled service for us to keep unaltered is the collection and disposal of solid waste to ensure a healthy and safe environment for our community. To ensure that this mission-critical service is provided as well as other emergency response services in a worst case scenario MarBorg will modify our regular service schedule in the following manner:

1. We will suspend all recycling routes immediately.
2. We will suspend all greenwaste routes immediately.
3. We will restrict roll-off services to disaster response needs.
4. We will restrict portable restroom services to disaster response and public health needs.
5. We will restrict all semi truck and trailer trips to disaster response needs.

6. We will bring all trash loads to our C&D Recycling Facility in order to be transferred to the Tajiguas Landfill in order to conserve fuel.

Should the Tajiguas landfill become inaccessible during a disaster, MarBorg proposes to transfer the trash loads to one of these other landfills that may remain accessible.

Landfill	Operator	Location	Distance (miles)
Lompoc	City of Lompoc	Lompoc	55
Chiquita Canyon	Waste Connections	Castaic	59
Simi Valley	Waste Management	Simi Valley	63
Santa Maria	City of Santa Maria	Santa Maria	66
Taft	Kern County	Taft	121

In addition to the above actions, MarBorg will also offer the following service options as they may be appropriate in the event of an interruption of regular service:

7. provide conveniently located bins or roll-off containers where customers may discard refuse and other putrescible solid waste;
8. offer customers the option of self-hauling refuse and other putrescible solid waste to MarBorg's C&D Facility;
9. inform customers of procedures for handling refuse and other putrescible solid waste, preventing litter and discouraging vectors (such as keeping carts in their storage place and not at set-out Sites, and discarding excess solid waste in closed plastic bags and not loose in carts);
10. provide customers with a refund for any missed franchise services that are not the result of a natural disaster;
11. provide replacements for drivers and other employees who are not providing collection or other franchise services (such as supervisory personnel or management, or employees of affiliates or other solid waste management companies) and security for those drivers and other employees. MarBorg currently employs 139 employees with a commercial driver's license, only 41 of whom are employed as franchise drivers. The

remaining 98 employees are not currently assigned to franchise collection routes, and could therefore substitute for franchise drivers as needed. MarBorg also has an agreement with EJ Harrison in Ventura to supply drivers if the need arises; and

12. identify customers that require priority service on a case by case basis, starting with hospitals, disaster shelters, County operation centers.

Disaster Relief Facilities

MarBorg Industries understands the necessity of continuing our services in the event of a disaster. In order to deliver those services we will ensure that all of our critical facilities have permanent back-up power. An analysis of the emergency power needs for all critical operations was completed in October of 2010, by Alan Noelle Engineering. MarBorg will install the recommended permanent standby generators at the following facilities:

1. Main Office – The goal for the office is to keep it up no matter what, as it will be the essential command center in any prolonged power outage. To power the office we will install a 75kW diesel generator.
2. Shop & Maintenance Facility – The goal at this facility is to keep all operations online necessary to maintain critical equipment. To power the Shop & Maintenance Facility we will install a 150kW diesel generator.
3. Recycling Facility – The goal at his facility is to keep the operations online except for the large grinder. To power the recycling facility we will install a 175 kW diesel generator.
4. Liquid Waste Facility – The goal at this facility is to power the sewage treatment and storage systems to ensure continued capacity for liquid waste disposal. To power the Liquid Waste Facility we will install an 80kW diesel generator.
5. CNG Facility – The goal at this facility is to ensure that CNG fuel is delivered to mission-critical equipment. To power the CNG Facility we will install a 175kW diesel generator.

Disaster Relief Equipment

MarBorg Industries possesses many valuable pieces of equipment that we will make available in the event of a natural disaster. A summary of MarBorg Industries' equipment is listed below.

Equipment Description	Quantity
Roll-Off Trucks	24
Front-Loader Trucks	18
Rear-Loader Trucks	29
Side-Loader Trucks	9
Satellite Trucks	2
Stake-Side Trucks	4
Pumper Trucks	16
Grey Water Trucks	2
Semi-Trucks	4
Tanker Trucks	1
Walking Floor Trailers	4
Roll-Off Trailers	4
Excavators w/ Grapple	3
Excavators w/ Stump Sheerer	1
Excavators w/ Concrete Pulverizer	1
Wheel Loaders	8
Fork-Lifts	8
Street Sweeper	1
Grinder	1
Bailer	2
Roll-Off Boxes	480
Storage Boxes	106
Portable Offices	20
Portable Restrooms	400
Four Station Sinks	100
Portable Showers 8 stall	5
Portable Showers 12 stall	5
250 Gallon Holding Tanks	50
Temporary Fencing	

In the event that MarBorg Industries suffers substantial equipment loss during a disaster, we have established Mutual Aid relationships with several other entities where we can use their spare vehicles to provide our mission-critical services. These relationships include those listed below. MarBorg also has access to a large network of rental trucks that can be delivered within 24 hours.

South San Francisco Scavenger	
Automated Side Loaders	10
Front Loaders	8
Roll Off	10
Rear Loaders	6
Heli Star Trailers	4
Tractors	2
Transfer Trailers	6
Walking Floors	4
Semi-Tractor	1

EJ Harrison & Sons	
Front Loaders	4
Side Loaders	4
Roll Off	1

Prince Motors	
Rear Loaders	3
Front Loaders	3
Side Loaders	8

AMREP	
Side Loaders	2

Additionally, MarBorg has a Teaming Agreement with a consortium of disaster response companies throughout the United States to provide disaster relief. There is no single company that can provide all the services necessary in a large scale disaster so groups of companies have banded together to provide comprehensive services to affected communities. As a result of this partnership we are able to secure the following additional equipment in the event of a disaster:

Potable Water Trucks	Tables
Mobile Laundry Units	Chairs
12 Station	Cots
Pole Tents	Shower Units
Shelter Tents	Grey Water
HVAC Units	Light Towers
Generators	Water Distribution
Power Distribution	Hand Washing Trailers

Disaster Relief Labor

MarBorg Industries has 235 employees that are available to provide mission-critical disaster relief services. Of MarBorg’s 235 employees, almost half of them live locally in the Santa Barbara/Goleta area and can be immediately available. 59 of our employees live South of Santa Barbara in the Ventura/Oxnard area and 64 live north of Santa Barbara in the Lompoc/Santa Ynez area, as shown below.

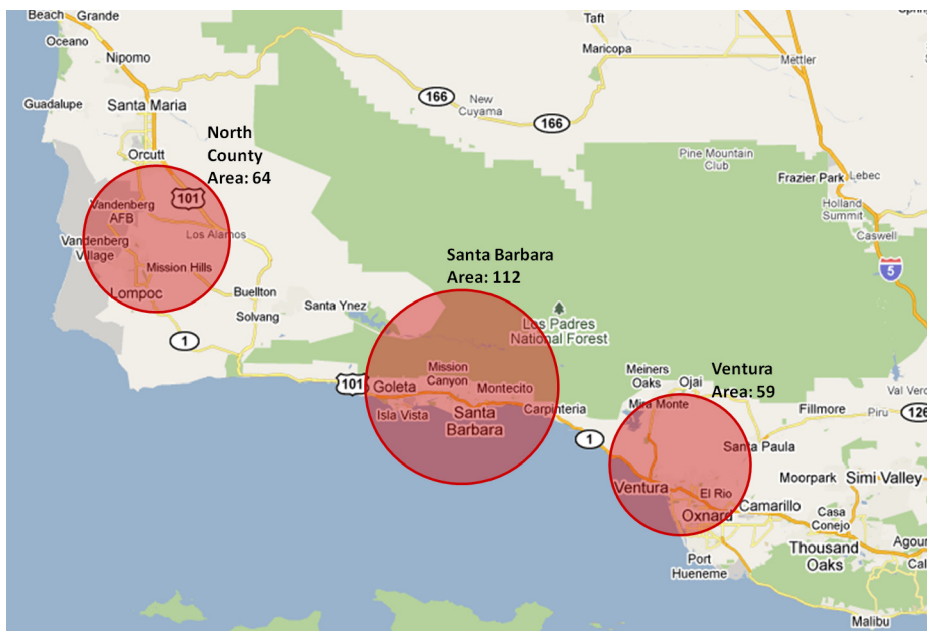


EXHIBIT 5.08b

HAZARDOUS WASTE HANDLING PROTOCOL

Franchisee will attach to this Exhibit, its Hazardous Waste Handling Protocol, including the following provisions:

1. **Mandatory Personnel Training:**

- for all **drivers:** HAZWOPER First Responder, Awareness Level training meeting the requirements of 29 CFR 1919.120(q)(6)(i), including hazard evaluation methods, emergency preparedness, and emergency response plan implementation techniques with the intent that they learn who, what and how to report on the incident,
 - for all **route supervisors:** 24-Hour HAZWOPER General Site Worker training meeting the requirements of 29 CFR 1919.120(e) (hazardous waste Operations and Emergency Response), including hazard recognition and measurement, as well as personal protective equipment and work practices in keeping with the risk level, and
 - for all **employees** specified in 29 CFR 1919.120(e)(8), at least 8 hours of refresher training annually,
2. means of driver inspection, such as visual inspection during tipping of containers into vehicles,
 3. immediate driver response, such as load segregation and notification procedures, including leaving Non-collection notices, when safe,
 4. driver notification, such as calling Franchisee's dispatcher or route supervisor,
 5. customer notification, including description of proper means to dispose of Unpermitted Waste, by phone call and/or written material,
 6. notification of appropriate local agency or department (with contact phone number),
 7. appropriate action, such as segregation and containerization for manifesting and transport for disposal as required by law or securing services of permitted handling and transport company,
 8. compliance with law, including regulations of the federal Department of Transportation (DOT) (Title 49 CFR) and of the United States Environmental Protection Agency (Title 40 CFR), and
 9. form, content and placement of labels on containers that prohibit discard of hazardous waste, special waste and e-waste.

Franchisee may change this protocol. Changes are effective when received by the County.³

MarBorg Industries will provide the following hazardous waste training:

- for all **drivers**: HAZWOPER First Responder, Awareness Level training meeting the requirements of 29 CFR 1919.120(q)(6)(i), including hazard evaluation methods, emergency preparedness, and emergency response plan implementation techniques with the intent that they learn who, what and how to report on the incident,
- for all **route supervisors**: 24-Hour HAZWOPER General Site Worker training meeting the requirements of 29 CFR 1919.120(e) (hazardous waste Operations and Emergency Response), including hazard recognition and measurement, as well as personal protective equipment and work practices in keeping with the risk level, and
- for all **employees** specified in 29 CFR 1919.120(e)(8), at least 8 hours of refresher training annually.

This training will be in addition to the HAZWOPER 40 training that is provided for all employees who may deal with hazardous waste in their regular duties. The HAZWOPER 40 hazardous materials training course is provided by Dickinson International Consultants, and consists of an initial 40-hour training class followed by an 8-hour annual refresher. This course is provided for all employees who may deal with hazardous materials, including four C&D Facility employees, four David Love employees, two employees from the Cacique Street ABOP Center, and the Safety Manager. Topics covered in the HAZWOPER 40 course include:

- Regulation Overview
- Site Characterization
- Toxicology
- Hazard Recognition
- Hazardous Chemical Awareness
- Hazard & Safety Analysis
- Radiological Hazards
- Respiratory Protection
- Personal Protective Equipment
- Site Control
- Decontamination
- Medical Surveillance
- Air Monitoring
- Confined Space Entry
- Emergency Response
- Emergency Procedures
- Material Sampling

- Safe Work Practices
- Personal Sampling
- Excavation
- Fire Protection
- Introduction to Bloodborne Pathogens
- Bloodborne Pathogens: Control and Compliance
- Bloodborne Pathogens: Understanding Hepatitis B
- Bloodborne Pathogens: Communication and Training
- Bloodborne Pathogens: Revisions and Additions to OSHA Standards

Following the initial 40 hour training course, each employee is required to complete three days of field experience under a trained supervisor before they are considered fully trained.

In addition to HAZWOPER training courses, MarBorg also has the following policies in place regarding hazardous waste that may be discovered by a driver along his collection route.

All side-loader collection vehicles will be equipped with a variety of cameras, one of which will be installed inside the hopper. This will enable the driver to see the material as it is being dumped and packed to insure there is minimal contamination of the recycling or green waste loads, and minimal recyclable materials in the trash loads. The driver will also be able to determine if hazardous material has been included in any of the containers.

If the driver identifies hazardous materials in a collection container prior to tipping that container, he will leave a non-collection notice on the container and notify his supervisor of the situation. If the driver identifies hazardous materials after they have been dumped into the hopper, he will attempt to determine if the material has contaminated the load, or if the material is in a sealed container. If the material is sealed and it is safe to do so, the driver will remove the material from the hopper and leave it behind with a non-collection notice. If the material appears to have contaminated the load, the driver will bring this load to MarBorg's C&D Facility where the load will be handled appropriately by HAZWOPER 40 trained employees.

In all cases, the driver will notify his route supervisor or dispatcher of the situation, and leave a non-collection notice for the customer. When appropriate, the route supervisor or dispatcher will notify the Hazardous Materials Unit of the Santa Barbara County Fire Department at (805) 686-8170.

Customers will be notified of the prohibition against hazardous waste and universal household waste in collection containers on the labels on those containers, as well as on www.MarBorg.com. MarBorg's website also informs customers of the appropriate facilities for the disposal of such waste.

Acknowledgment: Franchisee has submitted, and County has received, the attached Hazardous Waste Handling 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 _____

EXHIBIT 6.03g DIVERSION PLAN

Franchisee will attach to this Exhibit its Diversion Plan with respect to the following, containing its strategy to meet the Minimum Diversion Requirement:

1. refuse
2. recyclables
3. green waste
4. bulky waste
5. special waste (including e-waste)
6. manure.

Franchisee will include a description of how it will sort recyclables and green waste from refuse collected on wet-dry routes. Franchisee will describe how to corroborate whether discards in bins contain 50% recyclables and green waste.

Franchisee will include a plan for outreach to customers to perform better source separation of recyclables, green waste and other solid waste that can be diverted from disposal.

Franchisee will revise this Diversion Plan upon request of County, and as acceptable to the County⁴

⁴ **Acknowledgment:** Franchisee has submitted, and County has accepted, the attached Diversion 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. after the franchise date, the following date following any change, as evidenced by their following signatures :

Date_____

County Representative: _____

Franchisee Representative_____

MarBorg Industries has extensive operations in place to meet and exceed the 50% diversion goal in Zone 2 of the County. MarBorg will provide residential collection of commingled recycling, green waste, Christmas trees, and biannual bulky household items, and commercial collection of commingled recycling, green waste, and a variety of specialized routes designed to maximize diversion.

Central to all of MarBorg's diversion efforts is the C&D Facility, which will continue to divert recyclable material from the landfill. Other strategies include specialized routes for food waste, mixed or slightly contaminated loads, sorting of commercial loads at MarBorg's C&D Facility, and including MarBorg's ABOP and Buy Back Centers in the upcoming Franchise Agreement. In addition, MarBorg supports a partnership in constructing a new Commingled Material Recovery Facility in the Santa Barbara area. MarBorg also understands the importance of customer knowledge and education for meeting or exceeding any goals set by the County.

Diversion from MarBorg's C&D Facility

MarBorg will continue to use the C&D Facility to sort and divert commercial recyclables as well as non-traditional recyclable materials such as drywall, carpet, and concrete.

Specialized Routes

Dirty Green Routes

MarBorg Industries will collect specialized routes from residential and commercial bin customers with a high proportion of green waste or manure in their trash bins. These bins, while containing mostly green waste or manure, are contaminated with trash from the properties as well. All of this material is brought to MarBorg's C&D Facility where it is sorted, resulting in a recycled rate of approximately 80-90%.

High Content and Low Content Routes

Other specialized MarBorg routes similar to the dirty green routes include high content (roughly 50/50 trash/recycling) and low content (90/10 trash/recycling) collection. These routes are designed for bin customers who either don't have the space to utilize both trash and recycling bins, or bins that have been determined to contain a reasonable proportion of recyclable material. This program will also be used for customers who dispose of nontraditional recyclable material, such as rocks and tile from masonry operations, plastic and metal from auto body shops, and more. All of this material will be brought to MarBorg's C&D Facility and sorted.

ABOP and Buy Back Facilities

MarBorg will continue to operate the two ABOP and Buy Back facilities in the South Coast area, located at 20 David Love Place in Goleta and at 725 Cacique Street in Santa Barbara. These centers allow customers to drop off ABOP materials, such as paint, batteries, oil, antifreeze, fluorescent lights, and household electronics, and to redeem Buy Back materials, such as glass, cardboard, and metal. The ABOP disposal services are offered free of charge to all residential customers, and the Buy Back services pay customers for their material in accordance with the California Redemption Values set by the State.

Reuse Partnership

MarBorg has partnered with a local material reuse center called Demo 2 Design. Reusable materials that are brought in to the C&D Facility will be routed to Demo 2 Design, allowing for their reuse in local building and renovation projects.

Customer Behavior and Education

In addition to having adequate recycling container capacity, customers must be informed as to what materials should be placed in each container. Detailed information will be provided in the customer orientation packets that customers receive when their containers are initially delivered. Quarterly newsletters will also contain this information. All holiday e-mail alerts, and any other e-mails sent from MarBorg, contain a link to MarBorg's website showing what can and what cannot be disposed of in the residential recycling program (www.marborg.com/recyclecollection.html). This information can also be directly accessed from the website under the "Collection Services" heading. Commercial customers can find the equivalent information on the web site as well, in a downloadable brochure of what is allowed in each container. Commercial customers will also receive an annual mailing regarding the mandatory recycling program and a thorough description of recycling procedures and tips.

MarBorg reaches out to customers not only through literature, but also through school presentations, tours, public speaking, and festival sponsorships described above. All of these practices serve to increase awareness of the importance of diversion, as well as practical tips and suggestions for how to increase diversion in the home, office, or school.

ATTACHMENT 8.03d

EXAMPLES OF APPLIABLE LAW

Examples of applicable law include law relating to the following:

1. *health*
2. *safety,*
3. *fire,*
4. *mitigation monitoring plans,*
5. *building codes,*
6. *zoning,*
7. *non-discrimination,*
8. *vehicles*
 - *Control Measure for Diesel Particulate Matter from On-road Heavy- Duty residential and Commercial solid waste collection vehicles, 13 CCR 2020 et seq.,*
 - *California Health and Safety Code § 43000 et seq., with respect to air emissions (smog checks),*
 - *California Vehicle Code § 27456b, with respect to tires,*
 - *California Vehicle Code § 34500 et seq., with respect to documentation through its maintenance log or otherwise of a safety compliance report issued under Division 14.8 of the California Vehicle Code as applicable to each vehicle, including bi-annual "BIT" inspections conducted by the California Highway Patrol, documentation through maintenance log or otherwise of a safety compliance report, vehicle highway lighting, flashing and warning lights, clearance lights, and warning flags, registration, weight limits, cleaning, enclosure / water-tight beds,*
 - *Rules and regulations promulgated under the California Vehicle Code with respect to vehicle highway lighting, flashing and warning lights, clearance lights, and warning flags,*
 - *Rules and regulations of the California Department of Motor vehicles with respect to vehicle registration,*
 - *vehicle weight limits,*
 - *The appropriate class of drivers' licenses issued by the California Department of Motor vehicles,*
 - *14 CCR 17341, 17342, 17343 and 17344, with respect to equipment construction, safety, and parking and identification of operating equipment.*
9. *containers, such as:*

- 14 CCR 17314, with respect to maintenance and placement for collection,
- 14 CCR 17317, with respect to placing Franchisee's name and telephone number on Receptacle,

10. 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

11. 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.),
- the Clean Air Act, (42 U.S.C. §1351 et seq., 42 U.S.C. §7401-7642) and *Clean Water Act*, and,corresponding State requirements,
- Emergency Planning and Community Right to Know Act, (42 U.S.C. §11001 et seq.),
- regulations governing the recovery of ozone-depleting refrigerants during the disposal of air conditioning or refrigeration equipment, including 40 C.F.R. Part 82, and
- any wash-down requirements for containers, trucks or facilities,

12. *County Code*,

13. Civil Rights Act of 1964 (Sub chapter VI or Chapter 21 of Title 42),

14. *customers' privacy rights*,

15. *business-related laws, such as taxation, anti-trust, securities and reporting.*

EXHIBIT 8.03e

PERMITS

Franchisee shall attach its permits to this Exhibit, including the following. It will update this Exhibit 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.*,
7. **CNG fueling facility**, and
8. NPPDES Industrial General Permit.

ATTACHMENT 10.01a RECORDS

Franchisee will daily collect and record, at a minimum, the information required in Monthly Reports under Exhibit 10.02a, and the following information, indicating the day of the week and date:

1. **Collection, Disposal and Processing:**
 - weight of each vehicle load (gross, tare and net), or volume estimates of green waste and corresponding tonnage equivalents number of tons of refuse, recyclables, green waste and bulky waste Collected and delivered to each Identified Solid Waste Facility,
 - route number(s),
 - truck number,
 - Identified Solid Waste Facility's certified weight ticket number for each load, and weight of each load (gross, tare and net), or volume estimates of green waste and corresponding tonnage equivalents, as appropriate, disposal and processing costs (per ton and aggregate),

2. **Accounts Serviced:**
 - list of customers including the following:
 - name,
 - mailing address for bills,
 - address of serviced premise,
 - service subscription (containers type, number capacity)
 - with addresses and Service subscription levels,
 - whether commercial customer has demonstrated that it is self-hauling recyclables or been granted an exemption from the County's Mandatory Business Recycling Program.
 - the total number of customers per route number and customers added or deleted,
 - number of *non-collections* per route, address of each customer where non-collection occurred, and reason for non-collection,
 - promotional materials distributed-number of copies distributed; description, and route number(s).

3. **Containers:**
 - number of containers for each capacity:
 - aggregate number,

- per route,
 - customer information
 - address
 - notation of any special service (such as regular Bin service, Roll-out)
 - type, number and capacity of containers,
 - ID numbers,
 - customer requests to change frequency of franchise services or size of containers, including reason,
 - promotional, informational or educational materials distributed (number of copies distributed, descriptions and route number(s)),
4. **Special franchise services- aggregate number:**
- regularly scheduled bin service and number of bins,
 - bulky waste collection, and
 - emergency services (and description), including the address of each customer (or location of emergency services) and the total number of customers for which Franchisee provided the special services,
5. **Billing records** for each customer under Section 4.16,
6. **green waste** information, including cost, productivity, tons Collected, person hours, number of stops, number of participating homes, number of routes and all other data on franchise services with respect to green waste,
7. any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to the amounts paid pursuant to this Agreement (including the Rate, any fees paid to County, and Solid Waste Program Fees, County and Franchisee Reimbursable Costs, Franchisee fees described in Section 13.04, damages) or performance of this Agreement, including the following:
- Minimum Diversion Requirement,
 - routing,
 - level of each customer's services,
 - customer complaints,
 - employee training,
 - inventory,
 - maintenance logs,
 - a complete customer subscription information,
 - all information required for reports, and
 - sufficient information for County to corroborate the amounts payable by Franchisee to County under this Agreement.

Section	Record Keeping Requirement
4.09b	leaks
4.11b	daily customer communications
4.12c(4)(iv)	phone response standards
4.16a(4)	suspension / termination of service for non-payment; reinstatement of service
4.16a(5)	customer refunds
5.01	route maps and schedules
5.02b(2)	results of noise tests
5.02b(3)	vehicle maintenance log / safety compliance reports
5.02d(2)(ii)	dates vehicles are painted
5.02d(3)	evidence of oil recycling / any use of re-refined oil
5.04c	CHP BIT inspection reports
5.05b	container inventory
5.06b	results of employee drug testing driver safety training
5.06d	Compliance with Federal Immigration & Control Act of 1986
5.06e	Failure to abate notices from CAL OSHA
6.01b	weight records
8.01	direct costs of providing emergency services

ATTACHMENT 10.02a MONTHLY REPORTS

[COUNTY FORM / EXCEL SPREAD SHEETS TO BE INSERTED]

In its Monthly Report Franchisee will include, the following:

SECTION	REPORTING OBLIGATION
4.09c	Customers' notices of damaged property, with resolution
4.10	Non-collection notices (including for hazardous waste)
4.11a	dates and locations of reported missed collections
4.11b(1)	customer complaint log, including missed pickups, and a description of how each complaint was resolved
4.12c(4)(iv)	Phone response standards
10.01a	updated list of customers and their respective franchise service subscriptions
6.01b	Information with respect to delivery of green waste to Organics Site(s) and recyclables to MRFs not owned or operated by County
6.03AB 939 Information	Identified Solid Waste Facility tonnage and County DRS tonnage
Operations	a discussion of franchise service or operational problems and their resolution or planned action
	any other information requested by County related to Franchisee providing franchise services and satisfying its franchise obligations, and to this Agreement

Franchisee will represent and warrant that it has met its franchise obligations during that month, or describe any that it has *not* met.

ATTACHMENT 10.02a ANNUAL REPORTS

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
5.02b(2)	certified results of vehicle noise tests
5.02d(2)(ii)	Digital photograph of each vehicle used in the service area
5.05b	updated container inventory
RE AB 939: County's diversion reporting requirements	any information not previously supplied in any Monthly Reports necessary to meet the reporting requirements of the CA IWM Act
RE 6.03b	substantiated calculation demonstrating (non)compliance with the Minimum Diversion Requirement
RE Article 12	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.
	any other information requested by County related to Franchisee providing franchise services and satisfying its franchise obligations, and to this Agreement

ATTACHMENT 10.03 FINANCIAL STATEMENTS

Franchisee will submit financial statements in substantially the form provided from time to time by County.

	Residential	Commercial	Rolloff	Total
Revenues:				
Operating Revenue				
Recycling 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)				

EXHIBIT 11.01 INSURANCE

a. Coverage Requirements. Without limiting its Indemnities, Franchisee will obtain insurance coverage meeting the requirements in this Exhibit or under law, whichever is greater. Franchisee may use a combination of primary and excess insurance coverage to satisfy these requirements, but excess policies must provide coverage as broad (“follow form” over) the underlying primary policies.

1. **General Liability Insurance** written on ISO policy form CG 00 01 (occurrence) or its equivalent (and not CG 00 02 claims made) with policy limits of not less than 3 million dollars per occurrence:

Broad Form Property Damage:

Contractual Liability

premises and Operations

Products/Completion Operations Aggregate:

personal and Advertising Injury:

The general liability policy must provide contractual liability coverage for Indemnities under Section 11.02, by endorsement, schedule or other documentation, if necessary to provide coverage.

2. **Pollution Legal Liability Coverage** with a limit of not less than \$5 million per occurrence covering loss (including cleanup costs) that Franchisee becomes legally obligated to pay as a result of claims for bodily injury, property damage, and cleanup costs (including expenses required by environmental laws or incurred by federal, state, or local governments or third parties) resulting from pollution conditions caused by transported cargo (including waste). For the purpose of this Subsection, “pollution conditions” includes the dispersal, discharge, release, or escape of any solid, liquid, gaseous or thermal irritant or contaminant (such as smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, and waste materials) into or upon land, any structure on land, the atmosphere, or any watercourse or body of water (including groundwater), provided the conditions are not naturally present in the environment in the amounts or concentrations discovered.

The liability coverage for pollution must provide contractual liability coverage, by endorsement or schedule, if necessary, for Indemnities.

3. **Automobile Liability Coverage**

- written on ISO policy forms CA 00 12 pr CA 00 20 (or their equivalent) (occurrence) with a combined limit of liability not less than \$3 million for each accident,
- endorsed to delete the pollution and/or the asbestos exclusion and include pollution liability (using form CA 99 48 or its equivalent) for accidental spills and discharges while transporting and/or processing materials, and
- covering all vehicles (any auto): owned, non-owned or hired autos.

If Franchisee is subject to federal regulations, Franchisee also will maintain any other coverage necessary to satisfy state or federal financial responsibility requirements.

4. **Workers' Compensation and Employers' Liability** insurance providing

- workers' compensation benefits required by the California Labor Code or by any other state labor law, and for which Franchisee is responsible, and
- Employers' Liability coverage with limits of not less than the following:

Each accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

b. Insurer qualifications. Franchisee will secure insurance provided by an insurer meeting the following qualifications:

1. is acceptable to County,
2. is an admitted company in California,
3. has a size category of VII or larger by A.M. Best Company, Inc., and
4. has a rating of A or better by A.M. Best Company, Inc.

c. Insurance Coverage Requirements for Subcontractors. Franchisee will insure each Subcontractor performing collection by providing evidence that either:

1. Franchisee is maintaining insurance required by this Section protecting Franchisee and County interests against liabilities caused by the acts, errors or omissions of the Subcontractor, or
2. the Subcontractor is maintaining that insurance itself.

d. Evidence of Coverage

(1) Provision. Franchisee will provide endorsements, schedules and other evidence of coverage with respect to Franchisee and any Subcontractor requested by and acceptable to County, at the following times:

1. on or before the Agreement Execution Date,
2. Within one week of a policy's renewal, and
3. within 10 County business days of County request.

Neither County failure to obtain, nor County receipt of, or failure to object to a non-complying insurance certificate or endorsement or any other insurance documentation or information provided by Franchisee, Franchisee insurance broker(s) and/or insurer(s), can be construed as a waiver of any obligation under this attachment.

d(2)-(5) Franchisee will give County the documentation required in following Subsections d(2)-(5), attached to this Exhibit, including the following:

- (2) Certificates of insurance with evidence of insurer's qualifications,
- (3) Endorsements,
- (4) Schedules of Broker's letters,
- (5) Signature verification.

EXHIBIT 11.01d(2)

CERTIFICATES OF INSURANCE

Franchisee will provide certificates (or other evidence of coverage) containing at a minimum, the following information with respect to Franchisee and any Subcontractor:

1. **Agreement name:** explicitly identifying this Agreement (for example, UNDER DESCRIPTION OF OPERATIONS), and if necessary to secure contractual liability coverage as an “insured contract” or otherwise, include a schedule or endorsement that specifically identifies this Agreement,
2. **Insured party:** naming the insured party that matches the name of Franchisee,
3. **Insurer:** providing the full name of each insurer providing coverage and the insurer’s NAIC (National Association of Insurance Commissioners) identification number,
4. **Financial rating** of insurer,
5. **Types, policy numbers, policy effective / expiration dates and limits:** explicitly referencing each type and corresponding limit of coverage required under this Agreement, together with the following:
 - policy number,
 - effective date and expiration date,
 - identification of each required ISO policy form or confirmation of its equivalency to ISO policy forms required under this Agreement (such as “auto liability ISO form CA 00 12”). Where the Agreement does not require a specific ISO policy form, the certificate of insurance must specifically reference the required type of coverage (such as “pollution liability” under TYPE OF INSURANCE – OTHER) together with a summary description of its coverage (such as “pollution conditions caused by transported cargo” under SPECIAL PROVISIONS),
6. **30 days’ cancellation Notice:** containing the express condition that County must be given written notice by mail at least 30 days in advance of cancellation (10 days, with respect to cancellation for nonpayment of premium) for all policies evidenced on the certificate of insurance. Endorsements cannot contain mere “best effort” modifiers or relieve the insurer from its responsibility to give that Notice. CANCELLATION information on the certificate of insurance must delete language such as “failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives,”
7. **Deductibles and self-insured retentions:** identifying any deductible and self-insured retention. Upon County request, Franchisee will reduce any deduction or self-insured retention (SIR) as it applies to any County Insured or provide a letter of credit, certificate

of deposit or other financial assurance acceptable to County guaranteeing payment of all retained losses and related costs and expenses related to investigations, claims administrations, and legal defense. The letter of credit or certificate of deposit must be provided by a bank satisfactory to County. Policies must not obligate County to pay any part of any deductible or SIR. If anyone makes a claim against Franchisee or any subcontractors exceeding the amount of any deductibles or self-insured reserves, Franchisee will inform the following persons at the following times:

- the County, within one week of the claim, and
 - the insurer, within the time required under the policy, and
8. **Claims made:** if any insurance coverage is written on a claims-made form (such as pollution liability), evidencing that the “retro date” is before the Agreement Execution Date. Franchisee must maintain that coverage for at least 5 years after the Termination Date. Within 2 days of upon County request, Franchisee must provide County with evidence of that coverage. **FRANCHISEE’S OBLIGATIONS SURVIVES THE FRANCHISE TERM.**

[FRANCHISEE, ATTACH COIs AND EVIDENCE OF INSURER’S QUALIFICATIONS TO THIS EXHIBIT.]⁵

⁵ **Acknowledgment:** Franchisee has submitted, and County has accepted, the attached documentation as of the following date: _____
County Representative: _____
Franchisee Representative: _____

EXHIBIT 11.01d(3)

ENDORSEMENTS

Franchisee will give County copies of the following endorsements (or with respect to “additional insured” evidence of blanket or contractual additional insured status) or other documentation with respect to Franchisee and any Subcontractor satisfactory to County, including the following:

1. **additional insured** endorsement to each liability policy, explicitly adding **County Insureds** as additional insureds (coverage must not contain any special limitations on the scope of protection of County Insureds; the endorsement may be an automatic additional insured endorsement if it meets these requirements),
2. **waiver of subrogation** necessary to effect Franchisee waiver of its and its insurer(s)’ rights of recovery against County under all insurance, to the fullest extent permitted by law.
3. insurance is excess or **primary and not contributing** with any other insurance or self-insurance programs maintained by County Insureds,
4. the **full policy limits** and scope of protection applies to each of County Insureds, even if those limits or scope exceed the minimum required insurance specifications in this Agreement,
5. **Insured-vs.-insured**. Clearly evidence that all liability policies provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured-versus-insured exclusions or limitations,
6. any failure to comply with reporting provisions of policies will not affect coverage provided to County Insureds.

“County Insureds” include the following individuals or entities related to the County:

1. County
2. officers, officials,
3. employees,
4. agents,
5. assigns, and
6. volunteers

[FRANCHISEE, ATTACH ENDORSEMENTS TO THIS EXHIBIT.]⁶

EXHIBIT 11.01d(4)
SCHEDULES OR BROKER'S LETTER

Franchisee must provide schedules or other evidence (such as written confirmation of Franchisee's broker) that policies comply with this Agreement, including:

1. Coverage will contain no special limitations on the scope of protection afforded to County Insureds,
2. liability policies of Franchisee and any Subcontractor provide contractual liability coverage for Indemnities, such as listing this Agreement as an "insured contract", and
3. Any failure to comply with reporting provisions of policies will not affect coverage provided to County Insureds.

[FRANCHISEE, ATTACH SCHEDULES OR BROKER'S LETTERS TO THIS EXHIBIT.]⁷

⁷ **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

Upon 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.]⁸

⁸ **Acknowledgment:** Franchisee has submitted, and County has accepted, the attached documentation as of the following date: _____

County Representative: _____

Franchisee Representative: _____

EXHIBIT 11.03 LETTER OF CREDIT

- a. **Draws.** Within 10 days after the franchise date, Franchisee will give County a Letter of Credit⁹ under which County can draw up to the Stated Amount¹⁰ during the franchise term in one or more drawings, in any of the following events:
2. Franchisee does not timely pay County any monetary obligation, including the following:
 - liquidated damages or compensatory damages assessed by County,
 - County's Reimbursement Costs under County's invoice for those costs,
 - Franchisee Fees or Solid Waste Program Fees,
 3. Franchisee does not pay any self-insured retention under any insurance policy
 4. Franchisee fails to provide an Assurance of Performance requested by County,
 5. Franchisee does not replace an expiring letter of credit (including expiration for non-renewal) with a new letter of credit at least 90 days before the expiration date,

⁹ **"Letter of Credit"** means the irrevocable standby letter of credit for the benefit of County, issued by a Bank, in form satisfactory to County in County sole discretion, including the following:

1. the procedures for and place of demand for payment, and
2. drawing certificate.
- 3.

¹⁰ **"Stated Amount"** means the greater of the following amounts:

1. the amount required under Section 17-20 of the County Code, or
2. during the first contract year of this Agreement, \$573,000, and
3. during the second and following contract years of this Agreement
 - (1) the **quarterly average** of the following amounts incurred during the **prior 12 months**:
 - gross receipts, plus
 - Franchise Fee and Solid Waste Program Fee that Franchisee owed County, plus
 - (2) **110%** of the following amounts incurred during the **prior 6 months**:
 - liquidated damages that County assessed Franchisee, plus
 - County Reimbursement Costs that County billed Franchisee.
4. **County Reimbursement Costs** means County direct costs plus 35% thereof.

6. Franchisee does not honor an Indemnification,
7. Guarantor does not honor its Guaranty, or
8. an event of default.

b. Term. The term of the Letter of Credit must be either of the following:

1. the same as the franchise term plus 180 days, or
2. renewable annually or at other period up to the franchise term plus 180 days.

The Letter of Credit may be released when the Bank¹¹ receives a certificate from County stating the following:

1. this Agreement has expired, or
2. this Agreement has been terminated for a period of 180 days or other preference period provided under law with respect to bankruptcy or insolvency of Franchisee, or
3. Franchisee has substituted an alternative letter of credit or other security document acceptable to County in County sole discretion, and
4. Franchisee does not owe County any money.

c. Transfer. The Letter of Credit must be transferable to any successor or assign of County.

Franchisee may substitute another letter of credit acceptable to County.

[FRANCHISEE, ATTACH LETTER OF CREDIT TO THIS EXHIBIT.]

¹¹ **“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.

EXHIBIT 11.04
FORM OF GUARANTY

EXHIBIT 12.01a

FRANCHISEE OR ANY OF ITS “FRANCHISEE MANAGERS”

The definitions of “Franchisee Managers” and “Position of Influence” are inserted here for the convenience of the parties, but the definition under Section 12.01 governs in case of any inconsistencies or conflicts.

“Franchise Managers” means the following

1. Franchisee,
2. Franchisee Representative
3. Franchisee officers and directors,
4. the officers and directors of any direct or indirect parent corporation of Franchisee, and
5. anyone in a Position of Influence

“Position of Influence” means the authority or responsibility to directly or indirectly administer, manage, direct, supervise, monitor or oversee franchise services or this Agreement, including any of the following:

1. reviewing or negotiating Franchisee’s contracts (including this Agreement),
2. providing in-house legal services with respect to franchise services or this Agreement,
3. preparing or overseeing Franchisee’s operating and capital budget, and
4. establishing policies and procedures related to the Criminal Conduct.

Franchisee will update this list in its Annual Report, or within one week of County request.

[FRANCHISEE, ATTACH LIST OF FRANCHISEE AND FRANCHISEE MANAGERS.]¹²

¹² **Acknowledgment:** Franchisee has submitted, and County has received, the attached list of Franchise Managers as of the later of the following dates:

1. the franchise date, 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 _____

ATTACHMENT 13.02a(1)

RATE SCHEDULE

The following Rates are in effect as of the franchise date, subject to subsequently adjustment evidenced by Resolution or other action of the County Board

These maximum Rates comprise Franchisee's compensation, under this Agreement, not charges to customers.

The Rates do not include either of the following:

1. any Franchise Business Fees (including the Franchise Fee) which are obligations of Franchisee payable by Franchisee to County, or
2. Solid Waste Fees which are charged by County but collected by Franchisee and forwarded to County..

As of the franchise date, the Tipping Fee Portion of each Rate (defined in Attachment 13.02b Rate Adjustments) will be adjusted based on changes in tipping fees effective FY 2011-2012.

As of the franchise date, the Operations Portion of each Rate (defined in Attachment 13.02b Rate Adjustment) will be annually adjusted beginning in franchise year / County's FY 2012-2013.

Zone 2 - Rates

RESIDENTIAL CART SERVICES RATES

(includes extra item, batteries, Christmas trees, sharps, and disabled carry-out collection services)

Single Family Homes or Multi-Family with Green Waste Service

1x week refuse, 1 x week green (64 or 96 gal), bi-weekly recyclables (up to 192 gal)

Service Category	Monthly Rate
96 gallon refuse	\$ 28.75
64 gallon refuse	25.20
32 gallon refuse	21.50
Additional 96 gal refuse	7.75
Additional 64 gal refuse	6.50
Additional 32 gal refuse	5.25
Additional 96 gal green	6.20
Additional 64 gal green	5.30
Additional 32 gal green	4.40
Additional 96 gal recyclables	0.00
Additional 64 gal recyclables	0.00
Additional 32 gal recyclables	0.00

Multi-family complexes with no green waste service (condos, townhomes, mobile home parks)

1x week refuse, bi-weekly recyclables (up to 192 gal) - no green

Service Category	Monthly Rate
96 gallon refuse	\$ 23.45
64 gallon refuse	20.80
32 gallon refuse	17.90
Additional 96 gal refuse	7.75
Additional 64 gal refuse	6.50
Additional 32 gal refuse	5.25
Additional 96 gal recyclables	0.00
Additional 64 gal recyclables	0.00
Additional 32 gal recyclables	0.00

Multi-family complexes with no green waste (condos, townhomes, mobile home parks)

2x week refuse, bi-weekly recyclables (up to 192 gal) - no green

Service Category	Monthly Rate
96 gallon refuse	\$ 29.90
64 gallon refuse	26.60
32 gallon refuse	23.00
Additional 96 gal refuse	12.40
Additional 64 gal refuse	10.40
Additional 32 gal refuse	8.40
Additional 96 gal recyclables	0.00
Additional 64 gal recyclables	0.00
Additional 32 gal recyclables	0.00

Extra Cart Services

Service Category	Monthly Rate
Pup truck route charge	\$ -
Backyard service charge	\$6/container
Distance charge (100 feet increments)	\$3/container
Over 500 ft negotiated	

RESIDENTIAL BIN SERVICES RATES (multi-family complexes & single-family residences with recycling service)
 (includes up to 30% addtl refuse capacity for recycling, extra items, batteries, Christmas trees, and sharps collection)

Service Category	Monthly Rate					
	Number of Collections per Week					
Container Type/Size	1	2	3	4	5	6
1.5 cubic yard - refuse	\$ 97.05	\$ 173.16	\$ 249.27	\$ 325.38	\$ 401.48	\$ 477.59
2.0 cubic yard - refuse	126.36	227.84	329.31	430.79	532.27	633.74
3.0 cubic yard - refuse	179.72	331.93	484.15	636.36	788.58	940.79
4.0 cubic yard - refuse	234.37	437.33	640.28	843.23	1,046.19	1,249.14
1.5 cubic yard - green	88.29	155.64	222.99	290.33	357.68	425.03
2.0 cubic yard - green	114.68	204.47	294.27	384.07	473.86	563.66
3.0 cubic yard - green	162.19	296.89	431.58	566.28	700.97	835.67
4.0 cubic yard - green	211.01	390.60	570.20	749.79	929.38	1,108.97
1.5 cubic yard - manure	88.29	155.64	222.99	290.33	357.68	425.03
2.0 cubic yard - manure	114.68	204.47	294.27	384.07	473.86	563.66
3.0 cubic yard - manure	162.19	296.89	431.58	566.28	700.97	835.67
4.0 cubic yard - manure	211.01	390.60	570.20	749.79	929.38	1,108.97

Commercial Services

Service Category	Monthly Rate					
	Number of Collections per Week					
Container Type/Size	1	2	3	4	5	6
1.5 cubic yard - refuse	\$ 97.05	\$ 173.16	\$ 249.27	\$ 325.38	\$ 401.48	\$ 477.59
2.0 cubic yard - refuse	126.36	227.84	329.31	430.79	532.27	633.74
3.0 cubic yard - refuse	179.72	331.93	484.15	636.36	788.58	940.79
4.0 cubic yard - refuse	234.37	437.33	640.28	843.23	1,046.19	1,249.14
1.5 cubic yard - recyclables	66.94	112.94	158.93	204.93	250.92	296.92
2.0 cubic yard - recyclables	86.21	147.54	208.86	270.19	331.52	392.84
3.0 cubic yard - recyclables	119.49	211.48	303.47	395.46	487.45	579.44
4.0 cubic yard - recyclables	154.07	276.73	399.38	522.03	644.69	767.34
1.5 cubic yard - green	88.29	155.64	222.99	290.33	357.68	425.03
2.0 cubic yard - green	114.68	204.47	294.27	384.07	473.86	563.66
3.0 cubic yard - green	162.19	296.89	431.58	566.28	700.97	835.67
4.0 cubic yard - green	211.01	390.60	570.20	749.79	929.38	1,108.97
1.5 cubic yard - manure	88.29	155.64	222.99	290.33	357.68	425.03
2.0 cubic yard - manure	114.68	204.47	294.27	384.07	473.86	563.66
3.0 cubic yard - manure	162.19	296.89	431.58	566.28	700.97	835.67
4.0 cubic yard - manure	211.01	390.60	570.20	749.79	929.38	1,108.97
1.5 cubic yard - noncompliance	112.27	203.60	294.93	386.26	477.59	568.92
2.0 cubic yard - noncompliance	146.65	268.43	390.20	511.97	633.74	755.52
3.0 cubic yard - noncompliance	210.16	392.82	575.48	758.14	940.79	1,123.45
4.0 cubic yard - noncompliance	274.96	518.51	762.05	1,005.60	1,249.14	1,492.69

Extra Bin Services Rates

Service Category		Monthly Rate
Additional Volume of Material Rates		
1.5 cubic yard		24.26
2.0 cubic yard		31.59
3.0 cubic yard		44.93
4.0 cubic yard		58.59
On-call bins		
1.5 cubic yard		48.53
2.0 cubic yard		63.18
3.0 cubic yard		89.86
4.0 cubic yard		117.19
Replacement of lids		
1.5 cubic yard		no charge
2.0 cubic yard		no charge
3.0 cubic yard		no charge
4.0 cubic yard		no charge

Push Rates

Roll-Off Service

\$6 per 25' per p/u

Service Category	Rate	
Rental	\$ 3.00	per day
Delivery	no charge	per load
Service	135.00	per load

Compacted Rates

For the collection in bins of waste that has been compacted by the generator, Collector will receive double the regular commercial bin charge.

Service Category	Monthly Rate
Once per Week - Refuse	
32 gallon - refuse	\$ 26.00
64 gallon - refuse	28.00
96 gallon - refuse	30.00
Additional 32 gal - refuse	6.00
Additional 64 gal - refuse	7.25
Additional 96 gal - refuse	8.50
Twice per Week - Refuse	
32 gallon - refuse 2x week	47.00
64 gallon - refuse 2x week	51.00
96 gallon - refuse 2x week	55.00
Additional 32 gal - refuse	12.00
Additional 64 gal - refuse	14.50
Additional 96 gal - refuse	17.00
Once per Week - Recyclables	
32 gallon - recyclables	8.00
64 gallon - recyclables	9.00
96 gallon - recyclables	10.00
Additional 32 gal - recyclables	3.50
Additional 64 gal - recyclables	3.75
Additional 96 gal - recyclables	4.00
Once per Week - Green	
32 gallon - green	12.00
64 gallon - green	13.00
96 gallon - green	14.00
Additional 32 gal - green	5.05
Additional 64 gal - green	5.95
Additional 96 gal - green	6.85

(CHECKLIST) Parties acknowledge that the Rate Schedule will include at least the following maximum Rates:

RESIDENTIAL (Single & Multi-family) / COMMERCIAL CARTS / BINS	
4.04a & b, 4.05	regularly scheduled collection of refuse, recyclables and green waste
RESIDENTIAL (Single & Multi-family) CARTS / BIN	
4.04a(1),(2), (3)	additional refuse, recyclables containers
4.04a(4) 4.04b(4)	extra on-call collections of bulky and special waste service
4.04a(6) 4.04b(6)	collection of Christmas trees after January 14
4.04a(8)	carry-out services for non-qualifying customers
RESIDENTIAL: Multi-family only CARTS only	
4.04a(3))	optional green waste service in carts
RESIDENTIAL (Single & Multi-family) BINS only	
4.04b(3)	optional green waste service in carts or bins
COMMERCIAL CARTS & BINS	
4.05(2)(i)	optional recyclables service in carts or bins
4.05(3)	optional green waste service in carts or bins
4.04b(7)	Optional manure service

ATTACHMENT 13.02b(1) RATE ADJUSTMENTS

a. **Annual Indexed and Pass-Through Adjustments.** Each year the maximum Rate will be adjusted effective July 1, according to the principles outlined in this Subsection, as implemented by County in spreadsheets. Rates will be escalated only if no event of default exists.

(1) **Indexed Adjustment of Operations Portion.** The Operations Portion of the maximum Rate is adjusted by 100% of the *average* monthly percent change in the CPI index during the period beginning March 1 of the prior calendar year through February 28 of the current calendar year.¹³ The total adjustment of the Operations Portion of the Rate, whether upward or downward, may not exceed 5% in any one franchise year. If any index is discontinued or revised during the franchise term, County will substitute another government index or computation that County determines to be comparable.

“Operations Portion” means the percent of the Rate equal to the following:

1. current Rate (which includes Franchisee Fees but excludes Solid Waste Program Fees), *minus*
2. current Tipping Fee Portion.

“Tipping Fee Portion” means the percent of the Rate attributable to Franchisee’s direct cost of service at each Identified Waste Management Facility (processing or tipping fees).

“CPI index” means the *Pacific Cities 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).*

(2) **Pass-Through of Tipping Fee Changes.** The Tipping Fee Portion of the maximum Rate is adjusted by 100% of the allocable difference in tipping fees at each MRF and Disposal

¹³As of the franchise date, the Operations Portion of the maximum Rate is X%.

Facility on March 1 of the prior calendar year and February 28 of the current calendar year.¹⁴

(3) Subtotal: Operations Portion + Tipping Fee Portion. The dollar amount of the Operations Portion is added to the dollar amount of the Tipping Fee Portion.

(4) Changes in Fees. The subtotal is multiplied by the applicable percent of Franchisee Business Fee and Solid Waste Program Fee.

(5) Rate Schedule. The Rate Schedule will be updated to reflect the sum of the following:

1. Operations Portion,
2. Tipping Fee portion,
3. Franchisee Business Fee, and
4. Solid Waste Program Fee.

b. Adjustments for Change in Law or Franchise Services. Once each contract year Franchisee may request an adjustment of (or County may adjust) the maximum Rate if Franchisee's direct costs of providing franchise services (other than direct costs of gate fees charged at a Solid Waste Facility) have increased or decreased due to a change in law or franchise service specifications.

c. Adjustment Process

(1) Adjustment Requests, Review, Consent

1. Information.

Within 15 days of County request, Franchisee will give County any information from Franchisee or its affiliates related to adjustment of the maximum Rate.

Franchisee will attach the following information in any request it might have for adjustment of the maximum Rate due to change in law or service specifications:

- the amount of the requested adjustment,
- the change in law or franchise service specifications and Franchisee's direct cost of providing new or different franchise service, and the consequent change in Operations Portion of the Rate.

¹⁴ As of the franchise date, the Tipping Fee Portion is X%.

- Franchisee’s calculations to support its request, and
 - all financial and other records related to its request.
2. **Additional Information.** Within 10 days of County request, Franchisee will give County any additional information from Franchisee or Franchisee’s affiliates reasonably related to adjustment of the maximum Rate.
 3. After County has had a reasonable period of time to request, review, and audit the requested information, it may adjust the Rate limit in its sole discretion, subject to Franchisee dispute under Subsection d(3) below.

(2) Calculations. All calculations are rounded to the nearest 1/100th decimal place (for example, 101.9656% to 101.97%, or 101.9637% to 101.96). The decimal 5 is rounded down (for example, 101.965% to 101.96%).

Adjustments to the maximum Rate are rounded to the nearest penny (for example, \$25.34).

(3) Franchisee Dispute. Upon Franchisee request, Franchisee may meet with representatives of County (such as Public Works Director or County Manager) to resolve a dispute with respect to maximum Rate. The existing maximum Rate limit will remain in effect until parties resolve the dispute or County terminates this Agreement. If they cannot resolve the dispute, then County may terminate this Agreement effective at a date no sooner than 3 months from the date printed on the Notice of termination, or a shorter time to which Franchisee agrees.

**EXHIBIT 17.07a(1)
COUNTY REPRESENTATIVE**

Name	Mark Schleich Deputy Director of Public Works (Resource Recovery and Waste Management Division)
telephone number	805 882-3600
e-mail address	Schleich@cosbpw.net
mailing address	<u>County of Santa Barbara</u> <u>Resource Recovery and Waste Management Division</u> <u>109 East Victoria St.</u> <u>Santa Barbara, CA 93101</u>
Franchisee office address	Same as mailing address

County may change its representative following Notice to Franchisee.¹⁵

¹⁵ **Acknowledgment:** County has submitted, and Franchisee has received, the attached identification of County Representative 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 _____

EXHIBIT 17.07b
FRANCHISEE REPRESENTATIVE

Name	Derek Carlson
Telephone number	805-963-1852
e-mail address	<u>dcarlson@marborg.com</u>
Mailing address	P.O. Box 4127 Santa Barbara, CA 93140
Franchisee office address	728 E. Yanonali St Santa Barbara, CA 93103

Franchisee may change any of this information following notice to County.¹⁶

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1. ¹⁶ **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 _____