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**Franchise Agreements
Zone 4 and Zone 5**

Between

County Of Santa Barbara

And

VALLEY GARBAGE & RUBBISH CO., INC

dba

Health Sanitation Service /

Waste Management

For

**Residential, Multi-family and Commercial
Solid Waste, Recyclables, Green Waste And**

Special Waste

Collection Services

**Franchise Date: May 1, 2011
Expiration Date: June 30, 2019**

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1 **Contract Conventions**

2 #

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

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

10 Text is arranged in the following outline:

11 **ARTICLE** I, II, III, etc.

12 **Section** 1.01, 1.02 etc.

13 **Subsection a, b, c, etc**

14 **(1) Subsection etc.**

15 **(i) Sub-subsection**

16 **Glossary**

17 Defined Term	Definition / Section Cross-Reference
18 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

bins	containers for collection of solid waste with front end loading vehicles, such as 3 yard dumpsters
bulky waste	<p>solid waste that cannot be contained within a cart, but can be lifted by 2 people using a dolly, including the following:</p> <ol style="list-style-type: none"> 1. furniture (such as chairs, sofas, mattresses and rugs), 2. appliances (such as refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “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. <i>See also other types of solid waste (refuse, recyclables, green waste), household hazardous waste, special waste (universal waste and e-waste) and sharps.</i></p>
business day	day on which County Administration building is open for business with the public
Business and Multi-family Recycling Program	Exhibit 4.05(2)(ii)
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
Change in Law	14.03a
collect, collection or other form	solid waste pickups made by Franchisee under this Agreement
commercial	<p>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:</p> <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)	<p>the receptacles supplied by Franchisee as part of franchise services for discard of solid waste pending collection, including the following:</p> <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": "MRFs" and "Organic Sites")
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	12.01a
Customer	anyone to whom Franchisee provides franchise services, such as owners, managers, tenants, occupants and other individuals having the care or control of any premises in the franchise service area; and County (with respect to collection of public containers and abandoned waste)
customer's collection day	4.04a(1) (Contrast "franchise service day".)
Customer Service Policy	4.09a 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 described in Section 7.01 and identified by County, including any Conversion Facility (See also other "Identified Solid Waste Facilities": "MRFs" and "Organic Sites")
diversion	6.03a
event of default	14.02
e-waste	<p>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></p> <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> 4. <i>any other covered electronic devices listed in the regulations</i>

	<i>adopted by the California Department of Toxic Substances Control pursuant to California Health and Safety Code Section 25214.10.1(b)</i>
franchise service day	Monday-Saturday, <i>except</i> holidays (Contrast “customer’s collection day”.)
franchise date	Cover page
franchise fee	13.04a(2) (See “Franchisee Business Fees” and compare “Solid Waste Program Fees”.)
Franchise Managers	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 Summary	Exhibit 14.13a (Contrast “Customer Service Summary”.)
franchise service(s)	4.01a (See also “franchise obligation”.)
franchise service area	4.01a / Exhibit 4.01a
franchise service asset(s)	5.05
franchise term	3.01a
franchise year	County’s fiscal year, July1 – June 30

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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
	4.09a	Customer Service Policy
	4.10b	Non-Collection Notice
	4.13a	CUSTOMER ORIENTATION PACKET (for residential single family & multi-family cart and bin service, multi-family bins, and commercial service) (1) <u>Customer</u> Service Summaries (2) <u>Franchise</u> Service Summaries (3) Discard and Set-Out Instructions
	4.16a #1	Form of customer bill
	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
	5.08	Hazardous Waste Handling Protocol
	6.03e	Diversification Plan
	8.03	Permits
	11.01	Insurance
	11.03	Letter Of Credit
	11.04	Parent Guaranty
	12.01a	Franchisee Managers
	17.07b	Franchisee Representative
Franchisee	Preamble	
Franchisee Business Fees	13.04(a)(1)	
Franchisee contact information	4.12d	
Franchisee Manager	12.01a	
Franchisee office	4.12a	
Franchisee office hours	4.12a(1)	
Franchisee phone hours	4.12c	
Franchisee Reimbursement Costs	8.01	
Franchisee Representative	17.07b / Exhibit 17.07b	
green waste	<p>organic solid waste:</p> <ol style="list-style-type: none"> 1. that is accepted at the Organic Site, and 2. that can fit inside the container. <p>As of the Franchise Date, examples of “green waste” include grass, leaves, flowers, ivy and other plants; branches and tree trimmings; and bedding straw, but exclude palm fronds, pampas grass, food, animal waste, and plastic bags or any other type of plastic. See also other types of solid waste (refuse, recyclables, bulky waste), household hazardous waste, special waste (universal waste and e-waste) and sharps.</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>See also solid waste (refuse, recyclables, green waste, bulky waste), special waste(universal waste and e-waste) and sharps.</i>
including	“including, without limitation”, “including, but not limited to”
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: 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
Monthly Report	10.02a / Attachment 10.02a
MRF(s)	the materials recovery facility described in 6.01a and identified by County (See also other “Identified Solid Waste Facilities”: “Disposal Facility/Facilities” and “Organic Sites”.)
multi-family	used with respect to dwellings other than single family homes, including the following: 1. having more than one unit (such as duplex, triplex, multi-family, apartment, stock cooperative and condominium residences, and mobile home parks, but <i>not</i> hotels or motels), 2. each with separate cooking and bathing facilities, and 3. located in the franchise service area (See “residential” (“multi-family and “single family”) and conversely, “commercial”.)
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”: “Disposal Facility/Facilities” and “MRF(s)”.)
ownership	18.01a(2)
permits	8.03e / Exhibit 8.03e
person	any of the following: 1. individual,

	<ol style="list-style-type: none"> 2. firm, association, organization, 3. partnership, corporation, joint venture, 4. trust, 5. the United States, 6. the State, 7. the County, a municipality or special purpose district, or 8. other entity
Pleas	12.01e
Position of Influence	12.01a
Solid Waste Program Fee	13.04a (Compare "Franchisee Business Fee".)
public containers	4.06b(1)
Rates	13.01b
Rate Schedule	13.02 / Attachment 13.02
reasonable business efforts	efforts a reasonably prudent business person would expend under the same or similar circumstances, exercising business judgment and intending in good faith to take steps calculated to satisfy its obligations
records	the Items enumerated in Attachment 10.01
recyclables	<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", #3-7 and bundled plastic bags 2. California redemption containers 3. glass containers 4. ferrous and non-ferrous metals 5. white paper, mixed paper and newspaper 6. corrugated cardboard and chipboard 7. telephone books 8. materials commonly collected in recycling programs in the County. <p><i>(See also other types of solid waste (refuse, green waste, bulky waste), household hazardous waste, special waste (Universal Waste and e-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 (recyclables, green waste, bulky waste), household hazardous waste, special waste (universal waste and e-waste) and sharps.)</i></p>
regulatory authority	14.02 - Table Item 8.08
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	Used with respect to either or both of the following: <ol style="list-style-type: none"> 1. single family residences, and 2. multi-family residences. (See conversely, “commercial”)
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	any item having corners, edges, or projections capable of cutting or piercing the skin to deliver injections or for medical purposes, including the following: <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	“solid waste “defined in CA Public Utility Code Section 40191 that is discarded in the franchise service area, including the following: <ol style="list-style-type: none"> 1. refuse 2. recyclables 3. green waste, and 4. bulky waste. <i>See also types of solid waste (refuse, recyclables, green waste, bulky waste), household hazardous waste, special waste (universal waste and e-waste) and sharps.</i>
Solid Waste Program Fee	13.04b
special waste	<ol style="list-style-type: none"> 1. Universal Waste, and 2. e-waste
State	State of California
termination events	events listed in Section 15.01a
Transfer	18.01b(2)
Transfer cost	18.01b(4)
Transition Plan	4.03 / Exhibit 4.03
uncontrollable circumstances	14.03a
Universal Waste	materials that the California Department of Toxic Substances Control considers universal waste, including materials listed in 22 CCR 66261.9, such as the following: <ol style="list-style-type: none"> 1. batteries

	<ul style="list-style-type: none"> 2. aerosol cans 3. certain mercury-containing devices 4. thermostats, lamps, cathode ray tubes, 5. computers, calculators, 6. telephones, answering machines, 7. radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders, compact disc players/recorders, and 8. some appliances
vehicles	5.02b
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

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1 **PREAMBLE**

2

3 This document comprises two agreements between County of Santa Barbara and Franchisee
4 named on the execution page of this Agreement, with respect to Zone 4 and Zone 5,
5 respectively, Its text applies identically to both Zone 4 and Zone 5, *unless* the text explicitly
6 states that it is applicable to Zone 4 or Zone 5. County may administer and enforce this
7 Agreement with respect to both Zone 4 or Zone 5 together or separately.

8

9 This Agreement is dated the franchise date on its cover page. It replaces and supersedes any
10 prior franchise agreement between the parties described in Recitals *except* for the parties'
11 respective, rights, obligations, representations and warranties that survive the expiration or
12 termination of the parties' prior franchise agreement.

13

14

“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.*

15

“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.*

16

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

17

18

19 **Recitals**

20

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

24

25 Solid waste handling services, including the collection, transportation, storage, transfer, and
26 processing of solid wastes, recyclables and compostables are so closely intertwined with the
WM 310 redlined to RFP franchise

1 protection of the health, safety and welfare of the residents of this County that solid waste
2 handling services provided by private solid waste enterprises require government regulation
3 and monitoring.

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

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

11 12 13 **AB 939 SOLID WASTE DIVERSION**

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

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

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

36 37 38 **RATES NOT SUBJECT TO PROPOSITION 218**

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

6 1. **Private Service: Franchisee bills customers and collects service charges.** Franchisee
7 provides franchise services and charges its customers for those franchise services. The
8 County is not providing public solid waste collection and transportation services nor is it
9 billing customers and collecting charges for those services. Franchise services are not
10 “public services” within the meaning of CA Constitution Article XIID, Section 2(h).

11 2. **The County sets only maximum customer rates.** The County is authorizing the
12 Franchisee to charge customers service charges up to the maximum amounts in the
13 Rate Schedule. The Franchisee must charge all customers that receive the same capacity
14 and frequency of collection service, the same, uniform rates.

15 3. **Rates are paid for franchise services, not as an incident of property ownership.**
16 There is no mandatory solid waste collection service in the franchise service area.
17 Residents and businesses can choose to self-haul solid waste or subscribe to franchise
18 services. (Businesses cannot dispose of recyclables.) The Board of Supervisors has *not*
19 exercised its authority to require that any person or responsible party residing in or
20 occupying any dwelling unit or other premises located within any area of the
21 unincorporated territory of the county which is within urban boundary lines or
22 developed rural areas, as designated in the adopted county general plan as amended
23 from time to time, must subscribe to the service of an authorized collector.

24 25 **COUNTY AUTHORIZATION**

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

32
33 Under Public Resources Code Section 40059(a)(1), County may determine all aspects of solid
34 waste handling which are of local concern, as provided in this Agreement, including:

- 35 1. frequency of collection,
36 2. means of collection and transportation,
37 3. level of services,

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

3

4 **EXCLUSIVE FRANCHISE**

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

8

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

15

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

21

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

28

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

31

32 **COMPETITIVE PROCUREMENT**

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

35

36 **County's Exclusive Franchise Zones.** Prior to 1997, County licensed all solid waste haulers
37 doing business in the County. In 1997, County granted exclusive franchises to haulers then

1 doing business in 5 different zones (under 17-29(d) of the County Code) without competitive
2 bidding. County and haulers negotiated the exclusive franchise agreements.

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

8
9 County grants this franchise and enters into this Agreement on the terms and conditions in this
10 Agreement as authorized by the Board under Section 17-3(c) of the County Code.

11
12 NOW, THEREFORE, in consideration of the mutual promises, covenants, guaranties and
13 conditions contained in this Agreement and for other good and valuable consideration, County
14 and Franchisee agree as follows:

17 **Article 1 Definitions And Contract Interpretation#**

18
19 **1.01 Definitions.** For ease of reading, some words that are defined terms in this Agreement
20 are not capitalized, as is done in the County Code. Words in this Agreement have the meanings
21 given in the Glossary or text of this Agreement, *regardless* of whether or not they are
22 capitalized.

25 **1.02 Interpretation**

26
27 **a. Gender.** Words stated (or implied) in the masculine gender include correlative words of
28 the feminine and neuter genders, and vice versa. For example, *“he” and “she” are used*
29 *interchangeably*. In addition, words relating to individuals in neuter gender include correlative
30 masculine and feminine gender. *For example “customer” refers to both men and women,*
31 *whether the related adjective “his” or “her” is used; and “County Representative” includes both*
32 *male and female staff.*

33
34 **b. Headings, Font.** Any captions or headings following the Attachment, Exhibit, Article,
35 Section, Subsection, Sub-subsection numbers and preceding the operative text of this
36 Agreement is for convenience of reference only and does not control or affect the scope,
37 intent, meaning, construction, interpretation or effect of this Agreement. Any underlined,

1 italicized (such as examples and definitions), bold-faced, upper captioned or other font style are
2 for ease of reading and contract administration only and do not imply relative importance or
3 unimportance of any provision of this Agreement.
4

5 **c. References to This Agreement.** References to Articles, Sections, Subsections,
6 Attachments and Exhibits refer to this Agreement, unless specified otherwise.
7

8 **d. Specifics Not Limitation on Generalities.** The mention of any specific franchise
9 obligation may not be construed to limit or restrict any general liability or duty imposed upon
10 Franchisee elsewhere in this Agreement or under law.
11

12 **e. Ambiguities, Inconsistencies and Conflicts.** If any provisions contained in the text of
13 Articles 1 through 20 and in any Attachments or Exhibits to this Agreement are ambiguous,
14 inconsistent or conflict, the provisions of the text in Article 1 through 20 will govern.
15
16

17 **1.03 Integration.** This Agreement contains the entire agreement between the parties with
18 respect to their rights and obligations under this Agreement, including the enforcement and
19 administration of this Agreement. This Agreement supersedes all prior understandings and
20 agreements between the parties with respect to their rights and obligations, including those
21 contained in proposals and addendums, memorandums, correspondence, telephone calls, field
22 trips, negotiations and Board sessions.
23

24
25 **1.04 Governing Law.** This Agreement is governed by, and construed and enforced under, the
26 law of the State of California, without giving effect to the State's principles of conflicts of laws.
27
28

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

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

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

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

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

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

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

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

24
25 Each party represents and warrants as follows:

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

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

32
33
34 **1.07 Timely Performance**

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

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

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

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

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

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

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

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

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

33 34 **3.01 Term**

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

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

“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.

5
6 **b. Extension Options.** County and Franchisee may extend the franchise expiration date
7 one or more times for one or more months, not exceeding 12 months total, by mutual
8 agreement. *For example, they could extend the expiration date by 6 months, 3 months and 3*
9 *months.*

10
11
12 **3.02 Survival of Certain Provisions.** The following provisions survive the franchise term:

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

23
24 If County does not award Franchisee an agreement to continue to provide solid waste services
25 following the expiration or earlier termination of this Agreement, Franchisee will cooperate
26 fully with County and any subsequent solid waste service provider(s) to assure a smooth
27 transition from franchise services to other services, including all of the following:

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

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

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

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

ARTICLE 4 CUSTOMER COLLECTION SERVICES

4.01 Franchise Grant

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

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

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</p>	<ul style="list-style-type: none"> • resale of bulky waste such as appliances, • donation of recyclables such as

<p>premises <u>sells</u> or <u>donates</u> to someone else (who may remove that solid waste from owner or occupant’s premises), including source separated recyclables under Section 17-18 of the County Code. The owner or occupant cannot <u>pay</u> anyone else to remove that solid waste from the premises.</p>	<p>aluminum cans to a scout troop,</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 	

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c. Franchise Fee

- (1) **Consideration.** In consideration for this exclusive franchise, Franchisee will pay the franchise fee as follows:
1. simultaneously upon the parties’ signing this Agreement, an initial installment of the franchise fee the non-refundable amount of \$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.

1 **4.02 Franchise Service Arrangements.** Franchisee will independently arrange to
2 provide franchise services at the frequency, capacity, price and other terms agreed to with its
3 customers. Franchisee acknowledges that County is not responsible for supervising or
4 performing franchise services. Franchisee acknowledges that customers are not obligated to
5 discard their recyclables and that they may donate, sell or otherwise dispose of their
6 recyclables, including taking them to drop-off facilities and donating or selling them to private
7 or public entities.

8
9
10 **4.03 Transition to New Franchise Services.** Franchisee acknowledges that it is of the
11 utmost importance to County that the transition from solid waste services provided prior to
12 entering into this Agreement to franchise services under this Agreement will proceed smoothly
13 to the satisfaction of customers. Therefore:

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

21 22 23 **4.04 Residential (Single and Multi-family)**

24
25 **a. Carts.** Franchisee will provide the franchise services under this Subsection to
26 residential customers – both single and multi-family - who subscribe to carts. Franchisee will
27 supply the aggregate capacity of carts requested by any customer, but may consider the size
28 and shape of the set out site with respect to the combination of 32, 64 or 96 gallon carts.

29
30 **(1) Refuse.** Franchisee willR:

- 31 1. **Supply cart(s)** in the following capacities for discard of refuse:
 - 32 • One 32, 64, 96 gallon cart, as customer requests,
 - 33 • additional 32, 64, 96 or 350 gallon cart(s) as customer requests, for
34 additional Rate,
- 35 2. **Weekly:** Collect cart(s) weekly from set-out site on customer's collection day,
36 and
- 37 3. **Holiday:** Collect up to 96 gallons of refuse discarded on customer's collection

1 day next to the refuse cart in bundles, boxes or cans (such as an approximately
2 32 gallon standard refuse can) from December 26 through January 12.
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<p><i>“customer service day” means the day on which a customer is scheduled to receive regular collection.</i></p>
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(2) **Recyclables.** Regular residential franchise services include the collection and transportation of recyclables under Section 17-29 (a) of the County Code. Franchisee will:

1. **Supply cart(s)** with the following capacities for the discard of recyclables:
 - supply one 96 gallon cart(s) (or 32 or 64 gallon, as customer requests),
 - either or both a 2nd and 3rd 96 (or 32 or 64) gallon cart(s) as customer requests, and
 - a 4th or more 32, 64 or 96 gallon cart as customer requests for additional Rate;
2. **Bi-weekly:** Collect cart(s) every other week from set-out site on same day as refuse collection.
3. **Holiday:** Collect up to 96 gallons of recyclables discarded on customer’s collection day next to the recyclables cart 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, *except* customers living in remote portions of the service area described in Exhibit 4.04a(3); and
- **Optional:** multi-family residential customers upon request, for additional Rate.

“green waste services” means the following:

1. **Supplying cart(s)** in the following capacities for discard of green waste:
 - One 96 gallon capacity cart, and a second 96 gallon cart as customer requests, and
 - More than 192 gallons as customer requests, for additional Rate.
2. **Bi-Weekly:** collecting cart(s) weekly from set-out site 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’s collection day next to green waste cart(s),
- emptying green waste from bag for diversion, and
- separately disposing of bags.

(4) Extra Items. Franchisee will:

1. Twice each year, collect unlimited amounts of 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. Three or more times each year, collect bulky waste, special waste and e-waste in the manner described in the preceding item, for additional Rate.
3. Avoid breakage: do not compact or tip items from trucks. Use flat bed trucks (or other truck acceptable to County),
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:

1. collect batteries discarded in plastic bags supplied by Franchisee or clear plastic bags provided by residential customer and laid on top of residential recyclables carts, and
2. reuse or process batteries (not dispose of them).

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

“Christmas Trees” means trees stripped of tinsel, flocking and artificial ornamentation.

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

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

6
7 **(8) Curbside / Carry-out Service.** Franchisee will provide the following carry-
8 out services:

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

13
14 *“qualifying customer” means any residential customer meeting the following criteria:*

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

19
20 **(9) County-approved Variations in Franchise Services.** Franchisee may
21 provide residential customers with franchise services different from the franchise
22 services in this Subsection for different rates, upon consent of County Representative
23 and subsequent approval by the County Board under Section 17.01a(2), such as
24 different collection frequency or materials type. *Examples include:*

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

28
29 **b. Bins.** Franchisee will provide the franchise services under this Subsection to residential
30 customers – both single family and multi-family - who subscribe to franchise service in bins.

31
32 **(1) Refuse.** Franchisee will:

- 33 1. **Supply** 1.5, 2, 3 or 4 cubic yard bins for discard of refuse as customer requests,
- 34 and
2. **Weekly:** Collect bins as frequently as customer requests, at least weekly from
set-out site on customer’s collection day(s).

35
36 **(2) Recyclables.** Franchisee will:

- 37 1. **Single Family:** Supply single family residential customers with the following

1 containers:

2 *the same type and capacity of recycling carts available to single family *cart*
3 customers, or

4 *with respect to single family residential customers included on a recyclables dry
5 / high content route identified on Exhibit 5.01, a 1.5, 2, 3 or 4 cubic yard
6 recycling bins as customer requests;

- 7 2. **Supply Multi-family:** Supply multi-family residential customers containers in
8 weekly capacity up to 30% of each customer's weekly refuse subscription, and
9 collect them at least weekly on same day as refuse collection, and
10 3. **Business and Multi-Family Recycling Plan:** implement its Business and Multi-
11 family Recycling Plan in Franchisee Documentation.

12
13 **(3) Optional Green Waste for Additional Rate.** Franchisee will:

- 14 1. **Supply Container:** Supply 96 (or larger) gallon cart or 1.5, 2, 3 or 4 cubic
15 yard bin, upon customer request, for additional Rate.
16 2. **Bi-weekly:** Collect container(s) every other week from set-out site on
17 same day as refuse collection.

18
19 **(4) Extra Items.** Franchisee will collect the following materials twice each year
20 upon Customer request (who may be the owner or property manager of a multi-family
21 premise):

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

25
26 **(5) Christmas Trees.** Franchisee will collect Christmas trees under Subsection
27 a(6), discarded next to customer's refuse bin

28 .
29 **(6) Sharps.** Upon customer request, Franchisee will provide for disposal of sharps
30 under Subsection a(7).

31
32 **(7) Optional Manure for Additional Rate.** Franchisee will do the following
33 upon customer request, for a Rate equal to the refuse Rate for comparable capacity bins
34 and frequency of collection:

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

39 Franchisee will contact each potential manure customer individually to explain franchise

1 services for manure.
2

3
4
5 **“Manure”** means solid waste comprised of animal dung or excrement, including straw or other
6 bedding material.
7

8
9
10 **4.05 Commercial.** Franchisee will provide the franchise services under this Subsection to
11 commercial customers.
12

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

- 14 1. **Supply** the following containers for discard of refuse as customer requests:
- 15 • 32, 64, 96 or 350 gallon cart(s), or
 - 16 • 1.5, 2, 3 or 4 cubic yard bins,;
- 17 2. **1-6 Times Weekly:** collect the following from 1 to 6 times each week, as requested by customer (but at least weekly) from set-out site on customer’s collection day(s):
- container(s) supplied by Franchisee, and
 - compactors that might be provided by customer.

18 **“compactor”** means a receptacle for discard and storage of solid waste pending collection,
19 containing a ram that pushes and compresses waste into a container or bale.
20

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

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

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

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

- 31 1. **Supply Container(s):** supply 32, 64 or 96 gallon recycling cart(s) or 1.5, 2,
32 3 or 4 cubic yard recycling bins as customer requests.
33 2. **1-6 Times Weekly:** collect the following from 1 to 6 times each week, as
34 customer requests (but at least weekly) from, set-out site on customer’s

1 collection day(s):

- 2 • container(s) supplied by Franchisee, and
- 3 • any compactor provided by customer, and

4 3. **Business and Multi-family Recycling Program:** implement its Business
5 and Multi-family Recycling Program in Franchisee Documentation and
6 comply with the compliance protocol under Chapter 2, Section 2-100 of
7 the County Code Rules and Regulations with respect to Chapter 17 of the
8 County Code.

9
10 **(iii) State Mandatory Commercial Recycling.** Franchisee acknowledges
11 that as of the franchise date, CalRecycle is developing regulations that will
12 require mandatory recycling at commercial premises (and perhaps some or all
13 multi-family premises under this Agreement). Franchisee will assist both
14 customers and County to comply with the regulations.

15
16 **(3) Optional Green Waste for Additional Rate.** Franchisee will:

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

21 22 **4.06 Public Services**

23 24 **a. Illegal Dumping**

25
26 **(1) On-call.** Upon County request, Franchisee will collect abandoned solid waste
27 discarded in the public right of way at locations identified by the County, without charge
28 to customers or County, at the following times:

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

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

- 36 1. to no more than 25 tons of abandoned solid waste, and
- 37 2. to no more than 100 County requests.

38

"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.

1
2 **(2) Cooperating with County.** Franchisee will cooperate with County in any
3 investigation and prosecution of illegal dumping.

4
5 **(3) Litter clean up.** Franchisee will clean up litter within a 10 foot radius of each
6 abandoned solid waste collection site.

7
8 **(4) Diversion.** Franchisee will use reasonable business efforts to divert the
9 abandoned solid waste that it collects.

10
11 **b. Public Trash Cans.**

12
13 **(1) Location and Frequency.** Franchisee will provide the following franchise
14 services, without charge to customers or County:

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

20
21 **(2) Container Handling, Placement and Bags.** Franchisee will:

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

26
27 **(2) Litter Clean Up.** Franchisee will clean up litter within a 5 foot radius of each
28 litter container.

29
30 **c. County Facilities.** Franchisee will provide the following franchise services to the
31 County, without charge, under Attachment 4.06c:

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

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

- 4 1. stopping service at listed facilities,
- 5 2. beginning service at facilities located in the franchise service area,
- 6 3. type of containers;
- 7 4. capacity of containers and frequency of service, up to 7.5% more than the aggregate
8 volume of all containers listed on Attachment 4.06c on the franchise date. Volume is
9 calculated as follows:
 - 10 • the capacity of each container (in gallons or cubic yards) is multiplied by the
11 number of times that Franchisee collected that container each week; then
 - 12 • adding together the volume of all containers, assuming that 1 cubic yard equals
13 202 gallons.

14
15 **d. Fluorescent Lights Recycling.** Upon County request, Franchisee will give
16 County a schedule showing the size and price of kits to return fluorescent bulbs or tubes lights
17 by mail (such as Franchisee’s Lamptacker program), with prepaid postage and recycling fees.
18 Franchisee will deliver kits ordered by County to the facility/facilities selected by County, in
19 value up to \$1,000 each franchise year.
20

21 **e. Used Battery Recycling.** Upon County request, Franchisee will deliver
22 commercial-sized buckets at locations selected by County, for discard of used batteries. Upon
23 notice from the location that the bucket is full, Franchisee will collect the bucket. Franchisee
24 will provide battery recycling services in value up to \$1,000 each franchise year.
25

26 **f. Large Venue Recycling.**

27
28 **(1) Program Development.** Franchisee will comply with PRC 42648.4, including the
29 following:

- 30 1. meet biennially with operators of large venues and large events in the franchise
31 area; and
- 32 2. determine the solid waste reduction, reuse and recycling programs that are
33 appropriate for the large venues or large events.

34 Franchisee will refer operators to CalRecycle’s web site under PRC 42648.1(c).
35

36 **(2) Program Facilitation.** Franchisee will use reasonable business efforts to assist County
37 and operators of large venues and large events to facilitate the operators’ solid waste
38 reduction, reuse and recycling program.
39

1 **(3) Recyclables Containers.** Franchisee will provide franchise services for recycling to
2 operators at the applicable Rate.

3
4 **(4) Definitions.**

5
6 “**large venue**” is defined in PRC 42648(c), such as permanent fairgrounds, amusement parks
and airports.

7
8 “**large event**” is defined in PRC 42648(b), such as a flea market or sporting event.

- 9
10 **g. School Outreach.** Upon County request, Franchisee will help County provide
11 refuse and recycling information, training and outreach to schools, such as the following:
12 1. delivering and collecting refuse and recyclables containers for special school events
13 (such as carnival or jog-a-thons), as school requests,
14 2. taking its mobile Recycling Education and Collection Center to schools for use by at least
15 1500 in Zone 4 and 3500 in Zone 5 students each calendar year in coordination with
16 schools’ teachers and administrators,
17 3. preparing and distributing educational materials.

18 **4.07 Collection Times and Schedules.**

19
20 **a. Times.** County establishes the following times, as authorized under Section 17-30(d) of
21 the County Code.

22
23 **(1) Residential Areas.** Franchisee will provide collection in residential areas at the
24 following times:

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

27
28 **(2) Commercial and Industrial Areas.** Franchisee will provide collection in commercial
29 and industrial areas at the following times:

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

32
33 **b. Schedule**

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

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

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"holidays" means holidays designated by County, comprised on the franchise date of the following:

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

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

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

4.08 Container Service

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

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

b. Delivery, Pick-up and Exchange

(1) Service Commencement; Lost or Stolen Containers. Franchisee will

1 deliver containers to the set-out site no later than the next franchise service day after
2 customer request and ensure that each customer has a container for solid waste discard
3 during the days remaining prior to customer's collection day.
4

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

9 1. once each year, and

10 2. the second or more times in a year, for the additional Rate.

11 *For example, Franchisee will pick up containers if a customer terminates service when*
12 *moving from his premises. Franchisee will exchange a 96 gallon refuse cart for a 64*
13 *gallon refuse cart, and deliver an additional 96 gallon recyclables cart, if customer*
14 *requests that change.*
15

16 **c. Repair or Replacement.** Franchisee will maintain and repair all containers, and
17 comply with Section 17-8(g) of the County Code. On the next customer's collection day after
18 any customer or County request, Franchisee will repair or replace containers that are damaged
19 or constitute a threat to public health and safety (including keeping out rodents, flies and other
20 vectors). County determination of whether a container must be repaired or replaced will bind
21 Franchisee.
22

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

25 1. All containers, once each year upon customer request, and

26 2. 2 or more times each year for the additional Rate.
27

28 **e. Collection and Emptying of Containers.** After emptying each container
29 Franchisee will replace it at its set-out site.
30
31

32 **4.09 Service Standards.** 33

34 **a. General.** Franchisee will perform all franchise services in a prompt, thorough,
35 comprehensive, reliable, courteous and professional manner so that customers receive high-
36 quality franchise service at all times. Franchisee will comply with its Customer Service Policy in

1 Franchisee Documentation. Franchisee must perform franchise services regardless of weather
2 conditions and regardless of difficulty of collection, subject to the exceptions under Section
3 4.10. Particular specifications in this Agreement do not relieve Franchisee of its duty and
4 obligation to accomplish all other aspects of franchise services in the manner provided in this
5 Subsection, whether or not those other aspects are enumerated elsewhere in this Agreement.
6

7 **b. Litter and Leaks**

8
9 **(1) Customer.** If Franchisee repeatedly observes littered solid waste outside a
10 container set out for collection, Franchisee will do the following:

- 11 1. discuss ways to prevent litter directly with the customer who subscribes to those
12 containers, and
- 13 2. if the problem persists, report its discussion to County.
14

15 **(2) Franchisee**

16
17 **(i) *Solid Waste.*** Franchisee will comply with Section 17-21 of the County
18 Code and immediately clean up all solid waste spilled, scattered or littered while
19 performing franchise services, including:

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

23 **(ii) *Liquids.*** Franchisee will not allow hydraulic fluid or other liquid to leak
24 from any vehicle. Franchisee will immediately clean up all leaks and spills
25 occurring while providing franchise services. Franchisee will keep a record of
26 leaks including type, amount and action taken to clean it up.
27

28 **(iii) *Equipment and supplies.*** Franchisee will equip each vehicle with a
29 broom, shovel and absorbent material.
30

31 Franchisee will pay all fines for improperly covering loads, including those assessed by the
32 operator of MRF(s), Disposal Facility/Facilities, or Organics Site(s).
33

34 **c. Respect for Property**

35
36 **(1) Private Property.** Franchisee will do the following:

- 37 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,
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 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 damages are 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 the following events, when it must take 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 or Disposal Facility] 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 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>

1

2 **b. Notice.** Franchisee will include the preceding information in the Non-Collection Notice

1 in both Spanish and English. When Franchisee leaves a Non-Collection Notice, it will mark the
2 reason that it did not collect the solid waste.

3
4 **“Non-Collection Notice”** means the notice prescribed in this Section and in Franchisee
5 Documentation, acceptable to County.

6 **c. Report.** Franchisee will report the non-collection to the County by the next franchise
7 service day.

8
9 **4.11 Missed Pickups and Other Complaints.** Franchisee acknowledges that County
10 determined to procure and enter into this Agreement with Franchisee for reasons that include
11 providing high quality customer service, relations and satisfaction.

12
13 **a. Timeliness.** On the next franchise service day after customer or County complaint
14 (such as a missed pickup), Franchisee will resolve the complaint acceptably to customer or
15 County (including providing a special pickup).

16
17 **b. Customer Service Policy**

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

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

28
29 Franchisee will give County access to those records during Franchisee office hours by
30 either or both of the following means, at County option:

- 31 1. at Franchisee office, or
- 32 2. electronically.

33
34 **(2) Resolution.** Franchisee will handle complaints and resolve disputes (including

1 billing disputes) under its Customer Service Policy.

2
3 **c. Reimbursement of County Cost.** Franchisee acknowledges that County is not
4 responsible for taking, responding or resolving customers' questions, complaints and disputes,
5 including the following:

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

12
13 However, if County chooses to take, respond or resolve any question, complaint or dispute,
14 Franchisee will reimburse County Reimbursement Costs that County incurs in excess of the
15 following times:

- 16 1. **5 hours/complaint:** more than five hours resolving a particular customer's complaint, or
- 17 2. **2 hours/week:** more than two hours in any work week (Monday through Friday)
18 resolving one or more customer complaints.

19 20 21 **4.12 Means of Communicating with Customers and County**

22
23 **a. Franchisee Office.** Franchisee will maintain an office ("**Franchisee office**") within the
24 franchise service area. Franchisee will keep its office open at a minimum from 8:00 a.m. to 5:00
25 p.m. weekdays, *except* holidays ("**Franchisee office hours**"). During Franchisee office hours, a
26 representative of Franchisee must be available for receiving the County Representative (and
27 individuals accompanying County Representative), customers and the public.

28 29 **b. E-mail**

30
31 **(1) Franchisee's.** Franchisee will maintain an email address for the following
32 purposes:

- 33 1. correspondence with customers and County, and
- 34 2. paying bills on line.

35
36 **(2) Customers'.** Franchisee will record customers' email addresses.

1
2 **c. Phone.** Franchisee acknowledges that customers' contact with Franchisee's employees
3 by telephone is critical in establishing and maintaining good customer service, relations and
4 satisfaction.

5
6 **(1) Phone Hours.** Franchisee will answer the telephone at the following times
7 ("**Franchisee phone hours**"):

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

11
12 Franchisee will provide an answering machine or answering service to take messages of
13 calls received outside of Franchisee phone hours. Franchisee must respond to messages
14 no later than the following franchise service day.

15
16 **(2) Toll-free Number.** Franchisee will list its toll-free telephone number under
17 Franchisee's name in County telephone directories (white pages and yellow pages).

18
19 **(3) Emergency Numbers.** Franchisee will also maintain one or more local
20 emergency telephone numbers requested by and disclosed to County Representative
21 and any other individual named by County for use outside Franchisee phone hours.
22 Franchisee will return any call made to that number as soon as possible, and not more
23 than two hours.

24
25 **(4) Response Standards.** Franchisee will comply with the response standards under
26 this Subsection.

27
28 **(i) Phone Tree.** An automatic phone tree cannot have more than two
29 options, such as:

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

33
34 **(ii) Answer Time.** Franchisee will answer all incoming calls as follows:

- 35 1. 90% by a live operator within 15 seconds or 3 rings, or
- 36 2. giving the caller the option of leaving a voice mail message. Franchisee
37 will respond to all messages left during Franchisee's phone hours that

1 same day.

2
3 **(iv) Records and Checks.** Franchisee will install a call tracking system capable
4 of the following:

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

10 County may evidence Franchisee’s compliance with - or breach of - these phone
11 response obligations based on the following:

- 12 1. the phone logs, or
- 13 2. County’s check:
 - 14 • at least 3 calls within one week, or
 - 15 • at least 10 calls within one month.

16
17 **d. Posting Contact Information.** Franchisee will post its Contact Information on all of
18 its written communications with customers, including:

- 19 1. bills,
- 20 2. Customer Service Summary,
- 21 3. Franchise Service Summary,
- 22 4. non-collection notices, and
- 23 5. newsletters.

24
25 **“Franchisee contact information”** means all of the following:

- 1. Franchisee office and office hours,
- 2. Franchisee’s toll-free phone number and phone hours,
- 3. Franchisee’s web site and email address.

26
27 **4.13 Education and Public Relations**

28
29 **a. Customer Orientation Packet**

30
31 **(1) Service Commencement.** Franchisee will produce the Customer
32 Orientation Packet in Franchisee Documentation in both English and Spanish and

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

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

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

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

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

14
15 **b. Educational Materials**

16
17 **(1) Newsletter.** Franchisee will produce and mail a newsletter in color,
18 designed to promote safe waste handling, recycling and diversion at the following times:

- 19 1. twice each year to all residential customers;
- 20 2. once each year to all commercial customers.

21 Franchisee will include the following:

- 22 1. service guidelines,
- 23 2. introduction of new programs,
- 24 3. publicize upcoming solid waste management and recycling events, and
- 25 4. provide recycling tips.

26
27 Franchisee will email the newsletter to each of the following customers who:

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

30
31 Franchisee will post the newsletter on its web site.

32
33 **(2) Additional Information.** Franchisee will produce and distribute
34 additional materials relating to franchise services and solid waste management upon
35 County request.

1
2 **(3) Mandatory Business Recycling.** Franchisee will annually produce and
3 distribute information to all its commercial and multi-family customers describing the
4 County’s Mandatory Business Recycling Program and the benefits of recycling, under the
5 Franchisee’s Business and Multi-family Commercial Recycling Plan in Franchisee
6 Documentation.
7

8 **(4) County’s Green Business Outreach Program.** Upon request of County,
9 Franchisee will assist County in distributing information to commercial customers in
10 relation to the County’s “Green Business” outreach program.
11

12 **(5) Bill Inserts.** Upon County request, Franchisee will insert information in bills to
13 inform customers of service changes, recycling and sustainability programs, and other
14 information such as the following:

- 15 1. Christmas tree recycling program,
- 16 2. suggestions on how to reduce holiday packaging,
- 17 3. source separated recycling and green waste notice,
- 18 4. special franchise services or community programs (sharps, anti-freeze, batteries,
19 used oil, paint, and e-waste collection).
20

21 **c. Web Site.** Franchisee will maintain a web site with content acceptable to County.
22 Franchisee will post all of the following information on its web-site:

- 23 1. the Franchise Service Summary and other information about franchise services,
24 including options for cart sizes,
- 25 2. a copy of the current Rate Schedule,
- 26 3. link to the County’s lessismore.org web site,
- 27 4. link to programs or facilities where customer can legally discard special waste (including
28 Universal Waste and e-waste) and hazardous waste,
- 29 5. Franchisee’s contact information,
- 30 6. Include information about and requested by County in Franchisee’s “Green Pages” web
31 site, and
- 32 7. other information related to waste management upon County request.
33

34 **d. Mobile Recycling Education and Collection Center.** Franchisee will update its
35 exhibit currently housed in a roll-off container, including implementing County requests. Each
36 year, Franchisee will offer to bring the exhibit to *every* elementary, middle and high school in

1 the franchise area and present a refuse (including e-waste and household hazardous waste) and
2 recycling presentation.

3
4 **e. Annual Outreach Plan.** Each year Franchisee will prepare its customer
5 education outreach plan, including the following information, and give it to the
6 County for County review and comment:

- 7 1. description of franchise services,
- 8 2. outreach at community events,
- 9 3. schedule of newsletters and other materials under this agreement.

10
11
12 **4.14 Customers' Privacy.** Franchisee will strictly observe and protect customers'
13 privacy rights under this Section and law.

14
15 **a. Customers' Identity and Solid Waste.** Franchisee will not reveal information
16 identifying individual customers or the composition or contents of a customer's waste stream
17 to anyone *except* under subsection c. This provision will not be construed to preclude
18 Franchisee from preparing, participating in or assisting in the preparation of waste
19 characterization studies or waste stream analyses requested by County.

20
21 **b. Customer Lists.** Franchisee will not market, sell, convey, or donate to anyone any list
22 with the name or address of customers *except* under subsection c

23
24 **c. Exceptions.** Franchisee is not subject to the prohibitions under subsections a and b in
25 any or all of the following circumstances:

- 26 1. request of the County or a regulatory authority,
- 27 2. requirement of law, and
- 28 3. receipt of valid customer authorization.

29
30
31 **4.15 No Discrimination.** Franchisee will not discriminate against customers on the
32 basis of race, color, national origin, ancestry, religion, creed, physical handicap, medical
33 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 February 28*).
- 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

1 which Franchisee subsequently determined the customer owed to Franchisee.

2
3 **4. Suspension of Service.**

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

- 6 • 90 days after the date of a residential bill,
- 7 • 30 days after the date of a commercial bill,

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

10
11 Franchisee will suspend or reduce franchise service to a customer on customer request
12 for no less than one month, and more than 6 months. Franchisee will pro-rate that
13 customer's bill to reflect the number of days service is suspended.

14
15 **5. Refunds.** Franchisee will refund to customer overcharges (including advance payments
16 for franchise services that customer subsequently canceled) within 30 days of the
17 following times:

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

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

22
23 **b. County Right to Bill.** County may provide billing services on no less than 180 days
24 Notice to Franchisee, with corresponding Rate reduction of \$1.00 per customer.

25
26 **c. Billing County Fees.** Franchisee will bill customers the Solid Waste Program Fee in
27 effect on the franchise date and any other Solid Waste Program Fees requested by County.
28 Franchisee will add the Solid Waste Program Fee to the Rate it charges customers for franchise
29 services.

30
31 **d. Aggregate Rates and Fees.** Franchisee may *not* identify or itemize any Solid Waste
32 Program Fee or Franchisee Business Fee separately from the Rate, including any of the
33 following:

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

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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.

ARTICLE 5 OPERATIONS

5.01 Route Maps, Schedules and Audits

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

- 1. maps showing Franchisee's refuse, recyclables and green waste collection routes, including alternative service routes (such as for ranchettes or remote customers, and wet/dry commercial routes; and
- 2. route sheets listing the following information,
 - customers' names and addresses,
 - levels of franchise service, and
 - day and approximate time (morning or afternoon) of pickup.

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

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

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

5.02 Vehicles

a. Air Emissions. As a contractual obligation (even if Franchisee is not obligated to do so under law),as soon as possible, but no later than December 31, 2013, Franchisee will use front- and side-loading collection vehicles that meet the State's 2010 emission standards for new,

- 1 heavy duty diesel vehicles , including:
2 1. PM-standard = 0.01 grams per brake-horsepower-hour (gm/bhp-hr), and
3 2. NOx standard = 0.20 gm/bhp-hr.
4

5 **3. b. Noise**

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

- 8 1.
9 • 75 decibels
10 • at a distance of 25 feet from the collection vehicle
11 • measured at an elevation of five feet above ground level
12 • using the "A" scale of a standard sound level meter at slow response, or
13 2. law.

14
15 **(2) Tests.** Franchisee will conduct noise tests by someone certified by the Board of
16 Certified Safety Professionals (who may be an employee of Franchisee) at both of the
17 following times:

- 18 1. within 7 days of County request, and
19 2. within one month prior to submitting its Annual Report.

20 Franchisee will give County a written copy of the testing results.
21

22 County may conduct random noise checks, and Franchisee will cooperate with County.
23

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

- 27 1. any report issued under Division 14.8 of the California Vehicle Code (Section
28 34500 *et seq.*), and
29 2. the biennial "BIT" inspections conducted by the California Highway Patrol.
30

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

31

1 **c. Vehicle Identification**

2
3 **(1) Lettering**

4
5 **(i) *Mandatory.*** Franchisee will place the following information on every
6 vehicle in letters and figures at least three inches high in colors that contrast
7 with the background:

- 8 1. Franchisee's name (not an affiliate's), *unless* Franchisee immediately
9 informs County that Franchisee has substituted another vehicle without
10 Franchisee's name to temporarily provide collection when the vehicle
11 that Franchisee usually uses for collection in the County is undergoing
12 repair;
13 2. toll-free telephone number; and
14 3. unique vehicle number.

15
16 **(ii) *Permissible.*** Franchisee may place safety instructions on vehicles.

17
18 **(iii) *Prohibited.*** Franchisee will *not* place any other words (such as County
19 name) or pictures (such as County logo) without County consent.

20
21 **(2) Permit.** Franchisee will clearly display its County permit in the front window of
22 every collection vehicle.

23
24 **d. Vehicle Maintenance.** Franchisee will maintain vehicles in clean condition and good
25 repair so that they operate properly and safely.

26
27 **(1) Inspections.**

28
29 **(i) *CHP.*** Franchisee will have the California Highway Patrol inspect each
30 vehicle under law.

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

34
35 **(iii) *Drivers.*** Franchisee's drivers will conduct pre-and post-route inspections
36 daily

37

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

3
4 (i) **Wash and Scrub.** Franchisee will wash and scrub vehicles clean at all of
5 the following times:

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

11
12 (ii) **Paint.** Franchisee will paint vehicles at both of the following times:

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

15
16 **(3) Oil Recycling, Re-refined Oil.** Franchisee will recycle all used oil from its vehicle
17 maintenance operations and make reasonable business efforts to use re-refined oil.

18
19 **(4) Spare Vehicles.** Franchisee will maintain a sufficient number of spare vehicles,
20 fully fueled and ready to dispatch within 15 minutes, to repair or replace any vehicle
21 that breaks down on route so that customer service is minimally delayed.

22
23 **e. Safety.** Franchisee will install and maintain in its front- and side-loading collection
24 vehicles, at a minimum, five cameras to view front, back, sides and hopper of the vehicle.

25
26 **f. Records.** Franchisee will install and maintain a GPS system on each collection vehicle,
27 together with the capability to display routes in the driver's cab. Franchisee will integrate its
28 routing and billing software with its main data base.

31 **5.03 Containers**

32
33 **a. Specifications.** Franchisee may continue to use containers that it presently provides
34 to customers in the franchise area, *except* for the following:

- 35 1. Franchisee will replace existing green waste carts that do *not* meeting the specifications
36 listed in Exhibit 5.03 a and franchisee documentation with new green waste carts

1 manufactured meeting those specifications; and
2 2. Franchisee will supply new customers with new refuse, recycling and green waste carts,
3 If Franchisee acquires new containers, they must meet specifications listed in Exhibit 5.03a and
4 in Franchisee Documentation. Prior to submitting orders for new containers to the
5 manufacturer, Franchisee will give County copies of container orders (including text of labels)
6 for County review and acceptance.

7
8 **b. Labels.** Franchisee will label each container with the information listed in Franchisee
9 Documentation (“Container Labels”) acceptable to County.

10
11 **c. Container Acquisition Agreements.** Franchisee acknowledges that County must
12 have full use and possession of containers in order to secure its rights under this Agreement,
13 including the following:

- 14 1. providing substitute franchise service, and
15 2. purchasing containers upon termination of this Agreement.

16
17 Therefore, if Franchisee does not own containers outright without encumbrance, any Container
18 Acquisition Agreement must allow the Guarantor, County or County designee to do all of the
19 following:

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

23

“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.

24

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

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

29

30

31 **5.04 Facilities**

32

1 **a. Requirements.** With respect to its operations and maintenance facilities in County,
2 Franchisee will do the following:
3 1. obtain certification under the County’s Green Business program,
4 2. comply with laws, including zoning laws,
5 3. provide ample entrance sand exits for vehicles, and avoid vehicles queuing on public
6 streets,
7 4. enclose facilities with fencing,
8 5. maintain its facilities, including adjacent landscape, in a neat, clean and presentable
9 manner, including regular sweeping for litter,
10 6. park, fuel, maintain and repair vehicles in the parking area of the facilities and not on
11 County roads, streets and alleys,
12 7. provide cleaning facilities designed with paved and curbed areas that direct drainage to
13 a catch basin connected to a sanitary sewer system or a holding tank and prevent
14 drainage to surrounding areas, and
15 8. maintain County’s Green Business certification.

16
17 **b. County Entry Rights.** Franchisee will allow County to enter Franchisee's operation
18 and maintenance facilities during Franchisee office hours upon two hours' prior telephone or
19 facsimile notice, and investigate, observe, inspect and review Franchisee's operations.

20
21 **c. Compliance with Law.** Franchisee will maintain a rating of Satisfactory (S) (or
22 better) by the California Highway Patrol’s Biennial Inspection of Terminals (BIT).

23
24 **d. ABOP / Buy-back Facilities.** Franchisee will accept at its facilities located at
25 • 1850 Betteravia Road in Santa Maria, and
26 • 97 Commerce Drive in Buellton,
27 the following materials from residential customers (and as permitted by law, commercial
28 customers who are small quantity generators), without charge:
29 1. anti-freeze, batteries (including dry cell batteries), oil and latex paint (without charge);
30 2. “covered electronic waste”, as defined by CalRecycle in its CEW Recovery and Recycling
31 Payment System, such as televisions, computers and monitors, and
32 3. appliances, including those containing hazardous materials (such as PCBs, CFCs and
33 other refrigerants, and mercury switches) as permitted by the CA Environmental
34 Protection Agency, Department of Toxic Substances Control (Consumer Projects Unit).

35
36 At those facilities Franchisee will purchase recyclable materials such as scrap metal, CRV

- 1 containers and mixed recyclables at the following prices:
2 1. the price set by the California Redemption Values established by the State, if any, or
3 2. if the State does not establish a price, the price set by Franchisee reflecting the current
4 recyclables market.
5
6

7 **5.05 Franchise Service Asset Requirements.**

8

9 **a. Assets.** Franchisee will finance, procure, repair and maintain without any
10 compensation in excess of its Rate, at its own cost and expense, franchise service assets
11 (including vehicles and containers it supplies to customers) which in number, design, and
12 capacity, are sufficient to enable Franchisee to perform franchise services without interruption,
13 including providing customers with their requested capacity container. If any useful part of the
14 franchise service asset is damaged or destroyed, as expeditiously as possible Franchisee will
15 commence and diligently repair or replace that service asset and restore it to the extent
16 required to perform franchise services.
17

18 **b. Inventory**

19

20 **(1) County Request.** Within one week of County request, Franchisee will give
21 County an inventory of containers that it has updated as recently as County requests.
22

23 **(2) Annual Report.** In its Annual Report, Franchisee will include an inventory of
24 containers that it updated within one month prior to the date Franchisee gives its Annual
25 Report to County.
26

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

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

27
28

1 **5.06 Personnel**

2
3 **a. Key Personnel.** Franchisee acknowledges that providing franchise services are
4 personal in nature, since it requires continuous and extensive communication between
5 Franchisee's personnel and County staff, and knowledge of County streets, terrain, and contract
6 requirements under this Agreement (including reporting). Therefore, no later than 30 days
7 prior to change in the following personnel identified by name in Franchisee Documentation,
8 Franchisee will use reasonable business efforts to notify County:

- 9 1. Franchisee Representative,
10 2. Route Supervisor,
11 3. County liaison in Franchisee's financial accounting department responsible for
12 submitting reports with respect to franchise fees, and
13 4. County liaison responsible for submitting reports with respect to Franchisee's diversion
14 of solid waste in County.

15
16 In its notice to County, Franchisee will include the name and professional qualifications of the
17 replacement personnel. Upon County request given within 30 days of receiving notice,
18 Franchisee will propose an alternative individual.

19
20 Within 10 days of County request at any time, Franchisee will replace Franchisee
21 Representative.

22
23 **b. Driver.** Franchisee will take the following actions:

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

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

10
11 Franchisee will give the route supervisor a cell phone to keep in contact with Franchisee's
12 customer service representatives, operation and maintenance personnel, County, and drivers.
13

14 **b. Identification, Appearance, Conduct.** Franchisee will ensure that all of its
15 personnel who come into contact with the public present a neat, tidy and orderly appearance.
16

17 **c. Soliciting Gratuities Prohibited.** Franchisee will not permit its personnel to
18 demand or solicit, directly or indirectly, any additional compensation or gratuity from
19 customers or any members of the public.
20

21 **d. Nondiscrimination.** Franchisee will not discriminate against any personnel on the
22 basis of his or her race, color, national origin, ancestry, religion, creed, physical handicap,
23 medical condition, marital status or sexual orientation.
24

25 **e. Compliance with Law.** Franchisee will comply with labor law, including keeping
26 records of compliance with the Federal Immigration and Control Act of 1986. Failure to comply
27 with law (such as a citation or failure-to-abate notice from the California Division of
28 Occupational Safety and Health) is a breach of this Agreement.
29
30

31 **5.07 Back-up Plan.** If franchise service is interrupted, within 24 hours of County request
32 Franchisee will implement its back up service plan in Franchisee Documentation.
33
34

35 **5.08 Hazardous Waste Handling** 36

- 1 **a. Driver Observation.** Franchisee will use reasonable business efforts to screen all
2 solid waste for hazardous waste when tipping containers into vehicles, such as using driver
3 observation in mirrors when tipping carts in front of the vehicle.
4
- 5 **b. Hazardous Waste Handling Protocol.** Franchisee will follow its Hazardous Waste
6 Handling Protocol in Franchisee Documentation.
7
- 8 **c. Inadvertent Delivery of Hazardous Waste.** If Franchisee inadvertently delivers
9 materials to any facility that comprise hazardous waste, Franchisee will take the following
10 actions:
11 1. make a good faith, best effort to identify and contact the customer that discarded the
12 hazardous waste, and recover the hazardous waste handling costs, and
13 2. cooperate with the facility owners or operators to arrange for proper disposal under
14 law.
15
- 16 **d. Definitions**
17

“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.

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

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4 **ARTICLE 6 DIVERSION**

5

6 **6.01 MRF(S) and Organics Site(s)**

7

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

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

12

13 As of the franchise date:

including following SECTIONS	Residential, Commercial & County, SOLID WASTE MATERIAL / CONTAINER	IDENTIFIED SOLID WASTE FACILITY	DISTANCE FROM CENTRIX (miles)
		MRF(s)	
4.04a(2) 4.05(2)(ii) 4.06c	Recyclables / carts	1850 W. Betteravia Road, Santa Maria	1. Zone 4 (Lompoc service area): 12.4 2. Zone 4 (Santa Ynez service area): 28.6 3. Zone 5: 17
6.03b(3)	high content recyclables in refuse / bins	1850 W. Betteravia Road, Santa Maria	1. Zone 4 (Lompoc service area): 12.4 2. Zone 4 (Santa Ynez service area): 28.6 3. Zone 5: 17
		ORGANICS SITE(S)	
4.04a(3) 4.05(3) 4.06c	Green waste / carts	XXX	xx
4.04a(6)	Christmas trees	XXX	xx
4.04b(3) 4.05(3) 4.06c	Green waste / bins	XXX	xx
4.04a(4) 6.03a(4)	Bulky waste	1850 W. Betteravia Road, Santa Maria	XX

4.04a(4)	Special waste (universal and e-waste)	At Franchisee's discretion: 1. 1850 W. Betteravia Road, Santa Maria, or 2. 97 Commerce Drive in Buellton	XX
4.04b(7)	manure	Ch	XX

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

3

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

4

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

8

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

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

16

17

18 **6.02 Diversion Defense and Indemnification**

19

20 **a. Defense.** Franchisee will contribute up to a maximum of \$10,000 of County direct

1 costs in the following events:

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

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

10

“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.*

11

12 **b. Indemnification**

13

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

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

1 budgeted to fund implementation of County Source Reduction and Recycling
2 Element.

3
4 **(2) Apportionment by Fault.** Franchisee's indemnity obligation for fines and
5 penalties is apportioned by fault between County and Franchisee, in both of the
6 following events:

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

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

15
16 **(3) Causation Limitation / PRC 40059.1(c)(4):** Franchisee's indemnity obligation for
17 fines and penalties is limited to the portion of fines and penalties caused by Franchisee's
18 breach of or non-compliance of an express obligation or requirement. If CalRecycle
19 does not make any determination with respect to causation, but Franchisee did breach
20 an express provision of this Agreement (such as the Minimum Diversion Requirement)
21 or fail to comply with an express requirement (such as provisions of County Code) the
22 portion is Allocable Fault.

23
24 **c. Survival.** FRANCHISEE'S DEFENSE AND INDEMNIFICATION OBLIGATIONS PROVIDED IN
25 THIS SECTION SURVIVE THE FRANCHISE TERM.

26 27 28 **6.03 Diversion**

29 30 **a. Maximizing Diversion**

31
32 **(1) All Solid Waste.** Franchisee will use reasonable business efforts to maximize
33 recycling, processing, marketing and diversion of all solid waste that it collects.

34

<p><i>“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.</i></p>
--

1
2 **(2) Solid Waste from Wet-Dry / Low-High Content Routes.** Franchisee will operate
3 routes designed to collect solid waste from refuse bins that contain an average of at
4 least 50% recyclable, by weight. Franchisee will use reasonable business efforts to
5 collect 45-50% of commercial solid waste on dry-high content recyclables routes. In the
6 dry-high recyclables loads, Franchisee will separate recyclables from refuse, use
7 reasonable business efforts to recycle 45-55% of the loads by weight, and divert
8 recyclables from disposal.
9

10 **b. Minimum Diversion Requirement**

11
12 **(1) Percentage.** *Each franchise year Franchisee must divert at least [Zone 4 45%]
13]Zone 5 40%] by weight of all solid waste that it collects under this Agreement (the
14 “Minimum Diversion Requirement”).*

15
16 **(2) Merit-based Compensation.** If Franchisee fails to meet the Minimum Diversion
17 Requirement, Franchisee’s compensation for providing franchise services may be
18 reduced by County in County’s sole discretion, by denying Franchisee’s increase
19 effective the following franchise year.
20

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

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

- 29 1. *recyclables that are diverted at MRF(s),*
30 2. *green waste that is diverted at Organics Site(s),*
31 3. *refuse that is diverted at any Conversion Facility, and*
32 4. *any type of solid waste that is diverted at Disposal Facility/Facilities (such as bulky waste*
33 *sorted on the floor of a transfer station or tires removed from refuse at a landfill) .*
34

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

1. *the MRF(s),*

2. *the Organics Site(s),*
3. *any Conversion Facility*
4. *the Disposal Facility/Facilities, and*
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 the following from transporters, shippers, brokers, beneficiators, remanufacturers and purchasers or other users:

1. weigh tickets,
2. invoices,
3. bills of lading, and
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 1. Facility **Data:** Identified Solid Waste Facility Tonnage; and
- 2 2. **Reconciled Data (DRS):**
- 3 • Identified Solid Waste Facility Tonnage, reconciled with
- 4 • County DRS Tonnage reviewed and reconciled under Subsections (d)(2)
- 5 and (3).
- 6

“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
- 2. 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.

8

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

10 Franchisee will request each Identified Solid Waste Facility not owned or operated by

11 County to send Franchisee a copy of tonnage that the Facility submits to the DRS before

12 or simultaneously with submission to the DRS.

13

14 **(3) Reconciliation of Discrepancies**

15

16 **(i) County Request.** County may request Franchisee to report on tonnage

17 discrepancies, including the following:

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

21

22 **(ii) Franchisee Response to County’s Request.** Within 15 business days of

23 County request, Franchisee will submit the following information to the County:

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

26

27 **(iii) Franchisee Reconciliation.** Franchisee will resolve the discrepancy within

28 45 days of County’s request under Sub-subsection (i).

29

30 **(iv) County Reimbursement Costs.** Within one week of upon County request,

31 Franchisee will pay County its County Reimbursement Costs incurred to resolve or

32 identify discrepancies to satisfaction of County if Franchisee does not do *either or both*

33 of the following:

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

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

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

13
14 County Reimbursement Costs include preparing and sending the following:

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

17
18 **f. Allocation of Commingled Materials.** If Franchisee commingles any type of solid waste
19 with materials generated or collected outside the franchise service area, Franchisee will
20 allocate solid waste to County under a protocol satisfactory to County, at the following times,

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

24
25 Within one week of County request, Franchisee will give County information supporting the
26 allocation, including the following:

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

30
31 If County is dissatisfied with the allocation protocol, calculations or supporting information, it
32 may revise the protocol, redo calculations and use its own sources of information. Franchisee is
33 bound by County revisions.

34
35 **g. Diversion Plan.** Franchisee will implement its Diversion Plan in Franchisee
36 Documentation. Franchisee will revise its Diversion Plan in conjunction with any change in
37 scope of franchise services (for example, addition of a new program in response to increased
38 State diversion requirements).

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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 Section 41950 of the CA IWM Act 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 Section 41953 of the CA IWM Act.

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/Facilities are the following:

ZONE	DISPOSAL FACILITY	CENTRIX
Zone 4 (Lompoc service area)	City of Lompoc’s landfill	XXX
Zone 4 (Santa Ynez service area)	Tajiguas landfill	33 miles
Zone 5	City of Santa Maria’s landfill	XXX

b. Compliance. Franchisee will observe and comply with all regulations in effect at the

29
30

1 Disposal Facility/Facilities and cooperate with the operator thereof with respect to operations
2 thereat, including directions to unload collection vehicles in designated areas, accommodating
3 construction and maintenance, and hazardous waste exclusion programs. Franchisee will at all
4 times operate according to safe industry practices.
5
6

7 **ARTICLE 8 MISCELLANEOUS SERVICE PROVISIONS** 8

9 **8.01 Emergency Services.** Within 8 hours of County request, Franchisee will provide, or
10 begin providing, services beyond the scope of franchise services at the times and to the extent
11 directed by County, including unscheduled discard, collection and disposal of bulky waste,
12 construction and demolition debris and other solid waste associated with earthquakes, fires,
13 storms, floods or riot.

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

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

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

"Franchisee Reimbursement Costs" means Franchisee's direct costs plus 10%.

22
23 Franchisee will document its direct costs to satisfaction of County, including the following:

- 24 1. a certificate signed by the principal financial officer of Franchisee, setting forth the
25 following:
 - 26 • amount of the direct costs and the reason why they are properly chargeable
27 to County, and
 - 28 • certifying that the direct costs are an arm's length and competitive price, if
29 there are competitive prices, for the service or materials supplied, and
- 30 2. on County request, additional back-up documentation to substantiate any direct cost,
31 such as invoices from suppliers and subcontractors.
32
33

34 **8.02 Ownership of Solid Waste.** This Agreement does not purport to grant Franchisee or
35 County ownership over materials that Franchisee collects. The right to possession or ownership

1 of those materials must be determined under law (including 14 CCR 17334 and Section 17-17 of
2 County Code), and not as a result of this Agreement. However, County nevertheless has the
3 right to direct Franchisee to transport those materials to facilities designated by County.
4
5

6 **8.03 Compliance with Law.**

7

8 **a. Contractual Obligations.** Franchisee will provide franchise services in compliance
9 with law, including Section 17-19 of the County Code. Provisions of law are incorporated into
10 this Agreement by reference as Franchisee's contractual obligations. County may enforce those
11 provisions not as violations of law (subject to fines or penalties), but as breaches of this
12 Agreement (subject to remedies under this Agreement). County may also enforce provisions of
13 County law as either or both violations or breaches of this Agreement. County has no
14 obligation to enforce law.
15

16 **b. Compliance With More Stringent Contract Provisions.** If any provision of this
17 Agreement is more stringent than comparable provisions of law, the provisions of this
18 Agreement applies.
19

20 **c. Amendments, Recodification.** Reference to specific provisions of law (such as
21 statutes) include the following:
22 1. future amendments to or recodification of those provisions, and
23 2. other law (such as regulations, rules and guidelines) promulgated under the authority of
24 those provisions.
25

26 **d. Definitions**

27

“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.*

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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.

“permits” means 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 contract year, at no additional cost to County, including 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 the following:

- 1. carts which 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.

- 1
- 2 **b. Other Supplies.** Franchisee will use reasonable business efforts to procure supplies with
- 3 post-consumer recycled content under County Recycled Content Procurement Policy adopted
- 4 by County pursuant to Resolution 00-44 and appended to this Agreement for convenience of
- 5 the parties.
- 6
- 7 **c. Green Business Program.** Franchisee will obtain certification under the County's
- 8 Green Business Program within one year from the franchise date.
- 9

10 **8.07 News Media Relations**

11

12 **a. Requests for Interviews or Inquiries.** Before responding to any inquiries from

13 news media related to franchise services or County, Franchisee will discuss Franchisee's

14 proposed response with County. Franchisee will use reasonable business efforts to inform

15 County by telephone followed by printed copy of all requests for interviews, comment, or

16 information related to franchise services or County within 24 hours of Franchisee's receipt of

17 the request.

18

19 **b. Franchisee News Releases.** Franchisee will not release or submit news releases or

20 proposed trade journal articles that reference the County or franchise services *unless* they are

21 acceptable to County.

22

23 **c. County Copies.** Within 5 days after publication or broadcasting, Franchisee will give

24 County copies of text (by hard copy or e-text) or transcript mentioning franchise services or

25 County, including the following:

- 26 1. Articles following media inquiries,
- 27 2. texts of interviews,
- 28 3. Franchisee's news releases.
- 29
- 30

31 **8.08 County Review of Printed Materials.** Prior to distributing any printed material

32 (including the following) to either or both (1) customers (other than correspondence related to

33 a specific customer's service) or (2) the public by any means (including written and electronic),

34 Franchisee will give County a copy to review, comment, and accept or reject by the following

35 times:

36

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
throughout	other	10

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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. if the correspondence is written confirmation of earlier phone, meeting or email correspondence, within the time required for phone, meeting or email response in this section, 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

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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 the following:

1. incorporating new developments in collection technologies and techniques,
2. and adding programs that facilitate County compliance with AB 939 diversion requirements, and
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 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 an

1 additional material(s), Franchisee will describe the extent to which the addition of the proposed
2 material would require the modification of vehicles, an additional container(s), additional
3 vehicles or routes, or additional route time and the associated additional costs, if any.

4
5 If both of the following occur:

- 6 1. County changes an identified solid waste facility, and
- 7 2. the change results in a different distance (greater or less) from the centric named in
8 Sections 6.01 or 7.01 measured by the shortest available route on roads that collection
9 vehicles may travel.,

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

12
13 **c. Proposal Implementation.** Upon County request, Franchisee will diligently provide
14 the changes in franchise services under the timeline accepted by County under Subsection (a).

15 16 17 **ARTICLE 10 RECORDS AND REPORTING**

18
19 Franchisee acknowledges County right to review records and receive reports provided in this
20 Article, for reasons including:

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

28 29 30 **10.01 Records Maintenance, Retention, Inspection and Audit.**

31
32 **a. Maintenance.** Franchisee will keep accurate records listed in Attachment 10.01 in
33 electronic form acceptable to County and comply with Sections 17-13 and 17-32(a) of the
34 County Code. It will maintain the following accounting records in both the following manners:

- 35 1. with respect to franchise services provided by Franchisee and any of its affiliates,
36 separately from Franchisee's and its affiliates' other operations,

1 2. with respect to all of Franchisee’s operations, combined as an entity.
2 Franchisee will back up all electronic records somewhere other than the place where
3 Franchisee keeps its records.
4

5 **b. Retention**
6

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

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

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

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

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

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

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

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

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

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

10
11 **(3) Dispute Resolution.** If County and Franchisee cannot reach agreement within 15
12 days following Franchisee's submission of its dispute, County may submit the matter to
13 the Independent Mediator for non-binding mediation under Article 9.

14 15 **10.02 Reports**

16
17 **a. Timing.** Franchisee will submit reports to County at the following times:

- 18 1. Monthly Reports no later than the 25th day of each month,
- 19 2. Annual Reports on or before each July 31.

20
21 *"Monthly Reports" means the report including the information listed in Attachment 10.02
"Monthly Reports", for the preceding calendar month.*

22
23 *"Annual Reports" means the report including the information listed in Attachment 10.02
"Annual Report", for the preceding contract year.*

24
25 **b. Submission and Correction.** Franchisee will do all of the following:

- 26 1. provide complete and accurate reports by required submission dates,
- 27 2. incorporate County comments on, and corrections in, reports within 5 days of receiving
28 them,
- 29 3. submit corrected reports or additional information submitted to any regulatory
30 authority (such as tonnage information to the State DRS) as soon as possible, and no
31 later than 5 days, and
- 32 4. provide additional complete and accurate information requested by County by the date
33 specified by County.

34 **c. AB 939 reports.** Contractor will assist County in preparing state-mandated
documents and implementing measures and recordkeeping to achieve County's integrated solid

1 waste management goals as mandated by CA IWM Act and authorized under Section 17-3(e) f
2 the County Code.

3
4 **d. Survival.** THE FRANCHISEE OBLIGATION TO SUBMIT ITS ANNUAL REPORT SURVIVES THE
5 FRANCHISE TERM. Franchisee will submit its Annual Report for the final contract year of this
6 Agreement at the time required in Section 10.02.

7
8
9 **10.03 Financial Statements.**

10
11 **a. Preparation.** Franchisee will cause an independent certified public accountant to
12 prepare the following financial statements:

- 13 1. Franchisee's financial statements with respect to franchise services for each of its fiscal
14 years, and
15 2. Guarantor's financial statements for each of its fiscal years.

16
17 Franchise will attach to the financial statements the following:

- 18 1. the accountant's representation that he has audited either or both Franchisee's and
19 Guarantor's financial statements in accordance with Generally Accepted Auditing
20 Principles, and
21 2. the accountant's following opinion:
22 • that the statements have been prepared in accordance with Generally Accepted
23 Accounting Principles consistently applied, and
24 • the statements fairly present the financial position, the results of operations and the
25 cash flows of either or both the Franchisee and Guarantor, and
26 3. the following statement of Franchisee's Chief Financial Officer:
27 • that no events subsequent to the preparation of the last financial statement
28 submitted under this Agreement have materially changed Franchisee's financial
29 status or condition, or
30 • describing any material changes in Franchisee's financial status or condition since
31 the preparation of the last financial statement.

32
33 **b. Annual Delivery to County.** Franchisee will give County 3 copies of the financial
34 statements in substantially the form attached as Exhibit 10.03, acceptable to the County,
35 together with the accountant(s)' representation and opinions on the earlier of the following
36 dates:

- 37 1. 100 days after the close of the Franchisee's and Guarantor's fiscal year, or

1 2. within one week of any statement's release,
2 Franchisee will comply with Section 17-32(b) of the County Code.

3
4 **c. County Review.** Franchisee will allow County and its representatives review the audit
5 plan and work papers of the independent certified public accountant(s) who audited and
6 opined on either or both of Franchisee's and Guarantor's financial statements. Within 2 weeks
7 of County request, Franchisee and its accountant(s) will meet with the County and its
8 representatives to discuss County's concerns and answer its questions. THIS PROVISION
9 SURVIVES THE TERM.

10 11 12 **10.04 Proprietary Records and Reports**

13
14 **a. Notice of Request.** If County receives a request from a third person to review or
15 copy material which Franchisee has marked "confidential", County will inform Franchisee and
16 allow Franchisee to present arguments and facts to County in support of Franchisee's position
17 that the material is entitled to an exemption from disclosure under the State Public Records Act
18 and should not be released.

19
20 **b. Notice of Release.** If County determines that the material is *not* entitled to an
21 exemption under this Agreement and that it must be released, before releasing that material so
22 County will inform Franchisee and Franchisee may seek a court order enjoining that release.

23
24 **c. Notice of Legal Action.** If County determines that the material is entitled to an
25 exemption, and the person who requested the information files a legal action seeking its
26 release, County will inform Franchisee and will not oppose a motion by Franchisee to intervene
27 in the action. Franchisee must either intervene or accept the release of the material. County is
28 not obligated to defend the action and may release the material sought without any liability.

29 30 31 **ARTICLE 11 FINANCIAL ASSURANCES**

32 33 **11.01 Insurance**

34
35 **a. Required coverage.** Franchisee will do both of the following:
36 1. carry insurance meeting the requirements in Exhibit 11.01, and

1 2. comply with Section 17-20(c) of the County Code.
2 If Franchisee does not carry insurance under this Agreement, in addition to any other rights and
3 remedies County may have, at its sole option County may do the following:
4 1. secure and maintain that insurance without further notice to Franchisee,
5 2. charge Franchisee any premium costs advanced by County, and
6 3. draw on the letter of credit provided by Franchisee.
7 If County does not recover its County Reimbursement Costs from the letter of credit, Franchisee
8 will directly pay County its County Reimbursement Costs.
9

10 **b. Notice of Claims.** Franchisee will inform County of any claim against either of the
11 following:
12 1. Franchisee, or
13 2. any subcontractor of Franchisee,
14 which claim exceeds the amount of any deductibles or self-insured retentions, within one week
15 of Franchisee’s learning of the claim.
16

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

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

25 **11.02 Franchisee Indemnification**

26

27 **a. Franchisee Conduct Included**

28

29 **(1) Indemnity, Release and Hold Harmless, Defense**

30

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

36 **(ii) Release and Hold Harmless.** Franchisee will release and hold

1 harmless County from and against all liabilities arising out of or in any way
2 connected to franchise services, including refraining from seeking
3 reimbursement from County for Franchisee's liability to someone else (such as
4 damages resulting from a suit against Franchisee by a customer).
5

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

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

12
13 County may retain co-counsel at its own cost and expense and Franchisee will
14 direct Franchisee's counsel to assist and cooperate with County co-counsel.
15

16 **(iv) County Sole Negligence Excluded.** Franchisee is not obligated to
17 indemnify, release, hold harmless or defend County if County is found solely
18 negligent by a court of competent jurisdiction after County has exhausted all
19 appeals.
20

21 **(v) Definitions.** In this Section, "County" includes everyone
22 described in the definition of "County Insureds".
23

"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 and defense under this Section.

(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 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.

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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 Franchisee can timely and fully meet its franchise obligations 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.
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.

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

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

ARTICLE 12 CRIMINAL CONDUCT

12.01 Criminal Conduct

a. Notice

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

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

“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” 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.*

b. Cure. Upon the occurrence of any Convictions or Pleas with respect to Criminal

1 Conduct by any Franchise Manager, Franchisee must do both of the following:

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

13
14 **c. County Remedy.** County in its sole discretion may terminate the Agreement or may
15 impose other sanctions (which may include financial sanctions, temporary suspensions or any
16 other condition deemed appropriate short of termination) as it deems proper, in the following
17 events:

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

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

26
27 **d. No Subversion.** Franchisee will not, or will not allow, hire or transfer from any
28 affiliate of any employee, officer or director of an affiliate who is the subject of any Conviction
29 or Plea to a position as a Franchise Manager.

30
31 **e. Definitions**

32
“Criminal Conduct” means any of the following:

1. **fraud or criminal offense** (other than offenses constituting infractions) in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to recyclables, green waste or solid waste services of any kind (including collection, hauling, transfer, processing, composting or disposal), including

this Agreement , or

2. **bribery** or attempting to bribe a public officer or employee of a local, state, or federal agency by Franchisee or by any Franchise Manager in that Franchise Manager’s official capacity, or
3. **embezzlement**, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony, or
4. **unlawful disposal of hazardous or special waste**, the occurrence of which Franchisee or any of its Franchise Managers knew or should have known, or
5. **violation of antitrust laws**, including laws relating to price-fixing, bid-rigging and sales and market allocation, and
6. **violation of unfair and anti-competitive trade practice laws**, including the inflation of waste collection, hauling or disposal fees.

1

“Conviction” means any of the following:

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

from a regulatory authority of competent jurisdiction with respect to any Criminal Conduct.

2

“Pleas” means either of the following,

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

to Criminal Conduct occurring:

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

3

4

5 **ARTICLE 13 CUSTOMER RATES**

6

7 **13.01 Franchisee Compensation.**

8

9 **a. Payable Only From Rates.** In consideration of and as compensation for full and timely
10 performing franchise services and satisfying its franchise obligations, Franchisee may charge

11 customers Rates. Franchisee is compensated solely from customers and not County. This

12 Agreement is a service agreement and does not constitute indebtedness of County in violation

1 of law.

2

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

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

7

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

8

9

10 **13.02 Rates**

11

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

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

17

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

23

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

27

28

29 **13.03 Security Deposit.** Franchisee may not charge customer any security deposit,
30 container rental or other amounts not listed on the Rate Schedule except under Section 4.16.

31

32

33 **13.04 Fees**

34

35 **a. Franchisee Business Fees**

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

- 4 1. the franchise fee.
- 5 2. a business tax, and
- 6 3. a permit or license fee.

7 Franchisee acknowledges the following:

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

11
12

<i>These fees are referred to in this Agreement as “Franchisee Business Fees”.</i>
--

13 **(2) Franchise Fee Payment.** In consideration for granting this franchise and
14 entering into this Agreement, Franchisee will pay County the franchise fee established
15 from time to time by County

16
17 **(i) Amount.** As of the franchise date , Franchisee will pay County a franchise
18 fee equal to x% of Franchisee’s gross receipts under this Agreement.

19
20 **(ii) Payment.** As of the franchise date, the franchise fee to the County by the
21 20th of each month, based on gross receipts that Franchisee received during the
22 previous month.

23
24 **(iii) County Right to Change.** County in its sole discretion may change the
25 franchise fee at any time, including the amount, manner of calculation and time
26 of payment.

27
28 **b. Solid Waste Program Fees**

29
30 **(1) Current and Future Fees.** Franchisee acknowledges the following:

- 31 1. County currently charges a solid waste program fee established from
32 time to time by the County, which is xx% of Franchisee’s gross receipts
33 under this Agreement on the franchise date, and
- 34 2. County in its sole discretion may impose different or additional fees
35 payable by customers and authorized under law (such CA Public Resources
36 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 belongs 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 satisfactory 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 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)
5. **County Reimbursement Costs:** including 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%.

1

“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 comprised of 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.

2

3

4 **ARTICLE 14 BREACHES, DEFAULTS AND REMEDIES**

5

6 **14.01 Certain Breaches and Liquidated Damages.**

7

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

13

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 by next	1-15 / \$100 Over 15 / \$500

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

4.11	franchise day,	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
4.04-4.06 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	1. Miscalculate / charge incorrect Rate,	1-5 / \$100 for each and every

13.02	and fail to correct it before (or in) next bill; 2. charge unauthorized Rate	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
6.05 7.01	Deliver: 1. recyclables to MRF(s), 2. green waste to Organics Site(s), 3. refuse to Disposal Facility/Facilities 4. manure to the identified site, and 5. universal waste and e-waste to the identified facilities	1-5 / \$1,000 per failed delivery Over 5 / \$5,000 (+ compensatory damages = County Reimbursement Cost of monitoring or confirming compliance)
6.06	Mixing refuse, recyclables or green waste	1-3 / \$5,000 per truck Over 3 / \$10,000
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

- 1
- 2 **b. Contest.** Franchisee may contest imposition of damages by Notifying County within 10
- 3 days of receiving County assessment, indicating Franchisee's basis for disagreement. County
- 4 Manager will consider information provided by County Representative and Franchisee and
- 5 make a binding determination as soon as possible.
- 6
- 7 **c. Acknowledgements.** Franchisee acknowledges the following:

- 1 1. County incurred considerable time and expense procuring this Agreement in order to
- 2 secure an improved level of collection service quality and increased customer
- 3 satisfaction. Therefore consistent and reliable franchise services are of utmost
- 4 importance to County and customers.
- 5 2. County has considered and relied on Franchisee's representations as to the quality of its
- 6 service in entering into this Agreement, and Franchisee's breach of its franchise
- 7 obligations represents a loss of bargain to County.
- 8 3. Quantified standards of performance are necessary and appropriate to ensure the
- 9 consistent and reliable franchise service, and if Franchisee fails to meet franchise
- 10 obligations referenced in this Section above, County will suffer damages (including the
- 11 following:
- 12
 - customers' inconvenience,
 - 13 • potential political pressure, criticism and complaint by customers,
 - 14 • lost County Board and staff time, and
 - 15 • loss of bargain,
- 16 4. It is and will be impracticable and extremely difficult to ascertain and determine the
- 17 value of damages.

18
 19 **d. Reasonable Estimate.** Therefore, each party acknowledges that the above
 20 liquidated damages represent a reasonable estimate of the amount of the damages,
 21 considering all of the circumstances existing on the franchise date, including the following:

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

26
 27 **d. Confirmation.** In signing this Agreement, each party specifically confirms the
 28 following:

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

32
 33
 34 **14.02 Defaults.** Each of the following is event of default (“**event of default**”) under this
 35 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 determination of non-compliance with applicable law from any regulatory authority to Franchisee, whether or not a fine or penalty is included, assessed, levied or attached.</i> <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> <ol style="list-style-type: none"> 1. promulgates law 2. regulates franchise services or operations of Franchisee, or 3. enforces law applicable to franchise services or operations of Franchisee, including: <ul style="list-style-type: none"> • CA DOT, CA DMV and other units that regulate transportation or enforce transportation laws, • CalRecycle, AQMD, water board and other units that regulate operations or enforce environmental laws, 	Franchisee's receipt of Notice of failure, subject to both of the following: <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.

	<ul style="list-style-type: none"> • <i>EDD, U.S. Immigration and Naturalization Services, federal and state departments of labor and other units that regulator operations or enforce 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> 	
Any provision	<p>Breach of Agreement</p> <ol style="list-style-type: none"> 1. Franchisee fails to meet any franchise obligation (other than a franchise obligation listed in this table as an event of default), and 2. County Notifies Franchisee as follows: <ul style="list-style-type: none"> • that in County opinion a specific breach has occurred, and • if Franchisee does not cure that breach within 20 days of receiving County Notice, County may terminate this Agreement. 3. If Franchisee cannot cure the breach within 20 days, as soon as possible (but no less than 2 days) Franchisee will Notify County as follows: <ul style="list-style-type: none"> • explain why Franchisee believes it needs additional time cure the breach, and • propose a schedule for curing the breach. 4. County, in its sole discretion, may do any of the following: <ul style="list-style-type: none"> • accept Franchisee's schedule, • present County alternative schedule, or • terminate this Agreement at the end of the 20-day period <p>This event of default is subject to uncontrollable circumstances <i>unless</i> related to the payment of money.</p>	20 days (or other County-prescribed period) following Franchisee’s receipt of County Notice of failure

12.01	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: <ol style="list-style-type: none"> 1. insurance, 2. performance bond, 3. guaranty, or 4. letter of credit 	Immediately following the public hearing required under Section 17-86(b) and (c)(1) of the County Code
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
	Seizure, Attachment: In the opinion of County, a seizure, attachment (other than a pre-judgment attachment) or levy upon any franchise service asset s: <ol style="list-style-type: none"> 1. substantially impairs Franchisee's ability to meet any Franchise Obligation, and 2. cannot be released, bonded or otherwise lifted within 48 hours, excepting weekends and holidays. 	Franchisee's receipt of Notice of failure
	Insolvency, Bankruptcy, Liquidation: <ol style="list-style-type: none"> 1. Franchisee does any of the following: <ul style="list-style-type: none"> • files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, <i>unless</i> Franchisee retains full control of franchise service assets throughout the pendency of that claim, or • consents to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of franchise service asset s no longer used to provide franchise services or backup franchise services), trustee (other than as security of an obligation under a deed of trust), custodian, 	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>sequestration, administrator (or similar official) of Franchisee for any part of Franchisee's operating assets or any substantial part of Franchisee's property, or</p> <ul style="list-style-type: none"> • makes any general assignment for the benefit of Franchisee's creditors, or • fails generally to pay Franchisee's debts as they become due, or takes any action in furtherance of any of the foregoing. <p>2. Involuntary bankruptcy:</p> <ul style="list-style-type: none"> • A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or • Franchisee consents to or fails to oppose any the proceeding, or • any court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, administrator (or similar official) of Franchisee or for any part of Franchisee's operating equipment or assets, or orders the winding up or liquidation of the affairs of Franchisee. 	
	Default under Guaranty	Franchisee's receipt of Notice of failure
	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 & throughout Agreement	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	Franchisee's receipt of Notice of failure

	<p>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>	
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14.03 Breaches and Defaults Excused by Uncontrollable Circumstances

a. Performance Excused

(1) Franchisee. Franchisee's failure to meet any franchise obligation will *not* be deemed an event of default if all of the following conditions are met:

1. the event of default is *caused* by uncontrollable circumstances,
2. the event of default is explicitly *subject to* uncontrollable circumstances under this Agreement, and
3. Franchisee exerted reasonable business efforts to prevent the occurrence and mitigate the effects of the uncontrollable circumstance.

(2) County. County failure to meet any obligation under this Agreement (other than payment of money *unless* County may withhold or offset payment under this Agreement) will *not* be deemed an event of default if the conditions in preceding Subsection (a)(1) are met.

<p><i>“uncontrollable circumstances”</i> means any of the following events:</p> <ol style="list-style-type: none"> 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 <u>except</u> for a Change in Law that meets both the following conditions: <ul style="list-style-type: none"> • 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
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- the failure of any public or private utility provider to provide water or electricity to the Franchisee office or maintenance facility.

1

“Change in Law” means any of the following:

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

2

3 **b. Notice.** The party experiencing an uncontrollable circumstance that causes that party
4 breach its obligations under this Agreement will give immediate Notice to the other party,
5 including all of the following:

- 6 1. describing performance under this Agreement for which it seeks to be excused,
- 7 2. the expected duration of the uncontrollable circumstance,
- 8 3. the extent to which franchise services may be curtailed,
- 9 4. any requests or suggestions to mitigate the adverse effects of the uncontrollable
10 circumstance, and
- 11 5. any extension of the schedule in the Transition Plan.

12

13 **c. County Rights**

1
2 (1) **Provide Franchise Services.** Even though Franchisee's breach is not event of
3 default under this Subsection, County in its sole discretion may perform any franchise
4 obligation under Section 14.10 if Franchisee does not cure the breach within 48 hours of
5 County Notice.
6

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

10 11 **14.04 Remedies Upon Default** 12

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

- 15 1. **Termination:** to terminate any or all of this Agreement,
- 16 2. **Suspension:** to suspend any or all of this Agreement,
- 17 3. **County Right to Perform Franchise Services:** perform franchise services under Section
18 14.10,
- 19 4. **Damages:** assess damages (including liquidated damages under Section 14.01) ,and
- 20 5. **All Other Available Rights and Remedies:** exercise any other available rights and
21 remedies at law and in equity (including specific performance).
22

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

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

- 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.
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

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

5 Franchisee does *not* waive any defenses of uncontrollable circumstances.
6
7

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

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

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

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

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

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

28 **14.09 reserved** 29

30 **14.10 County Right to Provide Franchise Services** 31

32 **a. Events.** County may provide, or contract for provision of, any or all franchise services
33 in either of the following events:

- 34 1. County in its sole discretion determines that Franchisee's failure to satisfy any franchise
35 obligation for a period of 48 consecutive hours poses a danger to public health, safety or
36 welfare, or
37 2. County suspends or terminates all or any part of this Agreement.
38

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

1
2 County has no obligation to continue providing franchise obligations. At any time, County in its
3 sole discretion may stop providing franchise obligations. However, County may continue to
4 provide franchise obligations until either of the following times:

- 5 1. Franchisee can demonstrate to County satisfaction that Franchisee is ready, willing and
6 able to timely and fully satisfy all franchise obligations, or
- 7 2. County provides services comparable to franchise services in scope and price, which
8 may include contracting with another service provider.
9

10 **b. Notice.** County may give Franchisee 24-hour oral notice that County is exercising its
11 right to provide any or all franchise service, effective immediately. Within those 24 hours,
12 County will give Franchisee a written Notice of confirmation.
13

14 **c. Containers.** Franchisee is deemed to give County possessory interest in any or all
15 containers necessary or convenient to provide franchise services, effective when County gives
16 oral notice. County may use containers to provide all or a part of franchise services. County
17 will have absolute and exclusive control over containers as though County were the absolute
18 owner thereof, subject to actual possession by customers.
19

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

- 23 1. County municipal employees,
- 24 2. Franchisee's current or prior employees such as:
 - 25 • key personnel and other management,
 - 26 • drivers,
 - 27 • route superintendents,
 - 28 • customer service representatives, and
 - 29 • billing, accounting and other office staff, and
- 30 3. any other person.
31

32 **e. Records.** Upon County request, Franchisee will give County immediate access to
33 Franchisee's office and any or all records, including records related to routing, customer service
34 subscriptions and billing.
35

36 **f. Franchisee Payment or County Reimbursement**

37

38 **(1) Uncontrollable Circumstances.** If events listed in Subsection (a) are due to
39 uncontrollable circumstances, then County will pay Franchisee the following costs so long as

1 Franchisee is not being compensated for franchise services through charging and collecting
2 Rates from customers (*for example, residential Rates for franchise service in carts that is*
3 *paid in advance*):

- 4 1. rental fees for County use and possession of carts and bins equal to their fair
5 market as determined by an independent appraiser selected by the parties in the
6 same manner as an the mediator under Article 16, and
- 7 2. Franchisee's direct cost of making its personnel available to County under
8 Subsection (d).

9
10 **(2) Franchisee Breach or Event of Default.** If events listed in Subsection (a) above are *not*
11 due to uncontrollable circumstances, then within 10 days of County request, Franchisee will
12 pay County its County Reimbursement Costs incurred in performing franchisee services. If
13 Franchisee does pay within 10 days, County may draw upon any letter of credit, guaranty or
14 other security provided under this Agreement.

15
16 **g. Insurance.** Franchisee will maintain all insurance required under this Agreement while
17 County exercises its rights under this Section.

18
19 **h. Stipulations.** Franchisee agrees and stipulates that County exercise of rights under
20 this Section:

- 21 1. is not a taking of private property for which County must compensate Franchisee,
- 22 2. will not create any liability on the part of County to Franchisee, except for rental under
23 Subsection (f)(1), and
- 24 3. does not exempt Franchisee from any Indemnifications, which Franchisee acknowledges
25 apply to this Section, *except* with respect to liabilities arising from
 - 26 • the negligence of County officers and employees (other than employees of
27 Franchisee at the time County commenced performing the franchise services),
28 and
 - 29 • individuals driving collection vehicles.

30 31 32 **ARTICLE 15 SUSPENSION OR TERMINATION**

33 34 35 **15.01 County Right to Suspend or Terminate**

36
37 **a. Termination Events.** County may in its sole discretion terminate this Agreement
38 separately or jointly with respect to Zone 4 and Zone 5 in whole or part, in any of the following
39 events:

- 1 1. **Franchisee Default:** the occurrence of an event of default,
- 2 2. **Uncontrollable Circumstances:** the occurrence and continuance of an uncontrollable
- 3 circumstance for 30 days or more, or
- 4 3. **Non-Severable Provisions:** any clause, sentence, provision, Subsection, Section or
- 5 Article of this Agreement or Exhibit to this Agreement is ruled invalid by any court of
- 6 competent jurisdiction but is not severable.

7
8
9 **b. Suspension Events.** County may in its sole discretion suspend all or part of this
10 Agreement for up to 30 days upon the occurrence of any event listed in Subsection (a) in whole,
11 or in part. During those 30 days Franchisee will have the opportunity to demonstrate to the
12 sole satisfaction of County that Franchisee can once again fully and timely satisfy all of its
13 franchise obligations. If County determines that Franchisee can satisfy all of its franchise
14 obligations, County right to suspend or terminate the Agreement will cease and Franchisee may
15 resume providing franchise service. If County does *not* make that determination, County may
16 terminate the Agreement and exercise any of its other rights and remedies.

17
18 **c. Notice.** Termination is effective at the times listed under Section 14.02 or any longer
19 times required by County.

20
21 **d. Suspension, Termination of a Portion of Franchise Services.** If County
22 suspends or terminates a part of this Agreement, Franchisee will do the following:
23 1. continue to fully and timely satisfy its remaining franchisee obligations, and
24 2. within two weeks, give customers written notice of reductions in franchise services.
25 *For example, if County suspends franchisee obligations with respect to residential recyclables*
26 *collection, Franchisee would be obligated to fully perform its other franchise obligations, such as*
27 *residential refuse and green waste collection.*

28
29
30 **15.02 Franchisee Obligations Upon Termination.** THIS SECTION SURVIVES THE
31 FRANCHISE TERM. Upon termination of this Agreement, County has the following rights and
32 Franchisee the corresponding obligations. County may exercise these rights no later than the
33 day that Franchisee receives County's Notice of termination.

- 34
35 1. **Use of Franchise Service Assets.** If County requests, Franchisee will give County
- 36 possession of franchise service assets (including vehicles) to provide franchise services.
- 37 Franchisee will transfer or assign to County all rights necessary to give County
- 38 possession and use of franchise service assets. County may keep those franchise service
- 39 assets until the County purchases or otherwise acquires replacement assets or secures

1 the use of replacement assets. Franchisee will comply with Section 17-86(c)(2) of the
2 County Code.

3 **2. Receipt of Customers' Franchise Service Payments.** Franchisee will give
4 County immediate access to Franchisee's service subscription and billing records. By
5 entering into this Agreement, Franchisee authorizes County to bill, collect and keep
6 customer service charges. Franchisee will comply with Section 17-86(c)(2) of the
7 County Code.

8 **3. Option to Purchase Containers.** County *may* purchase some or all containers at a
9 price equal to their book value amortized straight-line over a 7 year life. Franchisee will
10 transfer or assign to County all rights necessary to give County ownership, possession
11 and use of carts, including under any Container Acquisition Agreement. If County does
12 *not* purchase carts, upon County request Franchisee will pick up those carts at its
13 customers' cart set-out site on the date specified by County. Franchisee will recycle
14 rather than dispose of carts.

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17 **ARTICLE 16 [RESERVED]**

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19 **16.01 RESERVED**

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21
22 **ARTICLE 17 THE PARTIES**

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24 **17.01 Franchisee Is Independent** . Franchisee will perform franchise services as an
25 independent contractor engaged by County and not as officer, agent, servant, employee or
26 partner of County or as a joint venture with County. No employee or agent of Franchisee is
27 deemed to be an employee or agent of County. Franchisee has the exclusive control over the
28 manner and means of performing franchise services anyone else performing franchise services,
29 *except* for County right to change the scope of franchise services under Article 9. Franchisee is
30 solely responsible for the acts and omissions of its officers, employees, Franchisees,
31 subcontractors and agents, none of whom is deemed to be an officer, agent, servant, employee
32 of County. Neither Franchisee nor its officers, employees, subcontractors and agents will
33 obtain any rights to retirement benefits, workers compensation benefits, or any other benefits
34 which accrue to County employees, and Franchisee expressly waives any claim it may have or
35 acquire to the benefits.

1 **17.02 Parties In Interest.** Nothing in this Agreement, whether express or implied, is
2 intended to confer any rights on anyone other than the parties and their representatives,
3 successors and permitted assigns.
4
5

6 **17.03 Binding On Successors.** The provisions of this Agreement will inure to the benefit of
7 and be binding on the successors and permitted assigns of the parties. This Section does not
8 imply that County consents to the Transfer of this Agreement.
9

10
11 **17.04 Further Assurances.** Each party will execute and deliver any instruments and
12 perform any acts as may be necessary or requested by the other in order to give full effect to
13 this Agreement.
14
15

16 **17.05 Actions of County In Its Governmental Capacity.** Nothing in this Agreement can
17 be interpreted as limiting the rights and obligations of County in its governmental or regulatory
18 capacity. However, the parties intend that County designation of any Identified Solid Waste
19 Facility is an exercise of County contractual rights and not a governmental or regulatory action.
20

21 **17.06 Reserved.**
22

23 **17.07 Parties' Representatives**

24 **a. County Representative**

25
26
27 (1) **Named.** County Representative is the Deputy Director of the Public Works
28 Department (Resource Recovery and Waste Management Division) *unless* County names
29
30 someone else by Notice to Franchisee. County Representative is authorized to act on behalf of
31 County in the administration of this Agreement, *unless* another individual is specifically named.
32

33 **"County Representative"** means the Person named by County under this Section.

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

- 38 1. extending the Term,

- 1 2. suspending or terminating the Agreement,
- 2 3. approving or disapproving Transfer of this Agreement,
- 3 4. approving Rates, including Rate adjustments for variations in franchise services
- 4 under Section 4.04a(9), and
- 5 5. exercising any delegation of authority contrary to law.
- 6

7 **b. Franchisee Representative.** Franchisee Representative is the individual whom
8 Franchisee names in Franchisee Documentation. County may assume that Franchisee has
9 authorized Franchisee Representative to act on behalf of Franchisee under this Agreement.
10 Franchisee Representative must have at least 5 years experience providing solid waste
11 collection services.
12

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

14
15 **17.08 Due Diligence.** Franchisee acknowledges the following:

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

19 Franchisee agrees that it will exercise due diligence in providing franchise services.
20
21

22 **17.09 No Use of County Name.** Franchisee will not do business as or use a corporate,
23 partnership, venture or other formal name containing the words "Santa Barbara County" or
24 implying municipal ownership. However, upon County request, Franchisee will use County
25 name in any of the public relations materials.
26
27

28 **ARTICLE 18 TRANSFER AND AMENDMENTS**

29

30 **18.01 Transfer**

31

32 **a. County Transfer.** County may transfer this Agreement to a sanitation district, joint
33 power authority, sanitation district or other public entity succeeding to the major part of
34 County solid waste management rights and obligations. County may transfer this Agreement to
35 anyone else if it determines that the transferee is capable of meeting County obligations under
36 this Agreement.
37

1 **b. Franchisee Transfer**
2

3 **(1) Franchisee Acknowledgments.** Franchisee acknowledges as follows:

- 4 1. In Franchisee’s proposal to provide franchise services Franchisee submitted
5 information with respect to Franchisee’s:
6 • experience in providing services similar to franchise services in a timely, safe and
7 effective manner,
8 • financial strength and creditworthiness to meet franchise obligations (including
9 paying Indemnifications),
10 • history of (non)compliance with law (including environmental law with respect
11 to both solid waste and hazardous waste),
12 • litigation record (especially by or against public entities or with respect to
13 procurements),
14 • reputation for sound solid waste management practices,
15 • references from other public entities , and
16 • other matters relating to Franchisee’s fitness to provide franchise services.
17 2. County evaluated that information prior to awarding this Franchise to
18 Franchisee.
19 3. Therefore, and as described in Section 5.06, Franchise services are personal
20 services in nature and County and customers may not receive the full benefit of their
21 bargain if someone else assumes Franchisee’s performance obligations.
22

23 **(2) County Consent.** Consequently, Franchisee will not Transfer this Agreement, or any
24 rights or duties under it, in whole or part, whether voluntarily or involuntarily, without
25 County prior consent exercised in County sole discretion. Franchisee will comply with
26 Section 17-86(c) of the County Code.
27

28 Any transfer or attempted Transfer of this Agreement or any rights and duties under it,
29 made without County consent, is null and void at County option. All of Franchisee’s rights
30 under this Agreement will terminate as provided in Section 17-86(c) of the County Code.
31

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

- 35 1. 10% *times*
36 2. the following difference:
37 • Franchisee’s average monthly revenue since the franchise date that

- 1 Franchisee reported to County as basis for calculating the franchise fee,
2 *minus*
- 3 • any corresponding Franchisee Business Fees or Solid Waste Program Fees,
4 *times*
- 5 3. the number of months (or partial months) remaining in the franchise term.
6

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

- 9 1. the County consents to the Transfer, and
10 2. the Transfer is to an affiliate, and
11 3. the Guarantor does not change.
12

"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 of the following:
 - *the effective control, or*
 - *the ownership (actual or constructive) of franchise service assets (except for sales or Transfers to the Immediate Family or a trust created primarily to benefit the Immediate Family) unless Franchisee proves to satisfaction of County that less than 20% of the value of franchise service assets has changed ownership, or*
3. *resulting in someone other than Franchisee performing franchise services or assuming the obligation to provide franchise services (including substitution of someone else by a surety company providing a performance bond, contract assignment, transfer, conveyance, 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.

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“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 or corporations.

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

1 additional Transfer costs in excess of the Transfer Deposit within 30 days of
2 County request therefor, whether or not County consents to the Transfer. At
3 Franchisee’s request, County will provide Franchisee access to all records
4 evidencing the Transfer costs incurred.
5

“Transfer Costs” means County Reimbursement Costs for the following:

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

6
7 **(iii) County Reimbursement Costs of Enforcement.** In addition, within 30
8 days of County request Franchisee will pay County Reimbursement Costs for fees
9 and investigation costs that County deems necessary to enjoin the Transfer or to
10 otherwise enforce this provision.

11
12 **(5)** Franchisee must remain secondarily liable after the transferee for meeting
13 franchise obligations.

14
15 **(6)** The transferee must assume all of Franchisee’s franchise obligations (including
16 obligations precedent).

17 18 19 **18.02 Amendments to Agreement**

20 21 **a. County Manager Changes**

22
23 **(1) Changes to Franchisee Documentation.** County Manager may make changes to
24 Franchisee Documentation.

25 **(2) Mutual Consent.** The following changes in the Agreement are effective upon
26 mutual consent of County Manager and Franchisee,

- 27 1. Changes in franchise obligations that do not result in a Rate adjustment,
- 28 2. Immaterial changes in franchise services (such as changing the date that a report is due),
29 and
- 30 3. Changing the Franchisee Representative.

- 1 **b. County Board Amendments.** The following changes in this Agreement after the
2 franchise date are effective only upon execution of a written amendment to this Agreement,
3 including warranties by the parties under Article 20:
4 1. Changes in franchise obligations that result in a Rate adjustment, *except* for variations in
5 franchise service under Section 4.04a(9), and
6 2. Material changes in franchise obligations (such as County remedies for breach of this
7 Agreement or the definition of “Events of Default”).
8

9 **18.03 Amendments to Franchisee Documentation.** The parties dated signatures on
10 Franchisee Documentation or other Attachments is deemed evidence that it was duly amended
11 following Notice and/or consent, as it requires. Amended Franchisee Documentation
12 supersedes the prior Franchisee Documentation as of the last dated signature of County
13 Representatives or Franchisee Representative.
14
15

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

17

18 **19.01 Notices, etc..** Parties must give Notices at the following addresses:
19

- 20 1. To Franchisee: At address in Franchisee Documentation.
21
22 2. To County: XXX
23
24

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

- 26 1. Email or facsimile followed as soon as possible (but no more than 2 days) by personal or
27 mailed delivery,
28 2. personal delivery to Franchisee Representative or County Representative being notified,
29 3. deposit in the United States mail first class postage prepaid (certified mail, return
30 receipt requested), or
31 4. commercial delivery service providing delivery verification.
32

33 Notice by County to Franchisee of a missed pick-up or other customer problem or complaint
34 may be given to Franchisee orally by telephone to Franchisee Representative or other
35 Franchisee personnel responsible for taking complaints from County or the public.
36

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

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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.

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.

1 COUNTY OF SANTA BARBARA,
2 CALIFORNIA, a municipal corporation
3 By: _____
4 Name: _____
5 Title: CHAIR OF THE BOARD
6 Dated: _____

7
8 ATTEST:
9 _____
10 COUNTY CLERK
11 Dated: _____

12
13 APPROVED AS TO FORM:
14 _____

15 COUNTY COUNSEL
16 Dated: _____

17
18 _____

19 COUNTY RISK MANAGER
20 Dated: _____

21
22 _____

23 COUNTY AUDITOR-CONTROLLER
24 Dated: _____

25
26
27
28

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

ATTEST:

Dated: _____

1 **ATTACHMENT 2.01 FRANCHISEE REPRESENTATIONS AND WARRANTIES**

2 Franchisee represents and warrants as follows:

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

- 1 franchise services to be provided. Franchisee agrees that it will make no claim against
2 County based on any good faith estimates, statements or interpretations made by any
3 officer, employee or agent of County which proves to be in any respect erroneous.
- 4 7. **Compliance with law.** Franchisee fully complied with all law, including without
5 limitation law relating to conflicts of interest, in the course of procuring this Agreement.
- 6 8. **Truth and Accuracy of Application.** As of the date Franchisee submitted to the
7 County its proposal to provide franchise services, t he information provided by
8 Franchisee in its proposal, was true and accurate, without material omissions.
- 9 9. **Truth and Accuracy of Proposal Information.** The information that Franchisee
10 submitted to County in its proposal to provide franchise services is true and accurate.
11 Franchisee will inform County of any change in that information within one week of
12 discovering any untruth or inaccuracy.
- 13 10. **No Prior Agreements.** Neither Franchisee nor any of its affiliates has previously
14 been a party to an agreement with County, that has either expired without Franchisee
15 earning an available extension, or been terminated by County.
16

1 **EXHIBIT 4.01a** **SERVICE AREA / ZONE 4 /**
2

3 ***Description for the Solid Waste Collection Zone Four***
4

5 *Resource Recovery and Waste Management Division*
6 *Santa Barbara County Public Works Department*
7 *See Board of Supervisors File# 10-00845, 9/28/2010*
8
9

10 That portion of land situated in the County of Santa Barbara, State of California, described as
11 follows:
12

13 Beginning at a point at the intersection of the mean high water line of the Pacific Ocean and
14 the southerly prolongation of the easterly line of the Cojo Ranch as shown on the *Map of*
15 *Retracement of the Cojo Ranch, Part of the Rancho Punta de la Concepción*, recorded January 20,
16 1913 in book 7, page 14 of Maps and Surveys, in the Office of the County Recorder of said
17 County, noted as a point on Exhibit 4B, attached; thence,
18

- 19 1st Northerly to the southeasterly corner of said Cojo Ranch; thence
20
- 21 2nd Northerly along the easterly boundary of the Cojo Ranch to the northwesterly
22 corner of Parcel 5 of the Hollister Ranch property as shown on the *Parcel Map of the*
23 *Hollister Ranch, Phase I*, recorded August 27, 1971 in book 8 pages 45 thru 57 of
24 Parcel Maps; thence
25
- 26 3rd Easterly along a straight line to the crest of San Julian Grade on State Highway 1;
27 thence
28
- 29 4th Easterly along a straight line to the crest of Nojoqui Grade on US Highway 101;
30 thence
31
- 32 5th Easterly along a straight line to the crest of Refugio Road; thence
33
- 34 6th Easterly along a straight line to the Tecolote Tunnel inlet on the southerly bank of
35 Lake Cachuma; thence
36
- 37 7th Westerly along the southerly bank of Lake Cachuma to the most westerly end of
38 said lake; thence
39
- 40 8th Northerly along a straight line to the end of the paved section of Happy Canyon
41 Road as of September 2002; thence

- 1
2 9th Northerly along a straight line to a point southerly of the intersection of Pine
3 Canyon Road and State Highway 166, said point being on the Easterly line of
4 Rancho Sisquoc, as patented; thence
5
6 10th Southerly along the easterly line of said rancho to a point lying north 29°19'10"
7 east 9701.40 feet from the southeast corner of said rancho, said point being the
8 same point as described as the end of the first course of the line of the parcel of
9 land described in a Certificate of Compliance recorded as Instrument 2009-
10 0057191, Official Records, County of Santa Barbara, September 17th 2009; thence
11
12 11th Northwesterly and southerly along the northwesterly and westerly line of said
13 Certificate of Compliance to the southerly line of Rancho Sisquoc, said point being
14 the westerly corner of said Certificate of Compliance; thence
15
16 12th Northwesterly along the southerly boundary of Rancho Sisquoc, to the northwest
17 corner of Assessor's Parcel Number 133-080-037 as it existed on September 28th,
18 2010; thence
19
20 13th Southerly along westerly line of Assessor's Parcel Number 133-080-037 to the
21 southwesterly corner of said parcel; thence
22
23 14th Southerly to the northwesterly corner of Rancho la Zaca, as patented, said point
24 also being an angle point on the boundary of Rancho la Laguna, as patented;
25 thence
26
27 15th Southerly, westerly, southerly, westerly and northerly along the boundary of
28 Rancho la Laguna to southeasterly corner of Rancho los Álamos, as patented;
29 thence
30
31 16th Northwesterly along the southerly boundary of Rancho los Álamos to the
32 southwesterly corner of said rancho and the southeasterly corner of Rancho Todos
33 Santos y San Antonio, as patented; thence
34
35 17th Northwesterly along the southerly boundary of Rancho Todos Santos y San
36 Antonio to its intersection with the Vandenberg Air Force Base boundary; thence
37
38 18th Northwesterly, southerly, southeasterly, southerly, northwesterly and
39 southwesterly along the easterly Vandenberg Air Force Base boundary to a point
40 on the northerly boundary of the City of Lompoc; thence
41

- 1 19th Easterly, southerly, westerly, northerly and northwesterly along the boundary of
2 the City of Lompoc to a point on the westerly boundary thereof and the easterly
3 Vandenberg Air Force Base boundary; thence
4
- 5 20th Westerly and southerly along the Vandenberg Air Force Base boundary to the
6 northwesterly corner of the intersection of Renwick Avenue and Ocean Avenue;
7 thence
8
- 9 21st Westerly along the northerly right of way of Ocean Avenue to the northerly right of
10 way of Ocean Park Road; thence
11
- 12 22nd Westerly along the northerly right of way of Ocean Park Road to the easterly
13 boundary of Ocean Beach Park; thence
14
- 15 23rd Northerly, westerly, southwesterly, and southeasterly along the boundary of Ocean
16 Beach Park to the southerly right of way of Ocean Park Road; thence
17
- 18 24th Easterly along the southerly right of way of Ocean Park Road to the northwest
19 corner of the intersection of Ocean Park Road and Ocean Avenue; thence
20
- 21 25th Southerly across Ocean Avenue at right angles to the southerly right of way
22 thereof; thence
23
- 24 26th Easterly along the southerly right of way of Ocean Avenue to a point on the
25 easterly Vandenberg Air Force Base boundary; thence
26
- 27 27th Easterly, southerly, easterly, southerly and westerly along the easterly Vandenberg
28 Air Force Base boundary to the mean high water line of the Pacific Ocean; thence
29
- 30 28th Southerly and easterly along the mean high water line of the Pacific Ocean to the
31 point of beginning.
32

33 Excepting therefrom the incorporated areas of the County of Santa Barbara (the cities of
34 Lompoc, Buellton, and Solvang).
35

1 **Description for the Solid Waste Collection Zone Five**

2
3 *Resource Recovery and Waste Management Division*
4 *Santa Barbara County Public Works Department*
5 *See Board of Supervisors File# 10-00845, 9/28/2010*
6

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

9
10 Beginning at a the point described as forming the northwest corner of the boundary of the
11 County of Santa Barbara as described in California Government Code §23142, said point
12 being in the Pacific Ocean opposite the mouth of the Santa Maria River, noted as a point on
13 Exhibit 5B, attached; thence,

14
15 1st Easterly along the northerly boundary of the County of Santa Barbara, up the Santa
16 Maria River to the northwesterly boundary of the City of Santa Maria; thence

17
18 2nd Southerly, westerly, southerly, easterly, northerly, easterly and northerly along the
19 boundary of the City of Santa Maria to northeasterly corner thereof, said corner
20 being on the northerly boundary of the County of Santa Barbara; thence

21
22 3rd Southeasterly, northerly and easterly along the northerly boundary of the County
23 of Santa Barbara to a point due north of the intersection of State Highway 166 and
24 Pine Canyon Road; thence

25
26 4th South to the intersection of State Highway 166 and Pine Canyon Road; thence

27
28 5th Southerly along a straight line to a point north of the end of the paved section of
29 Happy Canyon Road as of September 2002, said point being on the Easterly line of
30 Rancho Sisquoc, as patented; thence

31
32 6th Southerly along the easterly line of said rancho to a point lying north 29°19'10"
33 east 9701.40 feet from the southeast corner of said rancho, said point being the
34 same point as described as the end of the first course of the line of the parcel of
35 land described in a Certificate of Compliance recorded as Instrument 2009-
36 0057191, Official Records, County of Santa Barbara, September 17th 2009; thence

37
38 7th Northwesterly and southerly along the northwesterly and westerly line of said
39 Certificate of Compliance to the southerly line of Rancho Sisquoc, said point being
40 the westerly corner of said Certificate of Compliance; thence

- 1
- 2 8th Northwesterly along the southerly boundary of Rancho Sisquoc, to the northwest
- 3 corner of Assessor's Parcel Number 133-080-037 as it existed on September 28th,
- 4 2010; thence
- 5
- 6 9th Southerly along westerly line of Assessor's Parcel Number 133-080-037 to the
- 7 southwesterly corner of said parcel; thence
- 8
- 9 10th Southerly to the northwesterly corner of Rancho la Zaca, as patented, said point
- 10 also being an angle point on the boundary of Rancho la Laguna, as patented;
- 11 thence
- 12
- 13 11th Southerly, westerly, southerly, westerly and northerly along the boundary of
- 14 Rancho la Laguna to southeasterly corner of Rancho los Álamos, as patented;
- 15 thence
- 16
- 17 12th Northwesterly along the southerly boundary of Rancho los Álamos to the
- 18 southwesterly corner of said rancho and the southeasterly corner of Rancho Todos
- 19 Santos y San Antonio, as patented; thence
- 20
- 21 13th Northwesterly along the southerly boundary of Rancho Todos Santos y San
- 22 Antonio to its intersection with the Vandenberg Air Force Base boundary; thence
- 23
- 24 14th Northerly, westerly, northwesterly and southerly along the Vandenberg Air Force
- 25 Base boundary to the mean high water line of the Pacific Ocean; thence
- 26
- 27 15th Northerly along the mean high water line of the Pacific Ocean to the point of
- 28 beginning.
- 29

30 Excepting therefrom the incorporated areas of the County of Santa Barbara (the cities of
31 Santa Maria and Guadalupe).

32
33

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

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

- 6 1. Timeline showing the commencement, duration and completion date of transition,
7 including the following:
- 8 • permitting, constructing, testing and commencing operation of the CNG fuel
9 depot,
 - 10 • developing the procedure for residential and commercial customers to select
11 container size(s) and service frequency,
 - 12 • contacting customers to determine subscription levels and consequent number
13 and type of containers,
 - 14 • public education and outreach activities, including holding public workshop /
15 community meetings on date chosen by County to explain new programs and
16 display new carts,
 - 17 • individually contacting (potential) manure customers of new franchise services
18 for manure,
 - 19 • informing any customer than must pay bin push-out charges under this
20 agreement,
 - 21 • give County route sheets, including wet/dry – high content recyclables
22 • submitting form of container orders, if any, to County for acceptance (including
23 labeling),
 - 24 • ordering any containers from manufacturer(s).
 - 25 • ordering trucks (including vehicle description, manufacturer, model, capacity,
26 lease/ownership) and any additional on-board cameras and computer/GIS
27 systems,
 - 28 • container delivery and assembly,
 - 29 • delivery of trucks,
 - 30 • hiring and training personnel,
 - 31 • training customer service personnel,
 - 32 • developing and implementing customer service and billing database,
 - 33 • submitting route sheets to County for acceptance,
 - 34 • training drivers on routes,
 - 35 • submitting Customer Orientation Packet to County for acceptance,
 - 36 • delivering containers and Customer Orientation Packets to customers,
 - 37 • collecting and recycling customers' old containers, at their request,
 - 38 • rolling out used batter collection program;

- 1 2. Identifying problems that might arise during transition, together with proposals to
- 2 prevent those problems and responses to solve them;
- 3 3. Detailing public education strategies to inform customers of all franchise services,
- 4 and explain how to secure and use those services;
- 5 4. Describing how Franchisee will use reasonable business efforts to hire qualified
- 6 people who provided solid waste services in the franchise service area prior to the
- 7 franchise date, if Franchisee cannot provide franchise services using its existing
- 8 employees as of the franchise date.

9
10 Franchisee may change this plan if County accepts the changes.²

11

²**Acknowledgment:** Franchisee has submitted, and County has accepted, the attached Transition Plan as of the later of the following dates:

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

Date _____

County Representative: _____

Franchisee Representative _____

1 **EXHIBIT 4.04a(3) REMOTE GREEN WASTE SERVICE EXCEPTIONS**

2

3 Franchisee may change these lists following notice to County.³

4

³**Acknowledgment:** Franchisee has submitted, and County has received, the attached customer list as of the later of the following dates:

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

Date _____

County Representative: _____

Franchisee Representative _____

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

3
4
5
6
7
8

Franchisee may change this application form if County accepts the changes.⁴

[FRANCHISEE, ATTACH FORM].

⁴**Acknowledgment:** Franchisee has submitted, and County has accepted, the attached Application Form as of the later of the following dates:

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

Date_____

County Representative: _____

Franchisee Representative_____

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Exhibit 4.04b(2) 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.

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

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

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

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

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

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

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

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

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

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

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

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

15 16 **2-102 Exemption Protocol**

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

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

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

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

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

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

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

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

28

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

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

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

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

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

15 16 **2-104 Contamination Protocol**

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

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

Business and Multi-Family Recycling Program Guidelines

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

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

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

New Business Customer Protocol

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

New Multi-Family Customer Protocol

1. When a new multi-family customer subscribes to collection services, Franchisee will discuss the various refuse and recycling collection options available. Customer is entitled up to an additional 30% of the refuse collection capacity for recycling and the cost is built into the refuse collection rate. Franchisee and customer will determine the appropriate types of containers to be used, location of the containers, and frequency of service in order to encourage active participation in the recycling program.
2. When containers are delivered, customer will be provided with information regarding the types of services the customer is eligible for, and flyers and posters that explain the program to the residents and that list the types of materials that can

1 be recycled. Franchisee will include information that, if interested, the customer can
2 contact the County for free indoor recyclables collection containers for its residents.
3

4 **Existing Customers**

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

7 Franchisee will do the following:

- 8 a. Compare the level of service in the Franchisee customer database to what
9 the customer actually has and document any discrepancies;
10 b. Document any businesses and multi-family customers without recycling
11 service and any reason why not (self-haul, exemption, unknown)
12 c. Note the level of contamination in the recycling containers, if over 25%,
13 document this information and inform office staff for follow-up phone call,
14 offer for additional recycling information, and the possibility for withdrawing
15 the container if contamination does not go down;
16 d. Submit findings from this assessment to the County in Franchisee's Annual
17 Report.
18

19 **Explaining Recycling Options to Business and Multi-Family Customers**

- 20 1. Please ensure that the customer service representatives explain to new
21 commercial and multi-family customers and those customers that are not
22 recycling that they have two options to comply with the County's disposal
23 ban on recyclables (green waste is exempted):
24 b) subscribe to recycling service through its assigned franchise waste hauler or
25 c) collect and self-haul their recyclables to a recycling/buyback center. If this option is
26 chosen, the customer service representative should explain the need for the firm to
27 sort the recyclables by material type; also, the process for notifying the County that
28 the firm will be collecting and self-hauling its recyclables should be explained.
29

30 **Self-Hauling of Recyclables**

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

34
35 130 East Victoria Street, Suite 100
36 Santa Barbara, CA 93101
37

38 2. The letter must contain the following information:

- 39 a) The types of recyclable materials being collected;
40 b) The name and address of the facility where the recyclables are taken;

- 1 c) The approximate frequency that the recyclables are taken to a recycling/buyback
2 facility;
3 d) The name, title, and telephone number of a contact person.
4
5 3. Upon receipt of the letter, the County will contact the commercial customer to
6 schedule a site visit to verify that the firm's recycling program meets the
7 requirements of the disposal ban;
8 4. The County will complete a form that documents the results of the site visit;
9 5. The County will then send a letter to the commercial customer, confirming the firm's
10 compliance with the mandatory commercial recycling program; a copy of this letter
11 will be provided to the waste hauler;
12

13 **Commercial Customers Not Subject to the Commercial Recycling Program**

- 14 1. The disposal ban or mandatory commercial recycling program implemented by the
15 County of Santa Barbara in September 2003 is applicable to all businesses and owners of multi-
16 family dwellings (i.e. apartments, condominiums, and mobile home parks) in the
17 unincorporated areas of the County;
18 2. Entities currently not subject to the program include governmental agencies, schools,
19 single-family homes using cart service, and single-family homes using bin service.
20 3. Please ensure that a distinction is made between those entities that are not subject to
21 the program and those entities that are subject to the program but wish to obtain
22 approval for an exemption (see Section 2-102, Exemption Protocol of Commercial
23 Recycling Program Protocols); to request an exemption, a commercial customer must
24 claim that the requirements of having to recycle are infeasible or unnecessary or that
25 the commercial customer would suffer undue or unreasonable hardship by participating
26 in the program.
27

28 **Commercial Customers That Share a Recycling Container with Another Commercial Customer**

- 29 1. A commercial customer that does **not** have recycling service through the franchise
30 waste hauler and claims that it shares a recycling container with another firm must take
31 one of two actions:
32
33 a. Have the **firm whose recycling container it is sharing** send a letter to the
34 Recycling Program Specialist with the County Public Works Department,
35 Resource Recovery & Waste Management Division, at the following
36 address:
37

38 130 East Victoria Street, Suite 100
39 Santa Barbara, CA 93101
40

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

3
4 OR

5
6 b. Send a letter to the County confirming the types of recyclables that it is
7 generating and collecting AND have the **firm whose recycling container it**
8 **is sharing** send a letter confirming that it is allowing the other firm to
9 share its recycling dumpster.

10
11 c. Upon receipt of this information, the County will send a letter confirming
12 the firm's compliance with the County's mandatory commercial recycling
13 program.

14
15 **Public Education**

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

1 **EXHIBIT 4.05(2)(ii) #3 FRANCHISEE’S BUSINESS AND MULTI-FAMILY**

2 **RECYCLING PLAN⁵**

3 Franchisee will include the following in its plan:

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

19

⁵**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_____

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ATTACHMENT 4.06b (1) BUS STOPS

County may amend this list following Notice to Franchisee.⁶

[TO BE ATTACHED: LIST OF CONTAINER SET-OUT SITES]

-
1. ⁶ **Acknowledgment:** County has delivered, and Franchisee has received, the attached documentation on the later of the following dates:
- the franchise date, as evidenced by each of their signatures on the Agreement, or
 - with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date _____

County Representative: _____

Franchisee Representative _____

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ATTACHMENT 4.06c COUNTY FACILITIES

County may amend this list following Notice to Franchisee.⁷

[TO BE ATTACHED: LIST OF COUNTY FACILITIES]

-
2. ⁷ **Acknowledgment:** County has delivered, and Franchisee has received, the attached documentation on the later of the following dates:
- the franchise date, as evidenced by each of their signatures on the Agreement, or
 - with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date_____

County Representative: _____

Franchisee Representative_____

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EXHIBIT 4.09a CUSTOMER SERVICE POLICY

[FRANCHISEE, ATTACH PROTOCOL]

Franchisee may change this protocol following notice to County.⁸

⁸ **Acknowledgment:** Franchisee has submitted, and County has received, the attached Customer Service Policy as of the later of the following dates:

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

Date _____

County Representative: _____

Franchisee Representative _____

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EXHIBIT 4.10b NON-COLLECTION NOTICE

Franchisee will attach a copy of each of its Non-Collection Notices (recyclables, green waste trash, and other violations) written in both English and Spanish, 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,
- 5. the manner in which customer should discard materials and a list of materials that cannot be discarded in the recyclables and yard waste carts,
- 6. phone number for collection of household hazardous waste.

Franchisee may change this form of notice if County accepts the changes.⁹

⁹**Acknowledgment:** Franchisee has submitted, and County has accepted, the attached Non-Collection Notice as of the later of the following dates:

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

Date_____

County Representative: _____

Franchisee Representative_____

1 **EXHIBIT 4.13a CUSTOMER ORIENTATION PACKET**

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

Franchisee will include summary of available franchise services and discard / set-out instructions.

Franchisee may change form or content of the Customer Orientation package if County accepts the changes.¹⁰

¹⁰**Acknowledgment:** Franchisee has submitted, and County has accepted, the attached documentation as of the later of the following dates:

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

Date _____

County Representative: _____

Franchisee Representative _____

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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.

1 **EXHIBIT 4.16a(1) CUSTOMER BILL FORMAT**

2

3 Franchisee will include the following information on each customer bill:

- 4 1. customer’s level of franchise service,
- 5 2. Franchisee contact information, and
- 6 3. due and delinquency dates.

7

8 Franchisee may change this bill format if County accepts the changes.¹¹

9

10 [FRANCHISEE, ATTACH BILL FORMAT.]

11

12

¹¹**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_____

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EXHIBIT 5.01 ROUTE MAPS AND SCHEDULES

¹²

¹² **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 _____

1 **EXHIBIT 5.03a CONTAINER SPECIFICATIONS**

2
3
4 Containers acquired after the franchise date must meet all of the following requirements. They
5 must be:

- 6 1. with respect to carts, use the same colors as exists on carts as of the franchise date, but
7 transition towards only one style of recyclables and green waste cart;
8 • gray for refuse
9 • blue for recyclables
10 • green for green waste,
11 2. of high quality and durable (with 5 year general warranty on carts, at a minimum),
12 3. labeled as required under this Agreement, with printing embedded in carts (in-mold
13 graphics),
14 4. ultraviolet light stabilized (with respect to carts), and
15 5. painted or galvanized metal (with respect to entirely metal bins).

16
17 Franchisee may acquire hybrid plastic-metal bins, and plastic manure bins.

18
19 Franchisee may change these specifications if County accepts the changes.¹³

20 [FRANCHISEE, GIVE CART ORDER TO COUNTY FOR REVIEW AND ACCPTANCE, AND ATTACH
21 PRIOR TO ORDERING CARTS]
22

¹³ **Acknowledgment:** Franchisee has submitted, and County has accepted, the attached container specifications as of the later of the following dates:

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

Date_____

County Representative: _____

Franchisee Representative_____

1 **EXHIBIT 5.03b CONTAINER LABELS**

2
3 Labels must contain the following information embedded in carts:

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

13
14 Franchisee may change labels if County accepts the changes.¹⁴
15

¹⁴ **Acknowledgment:** Franchisee has submitted, and County has accepted, the attached form of labels as of the later of the following dates:

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

Date _____

County Representative: _____

Franchisee Representative _____

1 **EXHIBIT 5.03c CONTAINER ACQUISITION AGREEMENTS¹⁵**

2
3 Franchisee warrants as follows:

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

10
11
12
13 [FRANCHISEE, ATTACH AS OF THE FRANCHISE DATE, AND UPDATE IN EACH ANNUAL REPORT.]

¹⁵**Acknowledgment:** Franchisee has submitted, and County has received, the attached container acquisition agreement(s) as of the later of the following dates:

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

Date _____

County Representative: _____

Franchisee Representative _____

1
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EXHIBIT 5.03d CONTAINERS INVENTORY¹⁶

Franchisee will update its containers inventory under Section 5.03b.

[FRANCHISEE, ATTACH AS OF THE FRANCHISE DATE, AND UPDATE IN EACH ANNUAL REPORT.]

¹⁶**Acknowledgment:** Franchisee has submitted, and County has received, the attached container inventory as of the later of the following dates:

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

Date _____

County Representative: _____

Franchisee Representative _____

1 **EXHIBIT 5.06a KEY PERSONNEL.**¹⁷

2

3 Franchisee will identify by name the following personnel and include a brief description of their
4 professional qualifications:

- 5 1. Franchisee Representative,
- 6 2. route supervisor,
- 7 3. County liaison in Franchisee's financial accounting department responsible for
- 8 submitting reports with respect to franchise fees, and
- 9 4. County liaison responsible for submitting reports with respect to Franchisee's diversion
- 10 of solid waste in County.

11

POSITION	PERSONNEL
Market Area Director	Mike Smith
District Manager	Keith Ramsey
Operations Manager	Russell Hicks
Dispatch Manager	Suzy Snaric
Community Relations Manager	Michael LaBarbera
Maintenance Manager	Peder Lauridsen
Public Education Manager	Sandra Pursley
Community Outreach Liaison	Charla Horr
Public Education Consultant	Katy Wong

12

13

¹⁷ **Acknowledgment:** Franchisee has submitted, and County has received, the attached list as of the later of the following dates:

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

Date _____

County Representative: _____

Franchisee Representative _____

1 **EXHIBIT 5.07 BACK-UP SERVICE PLAN¹⁸**

2
3 Franchisee will develop a back-up plan to provide uninterrupted franchise service at all times,
4 including during mechanical breakdowns, facility closures, job actions (such as strikes, walk-
5 outs, slow-downs), or emergencies (such as natural disasters), including the following:

- 6 1. provide conveniently located bins or roll-off containers where customers may discard
7 refuse and other putrescible solid waste,
- 8 2. offer customers the option of self-hauling refuse and other putrescible solid waste to a
9 transfer station or Disposal Facility/Facilities,
- 10 3. inform customers of procedures for handling refuse and other putrescible solid waste,
11 preventing litter and discouraging vectors (such as keeping carts in their storage place
12 and not at set-out Sites, discarding excess solid waste in closed plastic bags and not
13 loose in carts),
- 14 4. describe any customer service charge refund policy for missed franchise services,
- 15 5. provide replacements for drivers and other employees who are not providing collection
16 or other franchise services (such as supervisory personnel or management, or
17 employees of affiliates or other solid waste management companies) and security for
18 those drivers and other employees, and
- 19 6. identify customers that require priority service.

20
21 Franchisee may change its back-up plan. Changes are effective when received by the County.

22 **[FRANCHISEE, ATTACH YOUR BACK-UP PLAN]**

-
- 3. ¹⁸**Acknowledgment:** Franchisee has submitted, and County has received, the
attached Back-Up Plan evidenced by each of their signatures on the Agreement, or
 - 4. with respect to subsequent changes, the following date, as evidenced by their
following signatures :

Date _____

County Representative: _____

Franchisee Representative _____

Hazardous Waste Handling Protocol as evidenced by the following:

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

Date _____

County Representative: _____

Franchisee Representative _____

1 **EXHIBIT 6.03g**

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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 annual outreach to customers to perform better source separation of recyclables, green waste, manure 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 County²⁰

²⁰ **Acknowledgment:** Franchisee has submitted, and County has accepted, the attached Diversion Plan as of the later of the following dates:

- 3. the franchise date, as evidenced by each of their signatures on the Agreement, or
- 4. after the franchise date, the following date following any change, as evidenced by their following signatures :

Date_____

County Representative: _____

Franchisee Representative_____

1 **ATTACHMENT 8.03d EXAMPLES OF APPLICABLE LAW**

2
3 *Examples of applicable law include law relating to the following:*

- 4 **1.** *health*
- 5 **2.** *safety,*
- 6 **3.** *fire,*
- 7 **4.** *mitigation monitoring plans,*
- 8 **5.** *building codes,*
- 9 **6.** *zoning,*
- 10 **7.** *non-discrimination,*
- 11 **8.** *vehicles*
- 12 • *Control Measure for Diesel Particulate Matter from On-road Heavy- Duty*
 - 13 *residential and Commercial solid waste collection vehicles, 13 CCR 2020 et seq.,*
 - 14 • *California Health and Safety Code § 43000 et seq., with respect to air emissions*
 - 15 *(smog checks),*
 - 16 • *California Vehicle Code § 27456b, with respect to tires,*
 - 17 • *California Vehicle Code § 34500 et seq., with respect to documentation through*
 - 18 *its maintenance log or otherwise of a safety compliance report issued under Division*
 - 19 *14.8 of the California Vehicle Code as applicable to each vehicle, including bi-annual*
 - 20 *"BIT" inspections conducted by the California Highway Patrol, documentation*
 - 21 *through maintenance log or otherwise of a safety compliance report, vehicle*
 - 22 *highway lighting, flashing and warning lights, clearance lights, and warning flags,*
 - 23 *registration, weight limits, cleaning, enclosure / water-tight beds,*
 - 24 • *Rules and regulations promulgated under the California Vehicle Code with*
 - 25 *respect to vehicle highway lighting, flashing and warning lights, clearance lights, and*
 - 26 *warning flags,*
 - 27 • *Rules and regulations of the California Department of Motor vehicles with*
 - 28 *respect to vehicle registration,*
 - 29 • *vehicle weight limits,*
 - 30 • *The appropriate class of drivers' licenses issued by the California Department of*
 - 31 *Motor vehicles,*
 - 32 • *14 CCR 17341, 17342, 17343 and 17344, with respect to equipment construction,*
 - 33 *safety, and parking and identification of operating equipment.*
- 34 **9.** *containers, such as:*
- 35 • *14 CCR 17314, with respect to maintenance and placement for collection,*
 - 36 • *14 CCR 17317, with respect to placing Franchisee's name and telephone number*
 - 37 *on Receptacle,*

1
2 **10. Environmental Protection:**

- 3
- 4 • CERCLA
 - 5 • RCRA;
 - 6 • Clean Air Act, (42 U.S.C. §1351 et seq., 42 U.S.C. §7401-7642); and California
 - 7 Clean Air Act (Health & Safety Code Sections 1251 et seq. and Health and
 - 8 Safety Code §39000 et seq.);
 - 9 • California Hazardous Waste Control Act, (California Health & Safety Code,
 - 10 §25100 et seq.);
 - 11 • California Hazardous Materials Release Response Plan and Inventory Act
 - 12 (California Health & Safety Code, Division 20, Chapter 6.95, §25500 et seq.);
 - 13 • Carpenter-Presley-Tanner Hazardous Substance Account Act, (California Health
 - 14 & Safety Code §25300 et seq.),
 - 15 • Emergency Planning and Community Right to Know Act, (42 U.S.C. §11001 et
 - 16 seq.);
 - 17 • NPPDES Industrial General Permit law, and

18 **11. Labor, such as:**

- 19
- 20 • Drug and alcohol testing,
 - 21 • The Occupational Safety and Health Act, (29 U.S.C. §651 et seq.),
 - 22 including the solid waste Disposal Facility/Facilities Criteria promulgated by the
 - 23 U.S. EPA on October 9, 1991 (40 C.F.R., Parts 257 and 258), and corresponding
 - 24 State requirements,
 - 25 • employment taxes, withholding and insurance requirements
 - 26 • Immigration Reform and Control Act of 1986 (PL.99-603),
 - 27 • Environmental Protection, such as:
 - 28 ▪ CERCLA (Comprehensive Environmental Response, Compensation, and
 - 29 Liability Act– Superfund- 42 U.S.C. 9601 et seq.),
 - 30 ▪ California hazardous waste Control Act(California Health & Safety Code §
 - 31 25100 et seq.),
 - 32 ▪ California Hazardous Materials Release Response Plan and Inventory
 - 33 Act(California Health & Safety Code, Division 20, Chapter 6.95, § 25500 et
 - 34 seq.), and Carpenter-Presley-Tanner Hazardous Substance Account
 - 35 Act(California Health & Safety Code § 25300 et seq.)
 - 36 ▪ 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

- 1 *Clean Water Act, and,corresponding State requirements,*
2 ▪ *Emergency Planning and Community Right to Know Act, (42 U.S.C.*
3 *§11001 et seq.),*
4 ▪ *regulations governing the recovery of ozone-depleting refrigerants during*
5 *the disposal of air conditioning or refrigeration equipment, including 40*
6 *C.F.R. Part 82, and*
7 ▪ *any wash-down requirements for containers, trucks or facilities,*
8 **12. County Code,**
9 **13. Civil Rights Act of 1964 (Sub chapter VI or Chapter 21 of Title 42),**
10 **14. customers' privacy rights,**
11 **15. business-related laws, such as taxation, anti-trust, securities and reporting.**
12

1 **10. ATTACHMENT 10.01a: RECORDS**

2
3
4 Franchisee will attach a timeline of franchisee’s obligations under this agreement, including its
5 “ConTrax” program product.

6
7 Franchisee will daily collect and record, at a minimum, the information required in Monthly
8 Reports under Exhibit 10.02a, and the following information, indicating the day of the week and
9 date:

10
11 1. **Collection, Disposal and Processing:**

- 12 • weight of each vehicle load (gross, tare and net), or volume estimates of green
13 waste and corresponding tonnage equivalents number of tons of refuse, recyclables,
14 green waste and bulky waste Collected and delivered to each Identified Solid Waste
15 Facility,
16 • route number(s),
17 • truck number,
18 • Identified Solid Waste Facility’s certified weight ticket number for each load, and
19 weight of each load (gross, tare and net), or volume estimates of green waste and
20 corresponding tonnage equivalents, as appropriate, disposal and processing costs
21 (per ton and aggregate),
22

23 2. **Accounts Serviced:**

- 24 • list of customers including the following:
25 o name,
26 o mailing address for bills,
27 o address of serviced premise,
28 o service subscription (containers type, number capacity)
29 o with addresses and Service subscription levels,
30 o whether commercial customer has demonstrated that it is self-
31 hauling recyclables or been granted an exemption from the County’s
32 Mandatory Business Recycling Program.
33 • the total number of customers per route number and customers added or deleted,
34 • number of *non-collections* per route, address of each customer where non-collection
35 occurred, and reason for non-collection,
36 • promotional materials distributed-number of copies distributed; description, and
37 route number(s).
38

39 3. **Containers:**

- 40 • number of containers for each capacity:

- 1 ○ aggregate number,
- 2 ○ per route,
- 3 • customer information
- 4 ○ address
- 5 ○ notation of any special service (such as regular Bin service, Roll-out)
- 6 ○ type, number and capacity of containers,
- 7 ○ ID numbers,
- 8 • customer requests to change frequency of franchise services or size of containers,
- 9 including reason,
- 10 • promotional, informational or educational materials distributed (number of copies
- 11 distributed, descriptions and route number(s)),
- 12
- 13 4. **Special franchise services- aggregate number:**
- 14 • regularly scheduled bin service and number of bins,
- 15 • bulky waste collection, and
- 16 • emergency services (and description), including the address of each customer (or
- 17 location of emergency services) and the total number of customers for which
- 18 Franchisee provided the special services,
- 19
- 20 5. **Billing records** for each customer under Section 4.16,
- 21
- 22 6. **green waste** information, including cost, productivity, tons Collected, person hours,
- 23 number of stops, number of participating homes, number of routes and all other data
- 24 on franchise services with respect to green waste,
- 25
- 26 7. any and all ledgers, books of account, invoices, vouchers, canceled checks, and other
- 27 records or documents evidencing or relating to the amounts paid pursuant to this
- 28 Agreement (including the Rate, any fees paid to County, and Solid Waste Program Fees,
- 29 County and Franchisee Reimbursable Costs, Franchisee fees described in Section 13.04,
- 30 damages) or performance of this Agreement, including the following:
- 31 • Minimum Diversion Requirement,
- 32 • routing,
- 33 • level of each customer's services,
- 34 • customer complaints,
- 35 • employee training,
- 36 • inventory,
- 37 • maintenance logs,
- 38 • a complete customer subscription information,
- 39 • all information required for reports, and

- 1 • sufficient information for County to corroborate the amounts payable by Franchisee
 2 to County under this Agreement.
 3

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

4
 5

1 **ATTACHMENT 10.02a MONTHLY REPORTS**

2
3
4 [COUNTY FORM / EXCEL SPREAD SHEETS TO BE INSERTED]

5
6 In its Monthly Report Franchisee will include, the following:

7

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
4.13d	(quarterly) names of schools and numbers of students to which Franchisee delivered its mobile education box program
4.12c(4)(iv)	Phone response standards
10.01a	updated list of customers and their respective franchise service subscriptions, including the following: 1. container type and capacity; service frequency; and 2. identification of single family or multi-family residential, or commercial customers
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

8
9 Franchisee will represent and warrant that it has met its franchise obligations during that
10 month, or describe any that it has *not* met.

ATTACHMENT 10.02a ANNUAL REPORTS

[COUNTY FORM TO BE INSERTED]

Franchisee will include the following information:

Section	Information
	Collated summary of the information contained in prior Monthly Reports for that franchise year
	Reconciliation of any adjustments from prior Monthly Reports
	Account information under Attachment 10.01 for each commercial and multi-family customer
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

1

ATTACHMENT 10.03 FINANCIAL STATEMENTS

Franchisee will give County financial information in substantially the following form, which County may change:

	Zone 4		
	Residential	Commercial	I
Revenues:			
Operating Revenue			
Recycling Revenue			
Roll off and Temporary Services Revenue			
Miscellaneous Revenue			
Total Revenues			
Operating Costs:			
Disposal & Processing Costs:			
Refuse Disposal			
Recycling Processing			
Green Waste Processing			
Total Disposal and Processing Costs			
Truck Operating Cost:			
Driver Salaries and Employee Benefits			
Other Salaries and Employee Benefits			
Total Operating Salaries and Employee Benefits			
Fuel			
Repair and Maintenance			
Truck Rental/Depreciation			
Other Truck Operating Costs			
Total Truck Operating Cost			
Recycling Operations			
Other Operating			
Total Operating Costs			
Selling, General and Administrative Expense			
Other Expense			
Total Costs and Expenses			
Net Income (Loss)			

2

1 **3. Automobile Liability Coverage**

- 2 • written on ISO policy forms CA 00 12 pr CA 00 20 (or their equivalent)
- 3 (occurrence) with a combined limit of liability not less than \$3 million for each
- 4 accident,
- 5 • endorsed to delete the pollution and/or the asbestos exclusion and include
- 6 pollution liability (using form CA 99 48 or its equivalent) for accidental spills and
- 7 discharges while transporting and/or processing materials, and
- 8 • covering all vehicles (any auto): owned, non-owned or hired autos.
- 9

10 If Franchisee is subject to federal regulations, Franchisee also will maintain any other

11 coverage necessary to satisfy state or federal financial responsibility requirements.

12

13 **4. Workers' Compensation and Employers' Liability** insurance providing

- 14 • workers' compensation benefits required by the California Labor Code or by any
- 15 other state labor law, and for which Franchisee is responsible, and
- 16 • Employers' Liability coverage with limits of not less than the following:
- 17

18 Each accident:	\$1 million
19 Disease - policy limit:	\$1 million
20 Disease - each employee:	\$1 million

21

22 **b. Insurer qualifications.** Franchisee will secure insurance provided by an insurer meeting

23 the following qualifications:

24

- 25 1. is acceptable to County,
- 26 2. is an admitted company in California,
- 27 3. has a size category of VII or larger by A.M. Best Company, Inc., and
- 28 4. has a rating of A or better by A.M. Best Company, Inc.
- 29

30 **c. Insurance Coverage Requirements for Subcontractors.** Franchisee will insure each

31 Subcontractor performing collection by providing evidence that either:

32

- 33 1. Franchisee is maintaining insurance required by this Section protecting Franchisee and
- 34 County interests against liabilities caused by the acts, errors or omissions of the
- 35 Subcontractor, or
- 36 2. the Subcontractor is maintaining that insurance itself.
- 37

1 **d. Evidence of Coverage**

2 **(1) Provision.** Franchisee will provide endorsements, schedules and other evidence of
3 coverage with respect to Franchisee and any Subcontractor requested by and acceptable to
4 County, at the following times:

- 5
- 6 1. on or before the Agreement Execution Date,
 - 7 2. Within one week of a policy's renewal, and
 - 8 3. within 10 County business days of County request.
- 9

10 Neither County failure to obtain, nor County receipt of, or failure to object to a non-complying
11 insurance certificate or endorsement or any other insurance documentation or information
12 provided by Franchisee, Franchisee insurance broker(s) and/or insurer(s), can be construed as a
13 waiver of any obligation under this attachment.

14

15 **d(2)-(5)** Franchisee will give County the documentation required in following Subsections
16 d(2)-(5), attached to this Exhibit, including the following:

- 17 (2) Certificates of insurance with evidence of insurer's qualifications,
 - 18 (3) Endorsements,
 - 19 (4) Schedules of Broker's letters,
 - 20 (5) Signature verification.
- 21

1 **EXHIBIT 11.01d(2) Certificates of Insurance**

2
3 Franchisee will provide certificates (or other evidence of coverage) containing at a minimum,
4 the following information with respect to Franchisee and any Subcontractor:

- 5 1. **Agreement name:** explicitly identifying this Agreement (for example, UNDER
6 DESCRIPTION OF OPERATIONS), and if necessary to secure contractual liability coverage
7 as an “insured contract” or otherwise, include a schedule or endorsement that
8 specifically identifies this Agreement,
9 2. **Insured party:** naming the insured party that matches the name of Franchisee,
10 3. **Insurer:** providing the full name of each insurer providing coverage and the insurer’s
11 NAIC (National Association of Insurance Commissioners) identification number,
12 4. **Financial rating** of insurer,
13 5. **Types, policy numbers, policy effective / expiration dates and limits:** explicitly
14 referencing each type and corresponding limit of coverage required under this
15 Agreement, together with the following:
16 • policy number,
17 • effective date and expiration date,
18 • identification of each required ISO policy form or confirmation of its equivalency
19 to ISO policy forms required under this Agreement (such as “auto liability ISO
20 form CA 00 12”). Where the Agreement does not require a specific ISO policy
21 form, the certificate of insurance must specifically reference the required type of
22 coverage (such as “pollution liability” under TYPE OF INSURANCE – OTHER)
23 together with a summary description of its coverage (such as “pollution
24 conditions caused by transported cargo” under SPECIAL PROVISIONS),
25 6. **30 days’ cancellation Notice:** containing the express condition that County must be
26 given written notice by mail at least 30 days in advance of cancellation (10 days, with
27 respect to cancellation for nonpayment of premium) for all policies evidenced on the
28 certificate of insurance. Endorsements cannot contain mere "best effort" modifiers or
29 relieve the insurer from its responsibility to give that Notice. CANCELLATION
30 information on the certificate of insurance must delete language such as “failure to do
31 so shall impose no obligation or liability of any kind upon the insurer, its agents or
32 representatives,”
33 7. **Deductibles and self-insured retentions:** identifying any deductible and self-insured
34 retention. Upon County request, Franchisee will reduce any deduction or self-insured
35 retention (SIR) as it applies to any County Insured or provide a letter of credit, certificate
36 of deposit or other financial assurance acceptable to County guaranteeing payment of

1 all retained losses and related costs and expenses related to investigations, claims
2 administrations, and legal defense. The letter of credit or certificate of deposit must be
3 provided by a bank satisfactory to County. Policies must not obligate County to pay any
4 part of any deductible or SIR. If anyone makes a claim against Franchisee or any
5 subcontractors exceeding the amount of any deductibles or self-insured reserves,
6 Franchisee will inform the following persons at the following times:

- 7 • the County, within one week of the claim, and
- 8 • the insurer, within the time required under the policy, and

- 9 8. **Claims made:** if any insurance coverage is written on a claims-made form (such as
10 pollution liability), evidencing that the “retro date” is before the Agreement Execution
11 Date. Franchisee must maintain that coverage for at least 5 years after the Termination
12 Date. Within 2 days of upon County request, Franchisee must provide County with
13 evidence of that coverage. **THIS FRANCHISEE OBLIGATIONSURVIVES THE FRANCHISE**
14 **TERM.**

15
16 [FRANCHISEE, ATTACH COIs AND EVIDENCE OF INSURER’S QUALIFICATIONS TO THIS EXHIBIT.]
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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.]

EXHIBIT 11.01d(5) Signature Verification

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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.]

1 8. an event of default.

2

3 **b. Term.** The term of the Letter of Credit must be either of the following:

4 1. the same as the franchise term plus 180 days, or

5 2. renewable annually or at other period up to the franchise term plus 180 days.

6

7 The Letter of Credit may be released when the Bank²³ receives a certificate from County stating
8 the following:

9 1. this Agreement has expired, or

10 2. this Agreement has been terminated for a period of 180 days or other preference period
11 provided under law with respect to bankruptcy or insolvency of Franchisee, or

12 3. Franchisee has substituted an alternative letter of credit or other security document
13 acceptable to County in County sole discretion, and

14 4. Franchisee does not owe County any money.

15

16 **c. Transfer.** The Letter of Credit must be transferable to any successor or assign of County.

17

18 Franchisee may substitute another letter of credit acceptable to County.

19

20 [FRANCHISEE, ATTACH LETTER OF CREDIT TO THIS EXHIBIT.]²⁴

21

²³ **“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.

²⁴ **Acknowledgment:** Franchisee has submitted, and County has accepted, the attached documentation as of the following date: _____

County Representative: _____

Franchisee Representative: _____

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EXHIBIT 11.04

FORM OF GUARANTY

[TO BE ATTACHED]

Date _____

County Representative: _____

Franchisee Representative _____

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ATTACHMENT 13.02a(1) RATE SCHEDULE

[TO BE INSERTED FROM PROPOSALS]

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
	Any other charges, such as the following: <ul style="list-style-type: none"> 1. returned checks, 2. new lids,

	<ol style="list-style-type: none">3. bin push-out,4. 3 tiers of charges for drive-in services.
--	---

1

1 **ATTACHMENT 13.02b(1) RATE ADJUSTMENTS**

2
3 **a. Annual Indexed and Pass-Through Adjustments.** Each year the maximum Rate will be
4 adjusted effective July 1, according to the principles outlined in this Subsection, as
5 implemented by County in spreadsheets. Rates will be escalated only if no event of default
6 exists.

7
8 **(1) Indexed Adjustment of Operations Portion.** The Operations Portion of the
9 maximum Rate is adjusted by 100% of the *average* monthly percent change in the CPI index
10 during the period beginning March 1 of the prior calendar year through February 28 of the
11 current calendar year.²⁶ The total adjustment of the Operations Portion of the Rate, whether
12 upward or downward, may not exceed 5% in any one franchise year. If any index is
13 discontinued or revised during the franchise term, County will substitute another government
14 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.

15
16 **“Tipping Fee Portion”** means the percent of the Rate attributable to Franchisee’s
17 direct cost of service at each Identified Waste Management Facility (processing or
18 tipping fees).

19
20 **“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).*

21 **(2) Pass-Through of Tipping Fee Changes.** The Tipping Fee Portion of the maximum
22 Rate is adjusted by 100% of the allocable difference in tipping fees at each MRF and Disposal
23 Facility on March 1 of the prior calendar year and February 28 of the current calendar year.²⁷
24

²⁶As of the franchise date, the Operations Portion of the maximum Rate is X%.
WM 310 redlined to RFP franchise 184

1 **(3) Subtotal: Operations Portion + Tipping Fee Portion.** The dollar amount of the
2 Operations Portion is added to the dollar amount of the Tipping Fee Portion.

3
4 **(4) Changes in Fees.** The subtotal is multiplied by the applicable percent of
5 Franchisee Business Fee and Solid Waste Program Fee.

6
7 **(5) Rate Schedule.** The Rate Schedule will be updated to reflect the sum of the
8 following:

- 9 1. Operations Portion,
- 10 2. Tipping Fee portion,
- 11 3. Franchisee Business Fee, and
- 12 4. Solid Waste Program Fee.

13
14 **b. Adjustments for Change in Law or Franchise Services.** Once each contract
15 year Franchisee may request an adjustment of (or County may adjust) the maximum Rate if
16 Franchisee's direct costs of providing franchise services (other than direct costs of gate fees
17 charged at a Solid Waste Facility) have increased or decreased due to a change in law or
18 franchise service specifications.

19
20 **c. Adjustment Process**

21
22 **(1) Adjustment Requests, Review, Consent**

23
24 **1. Information.**

25 Within 15 days of County request, Franchisee will give County any information
26 from Franchisee or its affiliates related to adjustment of the maximum Rate.

27
28 Franchisee will attach the following information in any request it might have for
29 adjustment of the maximum Rate due to change in law or service specifications:

- 30 • the amount of the requested adjustment,
- 31 • the change in law or franchise service specifications and Franchisee's
32 direct cost of providing new or different franchise service, and the
33 consequent change in Operations Portion of the Rate.
- 34 • Franchisee's calculations to support its request, and
- 35 • all financial and other records related to its request.

²⁷ As of the franchise date, the Tipping Fee Portion is X%.

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- 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.

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EXHIBIT 17.07a(1)

COUNTY REPRESENTATIVE

Name	
telephone number	
e-mail address	
mailing address	
Franchisee office address	

County may change its representative following Notice to Franchisee.²⁸

[COUNTY, ATTACH NAMED REPRESENTATIVE.]

-
5. ²⁸ **Acknowledgment:** County has submitted, and Franchisee has received, the attached documentation on the later of the following dates:
- the franchise date, as evidenced by each of their signatures on the Agreement, or
 - with respect to subsequent changes, the following date, as evidenced by their following signatures :

Date _____

County Representative: _____

Franchisee Representative _____

1 **EXHIBIT 17.07b**

FRANCHISEE REPRESENTATIVE

2
3 **CUSTOMER SERVICE / OPERATIONS**

Name	
Telephone number	
e-mail address	
Mailing address	
Franchisee office address	

4
5 **CUSTOMER EDUCATION / OUTREACH**

Name	
Telephone number	
e-mail address	
Mailing address	
Franchisee office address	

6
7 **CONTRACT COMPLIANCE**

Name	
Telephone number	
e-mail address	
Mailing address	
Franchisee office address	

8
9 Franchisee may change any of this information following notice to County.²⁹

- 10
-
6. ²⁹ **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 _____

