COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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November 5, 2008

IN REPLY PLEASE
REFER TO FILE: AS-0

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

AWARD OF CONTRACT FOR EXCLUSIVE RESIDENTIAL SOLID WASTE SERVICE FRANCHISE AGREEMENT FOR THE HACIENDA HEIGHTS AREA (SUPERVISORIAL DISTRICT 4) (3 VOTES)

SUBJECT

This action is to award an exclusive franchise agreement to provide refuse, green waste, and recyclables collection services to residential properties in the unincorporated areas of Hacienda Heights.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the public health, safety, and welfare require that the County award an exclusive franchise agreement for residential solid waste handling services for the unincorporated area of Hacienda Heights.

2. Award an exclusive franchise agreement to Arakelian Enterprises, Inc., d.b.a. Athens Services, located in the City of Industry, California, to provide refuse, green waste, and recyclables collection services to residential properties in the unincorporated areas of Hacienda Heights commencing upon execution of the agreement by both parties. The solid waste collection services will start on or after March 1, 2009, with a termination date of February 28, 2016, with three 1-year renewal options, not to exceed a total agreement period of ten years, subject to compliance with all terms and conditions contained in the franchise agreement with an initial monthly rate of $17.72, which includes a 10 percent franchise fee, per customer for monthly rate of collection services.

3. Authorize the Acting Director of Public Works or his designee to execute this franchise agreement with Arakelian Enterprises, Inc., d.b.a. Athens Services substantially similar to the franchise agreement; to take all necessary and appropriate steps to carry out the agreement; to renew the agreement for each additional renewal option if, in the opinion of the Acting Director of Public Works, the franchisee has successfully performed during the previous agreement period; to approve and execute amendments to incorporate necessary changes within the franchisee services and specifications; and to suspend work, if in the opinion of the Acting Director of Public Works it is in the best interest of the County to do so.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to award an exclusive franchise agreement to provide weekly, fully automated, separate collection in carts, processing, disposal of refuse, commingled recyclable materials, and green waste generated by single-family residences and duplexes (franchise services) in the unincorporated area of Hacienda Heights. The franchise agreement also requires the franchisee to provide franchise services to multifamily and commercial properties upon request and allows the franchisee to provide bin service and/or manure collection upon request to residential properties.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Service Excellence (Goal 1), Fiscal Responsibility (Goal 4), and Community Services (Goal 6) by providing County residents with responsive, high-quality waste collection, recycling, and disposal services and the funding necessary to administer the franchise.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund. The proposed monthly rate per customer is $17.72, which includes a 10 percent franchise fee for the unincorporated area of Hacienda Heights. Upon approval by your Board, the franchise fee resulting from the collection services in the Hacienda Heights area will generate an estimated $76,598 for Fiscal Year 2008-09 dependent on the commencement of service by March 1, 2009, and an estimated $306,393 per year for the remaining contract years. The franchise fee will provide the necessary funds to administer the franchise and enhance waste collection services for the unincorporated area. This revenue is included in the Fiscal Year 2008-09 Solid Waste Management Fund Budget and will be included in the Solid Waste Management Fund Budget for the remaining contract years.

This agreement allows annual rate adjustments based on annual changes in the Consumer Price Index, Producer Price Index Series, and/or solid waste facility fees.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The recommended franchisee is Arakelian Enterprises, Inc., d.b.a. Athens Services for the Hacienda Heights area. This franchise agreement will commence upon execution of the agreement by the respective parties and will terminate on February 28, 2016, with three 1-year renewal options, for a total contract period not to exceed ten years. The solid waste collection service is anticipated to start on or after March 1, 2009.

Chapter 20.70 of the Los Angeles County Code authorizes franchise agreements for solid waste handling services in all or part of the unincorporated territory, the payment of a franchise fee to the County in such amount as may be determined by your Board as consideration for the grant of a franchise, and a resolution to establish a franchise fee in the amount of 10 percent of monthly gross receipts.

Section 20.70.020 of the Los Angeles County Code authorizes your Board to award a nonexclusive, partially exclusive, or wholly exclusive franchise for certain solid waste handling services for any given geographic area of the unincorporated territory of the County.

Prior to the Acting Director of Public Works or his designee executing this franchise agreement, which will be substantially similar to Attachment A, the franchisee will sign and County Counsel will review and approve the agreement as to form.

The franchise agreement contains terms and conditions supporting your Board's ordinances, policies, and programs, including but not limited to: County's Greater Avenues for Independence and General Relief Opportunities for Work Programs (GAIN and GROW), Board Policy No. 5.050; Contract Language to Assist in Placement of Displaced County Workers, Board Policy No. 5.110; Reporting of Improper Solicitations, Board Policy No. 5.060; Notice to Contract Employees of Newborn Abandonment Law (Safely Surrendered Baby Law), Board Policy No. 5.135; Notice to Employees Regarding the Federal Earned Income Credit (Federal Income Tax Law, Internal Revenue Service Notice 1015); Franchisee Responsibility and Debarment, Los Angeles County Code, Chapter 2.202; the Los Angeles County's Child Support Compliance Program, Los Angeles County Code, Chapter 2.200; and the standard Board-directed clauses that provide for contract termination or renegotiation. Jury service requirements and the local Small Business Enterprise Preference Program were not included since the agreements are not County service contracts.

Proof of bonding, the required Comprehensive General and Automobile Liability insurance policies, naming the County as additional insured, and evidence of Workers' Compensation insurance will be obtained from the franchisee before any work is assigned.

As requested by your Board, the franchisee has submitted safety records that reflect past activities have been conducted according to reasonable standards of safety.

In accordance with the Chief Executive Officer's June 15, 2001, instructions, this is the Department of Public Works' (Public Works) assurance that this franchisee will not be requested to perform services that will exceed the agreement's scope of work, and/or terms.

Public Works has evaluated and determined that the Living Wage Program (Los Angeles County Code, Chapter 2.201) does not apply to this recommended franchise agreement, which is not subject to Proposition A, as authority to award the franchise agreement for solid waste handling services is expressly provided by statute. County Counsel concurs with this determination.

This franchise agreement contains a provision for fuel and disposal fee adjustments.

ENVIRONMENTAL DOCUMENTATION

An Initial Study was prepared for the award of nonexclusive, partially exclusive, or wholly exclusive franchise agreements to provide residential solid waste collection services in 20 County unincorporated areas, including the Hacienda Heights area, in compliance with the California Environmental Quality Act. The Initial Study showed that there is no substantial evidence that the project may have a significant effect on the environment. Based on the Initial Study, a Negative Declaration was prepared and was adopted by your Board on November 20, 2007. Based upon the Negative Declaration, the award of an exclusive franchise agreement to provide residential solid waste collection services in the Hacienda Heights area will not have a significant effect on the environment.

Upon your Board's award of an exclusive franchise for this area, we will file a Notice of Determination in accordance with Section 21152 (a) of the California Public Resources Code.

CONTRACTING PROCESS

On May 8, 2008, Public Works solicited proposals from 203 independent contractors and community business enterprises for the exclusive franchise agreement to provide residential solid waste collection services in the unincorporated area of Hacienda Heights. Also, a notice of the Request for Proposals (RFP) was placed on the County's bid website (Attachment B), and an advertisement was placed in the *Los Angeles Times*.

On August 6, 2008, six proposals were received for the unincorporated area of Hacienda Heights. The proposals were first reviewed to ensure they met the minimum requirements in the RFP. All proposals having met these requirements were then evaluated by an evaluation committee consisting of Public Works staff and Public Health staff with experience in the contracting process. The committee's evaluation was based on criteria described in the RFP, which included the price, experience, work plan, references, environmental record, and procurement/contract disputes. Based on this evaluation, it is recommended that this franchise agreement be awarded to the highest-rated, responsive, responsible, and lowest-cost proposer, Arakelian Enterprises, Inc., d.b.a. Athens Services.

Data regarding the proposers' minority participation is on file with Public Works. Arakelian Enterprises, Inc., d.b.a. Athens Services was selected upon final analysis and consideration without regard to race, creed, gender, or color.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

This franchise agreement will provide improved waste collection services for the community.

CONCLUSION

Please return one adopted copy of this letter to the Department of Public Works, Administrative Services Division.

Respectfully submitted,

for DEAN D. EFSTATHIOU
Acting Director of Public Works

DDE:GZ:cg

Attachments (2)

c: Chief Executive Office (Lari Sheehan)
County Counsel

ATTACHMENT A

EXCLUSIVE
FRANCHISE AGREEMENT

BETWEEN
THE COUNTY OF LOS ANGELES
AND
[INSERT NAME OF HAULER]

FOR
PROVISION
OF
REFUSE, RECYCLABLES, GREEN WASTE, AND MANURE

AUTOMATED CART SERVICES
AT
RESIDENTIAL PREMISES
AND CERTAIN MULTIFAMILY AND COMMERCIAL PREMISES

FOR THE SERVICE AREA OF
HACIENDA HEIGHTS

[INSERT DATE]

THIS AGREEMENT is made and entered into on_____ , 2008, by and between the County of Los Angeles, a political subdivision of the State of California (COUNTY), and **[Name of Franchisee]**, **[Form of Entity]** (FRANCHISEE).

RECITALS

WHEREAS, Municipal Solid Waste (MSW) Management Services have been provided by private haulers pursuant to permit. Historically, in the approximately 2,700 square mile unincorporated territory of the COUNTY, with a population of approximately one million inhabitants, MSW Management Services have not been provided by the COUNTY itself but rather by private industry through competitive, free enterprise, and open-market, private operations, except in Garbage Disposal Districts where the Garbage Disposal Districts contract with private haulers. Residents and businesses have individually arranged for Solid Waste collection. Customer service charges have been negotiated between customers and haulers. The practice of private arrangements for MSW Management Services between a hauler and Customers will continue under this AGREEMENT, but in order to limit the wear and tear on COUNTY streets, reduce pollution from collection vehicle exhaust, increase customer service accountability, improve Assembly Bill (AB) 939 program implementation performance and reporting accuracy, and facilitate more efficient franchise agreement administration and enforcement by COUNTY staff, only FRANCHISEE will arrange with Customers for MSW Management Services, subject to the terms of this AGREEMENT.

WHEREAS, the COUNTY is authorized to award franchises to private haulers. Article XI, § 7 of the California State Constitution authorizes the COUNTY to protect the public health and safety by exercising its authority over police and sanitary matters. Historically, the COUNTY Department of Health Services issued permits to haulers for the hauling of solid waste with requirements to protect public health and safety, including frequency of collection and collection vehicle maintenance. It will continue to do so, and FRANCHISEE will continue to obtain that permit and comply with all of its provisions.

WHEREAS, California Public Resources Code § 40059 specifically authorizes the COUNTY to prescribe the terms and conditions of aspects of MSW Management Services, including frequency of collection; means of collection and transportation; level of services; charges and fees; and the nature, location, and extent of providing MSW Management Services; and whether the services are to be provided by means of nonexclusive, partially exclusive, or wholly exclusive franchise, contract, license, permit or otherwise.

WHEREAS, the County Code authorizes the COUNTY'S Director of Public Works to require franchises in any part of the unincorporated territory of the COUNTY not served by a Garbage Disposal District.

WHEREAS, the COUNTY must comply with AB 939. The State of California has found and declared that the amount of solid waste generated in California coupled with diminishing landfill space and potential adverse environmental impacts from landfilling have created an urgent need for State of California and local agencies to enact and implement an aggressive new integrated waste management program. Through enactment of AB 939, the State of California has directed agencies, such as the COUNTY, to divert 50 percent of all solid waste through source reduction, recycling, and composting activities. The California Integrated Waste Management Board has granted the COUNTY a time line to achieve compliance with the AB 939 diversion requirements. Compliance is based in part on executing and implementing this AGREEMENT in order to secure cooperation with FRANCHISEE'S AB 939 waste diversion programs, record keeping, and reporting.

WHEREAS, the COUNTY'S Director of Public Works has determined to require franchises for Franchise Services. In order to assist residents and businesses located in the Service Area to receive quality MSW Management Services and to provide the COUNTY with programs, records, and reports that will help the COUNTY comply with AB 939, the Director of Public Works has determined to franchise MSW Management Services in portions of the COUNTY, under the terms of this AGREEMENT. The COUNTY gave the FRANCHISEE a five-year notice under California Public Resources Code § 49520 of the COUNTY'S intent to authorize, among other options, the exclusive franchising of MSW Management Services in portions of the COUNTY.

WHEREAS, residents and businesses in the service area are not required to subscribe to Franchise Services. They may self-haul their refuse, and this AGREEMENT excludes the collection of self-hauled waste. Owners and occupants of residential premises may collect solid waste in their own containers, transport in their own vehicles and themselves dispose of solid waste generated at their premises. The obligation to FRANCHISEE'S customers under this AGREEMENT to pay Customer Service Charges under this Agreement does not arise because they own property, but because they generate refuse and do not exercise their right to self-haul.

WHEREAS, the FRANCHISEE will perform Franchise Services in accordance with the laws governing the safe collection, transport, recycling, and disposal of Residential and Commercial Solid Waste, such as AB 939, Recovered Conservation and Recovery Act (RCRA), and Comprehensive Environmental Response Compensation and Liability Act (CERCLA). The COUNTY will not exercise control over the disposal or other disposition of the Solid Waste handled by the FRANCHISEE, and the COUNTY will not designate or determine the use of any given solid waste facility. FRANCHISEE acknowledges that by entering into this AGREEMENT, the COUNTY does not assume any of FRANCHISEE'S obligation to or responsibility for providing Franchise Services, and the COUNTY does not become a "generator" or an "arranger" as those terms are used in the context of CERCLA § 107(a)(3). FRANCHISEE agrees that FRANCHISEE, an independent entity, and not the COUNTY, is arranging for Franchise Services provided under this AGREEMENT. Although minimum scope of Franchise Services, Service Specifications, and Service Standards are set forth in this

AGREEMENT, the COUNTY has not, and by this AGREEMENT does not, supervise Franchise Services or assume title to Solid Waste.

WHEREAS, the COUNTY consulted with representatives of private haulers in developing this AGREEMENT. The COUNTY and representatives of the private hauling industry met many times to discuss the scope of Franchise Services, Service Specifications, Service Standards and other Performance Obligations and to address certain of the industry's questions, comments and concerns, and the COUNTY provided multiple drafts of this AGREEMENT to these representatives.

WHEREAS, the FRANCHISEE has set its compensation (the Customer Service Charges) through competitive procurement. The COUNTY issued a Request for Proposals to provide services under this AGREEMENT, and private waste hauling companies submitted proposals, including their proposed schedule of rates and charges. The COUNTY selected FRANCHISEE based, *inter alia*, on FRANCHISEE'S price proposal. Under this AGREEMENT, the FRANCHISEE cannot charge more than the Customer Service Charges, which it bills and collects from its customers.

WHEREAS, the FRANCHISEE is awarded this AGREEMENT. The Board of Supervisors determines and finds pursuant to California Public Resources Code § 40059, that the public health, safety, and welfare require that FRANCHISEE be awarded this AGREEMENT for Franchise Services pursuant to Chapter 20.70 of the County Code.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1 - GRANT OF RIGHT AND PRIVILEGE TO PROVIDE FRANCHISE SERVICES

A. Grant of Franchise. COUNTY grants to FRANCHISEE the right and privilege described in this Section. COUNTY'S grant is conditioned on FRANCHISEE being at all times ready, willing, and able to fully and timely meet all of its Performance Obligations. FRANCHISEE accepts this Franchise subject to all of the terms and conditions in this AGREEMENT and the exclusions in subsection B.

1. Grant of Exclusive Franchise for Collection in Carts. COUNTY grants to FRANCHISEE the exclusive right and privilege together with the obligation to make and enter into independent arrangements with Customers for the provision of Franchise Services to Residential Premises, subject to the exclusions in subsection B.

2. Grant of Nonexclusive Franchise.

a. *Recyclables.* COUNTY grants to FRANCHISEE the nonexclusive right and privilege together with the obligation to arrange to provide Franchise Services with respect to Recyclables discarded by

Customers if prescribed in Exhibit 3A. Notwithstanding the foregoing, however, Customers may donate or sell any or all of their Recyclables to Persons other than FRANCHISEE.

b. ***Collection in Carts at Commercial Premises and Multifamily Premises.*** COUNTY grants to FRANCHISEE the nonexclusive right and privilege together with the obligation to arrange to provide Franchise Services to Commercial Premises or Multifamily Premises for any Person who requests FRANCHISEE to provide Franchise Services at those Premises in Carts. However, that Person may arrange with any provider of MSW Management Services, including FRANCHISEE, to provide MSW Management Services in carts, subject to any applicable commercial franchise requirements.

B. Exclusions from Franchise.

1. **Customer Self-Haul.** This Franchise excludes the right and privilege to Collect self-hauled Solid Waste. Owners and occupants of Residential Premises and other Persons performing services other than MSW Management Services (such as roofers and gardeners) at those Premises may collect in receptacles other than Containers provided by FRANCHISEE, transport in their own vehicles, and themselves dispose of some or all of the Solid Waste generated at those Premises.

2. **COUNTY and Third-Party Agencies.** This Franchise excludes the right and privilege to arrange to provide Franchise Services to Premises owned or controlled by any of the following entities:

   a. COUNTY or any other entity governed by the Board of Supervisors;
   b. The State of California;
   c. Any school district;
   d. Any entity that is excluded by law from the obligation to subscribe to Franchise Services under this AGREEMENT.

   This Franchise does not prohibit FRANCHISEE from executing separate agreements with those entities to provide MSW Management Services.

3. **Residential Customers Requesting Collection of Solid Waste in Bins.** This Franchise excludes the right and privilege to provide Franchise Services for any Residential Customer requesting Bins instead of Carts unless otherwise provided in Exhibit 3A. That Customer may arrange with any provider of MSW Management Services, including FRANCHISEE, to provide MSW Management Services in Bins, subject to any applicable commercial franchise requirements.

4. **Collection of Solid Waste in Carts at Commercial Premises and Multifamily Premises.** As provided in Section 1A2b, this Franchise excludes the exclusive right and privilege to provide Collection of Solid Waste in Carts at Commercial Premises and Multifamily Premises.

5. **Rights Under California Public Resources Code § 49520.** This Franchise excludes the right and privilege to arrange for provision of Franchise Services with any Person who is receiving solid waste handling services from a solid waste enterprise that has the statutory right to continue to provide solid waste handling services to that Person in accordance with California Public Resources Code § 49520 *et seq.* This Franchise does not prohibit FRANCHISEE from executing separate agreements with those Persons to provide Franchise Services.

C. **Definition of Rights.** FRANCHISEE acknowledges having received a timely notice from COUNTY under California Public Resources Code § 49520 before entering into this AGREEMENT, which notice precludes FRANCHISEE from asserting the right to continue to provide MSW Management Services in the Service Area without a franchise agreement as may be required by COUNTY, now or in the future.

FRANCHISEE further acknowledges that the signing of this AGREEMENT does not confer on FRANCHISEE any rights under California Public Resources Code § 49520 and that FRANCHISEE does not have the right to make any claim under California Public Resources Code § 49520 but only under the terms of this AGREEMENT. Notwithstanding the foregoing, in accordance with California Public Resources Code § 49523, COUNTY and FRANCHISEE agree, based on the mutually satisfactory terms of providing Franchise Services set forth in this AGREEMENT and receipt of compensation therefor, that FRANCHISEE shall cease providing MSW Management Services in the Service Area on the Termination Date even if that Termination Date should occur before the expiration of the period described in California Public Resources Code § 49520. FRANCHISEE'S agreement and acknowledgments in this AGREEMENT do not foreclose COUNTY from reprocuring agreements for MSW Management Services, including from FRANCHISEE, after termination of this AGREEMENT, by nonexclusive, partially exclusive, or wholly exclusive franchise, contract, license, permit or otherwise, with or without competitive bidding.

D. **Franchise Fee.** In consideration for this Franchise, FRANCHISEE shall pay COUNTY the Franchise Fee at the time and in the amount and manner established from time to time by COUNTY ordinance or resolution of the Board of Supervisors. FRANCHISEE shall not separately identify the Franchise Fee in correspondence with Customers, including in Subscription Orders, bills, or invoices. FRANCHISEE'S fees, charges, and other compensation from providing MSW Management Services to Residential Premises in Bin, as authorized but not required in Exhibit 3A, will not be included in the calculation of the Franchise Fee.

SECTION 2 – TERM

A. **Term.** This AGREEMENT commences on the date both parties have executed this AGREEMENT and expires on the Termination Date provided in Exhibit 3A.

B. **Obligations Upon Expiration or Termination of AGREEMENT.** The following provisions will survive the expiration or termination of this AGREEMENT:

1. All acknowledgments, including those in the following Sections:
   - Section 1C with respect to inapplicability of cited California Public Resources Code provisions
   - Section 3A with respect to COUNTY responsibility
   - Section 11A with respect to COUNTY'S need for Record maintenance
   - Section 12A with respect to AB 939 compliance
   - Section 21F with respect to FRANCHISEE choice and initiative
   - Section 23C3 with respect to child support
   - Section 23A with respect to a legal day's work

2. All representations and warranties, including those made in accordance with the following Sections:
   - Section 21F with respect to review of this AGREEMENT
   - Section 24B, Authority to Execute
   - Exhibit 20H, FRANCHISEE'S Representations and Warranties

3. All Indemnities

4. All obligations to pay any due and payable monetary amounts, or claims for those amounts, including:
   - Any Franchise Fees
   - Payment of Transfer Deposits and Transfer Costs defined in Section 19C
   - Damages under Section 18D

5. All obligations to maintain and submit Records and Reports, including:
   - The final Annual Report
   - Information with respect to Solid Waste Facilities
   - Copies of certificates of insurance or other evidence of coverage and
   - Records of Disposal
   - Notice of destruction of Records of Disposal
   - Inspection and audit

6. Any other provisions of this AGREEMENT and rights and obligations of the Parties stated to survive the Termination Date, including this subsection B with respect to removal of Containers.

If FRANCHISEE is not awarded an agreement to allow FRANCHISEE to continue to provide MSW Management Services substantially similar to Franchise Services in the Service Area after the expiration or termination of this AGREEMENT, FRANCHISEE shall cooperate fully with COUNTY and the succeeding franchisee, licensee, permittee or other provider of MSW Management Services to assure a smooth, efficient, orderly, timely, and effective transition and continued delivery of MSW Management Services to FRANCHISEE'S former Customers. FRANCHISEE shall not remove a Container from any Premises until the earlier of: (1) the date any replacement Containers are provided to the Customer, or (2) two weeks after the Termination Date. FRANCHISEE'S OBLIGATIONS AND COUNTY'S RIGHTS IN THIS SUBSECTION B SURVIVE THE TERM.

C. **Undepreciated Assets.** If any of FRANCHISEE'S assets remain undepreciated upon the expiration or earlier termination by COUNTY of this Franchise, FRANCHISEE has no right to recover amounts equal to the undepreciated asset value from COUNTY or Customers, and neither COUNTY nor Customers are obligated to compensate FRANCHISEE for any undepreciated asset value.

SECTION 3 - SCOPE OF SERVICES AND SPECIFICATIONS

A. **Prescribed Scope.** FRANCHISEE shall arrange to provide Franchise Services to Premises in the Service Area with any Person who requests them. Notwithstanding the foregoing, subject to meeting the minimum required scope of Franchise Services and Service Specifications and Service Standards, FRANCHISEE has the freedom and discretion to determine the means, manner, or method of providing Franchise Services. FRANCHISEE acknowledges that in entering into this AGREEMENT, COUNTY is not responsible for supervising FRANCHISEE or for performance of any Franchise Services. FRANCHISEE is solely responsible for choosing the Solid Waste Facilities. In addition, County is not the owner or titleholder of any material Collected, transported, Disposed of, or otherwise handled by FRANCHISEE.

B. **County Notice.** Upon Notice of request by the Director, FRANCHISEE shall use its best efforts to promptly provide Franchise Services to any Premises, as the Director deems necessary to protect public health or safety.

C. **Change in Scope of Services.** COUNTY may change the scope of Franchise Services and Services Standards, subject to any Rate adjustment agreed to with FRANCHISEE in accordance with Section 10A.

D. **Franchisee Documentation.**

1. **FRANCHISEE'S Compliance with Franchisee Documentation.** FRANCHISEE shall provide Franchise Services in compliance with the Franchisee Documentation attached as Exhibit 3D.

2. **Changes in Franchisee Documentation.**

a. ***Notice to COUNTY.*** FRANCHISEE shall give the Director prompt Notice of any changes in Franchisee Documentation listed in Section A of Exhibit 3D Franchisee Documentation, after the Execution Date. The Director's receipt of those changes will be evidenced by the following acknowledgment appended to the changed Franchisee Documentation:

"Acknowledgment: FRANCHISEE has submitted the attached Franchisee Documentation listed below as of the following date:

Date: _____ Director:_____"

b. ***COUNTY Consent.*** FRANCHISEE shall submit to the Director for review and consent any changes occurring in Franchisee Documentation listed in Section B of Exhibit 3D Franchisee Documentation, after the Execution Date. The Director's approval will be evidenced by the following acknowledgment appended to the changed Franchisee Documentation:

"Acknowledgment: I have reviewed and approved the attached Franchisee Documentation submitted by FRANCHISEE as of the following date:

Date: _____ Director:_____"

SECTION 4 - SERVICE STANDARDS

A. Public Health and Safety; Nuisances

1. **Litter.** FRANCHISEE shall clean up all litter caused by FRANCHISEE. When Collecting any Bulky Item, CED, or E-waste, FRANCHISEE shall also clean up all litter within a 10-foot radius of the site from which FRANCHISEE Collected the Bulky Item, CED, or E-waste. FRANCHISEE shall ensure that each Vehicle is properly staffed and equipped at all times for this purpose.

2. **Spills.** FRANCHISEE shall enclose or cover Solid Waste that it transports in Vehicles, debris boxes, hoppers, compactors, or any other containers. FRANCHISEE shall prevent Solid Waste from escaping, dropping, spilling, leaking, blowing, sifting, falling, or scattering from Vehicles (**"Spills"**) during Collection and transportation. FRANCHISEE shall not transfer loads from one Vehicle to another Vehicle unless necessitated by mechanical failure or accidental damage to a Vehicle. FRANCHISEE shall immediately clean up any Solid Waste that it Spills onto any alley, street, or public place.

3. **Leaking.** FRANCHISEE shall prevent oil, hydraulic fluid, paint, or other liquid from leaking from its Vehicles. FRANCHISEE shall ensure that each Vehicle carries petroleum absorbent agents, and other appropriate cleaning agents and if any liquid leaks from a Vehicle, FRANCHISEE shall immediately cover, treat, or remove the liquid materials from the ground, as necessary, and apply the necessary cleaning agent to minimize the adverse impact of the liquid materials.

4. **Noise.** FRANCHISEE shall conduct Collection as quietly as possible, in compliance with noise levels prescribed by Applicable Law, including County Code § 12.08.520 - Refuse Collection Vehicles. FRANCHISEE shall perform Franchise Services so as to cause the least possible obstruction and inconvenience to public traffic or disruption to the peace and quiet of the area within which it performs Franchise Services.

5. **Emergency Telephone Number.** FRANCHISEE shall maintain a local emergency telephone number disclosed to the Director for use by the Director outside Franchisee Office Hours. FRANCHISEE shall make a representative available at the emergency number outside Franchisee Office Hours who will return any emergency call as soon as possible, and in any event within one hour.

B. **Streets and Alleys.** FRANCHISEE shall obtain all approvals required to operate Vehicles on private alleys, streets, and parking lots. Subject to COUNTY review and approval, and notwithstanding FRANCHISEE's obligations under Section 20C, FRANCHISEE may require those Customers for whom FRANCHISEE is required to operate Vehicles on private property to sign a Subscription Order containing a waiver of liability with respect to damage to private driveways or pavement.

C. **Non-Collection Notice.** FRANCHISEE is not obligated to Collect in any of the following events:

1. FRANCHISEE observes the presence of Unpermitted Waste at the Set-Out Site other than any Unpermitted Waste that Franchisee Collects as Bulky Items, E-waste or CEDs;

2. FRANCHISEE observes an unsafe condition at the Set-Out Site;

3. Solid Waste is not placed in a Container, *except* for uncontainerized materials set out as part of any on-call Collection of Bulky Items, E-waste and CEDs and annual cleanup campaigns, and uncontainerized Green Waste prescribed as part of Franchise Services;

4. Containers, Bulky Items, E-waste or CEDs are not placed at the Set-Out Site;

5. A Container exceeds any weight limitations described in Subscription Orders;

6. The Customer has not timely paid FRANCHISEE'S invoice for Franchise Services;

7. The Premises are not safely accessible to Vehicles;

8. FRANCHISEE observes the presence of Refuse or Green Waste in a Recyclables Container or the presence of Refuse or Recyclables in a Green Waste Container;

9. Any other event provided in Exhibit 3A.

If FRANCHISEE determines not to provide Collection as provided above, FRANCHISEE shall complete and leave a Non-Collection notice, substantially in the form included in Franchisee Documentation, securely attached to a Container, describing the reason the Customer's Solid Waste was not Collected, how the Customer can correct the problem, and how the Customer may contact FRANCHISEE. FRANCHISEE shall Collect the Customer's Solid Waste without surcharge to the Customer no later than 6 p.m. on the day it left the Non-Collection notice, if the Customer notifies Franchise by 3 p.m. that day that the Customer has corrected the condition justifying non-collection.

D. **Subscription Order.** Before commencing Franchise Services for an individual Customer, FRANCHISEE shall provide a Subscription Order to that Customer, substantially in the form included in Franchisee Documentation, which must include at a minimum, all of the following items:

1. The scope of Franchise Services, including size and number of Containers, subscription date, and Set-Out Site;

2. Customer Service Charges, which may be in the form of a general fee schedule, clearly marked to indicate the fees that are specifically applicable to the Customer but which may not separately indicate the portion of Rates for Basic Service indicated on the Rate Schedule attributable to any of the following Solid Waste materials types: Refuse, Green Waste, and Recyclables;

3. FRANCHISEE'S billing procedures, including payment due and delinquency dates, FRANCHISEE'S right to terminate Franchise Services for delinquent payments, and, in accordance with Section 10B, the Customer's refund rights after termination of Franchise Services;

4. Holiday schedules in accordance with Exhibit 3A;

5. Delivery, pick up, exchange and replacement of Containers;

6. Any weight limitations of Containers;

7. Customers' privacy rights in accordance with Section 5;

8. Nondiscrimination information in accordance with subsection F;

9. Term of the Subscription Order and the Customer's termination rights in accordance with Section 20I;

10. Franchisee Office Hours and toll-free Customer service telephone number;

11. Notice that the Customer's subscription is subject to FRANCHISEE'S execution of this AGREEMENT and will be terminated if this AGREEMENT is terminated;

12. The Customer's right to donate or sell any or all of their Recyclables to Persons other than FRANCHISEE as set forth in Section 1A2a above;

13. The Customer's right to self-haul as set forth in Section 1B1 above;

14. The Customer's rights in the event of property damage or personal injury as described in Section 20C;

15. COUNTY'S telephone number, which the Customer may call after contacting FRANCHISEE if the Customer's service complaint is not satisfactorily resolved;

16. Description of Green Waste and items that do not comprise Green Waste, including items approved by County, as described in Exhibit 21; and

17. Any other information requested by the Director.

FRANCHISEE shall annually distribute to Customers a summary, substantially in the form included in Franchisee Documentation, of the Customer's Subscription Order containing the general information described in items 1 through 16 and describing where a Customer can contact FRANCHISEE to obtain a copy of that Customer's Subscription Order. FRANCHISEE may distribute that summary together with other correspondence from FRANCHISEE to all Customers, such as Customer outreach and educational materials.

The Director may change the form and content of Subscription Order from time to time after Notice to FRANCHISEE. FRANCHISEE may change the form of Subscription Order only with the Director's prior written consent in accordance with Section 3D.

E. **Exceptions to Performance Obligations.** No exceptions to Performance Obligations described in the text of this AGREEMENT are permitted unless they are specifically identified in Section A2 of EXHIBIT 3A.

F. **Nondiscrimination.** FRANCHISEE shall comply with Subchapter VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e(17), to the end that no Customer or any other Person will, on the grounds of race, creed, color, sex, gender, national origin, ancestry, religion, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

G. **FRANCHISEE Waste Reduction Practices.** Consistent with the Board of Supervisors' policy to reduce the amount of Solid Waste that is disposed of at landfills within the COUNTY, FRANCHISEE shall implement waste reduction practices and procurement policies, including use of recycled-content paper, to the maximum extent possible in providing Franchise Services and maintaining Records. All recycled-content paper that is distributed to Customers must be labeled to indicate recycled content.

H. **Customer Correspondence and Other Materials.** FRANCHISEE shall submit to the Director for approval at least five County Business Days before printing, distributing, or mailing forms of written materials sent or given to Customers (other than with respect to a particular Customer's Subscription Order or Franchise Services complaints).

I. **Publicity and News Media Relations.**

1. **Publicity.** Unless otherwise required by subsection H or subsection I.2, FRANCHISEE and its Affiliates, employees, consultants, agents, or subcontractors may, without COUNTY consent, publicize its Franchise Services or indicate in its proposals and sales materials that it has been awarded this AGREEMENT to provide Franchise Services, if FRANCHISEE develops that publicity, proposals, or sales materials in a professional manner.

   Neither FRANCHISEE nor any of its Affiliates, employees, consultants, agents, or subcontractors may publish or disseminate commercial advertisements, news or press releases, opinions or feature articles using the name of COUNTY without the prior written consent of COUNTY'S Chief Administrative Officer and County Counsel. COUNTY shall not unreasonably withhold written consent. COUNTY consent will be deemed given if COUNTY does not submit to FRANCHISEE any adverse comments within two weeks after FRANCHISEE submitted the publicity material to COUNTY.

2. **News Media Relations; Trade Journal Articles.** FRANCHISEE shall notify COUNTY by telephone followed by facsimile or e-mail, if possible, of all requests for news media interviews related to the Franchise Services (and not other communities) within 24 hours of FRANCHISEE'S receipt of the request. Before responding to requests involving issues other than those relating to descriptions of Collection programs and scope of Franchise Services, FRANCHISEE shall discuss FRANCHISEE'S proposed response with COUNTY.

   FRANCHISEE shall submit copies of FRANCHISEE'S draft news releases or proposed trade journal articles related to Franchise Services to County for prior review and approval at least five County Business Days in advance of release.

   FRANCHISEE shall provide to County, within five days after publication, copies of articles related to Franchise Services resulting from media interviews or news releases.

J. **Responsiveness to County.** FRANCHISEE shall return telephone calls from COUNTY to the individual who made that call during County Office Hours no later than the next County Business Day. FRANCHISEE shall meet with COUNTY during County Office Hours within one week of COUNTY'S oral or written request at COUNTY offices or other location directed by COUNTY. FRANCHISEE shall respond to all e-mails from COUNTY within two County Business Days of receipt and shall respond to other written correspondence from COUNTY within one week of receipt thereof.

K. **No Commingling of Interjurisdictional Materials.** FRANCHISEE may not commingle, in its Vehicles or otherwise, any Solid Waste that it Collects with any other materials that it collects in cities, without the express prior written consent of the Director, who may require documentation such as records of customers, including container capacities, in cities and in the Service Area, respectively. FRANCHISEE shall maintain Records with respect to Solid Waste separately from weight and records with respect to those other materials.

L. **Key Personnel.** FRANCHISEE acknowledges that it identified certain personnel and described their professional experience and qualifications in the proposal it submitted to the COUNTY in connection with the procurement of this AGREEMENT, and that COUNTY awarded this AGREEMENT to FRANCHISEE based in part on those individuals' experience and qualifications. FRANCHISEE shall identify those personnel (**"Key Personnel"**) in Franchisee Documentation. FRANCHISEE shall provide COUNTY at least 30 days' Notice of changes in Key Personnel, including the professional experience and qualifications of the individual FRANCHISEE proposes to serve in place of a departing Key Personnel, unless a Key Personnel gives FRANCHISEE less than 30 days' notice of resignation, in which case FRANCHISEE shall provide COUNTY prompt Notice. During that 30-day period, COUNTY may request FRANCHISEE

to propose an alternative individual to serve in the position of the departing Key Personnel.

SECTION 5 - PRIVACY

A. **General.** FRANCHISEE shall strictly observe and protect the trade secrets and rights of privacy of Customers. FRANCHISEE shall not reveal to a Person other than COUNTY any information identifying individual Customers or the composition or contents of a Customer's Solid Waste to any Person unless under Section 11 or upon the authority of law or upon valid authorization of the Customer. This provision may not be construed to excuse FRANCHISEE from its obligations to assist COUNTY in the preparation of Solid Waste characterization studies or waste stream analyses, keeping Records, making Reports, or assisting COUNTY on meeting any of the requirements of AB 939.

B. **Mailing Lists.** FRANCHISEE shall not market or distribute mailing lists with the names and addresses of Customers.

C. **Privacy Rights Cumulative.** FRANCHISEE'S obligations in this Section are in addition to any other privacy rights accorded Customers under Applicable Law.

SECTION 6 - UNPERMITTED WASTE SCREENING AND REPORTING

A. **Protocol.** FRANCHISEE shall develop and implement the Unpermitted Waste Screening Protocol included in Franchisee Documentation, in compliance with Applicable Law and including, at a minimum, the following provisions:

1. Ongoing employee training in identification, safety and notification procedures, including leaving Non-Collection notices, when safe;

2. Means of driver inspection, such as visual inspection during tipping of Containers into Vehicles;

3. Immediate driver response, such as load segregation;

4. Driver notification, such as calling FRANCHISEE'S dispatcher or field supervisor;

5. Notification of appropriate local agency or department;

6. Appropriate action, such as segregation and containerization for manifesting and transport for disposal in accordance with Applicable Law or securing services of permitted handling and transport company;

7. Compliance with Applicable Law, including regulations of the Federal Department of Transportation (DOT) (Title 49 CFR) and of the United States Environmental Protection Agency (Title 40 CFR); and

8. Form and content of labels described in subsection D.

B. **Prohibition on Collection.** FRANCHISEE is prohibited, unless licensed in accordance with Applicable Law, from Collecting any Unpermitted Waste observed by FRANCHISEE other than in connection with providing Collection of Bulky Items, CEDs, or E-waste. FRANCHISEE shall notify all Persons required by Applicable Law of Unpermitted Waste that FRANCHISEE finds or observes in Solid Waste.

C. **Reports to Director.** If FRANCHISEE observes that any substance it reasonably believes or suspects to contain Unpermitted Waste has been disposed of or released on any COUNTY or any other public property, including storm drains, streets, or other public rights of way, FRANCHISEE shall use Reasonable Business Efforts to report its observation to the Director in addition to notifying Persons as required by Applicable Law.

D. **Labels.** FRANCHISEE shall conspicuously label Containers with stickers, embossing, or other secure means, prohibiting Customers from discarding Unpermitted Waste and including illustrative examples.

E. **Safe Disposal Customer Education Program.** As part of its Unpermitted Waste Screening Protocol, FRANCHISEE shall develop and implement a Customer educational program to maximize exclusion of Unpermitted Waste from Disposal and promote safe handling of Unpermitted Waste. FRANCHISEE shall include a copy of its program in Franchisee Documentation. At least once each Calendar Year, FRANCHISEE shall distribute flyers, pamphlets, brochures, or other written information describing the safe disposal Customer education program. FRANCHISEE shall submit the materials to COUNTY at least one month before mailing them, and COUNTY may comment on them. FRANCHISEE may combine this distribution with its Customer outreach for the Waste Diversion Program as provided in Section B2b of Exhibit 3A.

SECTION 7 - CUSTOMER SERVICE

A. **Office.** FRANCHISEE shall maintain an Office and Vehicle maintenance yard at the address provided in Franchisee Documentation, which FRANCHISEE may change following COUNTY consent in accordance with Section 3D2b.

B. **Telephone Service.** FRANCHISEE shall maintain a toll-free telephone number. FRANCHISEE shall list the telephone number under FRANCHISEE'S name in at least two telephone directories (white pages and yellow pages) available in the Service Area, including English and Spanish or other language as required by the Director. FRANCHISEE'S choice of directories must be approved by the Director before printing. FRANCHISEE shall be available during Franchisee Office Hours at that number to receive calls (including from the Director, Customers, and the public) with respect to its Performance Obligations or Franchise Services (including Subscription Orders, Franchise Services

payments, and complaints). FRANCHISEE shall provide an answering machine or answering service at that number to take reports of missed pick-ups and other complaints that are received outside of Franchisee Office Hours and otherwise provide Customer services in accordance with County Code § 20.72.160 and any additional provisions in Exhibit 3A.

C. **Bilingual.** FRANCHISEE shall respond to Customers in English and Spanish and/or any alternative or additional language prescribed in Exhibit 3A, as requested by a Customer.

D. **Customer Complaints; Missed Collections.**

1. **Resolution of Complaints.** The protection of public health, safety, and well-being require that Customer complaints be acted on promptly and that a record be maintained in order to permit COUNTY and FRANCHISEE to identify potential public health and safety problems. Accordingly, FRANCHISEE'S Subscription Order shall direct Customers to make all complaints to FRANCHISEE at the telephone number identified in subsection B.

   FRANCHISEE shall address all Customer complaints by the end of the next Service Day following Customer contact.

   If the Director or a Customer notifies FRANCHISEE that FRANCHISEE has missed Collecting from any Container that it should have Collected, Franchisee shall Collect from that Container:

   a. No later than 6 p.m. on the day it receives the complaint, if it receives the complaint by 3 p.m.; or

   b. On the next day, if it receives the complaint after 3 p.m.Franchisee shall promptly resolve all other complaints.

2. **Complaint Logs.** FRANCHISEE shall enter, log and maintain Records of all complaints and their resolution in computerized format and in accordance with County Code § 20.72.160. At COUNTY'S request, FRANCHISEE shall immediately e-mail the following to COUNTY during County Office Hours: (1) those Records and (2) the complaining Customer's Customer Service Charge and Subscription Order. FRANCHISEE shall include a copy or summary of this log for the applicable month in its Monthly Report.

3. **County's Reimbursement Costs.** If COUNTY employees or agents spend either: (1) more than two hours in the aggregate resolving complaints from any single Customer that the Customer states have previously been filed with FRANCHISEE, or (2) more than one hour in any work week (Monday through Friday) resolving complaints from different

Customers; then FRANCHISEE shall reimburse COUNTY its County's Reimbursement Costs incurred to resolve the complaint, as evidenced by an invoice indicating the name and address of the Customer, nature of complaint, amount of time spent, and hourly fees for employees involved and materials or other disbursements, including phone and postage costs.

SECTION 8 - OWNERSHIP OF SOLID WASTE

This AGREEMENT does not purport to grant FRANCHISEE ownership over Solid Waste. The right to possession or ownership of Solid Waste placed at the Set-Out Site for Collection, including Green Waste and Recyclables, will be determined in accordance with existing law and is not affected by this AGREEMENT. COUNTY acknowledges that it has no ownership rights in Solid Waste and that FRANCHISEE may provide for transfer of ownership in the Subscription Order.

SECTION 9 - DIVERSION

FRANCHISEE agrees to use Reasonable Business Efforts to Divert all Recyclables, Green Waste (including holiday trees), Bulky Items, E-waste, and CEDs that it Collects, including implementing its Waste Diversion Program.

SECTION 10 - RATES AND CUSTOMER BILLING

A. **Rates.** FRANCHISEE shall charge Customers no more than the Customer Service Charges provided in Attachment 2 (Rate Schedule) of Exhibit 10. FRANCHISEE shall charge the same, uniform rates to all Customers receiving the same services listed in Attachment 2 of Exhibit 10.

B. **Billing.** FRANCHISEE shall include in its form of Customer invoice the following information:

1. Set-out times and places for Containers as required by the County Code and other County Code requirements as may be requested by County; and

2. Franchisee's telephone number and address for Customer complaints and questions.

At COUNTY'S request, FRANCHISEE shall promptly submit its form of Customer invoice to COUNTY. FRANCHISEE shall itemize costs in accordance with service options itemized on the Rate Schedule. FRANCHISEE shall not separately segregate, separate, or designate that portion of a Customer's bill attributable to the Franchise Fee or identify it to Customers. FRANCHISEE may bill Customers monthly, bimonthly, or quarterly as the Customer and FRANCHISEE may agree.

At COUNTY'S request, FRANCHISEE shall use Reasonable Business Efforts to enclose with Customer bills all inserts promoting recycling and waste reduction prepared and provided by COUNTY.

FRANCHISEE shall refund any overcharges to a Customer (including advance payments for Franchise Services that are subsequently canceled) within 30 days after collection thereof. FRANCHISEE shall pay the Customer interest on overcharges (other than advance payments for subsequently canceled services) with interest thereon at 10 percent per annum from the date originally overcharged until the date refunded.

SECTION 11 - FRANCHISEE RECORDS; AUDITS

FRANCHISEE'S OBLIGATIONS AND COUNTY'S RIGHTS IN THIS SECTION SURVIVE THE TERM.

A. Record Maintenance and Retention.

1. **All Records.** FRANCHISEE shall prepare and maintain all Records during the Term and for an additional period of not less than three years after the Termination Date or any longer period required by Applicable Law.

2. **Disposal Records.** FRANCHISEE acknowledges:

   a. That COUNTY may need to respond to claims under CERCLA or similar claims with respect to Disposal of Solid Waste; and

   b. COUNTY'S need to determine the quantity of FRANCHISEE'S Disposal of Solid Waste.

   Therefore, FRANCHISEE shall establish and maintain a protocol for the retention and preservation of those Records, for a period of five years after the Termination Date or any longer period required by Applicable Law, which protocol will document where FRANCHISEE Disposed of Solid Waste that it Collected (whether landfilled, incinerated, composted, otherwise processed or marketed).

3. **Notification.** FRANCHISEE shall give Notice to the Director at least 30 days before destroying Records of Disposal at any time after the retention period referred to in subsection A2.

B. County Custody. If the Director has reason to believe that Records may be lost, discarded, or destroyed for any reason, the Director may require that FRANCHISEE give COUNTY custody of any or all Records in which event

access to those Records is granted to any Person duly authorized by FRANCHISEE.

C. **Inspection and Audit.** Upon five Service Days' advance notice by telephone or writing, or a lesser amount of time in the event of extraordinary circumstances, COUNTY and its auditors may inspect, audit (including using outside auditors), and copy all Records at FRANCHISEE'S Office during Franchisee Office Hours. FRANCHISEE may maintain Records outside of the COUNTY if it promptly provides copies thereof to COUNTY at COUNTY'S offices. COUNTY will bear the expense of the audit and of obtaining a copy of Records; however, within 30 days of COUNTY Notice, FRANCHISEE shall reimburse COUNTY for County's Reimbursement Cost of the expenses if the audit reveals a discrepancy of the lesser of 3 percent or $2,500 between:

1. The amount contained in the Records (e.g., the amount of Solid Waste Collected or Diverted or the amount of Gross Receipts received), and

2. Any representation or Report that FRANCHISEE made to COUNTY; Franchise Fee or other money paid to COUNTY; or information that FRANCHISEE submitted to COUNTY.

The Director may give Notice to FRANCHISEE identifying any shortfall, and if FRANCHISEE does not pay that shortfall within 30 days, including fees and charges for the late payment of Franchise Fees, that failure to pay will constitute a Franchisee Default in accordance with Section 17.

D. **Copies.** Franchise shall provide copies of Customers' names, addresses, and Franchise Services subscription levels to COUNTY upon request.

SECTION 12 - PROGRAM IMPLEMENTATION AND REPORTING REQUIREMENTS

A. **Programs.** FRANCHISEE acknowledges that one of COUNTY'S primary reasons for entering into this AGREEMENT with FRANCHISEE is to assist COUNTY in complying with AB 939. FRANCHISEE shall implement its Waste Diversion Program. FRANCHISEE shall use its best efforts to implement measures intended to achieve COUNTY'S source reduction, recycling, and waste stream diversion goals for Solid Waste it Collects. FRANCHISEE shall further use its best efforts to cooperate with COUNTY in conducting Solid Waste characterization studies and waste stream audits.

B. **Submission of Records.** FRANCHISEE shall submit to the Director, without charge to COUNTY or surcharge to Customers, any Records relating to Diversion requested by COUNTY to assist COUNTY in meeting obligations imposed by AB 939. FRANCHISEE shall submit those Records in a format compatible with COUNTY'S computers (such as by e-mail or on computer discs or hard copy) as requested by the Director.

SECTION 13 - REPORTS

A. Types and Content.

1. **Monthly.** Within 45 days after the end of each calendar month, FRANCHISEE shall submit the Monthly Report for that calendar month to COUNTY in a form satisfactory to COUNTY, including the following information:

   a. The total number of Commercial Premises, Multifamily Premises, and Residential Premises, respectively, at which FRANCHISEE provided for regularly scheduled Collection of Refuse or other measurement requested by COUNTY concerning these items;

   b. The respective total **quantities** of:

      - Refuse (in Tons), Recyclables (in Tons), and any Green Waste (in Tons or, if not weighed at the Solid Waste Facility where it is delivered, in cubic yards) Collected by FRANCHISEE,
      - Materials recovered from those Recyclables and residual Refuse remaining after processing of Recyclables,
      - The final destination of that Refuse, and
      - Where FRANCHISEE delivered those Recyclables;

   c. The estimated **number of holiday trees**, bushes, and biomass Collected by Franchisee and their final destination;

   d. Using Reasonable Business Efforts, the estimated number and **Tons of Bulky Items, E-waste, and CEDs** Collected by FRANCHISEE (such as major appliances/white goods and metallic discards, used tires and other Solid Waste recovered by FRANCHISEE during any annual cleanup campaigns), and final destination thereof;

   e. The **Collection route maps and schedule** for the entire Service Area if any map or schedule has changed during the prior month; and

   f. Any other information compiled from Records or formatting of that information requested by the Director.

2. **Quarterly Reports.** Within 45 days after the last day of each March, June, September, and December FRANCHISEE shall submit the Quarterly Report for the preceding three calendar months ending with that

month to COUNTY in a form satisfactory to COUNTY, including the following information:

a. A narrative description of efforts made to deter and prevent unauthorized removal or scavenging of Recyclables;

b. The number of Tons of any type of Recyclables rejected for sale after Processing together with the reason for rejection and place at which the rejected materials were Disposed;

c. A report of Waste Diversion Program promotional activities, including materials distributed by FRANCHISEE to its Customers;

d. The total number of Commercial Premises, Multifamily Premises, and Residential Premises, respectively, at which Customers set out Recyclables and Green Waste Containers, respectively, together with Tonnage of Recyclables and Green Waste or other measurement of participation requested by COUNTY concerning these items; and

e. The Collection route maps and schedule for the entire Service Area.

f. A summary of the number of Non-Collection notices issued and the reasons for issuance.

3. **Annual Report.** On or before each February 28, FRANCHISEE shall submit the Annual Report to COUNTY in a form satisfactory to COUNTY, for the preceding Calendar Year, including the following information:

a. General information about FRANCHISEE, including a list of its respective officers, principals, major shareholders, general and limited partners, limited liability company members, and member of its boards of directors or governing board as the case may be;

b. A copy of the most recent annual public financial reports and other periodic public financial reports of FRANCHISEE and, at the Director's request, each of its Affiliates and other entities, if any, performing Franchise Services or providing Goods or Services; provided however, that if FRANCHISEE did not submit its own financial reports before the Execution Date of this AGREEMENT, it must provide a guaranty in the form provided by the Director, by a guarantor satisfactory to the Director, which guarantor must provide its own audited financial reports;

c. A report of FRANCHISEE'S compliance with its Performance Obligations with respect to Waste Diversion Program implementation during the preceding Calendar Year;

d. An updated inventory of Service Assets in accordance with Section 16A3;

e. A copy of the telephone directories described in Section 7B;

f. A description of contamination audits of Recyclables Containers in accordance with Service Specifications; and

g. An updated list naming all Subcontractors, the amount of Goods or Services that each Subcontractor provides to FRANCHISEE, and a description of FRANCHISEE'S relationships to each Subcontractor (including ownership interests) in accordance with Exhibit 3A.

4. **Reports of Violators.** If FRANCHISEE discovers that any Person is providing MSW Management Services in the Service Area that are not authorized by COUNTY or are in Violation of Applicable Law, then FRANCHISEE shall use Reasonable Business Efforts to promptly provide COUNTY with a written report containing at least the following:

a. The identity and address of the Person ("Violator"), if known;

b. The facts and documentation supporting FRANCHISEE'S report; and

c. Any other information or documentation in connection with the Violator and FRANCHISEE'S report that COUNTY may reasonably request.

COUNTY acknowledges that FRANCHISEE may seek legal or injunctive relief against the Violator in accordance with Applicable Law to cease providing those MSW Management Services. Notwithstanding the foregoing, COUNTY is not liable to FRANCHISEE, and FRANCHISEE hereby releases COUNTY in connection with any act of a Violator.

B. **Format.** FRANCHISEE shall submit Reports in a format compatible with COUNTY'S computers (such as by e-mail or on computer discs or printed copy) as determined by the Director.

C. **Reporting Adverse Information.** FRANCHISEE shall provide the Director copies of all reports, pleadings, applications, notifications, notices of violation, communications or other material directly relating to its Performance Obligations submitted by FRANCHISEE to, or received by FRANCHISEE from, any of the following:

1. The United States or California Environmental Protection Agency;

2. The California Integrated Waste Management Board;

3. The Securities and Exchange Commission;

4. Any other Regulatory Agency;

5. Any federal, state, or county court.

Franchisee shall submit copies to the Director simultaneously with FRANCHISEE'S submission of those materials to those entities. At COUNTY'S request, FRANCHISEE shall promptly make available to COUNTY any other correspondence between FRANCHISEE and those entities.

D. **Submission of Reports.** FRANCHISEE shall submit Reports to the Director at COUNTY'S address provided for Notices.

E. **County's Right to Request Information.** At the Director's request, FRANCHISEE shall promptly provide to County additional information reasonably and directly pertaining to this AGREEMENT (including substantiation of information submitted in Reports).

F. **Reporting Requirements for Improper Solicitations.** FRANCHISEE shall immediately report any attempt by a COUNTY officer or employee to solicit improper consideration. FRANCHISEE shall make the report either to COUNTY manager charged with the supervision of the employee or to the COUNTY Fraud Hotline at (800) 554-6861 or www.lacountyfraud.org. Among other items, improper consideration may take the form of cash; discounts; service; or the provision of travel, entertainment, or tangible gifts.

SECTION 14 - INDEMNIFICATION AND INSURANCE

A. **Indemnification and Release of County.** FRANCHISEE shall release, indemnify, defend, and hold harmless COUNTY and County's Related Parties from and against any and all Liabilities arising from, connected with, or relating to all of the following:

1. **Operations.** FRANCHISEE'S and Franchisee's Related Parties' operations or any of their respective services on or after the date of this AGREEMENT, including the Franchise Services and Liabilities further detailed in the following Indemnifications contained in subsections A2 through 5, but excluding any Liabilities arising from the following:

   a. The sole active negligence of COUNTY, or

b. RCRA, CERCLA (specifically 42 U.S.C. § 9607(3)), or California Health and Safety Code § 25364.

2. **Cal/OSHA.** Without limiting the operations Indemnification in subsection A1, employer sanctions and any other Liabilities that may be assessed against FRANCHISEE or COUNTY or both in connection with any alleged act or omission of FRANCHISEE or any of Franchisee's Related Parties that is in violation of any Cal/OSHA regulation. This obligation includes all investigations and proceedings associated with purported violations of eight CCR 336.10 pertaining to multi-employer work sites. FRANCHISEE shall not be obligated to so release, indemnify, defend, and hold harmless COUNTY from and against any Liabilities arising from the active negligence of COUNTY.

3. **Immigration.** Without limiting the operations Indemnification in subsection A1, employer sanctions and any other Liabilities that may be assessed against FRANCHISEE, any of Franchisee's Related Parties or COUNTY or any one or all of them in connection with any alleged violation of Federal Applicable Law (including the Immigration Reform and Control Act of 1986 (PL. 99-603) pertaining to the eligibility for employment of individuals performing Franchise Services. FRANCHISEE shall not be obligated to so indemnify, release, defend, and hold harmless COUNTY from and against any Liabilities arising from active negligence of COUNTY.

4. **Enforcement of AGREEMENT or Applicable Law.** Without limiting the operations Indemnification in subsection A1, any Liabilities that may be assessed against FRANCHISEE, any of Franchisee's Related Parties or COUNTY or any one or all of them in connection with any alleged failure of COUNTY to exercise COUNTY's rights under this AGREEMENT or to enforce provisions of this AGREEMENT or of Applicable Law as permitted under Section 22A4.

5. **Disposal.** The presence, Disposal, escape, migration, leakage, spillage, discharge, release, or emission of Unpermitted Waste or petroleum to, in, on, at or under at any place, site, or facility where FRANCHISEE or any of Franchisee's Related Parties delivers, stores, processes, recycles, composts, or disposes of Solid Waste to the extent that Liabilities are caused indirectly or directly by any of the following:

   a. ***FRANCHISEE Negligence or Misconduct.*** The wrongful, willful, or negligent act, error or omission, or the misconduct of FRANCHISEE or any of Franchisee's Related Parties;

   b. ***Non-Customer Materials.*** The collection, delivery, handling, recycling, processing, composting or disposal by FRANCHISEE or any of Franchisee's Related Parties of any materials or waste,

including Unpermitted Waste, that are generated by Persons other than Customers or collected from premises other than Premises;

c. ***Failure to Comply with Unpermitted Waste Screening Protocol.*** The failure of FRANCHISEE or any of Franchisee's Related Parties to undertake Unpermitted Waste training procedures required by Applicable Law or the Unpermitted Waste Screening Protocol, whichever is more stringent; or

d. ***FRANCHISEE-Identified Unpermitted Waste.*** The improper or negligent collection, handling, delivery, processing, recycling, composting or disposal by FRANCHISEE or any of Franchisee's Related Parties of Unpermitted Waste that FRANCHISEE or any of Franchisee's Related Parties inadvertently collects from Customers and that FRANCHISEE or any of Franchisee's Related Parties identifies as Unpermitted Waste before its delivery, processing, recycling, composting, or disposal whether:

(i) In one or more occurrence;

(ii) Threatened or transpired;

(iii) FRANCHISEE or any of Franchisee's Related Parties is negligent or otherwise culpable; or

(iv) Those Liabilities are litigated, settled, or reduced to judgment.

For purposes of this Indemnification, **"Liabilities"** includes Liabilities arising from or attributable to any operations, repair, cleanup, or detoxification, or preparation and implementation of any removal, remedial, response, closure, postclosure, or other plan, regardless of whether undertaken due to government directive or action, such as remediation of surface or ground water contamination and replacement or restoration of natural resources.

The mere presence of household hazardous waste in the Solid Waste that is Collected by FRANCHISEE or any of Franchisee's Related Parties under this AGREEMENT will not constitute negligence and in and of itself create any liability on the part of FRANCHISEE or any of Franchisee's Related Parties absent any of the circumstances described in items a through d in this subsection A5.

COUNTY reserves the right to retain co counsel at its own cost and expense and FRANCHISEE shall direct FRANCHISEE'S counsel to assist and cooperate with COUNTY'S co counsel with respect to COUNTY'S defense.

The foregoing Indemnification is intended to operate as an agreement under 42 U.S.C. § 9607(e) and California Health and Safety Code § 25364, to insure,

protect, hold harmless, and indemnify COUNTY from liability in accordance with this Section.

FRANCHISEE hereby releases and shall not seek contribution or compensation of any nature from COUNTY for Liabilities relating to Unpermitted Waste, including relating to RCRA, CERCLA, or the California Health and Safety Code. FRANCHISEE shall not make any claims against or assert an interest in any account, fund, or reserve that COUNTY may establish or set aside from the proceeds of the Franchise Fee or otherwise or maintains to cover Liabilities relating to Unpermitted Waste, which established fund or reserve COUNTY is under no obligation to establish or maintain.

B. **Insurance.** Without limiting its Indemnities, FRANCHISEE shall provide and maintain throughout the Term, the following programs of insurance. All insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by COUNTY and FRANCHISEE shall provide and maintain it at FRANCHISEE'S own expense. All insurance shall contain the express condition that COUNTY is to be given written notice by mail at least 30 days in advance of cancellation, or at least 10 days in advance of cancellation for nonpayment of premium, for all policies evidenced on the certificate of insurance. If FRANCHISEE does not provide and maintain those programs of insurance, COUNTY may elect to purchase required insurance coverage without further notice to FRANCHISEE, and COUNTY may charge FRANCHISEE any premium costs advanced by COUNTY for that insurance and draw on the performance bond, letter, of credit, or other form of performance assurance provided by FRANCHISEE.

1. **Evidence of Insurance.** On or before the Execution Date and thereafter prior to each policy renewal and also within two business days of any COUNTY request, FRANCHISEE shall deliver a certificate or certificates of insurance or other evidence of coverage acceptable to the Director at the address provided for Notices. Certificates or other evidence must:

a. Specifically identify this AGREEMENT;

b. Clearly evidence all coverage required in this AGREEMENT, including policy forms or their equivalent;

c. Contain the express condition that COUNTY is to be given written notice by mail at least 30 days in advance of cancellation (10 days for nonpayment of premium) for all policies evidenced on the certificate of insurance;

d. Include copies of the additional insured endorsements to the policies, adding COUNTY, its Special Districts, its officers, and its employees as insured for all activities arising from this AGREEMENT;

e. Identify any deductibles or self-insured retention for COUNTY'S approval. COUNTY retains the right to require FRANCHISEE to reduce any deductibles or self-insured retention as they apply to COUNTY or to require FRANCHISEE to provide a bond, letter of credit, or certificate of deposit guaranteeing payment of all retained losses and related costs, including expenses, or both, related to investigations, claims administrations, and legal defense. The bond must be executed by a corporate surety licensed to transact business in the State of California; the letter of credit must be issued by a bank or other financial institution acceptable to the County; and

f. At COUNTY'S request, include documentation acceptable to COUNTY verifying that the individual signing or countersigning the certificates, policies, endorsements, or other evidence of coverage is authorized to do so and identifies his or her company affiliation and title. COUNTY may require complete, certified copies of FRANCHISEE'S insurance policies at any time.

2. **Insurer Financial Rating.** FRANCHISEE shall secure insurance provided by an insurance company acceptable to COUNTY with a rating by A.M. Best Company of not less than A: VII, unless otherwise approved by COUNTY.

3. **Notification of Incidents, Claims, or Suits.** FRANCHISEE shall promptly report the following in writing to the Director:

a. Any accident or incident relating to the Franchise Services involving injury or property damage that may result in the filing of an insurance claim, its legal claim, or lawsuit against FRANCHISEE and/or COUNTY;

b. Any third-party claim or lawsuit filed against FRANCHISEE arising from or related to Franchise Services; or

c. Any injury to a FRANCHISEE employee that occurs on COUNTY property. FRANCHISEE shall submit its report on a COUNTY "Nonemployee Injury Report" form available on COUNTY'S website at http://cao.co.la.ca.us/RMB/pdf/NonEmployeeInjuryReport.pdf.

4. **Insurance Coverage Requirements.** FRANCHISEE shall secure and maintain insurance coverage meeting the following requirements:

a. ***General Liability Insurance*** (written on ISO policy form CG 00 01 or its equivalent) with limits of not less than the following:

General Annual Aggregate:	$4 million
Products/Completed Operations Aggregate:	$4 million
Personal and Advertising Injury:	$1 million
Each Occurrence:	$2 million

The general liability policy must provide contractual liability coverage for FRANCHISEE'S indemnification of COUNTY.

b. ***Pollution Liability Coverage*** for pollution conditions resulting from transported cargo, with annual limits of not less than $2 million per occurrence and $4 million aggregate, covering loss (including cleanup costs) that FRANCHISEE becomes legally obligated to pay as a result of claims for bodily injury, property damage, and cleanup costs (including expenses required by environmental laws or incurred by Federal, state, or local governments or third parties) resulting from pollution conditions caused by transported cargo (including waste). For the purpose of this subsection 14B4b, "pollution conditions" includes the dispersal, discharge, release, or escape of any solid, liquid, gaseous, or thermal irritant or contaminant (such as smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, and waste materials) into or upon land, any structure on land, the atmosphere, or any watercourse or body of water (including groundwater), provided the conditions are not naturally present in the environment in the amounts or concentrations discovered. The pollution liability coverage must provide contractual liability coverage, by endorsement, if necessary, for FRANCHISEE'S indemnification of COUNTY. FRANCHISEE'S general liability policy may be endorsed to provide the required pollution liability coverage.

c. ***Automobile Liability Coverage*** (written on ISO policy forms CA 00 12 or CA 00 20 or their equivalent) with a limit of liability not less than $2 million for each accident and endorsed to include pollution liability (written on form CA 99 48 or its equivalent). The insurance must cover all vehicles used by FRANCHISEE pursuant to its operations and services and the terms of this AGREEMENT. FRANCHISEES subject to Federal regulations also shall maintain any other coverage necessary to satisfy State or Federal financial responsibility requirements.

d. ***Workers' Compensation and Employers' Liability*** insurance providing workers' compensation benefits required by the California Labor Code or by any other State labor law, and for which FRANCHISEE is responsible. In all cases, this insurance must also include Employers' Liability coverage with limits of not less than the following:

i.	Each accident:	$1 million
ii.	Disease - policy limit:	$1 million
iii.	Disease - each employee:	$1 million

5. **Insurance Coverage Requirements for Subcontractors.** FRANCHISEE shall ensure that all Subcontractors performing Franchise Services under this AGREEMENT secure and maintain the insurance coverage required in subsections B1 through 4 by providing evidence that either:

   a. FRANCHISEE is maintaining the required insurance covering the activities of Subcontractors, or

   b. Subcontractors are maintaining the required insurance coverage.

C. **Compensation for County Costs.** If FRANCHISEE fails to comply with any of the Indemnification or insurance requirements of this AGREEMENT and that failure results in any costs to COUNTY, FRANCHISEE shall pay full compensation for all County's Reimbursement Costs.

SECTION 15 - PERFORMANCE ASSURANCE

FRANCHISEE shall secure and maintain throughout the Term a faithful performance bond, in a form satisfactory to COUNTY or, at COUNTY'S sole and absolute discretion, any alternative security acceptable to the Director, including cash, certified check payable to COUNTY, certificate of deposit, or letter of credit (together, "**Performance Assurance**"). During the first Contract Year, the amount of the Performance Assurance must be in the sum established by COUNTY in Section A of Exhibit 3A to secure full and timely satisfaction of Performance Obligations, including payment of Franchise Fees, and any liquidated damages. In all subsequent Contract Years, that amount must be not less than the sum of:

1. 15 percent of FRANCHISEE'S Gross Receipts minus Franchise Fees for the prior Contract Year;

2. 110 percent of the Franchise Fees paid by FRANCHISEE during the first six months of the prior Contract Year;

3. 110 percent of any liquidated damages assessed FRANCHISEE by COUNTY during the first six months of the prior Contract Year;

4. Up to $50,000, at the discretion of the Director; and

5. Any additional amounts provided in Exhibit 3A.

A performance bond must be payable to COUNTY and executed by a corporate surety licensed to transact business ("admitted") as a surety in the State of California. The corporate surety must have an A.M. Best Rating of not less than A:VII, unless otherwise approved by COUNTY. The form of performance bond may not allow the bond surety to substitute another Person to perform Franchise Services but must provide for payment of moneys to COUNTY to secure substitute Franchise Services, remedy damages incurred, and ensure satisfaction of all Performance Obligations, including payment of Franchise Fees or liquidated damages to COUNTY, if recovered from COUNTY in any bankruptcy or similar proceedings relating to FRANCHISEE. The performance bond must be conditioned on faithful performance by FRANCHISEE of all the terms and conditions of this AGREEMENT, including payment of Franchise Fees and any liquidated damages.

Each Performance Assurance must be renewed to provide for continuing liability in the above amount notwithstanding any payment or recovery thereon. On or before the Execution Date and promptly upon any renewal of the Performance Assurance, FRANCHISEE shall deliver the Performance Assurance to COUNTY.

COUNTY may verify the accuracy and authenticity of the Performance Assurance submitted.

SECTION 16 - EMERGENCY SERVICE

A. COUNTY Right to Provide MSW Management Services.

1. **Events.** COUNTY may perform, or contract for the performance of, any or all of FRANCHISE Services, including the collection of Solid Waste or any portion thereof and the transportation and delivery to a solid waste facility, upon the occurrence of either of the following events, determined by County in its sole discretion:

    a. FRANCHISEE, due to Uncontrollable Circumstances or for any reason whatsoever, fails, refuses, or is unable for a period of 48 hours to collect and/or at any time to transport Solid Waste or any portion thereof to a Solid Waste Facility and the Director determines there is danger to the public health, safety, or welfare; or

    b. COUNTY suspends or terminates this AGREEMENT.

    If COUNTY contracts for the performance of any or all of Franchise Services, it will consider contracting with other COUNTY franchisees. COUNTY has no obligation to continue providing Franchise Services and may at any time, in its sole discretion, cease to provide Franchise Services. However COUNTY'S right to provide Franchise Services will continue until FRANCHISEE can demonstrate to COUNTY'S satisfaction that FRANCHISEE is ready, willing, and able to resume timely and full

Franchise Services or until COUNTY can make alternative arrangements for providing MSW Management Services comparable to Franchise Services in scope and price, which may include contracting with another service provider.

2. **Notice**. COUNTY may give FRANCHISEE oral notice that COUNTY is exercising its right to perform Franchise Services, which notice is effective immediately, but must confirm oral notice with a Notice within 24 hours thereafter.

3. **Service Assets**.

   a. ***COUNTY Possession***. Upon giving FRANCHISEE oral notice, COUNTY may take possession of any or all Service Assets necessary or convenient in providing Services, and FRANCHISEE shall fully cooperate with COUNTY to transfer possession of Service Assets to COUNTY. Customers' possession of Containers will be deemed possession by COUNTY if necessary to exercise this right.

   b. ***Service Assets Document.*** Any document that encumbers or limits FRANCHISEE'S interest in Service Assets, including a lease, financing contract, acquisition over time, mortgage, or other instrument establishing a security interest to or by FRANCHISEE, must allow COUNTY to assume FRANCHISEE'S obligations and to continue use of Service Assets in performing MSW Management Services.

   c. ***Updated Inventory.*** In each Annual Report and at any other time requested by COUNTY, FRANCHISEE shall update its inventory of Service Assets included in Franchisee Documentation to reflect acquisition or replacement of Service Assets or additional or amended Service Assets document described in Section 16A3b, accompanied by a certification signed by FRANCHISEE that all Vehicles meet any specifications provided in this AGREEMENT and all Carts meet the specifications described in Franchisee Documentation.

   d. ***County Use.*** COUNTY may use Service Assets to provide all or a portion of Franchise Services. COUNTY shall have absolute and exclusive control over Service Assets as though COUNTY were the absolute owner thereof. However, at COUNTY'S request, FRANCHISEE shall keep Service Assets in good condition. Unless Franchisee repairs and maintains them, COUNTY shall assume complete responsibility for use of Service Assets while they are in its possession and shall maintain Service Assets in the same condition as they were in when FRANCHISEE transferred

possession thereof to County. Subject to repair and maintenance by FRANCHISEE, COUNTY shall return Service Assets to FRANCHISEE in the same condition as received, normal wear and tear excepted.

FRANCHISEE shall maintain in full force and effect all insurance required in accordance with Section 14 during COUNTY'S possession of Service Assets. By granting COUNTY the right to possession and use of FRANCHISEE'S Service Assets, FRANCHISEE declares as follows:

i. COUNTY and Customers are permitted users for purposes of liability insurance policies that FRANCHISEE must procure and maintain under this AGREEMENT; and

ii. COUNTY'S and Customers' use and possession is not intended to be and is not transfer of ownership for purposes of any liability policies.

Furthermore, if COUNTY has possession and/or use of FRANCHISEE'S Service Assets, FRANCHISEE shall execute whatever documentation its liability insurers require to ensure that COUNTY and Customers are protected and covered by FRANCHISEE'S general and automobile policies, including requesting and executing endorsements to those policies. FRANCHISEE hereby gives COUNTY the right to call and confer with FRANCHISEE'S insurance broker to determine what, if any, documentation or actions are necessary to achieve protection satisfactory to COUNTY. FRANCHISEE hereby gives COUNTY the right to pay for any endorsements, additional premiums, or other costs. By executing this AGREEMENT, FRANCHISEE authorizes its insurance broker to cooperate with and respond to requests from COUNTY, which authorization FRANCHISEE may not rescind without COUNTY consent.

4. **FRANCHISEE'S Personnel.** Upon giving FRANCHISEE oral notice in accordance with subsection A2, COUNTY may immediately engage personnel necessary or convenient for providing all or a portion of Franchise Services, including employees previously or then employed by FRANCHISEE. However COUNTY shall not be obligated to hire FRANCHISEE'S employees and may use municipal employees or other individuals to provide all or a portion of Services, including driving Vehicles. At COUNTY'S request, FRANCHISEE shall promptly make available to COUNTY all FRANCHISEE'S management and office personnel necessary or convenient for providing Franchise Services (including Customer services) and billing at the cost, if any, provided in subsection A8.

5. **Records and Reports.** At COUNTY'S request, FRANCHISEE shall promptly provide COUNTY with immediate access to or possession of Records, including those related to routing and billing. Without limiting its available remedies provided elsewhere in this AGREEMENT, COUNTY may seek specific performance of this obligation.

6. **Reimbursement.** FRANCHISEE shall reimburse COUNTY for County's Reimbursement Costs incurred in taking over possession and use of Service Assets in accordance with subsection A3 and in providing MSW Management Services in amounts exceeding Rates.

7. **Stipulations.** FRANCHISEE stipulates that COUNTY'S exercise of rights under this Section does not constitute a taking of private property for which COUNTY must compensate FRANCHISEE, shall not create any liability on the part of COUNTY to FRANCHISEE, and does not exempt FRANCHISEE from any Indemnities, which Parties acknowledge are intended to extend to circumstances arising under this Section. However, FRANCHISEE is not required to indemnify COUNTY against claims and damages arising from the negligence or misconduct of COUNTY officers and employees (other than employees of Franchisee at the time COUNTY began performing Services) and agents driving Vehicles. COUNTY shall indemnify FRANCHISEE, its Affiliates and its and their officers, directors, employees, and agents from and against damages, costs, or other expenses or losses they incur arising out of or relating to that negligence or misconduct.

8. **Rental and Other Compensation.**

   a. ***Uncontrollable Circumstances.*** If an event enumerated in item a or b in subsection A1 is due to Uncontrollable Circumstances, then COUNTY shall pay FRANCHISEE the following Direct Costs of FRANCHISEE that FRANCHISEE is not then being compensated for through charging and collecting Rates:

      (i) Rental fees for COUNTY'S use and possession of Service Assets equal to fair market value thereof as determined by an independent appraiser selected by the Parties as provided in this subsection A8a.

      (ii) FRANCHISEE'S Direct Costs of providing Vehicles with fuel, oil, and other maintenance in accordance with subsection A3d.

      (iii) FRANCHISEE'S Direct Costs of making FRANCHISEE'S personnel available to COUNTY in accordance with subsection A4.

The Parties shall select an appraiser as follows: within 10 days after FRANCHISEE requests payment of rental fees in events described in item (i) of this subsection 8a, each Party will prepare a separate list of five Persons who do not work for either Party having experience in solid waste equipment appraisal, in numerical order with the first preference at the top, and exchange and compare lists. The Person ranking highest on the two lists by having the lowest total rank order position on the two lists is the appraiser. In case of a tie in scores, the Person having the smallest difference between the rankings of the two Parties is selected; other ties are determined by a coin toss. If no Person appears on both lists, this procedure is repeated. If selection is not completed after the exchange of three lists or 60 days, whichever comes first, then each Party will select one Person having the qualifications and experience described above and those two Persons will together select an appraiser.

b. ***Other Than Uncontrollable Circumstances.*** If an event enumerated in item a or b in subsection A1 is not due to Uncontrollable Circumstances, then COUNTY will not be obligated to pay the compensation enumerated in subsection A8a, and FRANCHISEE shall pay County's Reimbursement Costs in accordance with subsection A6 within 10 days of COUNTY'S submitting an invoice therefor. If FRANCHISEE does not so timely pay, COUNTY may draw upon any performance bond, letter of credit, or other security provided under this AGREEMENT.

B. **Emergency Assistance.** FRANCHISEE shall make Reasonable Business Efforts to assist County in the event that solid waste in any part of the unincorporated area of the County is not collected and in the judgment of the Director creates a danger to public health, safety, or welfare, including in the event of a major disaster such as an earthquake, storm, riot, or civil disturbance, by providing vehicles and drivers to collect any solid waste as requested by COUNTY, at Customer Service Charges no greater than the Rates, unless the Director provides authorization based on information provided by FRANCHISEE substantiating the need for an increase. FRANCHISEE shall cooperate with COUNTY, State of California, and Federal officials in filing information related to a regional, State, or Federally-declared state of emergency or disaster as to which FRANCHISEE has provided equipment and drivers under this AGREEMENT.

C. **Backup Service Plan.** FRANCHISEE shall develop a backup service plan included in Franchisee Documentation and implement that plan upon COUNTY request if Customers' Solid Waste is not Collected at Customer's Set-Out Site, including due to an event described in Section 16A1 or Section 16B. FRANCHISE shall include in the plan at a minimum, the following provisions:

1. Provide conveniently located Bins or roll-off containers where Customers may discard Refuse and other putrescible Solid Waste;

2. Offer Customers the option of self-hauling Refuse and other putrescible Solid Waste to a transfer station or disposal facility;

3. Inform Customers of procedures for handling Refuse and other putrescible Solid Waste, preventing litter and discouraging vectors (such as keeping Carts in their storage place and not at Set-Out Sites, discarding excess Solid Waste in closed plastic bags and not loose in Carts);

4. Describe any Customer Service Charge refund policy for missed Franchise Services;

5. Provide replacements for drivers and other employees who are not providing Collection or other Franchise Services (such as supervisory personnel or management, or employees of Affiliates or other solid waste management companies) and security for those drivers and other employees; and

6. Identify customers that require priority service.

SECTION 17 - DEBARMENT BREACHES AND DEFAULTS; SUSPENSION; TERMINATION

A. **Notice of Breach; Franchisee Cure.** If the Director determines that FRANCHISEE is in Breach, the Director may give Notice to FRANCHISEE identifying and describing the Breach, including any of the following:

1. Failure to keep Records required by this AGREEMENT;

2. Failure to file any Reports at the time, in the manner, and containing the information required in Section 13;

3. Failure to timely provide COUNTY with complete information (including any test results such as prescribed noise levels in accordance with Section 4A4) required by this AGREEMENT or requested by the Director in good faith in accordance with this AGREEMENT;

4. Failure to timely pay the Franchise Fee;

5. Failure to timely pay an Indemnification; or

6. Failure to timely implement the start-up transition and Cart roll-out plan described in Section I of Exhibit 3A.

FRANCHISEE shall remedy the Breach within 30 days from the receipt of Notice (or with respect to a Breach of the Child Support Compliance Program described in Section 22B, 90 days after notice by the Los Angeles County's Child Support Services Department) unless COUNTY determines that the public health and safety require a shorter period of time in which Franchisee must remedy the Breach. COUNTY will hold a conference with Franchisee within 30 days of Franchisee request. Franchisee may request additional time to correct the Breach, but COUNTY may accept or reject that request in its sole discretion.

B. Franchisee Default. The following constitute Franchisee Defaults:

1. **Fraud, Misrepresentation, or Breach of Warranties.** FRANCHISEE committed any fraud or deceit or made any intentional misrepresentations in the procurement of this AGREEMENT; commits, or attempts to commit, any fraud or deceit upon COUNTY after the Execution Date of this AGREEMENT; makes any material misrepresentations or breaches any warranties in this AGREEMENT (including Exhibit 20H); or includes any materially false or misleading statement, representation, or warranty in any Record or Report.

2. **Insolvency or Bankruptcy.** FRANCHISEE becomes insolvent or files a voluntary petition to declare bankruptcy; a receiver or trust is appointed for FRANCHISEE; or FRANCHISEE executes an assignment for the benefit of creditors. FRANCHISEE is deemed to be "insolvent" if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether or not FRANCHISEE has committed an act of bankruptcy and whether or not FRANCHISEE is insolvent within the meaning of the Federal bankruptcy law or not.

3. **Failure to Provide Insurance, Bonds.** FRANCHISEE does not provide or maintain in full force and effect all insurance and other assurances of its Performance Obligations, including as required under Sections 14 and 15, or provide evidence of insurance coverage acceptable to COUNTY.

4. **Material or Repeated Violation of Applicable Law.**

   a. Any material Violation of Applicable Law that is not cured to the satisfaction of COUNTY or applicable Regulatory Agency within 30 days of the notice, assessment, or determination of that Violation of Applicable Law; or

   b. Any repeated Violation of Applicable Law.

   If FRANCHISEE is entitled to and does contest a notice, assessment, or determination of Violation of Applicable Law by proceedings conducted in good faith, no Franchisee Default will be deemed to have occurred until a final decision adverse to FRANCHISEE is entered.

5. **Failure to Collect for Seven Days.** Unless due to Uncontrollable Circumstances, FRANCHISEE fails to Collect for a period of either:

   a. Seven consecutive days; or

   b. Seven days in the aggregate from the Execution Date.

6. **Failure to Collect for More Than Seven Days.** Whether or not due to Uncontrollable Circumstances, FRANCHISEE fails to Collect for a period of more than seven consecutive days.

7. **Payments to County.** FRANCHISEE does not timely and fully make any payment to COUNTY required under this AGREEMENT (including payment of Franchise Fees):

   a. More than twice in any Calendar Year;

   b. Within 30 days of Notice by COUNTY that payment is due; or

   c. With respect to payment of a shortfall in Franchise Fees, within 30 days of Notice in accordance with Section 11C.

8. **Specified Franchisee Defaults.** FRANCHISEE Breaches any of the following Sections:

   a. Section 22B Child Support Compliance Program (if not cured within 90 days of Notice as described in Section 17A);

   b. Section 23D1 Compliance with ILO Convention Concerning Minimum Age for Employment;

   c. Section 23E Nondiscrimination; or

   d. Section 23G County Lobbyist Ordinance.

9. **Uncured or Repeated Breach.** FRANCHISEE does not timely cure any other Breach in accordance with subsection A or FRANCHISEE Breaches any of its Performance Obligations repeatedly or habitually, as determined by the Director in his or her sole discretion, whether or not a specific instance of failure or refusal has been previously cured. However, this Franchisee Default will be excused for a period of seven days beginning on the first occurrence of that Franchisee Default in the event of Uncontrollable Circumstances, if the event materially affects FRANCHISEE'S ability to provide Franchise Services. Nevertheless, if Uncontrollable Circumstances interrupt Collection, Customers may take actions and COUNTY may exercise any of its rights under Section 16. This Franchisee Default will not be excused if it continues for a period of

more than seven days beginning on the first occurrence of this Franchisee Default.

10. **Improper Consideration**. COUNTY finds that consideration, in any form, was offered or given by FRANCHISEE either directly or through an intermediary to any COUNTY officer, employee, or agent with the intent of securing this AGREEMENT or securing favorable treatment with respect to the award, amendment, or extension of this AGREEMENT or the making of any determinations with respect to FRANCHISEE'S performance under this AGREEMENT where that consideration may take any form including cash; discounts; service; or the provision of travel, entertainment, or tangible gifts.

11. **Default Under Guaranty**. A default exists under the guaranty, if any, provided in accordance with Section 13A3b.

C. Notice of Franchisee Default.

1. **Effective Immediately**. The Director may terminate this AGREEMENT effective immediately after Notice by COUNTY to FRANCHISEE of any of the following Franchisee Defaults:

   a. Any Franchisee Default, if the Director determines that protection of public health and safety requires immediate suspension or termination;

   b. A Franchisee Default in subsection B3 (failure to provide insurance, bonds);

   c. A Franchisee Default described in subsection B4 (material or repeated Violation of Applicable Law, including the County Lobbyist Ordinance);

   d. A Franchisee Default described in subsection B10 (improper consideration).

2. **Effective 30 days**. The Director may terminate this AGREEMENT effective 30 days after Notice by COUNTY to FRANCHISEE of any Franchisee Defaults other than the Franchisee Defaults listed in subsection C1 or termination events listed in subsection D.

3. **Effective 15 days.** The Director may terminate this AGREEMENT effective 15 days after Notice by COUNTY to FRANCHISEE of COUNTY'S right to terminate this AGREEMENT in the event of Criminal Activity in accordance with Section 20J and subsection D2c.

D. **Suspension or Termination of AGREEMENT.**

1. **Suspension.** Together with any other rights COUNTY may have under this AGREEMENT (including the right to use and possession of Service Assets under Section 16), the Director may suspend this AGREEMENT, in whole or in part, for a period of 45 days effective immediately upon Notice to FRANCHISEE in any of the following events:

   a. A Franchisee Default; or

   b. COUNTY exercise of its right to suspend this AGREEMENT under Section 20J in the event of Criminal Activity of FRANCHISEE.

   During that 45-day period FRANCHISEE shall have the opportunity to demonstrate to COUNTY that FRANCHISEE can once again fully perform Franchise Services in accordance with this AGREEMENT. If FRANCHISEE so demonstrates, COUNTY'S right to suspend this AGREEMENT will cease and FRANCHISEE may resume providing services. If FRANCHISEE does not so demonstrate, COUNTY may terminate this AGREEMENT and exercise any other rights and remedies under this AGREEMENT.

2. **Termination.**

   a. ***Franchisee Default.*** The Director may terminate this AGREEMENT, in whole or in part, upon the occurrence of a Franchisee Default and Notice to FRANCHISEE at the times provided in subsection C.

   b. ***Failure to Agree on Rate Adjustments***. Notwithstanding the foregoing, the Director may terminate this AGREEMENT on six months' Notice if in the judgment of the Director, COUNTY and FRANCHISEE are unable to reach satisfactory agreement to adjust Rates in accordance with item d of Section A1 of Exhibit 10 for a Change in Law or changes in Service Specifications or Service Standards after good-faith negotiations during a period of at least 30 days.

   c. ***Criminal Activity***. The Director may terminate this AGREEMENT upon Notice required in Section 17C if County exercises its right to terminate this AGREEMENT under Section 20J in the event of Criminal Activity of FRANCHISEE.

E. **FRANCHISEE Responsibility and Debarment.** COUNTY may debar FRANCHISEE from doing business with COUNTY if COUNTY determines after giving notice and conducting a hearing in accordance with Chapter 2.202 of the County Code, which shall apply to this AGREEMENT, that FRANCHISEE (or any

of its Subcontractors) is not responsible within the meaning of Chapter 2.202 and in accordance with COUNTY'S policy to do business with responsible contractors; FRANCHISEE'S failure to comply with the Child Support Compliance Program, as provided in Section 22B, may be cause for debarment in accordance with § 2.200.020 of the County Code.

SECTION 18 - ENFORCEMENT OF AGREEMENT

A. **As Provided by Law.** Either Party may avail itself of any remedy available under law.

B. **County's Additional Remedies.** Without limiting COUNTY'S remedies otherwise available under this AGREEMENT in law or equity, at its option, COUNTY may enforce a Breach in any or all of the following ways:

1. Execute alternative agreements for MSW Management Services in the event of Franchisee Default;

2. Seek to obtain injunctive relief and/or damages; and

3. Assess damages under subsection D.

C. **Injunctive Relief.** FRANCHISEE acknowledges that COUNTY'S remedy of damages for a Breach may be inadequate for reasons including the following:

1. The urgency of timely, continuous and high-quality Franchise Services, including Collection, transportation, and/or transfer for Disposal of wastes which constitute a threat to public health;

2. The long time and significant commitment of money and personnel and elected officials (both COUNTY staff and private consultants, including engineers, procurement counsel, citizens, public agency colleagues, and elected COUNTY officials) invested in this AGREEMENT, including developing COUNTY'S Option Analysis dated February 2001, and implementing its recommendations through numerous meetings of a Working Group comprised of Solid Waste industry representatives from small and large businesses, requesting and evaluating qualifications and proposals for this AGREEMENT (including FRANCHISEE'S), reviewing and commenting on documentation submitted by FRANCHISEE in conjunction with execution of this AGREEMENT, and review of Franchisee Documentation;

3. The time and investment of personnel and elected officials described in the preceding item 2 to develop alternative Solid Waste services comparable to Franchise Services for the price provided under this AGREEMENT, and to negotiate new agreements therefor; and

4. COUNTY'S reliance on FRANCHISEE'S technical Solid Waste management expertise.

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

D. Recovery of Damages.

1. **Compensatory.** COUNTY may seek compensatory damages, including the following:

   a. Amounts equal to any Franchise Fees, liquidated damages, or other amounts that FRANCHISEE has previously paid to COUNTY but are subsequently recovered from COUNTY by a trustee in bankruptcy as preferential payments or otherwise;

   b. If COUNTY terminates this AGREEMENT for a Franchisee Default or in the event of Criminal Activity in accordance with Section 17D2a or c, respectively, costs incurred by COUNTY to provide or reprocure MSW Management Services in lieu of Franchise Services; and

   c. If COUNTY terminates this AGREEMENT before expiration for a Franchisee Default or in the event of Criminal Activity in accordance with Section 17D2a or c, respectively, costs of MSW Management Services provided or reprocured in lieu of Franchise Services in excess of Customer Service Charges for the balance of the Term remaining if this AGREEMENT had not been terminated.

   COUNTY may draw upon the performance bond, letter of credit, certificate of deposit, or other form of performance assurance provided by FRANCHISEE in accordance with Section 15 to pay compensatory damages.

   For FRANCHISEE'S misrepresentation regarding contingent fees in Exhibit 20H, in addition to terminating this AGREEMENT, COUNTY may recover from FRANCHISEE the full amount of the proscribed commission, percentage, brokerage, or contingent fee.

2. **Liquidated.** COUNTY may seek liquidated damages listed in Exhibit 18D2. The Parties acknowledge that COUNTY incurred considerable time and expense procuring this AGREEMENT in order to secure an improved level of Collection quality and increased Customer satisfaction. Therefore, consistent and reliable Services are of the utmost importance to COUNTY and Customers. COUNTY has considered and relied on FRANCHISEE'S representations as to its quality of service commitment in entering into this AGREEMENT, and FRANCHISEE'S

Breach represents a loss of bargain to COUNTY. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure quality, consistent, and reliable Collection, and if FRANCHISEE fails to meet its Performance Obligations, COUNTY will suffer damages (including its Customers' inconvenience; anxiety, frustration, potential political pressure, criticism, and complaint by Customers; lost Supervisors and staff time; deprivation of the benefits of this AGREEMENT and loss of bargain) in subjective ways and in varying degrees of intensity that are incapable of measurement in precise monetary terms, and that it is and will be impracticable and extremely difficult to ascertain and determine the value thereof. In addition, in the event of Breach or Franchisee Default, urgency of protecting public health and safety may necessitate that COUNTY enter into emergency or short-term arrangements for services without competitive procurement at prices substantially greater than under this AGREEMENT, and the monetary loss resulting there from is impossible to precisely quantify. Lastly, termination of this AGREEMENT for Franchisee Default and other remedies provided in this AGREEMENT are, at best, a means of future correction and not remedies that make COUNTY whole for past Breaches and Franchisee Defaults. Therefore, the Parties agree that the liquidated damages listed in Exhibit 18D2 represent a reasonable estimate of the amount of damages, considering all of the circumstances existing on the date of this AGREEMENT, including the relationship of the sums to the range of harm to COUNTY that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this AGREEMENT, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this AGREEMENT was made.

E. **County's Reimbursement Costs.** FRANCHISEE shall pay COUNTY promptly upon request County's Reimbursement Costs of conducting a nonroutine investigation of any alleged Breach, when appropriate in judgment of the Director. FRANCHISEE shall reimburse COUNTY for County's Reimbursement Costs incurred as a consequence of FRANCHISEE'S Breach, including failure to maintain insurance.

F. **Waiver.** No waiver by COUNTY of any breach of any provision of this AGREEMENT constitutes a waiver of any other breach of that provision. Failure of COUNTY to enforce at anytime, or from time to time, any provision of this AGREEMENT will not be construed as a waiver thereof. The rights and remedies set forth in this subsection F are exclusive and are in addition to any other rights and remedies provided by law or under this AGREEMENT.

SECTION 19 - TRANSFER OF FRANCHISE

A. **Director Consent.** FRANCHISEE may not Transfer this AGREEMENT, the Franchise granted under it, or any rights or duties under it, in whole or in part, and whether voluntarily or involuntarily, without the Director's prior written consent, the exercise of which is in the Director's sole discretion. Any Transfer or attempted Transfer of this AGREEMENT, the franchise granted under it or any rights and duties under it, made without the Director's consent, at COUNTY'S option, will be null and void. The Director may condition consent on payment of amounts specified in Exhibit 3A in consideration for the value of good will and intangibles that accrued to COUNTY and Customers in the award of this AGREEMENT to FRANCHISEE.

B. **Franchisee Demonstration.** Without obligating the Director to give consent, FRANCHISEE shall demonstrate to the Director's satisfaction that the proposed transferee has the operational and financial ability to satisfy FRANCHISEE'S Performance Obligations.

C. **Payment of County's Transfer Costs.**

1. **Transfer Deposit.** FRANCHISEE must make any request for the Director's consent to a Transfer in the manner prescribed by the Director. FRANCHISEE shall pay COUNTY a Transfer Deposit before the Director's consideration of FRANCHISEE'S request. COUNTY will return to FRANCHISEE any amounts paid in excess of the Transfer Costs incurred.

2. **Additional Transfer Costs.** In the course of COUNTY'S processing FRANCHISEE'S request for Transfer, FRANCHISEE shall further pay COUNTY its additional Transfer Costs in excess of the Transfer Deposit within 30 days of the Director's request therefor, whether or not the Director approves the Transfer. At FRANCHISEE'S request, COUNTY will provide FRANCHISEE access to all records evidencing the Transfer Costs incurred.

D. **County's Reimbursement Costs of Enforcement.** In addition, Franchise shall pay County's Reimbursement Costs for fees and investigation costs as COUNTY may deem necessary to enjoin the Transfer or to otherwise enforce this provision within 30 days of COUNTY'S request therefor.

SECTION 20 - GENERAL PROVISIONS

A. **Exercise of Options.** Parties will exercise any approval, disapproval, consent, judgment, option, discretion, election, opinion, or choice under this AGREEMENT, make a requirement under this AGREEMENT or interpret this AGREEMENT (**"Discretionary Action"**) reasonably. Any mediator, arbitrator, or court must find the Party's exercise to be reasonable. Recognizing the essential

public health and safety protections this AGREEMENT serves where this AGREEMENT specifically provides that the exercise of any Discretionary Action is in either Party's independent, sole, exclusive or absolute discretion, control or judgment, the other Party will not question or challenge the first Party's exercise thereof. Parties will nevertheless exercise their rights and remedies in good faith in accordance with Applicable Law.

B. **Independent Status.** FRANCHISEE is an independent entity and not an officer, agent, servant, or employee of COUNTY. This AGREEMENT is between COUNTY and FRANCHISEE and is not intended, and will not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association between COUNTY and FRANCHISEE, including for purposes of workers' compensation. FRANCHISEE is solely responsible for the acts and omissions of its officers, agents, employees, and any Subcontractors. Nothing in this AGREEMENT will be construed as creating an arrangement for handling Unpermitted Waste. FRANCHISEE bears the sole responsibility and liability for furnishing workers' compensation and all other benefits required by law to any individual for injuries arising from or connected with Franchise Services performed on behalf of FRANCHISEE under this AGREEMENT.

C. **Damage to Property and Personal Injury.** FRANCHISEE shall not cause damage to property or personal injury. At its sole expense, FRANCHISEE shall repair or replace to the satisfaction of the owner of damaged property, any physical damage to public or private property and shall reimburse to the satisfaction of an injured individual, the cost of any personal injury caused by the negligent or willful acts or omissions of FRANCHISEE. COUNTY may refer all complaints of damage or injury to FRANCHISEE as a matter within FRANCHISEE'S sole responsibility. Notwithstanding any rights COUNTY has for breach of contract, disputes between FRANCHISEE, and Persons as to damage to private pavement or other property or to injury are civil matters between FRANCHISEE and that Person, and the Person may institute suits with respect thereto as allowed by law.

D. **Venue.** In the event of litigation between the Parties, venue in State of California trial courts will lie exclusively in the COUNTY. In the event of litigation in a United States District Court, exclusive venue will lie in the Central District of California.

E. **Amendments and Changes.**

1. **Director's Changes.** The following changes in this AGREEMENT after the Execution Date will be effective after Notice from the Director to FRANCHISEE (or with respect to certain changes referenced in item b, from FRANCHISEE to the Director, in accordance with Section 3D2a) as consented to by FRANCHISEE:

a. Changes in the scope of Franchise Services and Service Specifications and minimum Service Standards that do not result in a Rate adjustment in accordance with Section 3C;

b. Changes to Exhibit 3D Franchisee Documentation;

c. Changes to Exhibit 20G Authorized Representative of Director;

d. Immaterial changes to immaterial Performance Obligations.

2. **Board's Amendments.** The following changes in this AGREEMENT after the Execution Date will be effective only upon execution of a written amendment to this AGREEMENT, including warranties by the Parties in accordance with Section 24B:

a. Changes in the scope of Franchise Services and Service Standards that result in a Rate adjustment in accordance with Section 3C; and

b. Material changes to material Performance Obligations (such as the period of performance, payments, or any material term or condition included in this AGREEMENT).

F. **Notices.** All Notices required or permitted to be given under this AGREEMENT must be in writing and must be personally delivered or sent by telecopier or registered or certified mail, return receipt requested. All Notices to COUNTY must be addressed to the Director as provided in Exhibit 20G. All Notices to FRANCHISEE must be addressed to the authorized representative of FRANCHISEE named in Franchisee Documentation (who will be FRANCHISEE'S primary contact under this AGREEMENT), except for Notices of suspension or termination of this AGREEMENT, which Notices may be personally delivered to any individual whose actual knowledge of suspension or termination would be sufficient notice to FRANCHISEE, including:

1. An individual, if FRANCHISEE is a sole proprietor;

2. Copartner, if FRANCHISEE is a partnership; or

3. The president, vice president, secretary, or general manager, if FRANCHISEE is a corporation.

Notice is deemed effective:

1. On the date personally delivered or sent by telecopier, with evidence of receipt; or

2. Three days after the date of mailing.

G. **Authorized Representative of Director.** COUNTY authorizes the Director to make requests or requirements of FRANCHISEE or give approvals under this AGREEMENT. The authorized representative of the Director named in Exhibit 20G is FRANCHISEE'S primary contact under this AGREEMENT and can be contacted as provided in Exhibit 20G. FRANCHISEE shall give that authorized representative a copy of all Notices in accordance with Section 20F. From time to time, COUNTY may change Exhibit 20G by Notice to FRANCHISEE.

H. **Authority and Representations; COUNTY Disclaimer.**

1. **COUNTY.** COUNTY represents and disclaims as follows:

   a. ***Status.*** COUNTY is a political subdivision of the State of California.

   b. ***Authority and Authorization.*** COUNTY has full legal right, power, and authority to execute and deliver this AGREEMENT and perform its obligations under this AGREEMENT. This AGREEMENT has been duly executed and delivered by COUNTY and constitutes a legal, valid, and binding obligation of COUNTY enforceable against COUNTY in accordance with its terms.

   c. ***No Warranty Regarding Waste Characterization.*** COUNTY makes no representations or warranties with respect to the waste characterization within the COUNTY, any waste disposal characterization study, or projections by material type with respect to waste in the COUNTY. COUNTY expressly disclaims any representations and warranties, either express or implied, as to the merchantability or fitness for any particular purpose of Solid Waste or any portion thereof.

2. **FRANCHISEE.** FRANCHISEE represents and warrants as provided in Exhibit 20H.

I. **Limitation on Subscription Orders.** FRANCHISEE shall limit the terms of Subscription Orders to no longer than the remaining period of the Term. FRANCHISEE shall give each Customer the option to terminate its Subscription Order without cause on 90 days notice. FRANCHISEE shall also give each Customer the right to terminate service immediately in the event of emergency in accordance with Section 16A, or within 30 days if FRANCHISEE:

1. Fails to provide Franchise Services in accordance with the Terms of this AGREEMENT (including missed Collections, failure to timely repair or replace Containers, or failure to provide Collection or Recyclables) or the Subscription Order; or

2. Bills the Customer for amounts not provided in the Subscription Order or in excess of Rates.

FRANCHISEE may not include in the terms of Subscription Orders any automatic renewals or extensions, colloquially referred to as "evergreen" clauses, which obligate a Customer to take affirmative, prescribed action (such as written notice within a specified time period before the stated expiration of the Subscription Order) in order to terminate the Subscription Order.

J. Criminal Activity.

1. **Notice.** FRANCHISEE shall immediately give Notice to COUNTY on the occurrence of any convictions of a Criminal Activity or any pleas of "guilty," "nolo contendere," or "no contest" to a Criminal Activity with respect to FRANCHISEE or any of its Franchisee Managers (except for Franchisee Managers in a Position of Influence). FRANCHISEE shall use Reasonable Business Efforts to immediately give Notice to COUNTY on the occurrence of any convictions or any pleas with respect to FRANCHISEE or any of its Franchisee Managers in a Position of Influence.

2. **Franchisee Cure.** Upon the occurrence of any conviction or any plea described in subsection J1, FRANCHISEE immediately shall do or cause to be done both of the following:

   a. Terminate from employment or remove from office any offending Franchisee Manager who is an individual, or with respect to FRANCHISEE or an Affiliate, the individual or individuals responsible for the Criminal Activity; and

   b. Eliminate the participation in management of FRANCHISEE by that Franchisee Manager who is an individual or, with respect to FRANCHISEE or an Affiliate, the individual or individuals responsible for the Criminal Activity from any Position of Influence.

3. **COUNTY Remedies.** COUNTY may suspend or terminate this AGREEMENT or may impose other sanctions (which may include financial sanctions or any other condition deemed appropriate short of suspension or termination), as it deems proper, in either or both of the following events:

   a. FRANCHISEE or any Affiliate fails to effectuate the cure described in subsection J2; or

   b. The Criminal Activity is related to this AGREEMENT or occurring in the COUNTY.

4. **Limitations on Franchisee Manager.** No Franchisee Manager may have previously been convicted of a Criminal Activity or any plea of "guilty," "*nolo contendere,*" or "no contest" to a Criminal Activity.

5. **Franchisee Documentation.** Franchisee shall list all Franchisee Managers in Franchisee Documentation.

K. **Notice of Delay.** Within one day of learning that any actual or potential circumstance is delaying or threatening to delay the timely satisfaction of a Performance Obligation, FRANCHISEE shall give COUNTY a Notice of the delay, including all relevant information, such as identifying the particular Performance Obligation, circumstance, and duration of the delay, and whether or not FRANCHISEE believes that the delay is due to Uncontrollable Circumstances.

L. **COUNTY'S Quality Assurance Plan.** COUNTY or its agent will evaluate FRANCHISEE'S performance under this AGREEMENT on not less than an annual basis. The evaluation will include assessing FRANCHISEE'S compliance with all terms and performance standards of this AGREEMENT. FRANCHISEE deficiencies that COUNTY determines are severe or continuing and that may place performance of this AGREEMENT in jeopardy, if not corrected within 30 days after FRANCHISEE'S receipt of the evaluation, will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by COUNTY and FRANCHISEE. If improvement does not occur consistent with the corrective action measures within 30 days after FRANCHISEE'S receipt of the report, COUNTY may terminate this AGREEMENT or impose other penalties as specified in this AGREEMENT.

SECTION 21 - DEFINITIONS AND INTERPRETATION OF AGREEMENT

A. **Definitions.** Defined words in this AGREEMENT have the meanings given in Exhibit 21 and in some instances within Sections 1 through 24.

B. **Interpretation and Construction.**

1. **Gender and Plurality.** Words of the masculine gender include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number include the plural number and vice versa unless the context demands otherwise. (For example, reference to a defined "Solid Waste Facility" may include reference to more than one facility identified by FRANCHISEE in Franchisee Documentation.)

2. **Headings; Font.** Any captions or headings following the Exhibit, Attachment, Section, subsection, paragraph, and other attachments and subdivisions of this AGREEMENT that precede the operative text of this AGREEMENT are for convenience of reference only and do not control or affect the scope, intent, meaning, construction, interpretation, or effect of

this AGREEMENT. Any underlined, italicized, bold-faced, upper captioned or other font style is for ease of reading and contract administration only and does not imply relative importance or unimportance of any provision of this AGREEMENT.

3. **References to Parts.** References to Sections refer to Sections of this AGREEMENT, unless specified otherwise. References to Exhibits and Attachments refer to Exhibits and Attachments attached to this AGREEMENT. Reference to "subsections" refers to the subsection contained in the same Section in which the reference occurs, unless otherwise referenced.

4. **Examples.** Examples are for purpose of illustration only. If any example is ambiguous, inconsistent, or conflicts with the text that it illustrates, the text governs.

5. **Specifics No Limitation on Generalities.** The mention of any specific duty or liability imposed on FRANCHISEE may not be construed as a limitation or restriction of any general liability or duty imposed on FRANCHISEE by this AGREEMENT or Applicable Law.

6. **Exhibits.** The Exhibits to this AGREEMENT, including their attachments, are part of this AGREEMENT to the same extent and effect as if included in the text of Sections 1 through 24.

7. **Inconsistencies and Conflicts.**

   a. If any provision of Exhibit 3A is inconsistent or conflicts with Sections 1 through 24 of this AGREEMENT or any other any Exhibits or Attachments to this AGREEMENT, then the provisions of Exhibit 3A will govern, and

   b. If any provision of Sections 1 through 24 of this AGREEMENT is inconsistent or conflicts with any Exhibit (other than Exhibit 3A), including Franchisee Documentation, then the provision of Sections 1 through 24 of this AGREEMENT will govern unless the Director determines that is contrary to the interest of the Parties.

C. **Integration.** This AGREEMENT contains the entire agreement between the Parties with respect to the rights and responsibilities of the Parties under this AGREEMENT. This AGREEMENT completely and fully supersedes all prior oral and written understandings and agreements between the Parties with respect to those rights and responsibilities.

D. **Governing Law.** This AGREEMENT is governed by, and construed and enforced in accordance with, the law of the State of California, without giving effect to the State's principles of conflicts of laws.

E. **Severability.** If any clause, sentence, provision, subsection, or Section of this AGREEMENT or Exhibit to this AGREEMENT (an "Agreement Provision") is ruled illegal, invalid, nonbinding, or unenforceable by any court of competent jurisdiction, then the Parties will take the following actions:

1. Promptly meet and negotiate a substitute for the Agreement Provision and any related amendments, deletions, or additions to other provisions of this AGREEMENT, which together effect the Parties' original intent to the greatest extent allowable under Applicable Law; and

2. If necessary or desirable to accomplish preceding item 1, apply to the court that declared the invalidity for a judicial construction of the substituted Agreement Provision and any amendments, deletions, or additions to this AGREEMENT. Within ten days of County's request, Franchisee shall pay County an amount equal to the Direct Costs of the application or other amount provided in Exhibit 3A.

The illegality, invalidity, nonbinding nature or unenforceability of any Agreement Provision will not affect any of the remaining provisions of this AGREEMENT, and this AGREEMENT will be construed and enforced as if the Agreement Provision did not exist.

F. **Interpretation.** This AGREEMENT will be interpreted and construed neither for nor against either Party, regardless of the degree to which either Party participated in its drafting. Franchisee acknowledges that it determined to provide Franchise Services in the Service Area and to execute this AGREEMENT upon FRANCHISEE'S own choice and initiative. Each Party represents and warrants that it and its counsel have reviewed this AGREEMENT, and the Parties agree that no provision in this AGREEMENT will be construed against the drafting Party.

SECTION 22 - COMPLIANCE WITH LAWS AND REGULATIONS

A. Applicable Law.

1. **Compliance.** FRANCHISEE shall comply with all Applicable Laws, including (as required by 13 CCR 2021.1) all applicable air pollution control laws such as Diesel Particulate Matter Control Measure of on-road heavy-duty diesel-fueled Residential and Commercial Solid Waste Collection Vehicles set forth in 13 CCR 2020 *et seq.*, and securing and maintaining all Permits. No obligation in this AGREEMENT may be construed to relieve FRANCHISEE of any obligations imposed by Applicable Law.

2. **Referenced Provisions.** References in this AGREEMENT to particular provisions or requirements of Applicable Law may not be construed to limit

FRANCHISEE'S obligation to comply with all provisions of Applicable Law. Those references are intended to facilitate FRANCHISEE'S satisfaction of its Performance Obligations and COUNTY'S administration and specific enforcement of this AGREEMENT and may not be construed to constitute lack of obligation to comply with other provisions or requirements of Applicable Law not specifically referred to or cited in this AGREEMENT. If any provision of this AGREEMENT is more stringent than Applicable Law, FRANCHISEE shall comply with that provision.

3. **Fines and Penalties.** FRANCHISEE is solely liable for all fines and penalties that may be imposed on FRANCHISEE or may be due to FRANCHISEE'S actions, including fines and penalties that are the result of FRANCHISEE'S Violation of Applicable Law (including Permits). FRANCHISEE shall not seek reimbursement from COUNTY or Customers for any fines or penalties.

4. **Contractual Obligations.** Provisions of Applicable Law are incorporated in this AGREEMENT by reference as if set forth fully in this AGREEMENT as contractual obligations of FRANCHISEE to COUNTY.

   a. ***Breaches.*** In addition to or in lieu of prosecuting violations of those provisions as misdemeanors, infractions, or otherwise in the manner provided under Applicable Law, COUNTY may enforce those provisions in the same manner as it may enforce FRANCHISEE'S other contractual obligations under this AGREEMENT, including specific performance and as Breaches subject to cure in accordance with Section 17A. However, COUNTY has no obligation to enforce any Applicable Law.

   b. ***Violation.*** Violation of Applicable Law is a Franchisee Default subject to contest as provided in item 4 of Section 17B.

5. **County's Protection of Public Safety, Health, and Welfare.** FRANCHISEE acknowledges that COUNTY is authorized to make all necessary and reasonable rules and regulations regarding all aspects of MSW Management Services to protect the public's health, safety, and welfare.

   No provision in this AGREEMENT is deemed to limit the power of COUNTY to regulate FRANCHISEE or to take any action as COUNTY deems appropriate or necessary in COUNTY'S sole and absolute discretion, under COUNTY'S police power, including to protect the public's safety, health, and welfare.

6. **Compliance with Applicable Law of County.** FRANCHISEE shall comply with Applicable Law of COUNTY subject to possible adjustments

in the Rates in the event of Changes in Law in accordance with Section A1d of Exhibit 10.

B. **County Child Support Compliance Program**. As required by COUNTY'S Child Support Compliance Program (County Code Chapter 2.200), FRANCHISEE shall fully comply with employment and wage reporting requirements under the Federal Social Security Act (42 U.S.C. § 653(a) and California Unemployment Insurance Code § 1088.5. FRANCHISEE shall implement lawfully served wage and earnings withholding orders or COUNTY Child Support Services Department notices of wage earnings assignment for child, family, or spousal support issued in accordance with California Code of Civil Procedure § 706.031 and California Family Code § 5246(b).

SECTION 23 - LABOR-RELATED PROVISIONS REQUIRED IN COUNTY CONTRACTS

A. **Labor Code.** FRANCHISEE and its agents and employees are bound by and shall comply with all applicable provisions of the California Labor Code as well as all other Applicable Laws related to labor. By and through its execution of this AGREEMENT, FRANCHISEE represents and warrants that it is aware of and understands the provisions of California Labor Code § 3700, which requires every employer to be insured against liability of Workers' Compensation or to undertake self-insurance in accordance with those provisions before commencing the performance of work under this AGREEMENT and agrees to fully comply with those provisions.

B. **Consideration of GAIN/GROW Participants for Employment.** Should FRANCHISEE require additional or replacement personnel after the Execution Date, FRANCHISEE shall give consideration for any of those employment openings to participants in COUNTY'S Department of Public Social Services' Greater Avenues for Independence (GAIN) Program or General Relief Opportunities for Work (GROW) Program who meet FRANCHISEE'S minimum qualifications for the open position. COUNTY will refer GAIN/GROW participants, by job category, to FRANCHISEE. For this purpose, "consideration" means that FRANCHISEE shall interview qualified candidates.

C. **Notices to Employees.**

1. **Regarding the Federal Earned Income Credit.** FRANCHISEE shall notify its employees, and shall require each Subcontractor performing Franchise Services to notify its employees, that they may be eligible for the federal Earned Income Credit under the Federal income tax laws. The notice must be provided in accordance with the requirements set forth in Internal Revenue Service Notice 1015 that FRANCHISEE has attached as Franchisee Documentation.

2. **Regarding Safely Surrendered Baby Law.** FRANCHISEE acknowledges that COUNTY places a high priority on the implementation of the Safely Surrendered Baby Law (SB 1368).

   a. ***Fact Sheet.*** FRANCHISEE shall notify and provide to its employees and shall require each Subcontractor performing Franchise Services to notify and provide to Subcontractors' employees a fact sheet regarding the Safely Surrendered Baby Law, its implementation in the COUNTY, and where and how to safely surrender a baby. FRANCHISEE shall print and make available in every facility where its employees are present, including offices and operation yards, the fact sheet that is available at www.babysafela.org.

   b. ***Poster.*** FRANCHISEE understands that it is COUNTY'S policy to encourage all COUNTY contractors to voluntarily post COUNTY'S "Safely Surrendered Baby Law" poster in a prominent position at the contractor's place of business. FRANCHISEE shall also encourage its Subcontractors to post this poster in a prominent position in the Subcontractors' place of business. COUNTY'S Department of Children and Family Services will supply FRANCHISEE with the poster to be used.

3. **Regarding Child Support.** FRANCHISEE acknowledges that COUNTY places a high priority on the enforcement of child support laws and the apprehension of child support evaders. FRANCHISEE further acknowledges that it is COUNTY'S policy to encourage all COUNTY contractors to voluntarily post COUNTY'S "L.A.'s Most Wanted: Delinquent Parents List" supplied by COUNTY in a prominent position at their place of business.

D. **Prohibition Against Use of Child Labor.**

1. **Compliance with ILO Convention Concerning Minimum Age for Employment.** FRANCHISEE shall not knowingly sell or supply to COUNTY or Customers any products, goods, supplies, or other personal property manufactured in violation of child labor standards set by the International Labor Organization through its 1973 Convention Concerning Minimum Age for Employment (the **"Convention Concerning Minimum Age for Employment"**). If FRANCHISEE discovers that any products, goods, supplies, or other personal property sold or supplied by FRANCHISEE to COUNTY or any Customer are produced in violation of that Convention, FRANCHISEE shall immediately provide an alternative source of supply that complies with that Convention.

2. **Provide COUNTY with Records.** At COUNTY'S request, FRANCHISEE shall provide documentation satisfactory to COUNTY evidencing the country or countries of origin of any products, goods, supplies, or other personal property FRANCHISEE sells or supplies to COUNTY or any Customer in connection with Franchise Services.

3. **Provide COUNTY with Manufacturers' Certification.** At COUNTY'S request, FRANCHISEE shall provide to COUNTY the manufacturer's certification of compliance with the Convention Concerning Minimum Age for Employment or other all-international child labor conventions.

E. Nondiscrimination.

1. **Employees.** FRANCHISEE and its Affiliates shall employ qualified applicants and treat employees equally without regard to or because of race, color, national origin, ancestry, religion sex, age, physical or mental disability, marital status, or political affiliation and in compliance with all State of California and Federal anti-discrimination laws, including employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay, other forms of compensation, and selection of training (including apprenticeship).

2. **Subcontractors, Bidders, and Vendors.** FRANCHISEE shall deal with its Subcontractors, bidders, and vendors without regard to or because of race, color, national origin, ancestry, religion, sex, age, physical or mental disability, marital status, or political affiliation.

3. **Certification.** FRANCHISEE shall comply with the provisions of FRANCHISEE'S EEO Certification (Form PW-7), attached as Franchisee Documentation.

4. **Inspection of Records.** At COUNTY'S request, FRANCHISEE shall promptly allow COUNTY and its auditors access to FRANCHISEE'S employment records at FRANCHISEE'S Office during Franchisee Office Hours to verify compliance with the provisions of this subsection E.

5. **Remedies for Discrimination.** If COUNTY finds that FRANCHISEE has violated any provisions of this subsection E, that violation constitutes a Franchisee Default. While COUNTY reserves the right to determine independently that the anti-discrimination provisions of this subsection E have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that FRANCHISEE has violated State of California or Federal anti-discrimination laws will constitute a finding by COUNTY that FRANCHISEE has violated the anti-discrimination provisions of this subsection E.

F. **Safety.**

1. **Services Safety Official.** FRANCHISEE shall designate in Franchisee Documentation a Services Safety Official who shall be thoroughly familiar with FRANCHISEE'S Injury and Illness Prevention Program (IIPP) and Code of Safe Practices (CSP). FRANCHISEE shall ensure that the Services Safety Official is available at all times Franchise Services are provided to abate any potential safety hazards. FRANCHISEE shall give the Services Safety Official the authority and responsibility to cease performing any service if necessary to abate any potential safety hazard. If FRANCHISEE fails to designate or make available the Services Safety Official, COUNTY may direct the Franchise to cease providing Franchise Services at no cost to COUNTY until FRANCHISEE is in compliance with this Section.

2. **Safety Responsibilities.** FRANCHISEE is responsible for the safety of equipment, material, and personnel under FRANCHISEE'S control or authority during performance of Franchise Services. FRANCHISEE is solely responsible for ensuring that all work performed under this AGREEMENT is performed in strict compliance with all Applicable Laws with respect to occupational safety regulations. FRANCHISEE shall provide at its expense all safeguards, safety devices, protective equipment, and shall take all actions appropriate to providing a safe job environment.

G. **COUNTY Lobbyists.** FRANCHISEE and each COUNTY lobbyist or County lobbying firm as defined in County Code § 2.160.010, retained by Franchisee shall fully comply with the County Lobbyist Ordinance.

SECTION 24 - EXECUTION OF AGREEMENT

A. **Execution in Counterparts.** This AGREEMENT, including dated signatures on amended Exhibits and attachments to those Exhibits, may be signed in any number of original counterparts. All counterparts constitute but one and the same agreement.

B. **Authority to Execute.** COUNTY warrants that the individual signing this AGREEMENT has been duly authorized by COUNTY to sign this AGREEMENT on behalf of COUNTY and has the full right, power, and authority to bind COUNTY to this AGREEMENT. FRANCHISEE warrants that the individual signing this AGREEMENT below has been duly authorized by FRANCHISEE to sign this AGREEMENT on behalf of FRANCHISEE and has the full right, power, and authority to bind FRANCHISEE to this AGREEMENT.

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IN WITNESS WHEREOF, COUNTY has by order of its Board of Supervisors caused this AGREEMENT to be signed by the Acting Director of Public Works, and FRANCHISEE has caused this AGREEMENT to be signed by its duly authorized officers, as of the date first written above.

COUNTY OF LOS ANGELES

By _____
Acting Director of Public Works

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By _____
Deputy

NAME OF FRANCHISEE

By _____
President

_____
Type or Print Name

_____
Secretary

_____
Type or Print Name

EXHIBIT 3A - FRANCHISE SERVICES AND SERVICE SPECIFICATIONS

A. Provisions Cross-Referenced in the Body of AGREEMENT. The following provisions are referenced in the body of this AGREEMENT and provided in this Exhibit:

1. **Section 2A Termination Date.** The Termination Date is **[INSERT DATE]**. The Director in his or her sole discretion may extend the Termination Date for up to three one-year periods after Notice to FRANCHISEE no later than 90 days before the Termination Date. FRANCHISEE acknowledges that in exercising its option to extend the Termination Date, COUNTY need not consider whether any Service Assets are not fully depreciated as of the Termination Date, and that FRANCHISEE invested in and depreciated those Service Assets in FRANCHISEE'S sole discretion.

2. **Section 4C Non-Collection Notice item 9.** The Parties agree to the following additional items: FRANCHISEE is not obligated to Collect Green Waste in Green Waste Containers if FRANCHISEE observes Manure in the Green Waste Cart, *unless* after the Execution Date, FRANCHISEE develops a program approved by the Director for Diverting Manure commingled with Green Waste.

3. **Section 4E Exceptions to Performance Obligations.** The Parties agree to the following exceptions to Performance Obligations described in Sections 1 through 24 of this AGREEMENT: None.

4. **Section 7B Telephone Service.** The Parties agree to the following additional service obligations:

   a. FRANCHISEE shall use Reasonable Business Efforts to broadcast public education messages to Customers while they are placed on hold waiting to talk to a Customer service representative;

   b. FRANCHISEE shall require no more than two recorded options on a telephone tree before the Customer speaks to a live Customer service representative (for example, English/Spanish and residential/commercial service choices); and

   c. FRANCHISEE shall answer the telephone within five rings. Upon the Director's determination that the telephone is not answered within five rings based on at least three calls within one week or ten calls within one month made and certified by the Director, the Director may require that FRANCHISEE install additional telephone lines, hire additional operators, and make other Customer service improvements without increasing Rates.

5. **Section 7C Bilingual.** FRANCHISEE shall respond to Customers in English, Spanish, and Mandarin, as the Customer requests.

6. **Section 15 Amount of Performance Assurance.** During the first Contract Year, FRANCHISEE shall provide performance assurance in the following amount: $1,007,000.

7. **19A Director's Consent to Transfer.** The Director may condition consent to any Transfer, other than a Transfer to an Affiliate, on FRANCHISEE'S payment to COUNTY of $5.00 per Customer.

8. **21E Allocable Share of Direct Costs of Application with Respect to Severability of Agreement Provision.** FRANCHISEE'S share is 100 percent.

B. General Specifications.

1. **Collection Commencement Date and Hours of Collection.** FRANCHISEE shall begin Collection on **February 1, 2009,** and Collect from all Customers during the succeeding week. Franchise shall Collect only between the hours of 6 a.m. and 6 p.m., Monday through Saturday, except that FRANCHISEE may Collect from Commercial Premises that are not located within 500 feet of Residential Premises at other times agreed to between FRANCHISEE and the Commercial Customer in accordance with the County Code, including § I2.08.520 Refuse Collection Vehicles. FRANCHISEE shall use Reasonable Business Efforts to adjust the early morning start point of Collection routes to address and minimize Customer complaints. FRANCHISEE shall Collect from Premises that were scheduled for Collection on a Holiday on the day before or after the scheduled Service Day that is a Holiday, and shall Collect from all other Premises in the Service Area on their regularly scheduled Collection day or one day later than their regularly scheduled Collection day. FRANCHISEE shall indicate the option it has selected in Franchisee Documentation. *FRANCHISEE shall pay liquidated damages for Breach under this subsection B1 in accordance with Exhibit 18D2 Liquidated Damages.*

2. **Waste Diversion Program.** FRANCHISEE shall develop and implement a Waste Diversion Program for all Residential Premises and Multifamily Premises, including Collection of Recyclables, Green Waste, Bulky Items, E-waste and CEDs; Customer education and outreach; Record keeping; and submission of Reports. FRANCHISEE shall include a copy of its program in Franchisee Documentation. The Waste Diversion Program must include, at a minimum, all of the following items:

a. ***Customer Recyclables Diversion Education Program.*** As part of its Waste Diversion Program, FRANCHISEE shall develop and implement a Customer educational program to maximize Diversion of Recyclables, Green Waste, Bulky Items, E-waste and CEDs. The Customer educational program must include, at a minimum, all of the following items:

(i) Recycling and Diversion goals, including method and calculations used and measures that will be used to determine how successful FRANCHISEE is in meeting its waste diversion goals;

(ii) Identifying Recycling and Diversion strategies and Customer options, including efforts to increase participation of Customer food retailers;

(iii) Establishing program tasks, such as meeting with managers of Multifamily Premises, visiting schools, speaking at Chambers of Commerce, informing Customers of on-line recycling and diversion information sites, and mailing quarterly newsletters;

(iv) Timetable for program implementation; and

(v) Developing and distributing literature in the form of fliers, cards, stickers, or otherwise as FRANCHISEE determines to be the most effective means of increasing Recycling and Diversion by Customers.

FRANCHISEE shall use Reasonable Business Efforts to participate in other promotional activities to increase Diversion, including participation in local fairs, parades, and civic events.

b. ***Distribution of Promotional Materials.*** At least once each Calendar Year, FRANCHISEE shall distribute flyers, pamphlets, brochures, or other written information describing FRANCHISEE'S Recyclables services and other opportunities for Customers to reduce, reuse, recycle, and divert Solid Waste. FRANCHISEE shall submit the materials to COUNTY at least one month before mailing them for COUNTY review and approval. FRANCHISEE may combine this distribution with its Customer outreach for the Unpermitted Waste Screening Protocol as provided in Section 6E.

c. ***Diversion.*** FRANCHISEE shall use Reasonable Business Efforts to Divert all materials that it Collects in accordance with this subsection B2, including the following:

i. Holiday trees that it Collects in accordance with subsection F1;

ii. Bulky Items, CEDs, E-waste and excess Solid Waste, that it Collects in accordance with subsection F2; and

iii. Refuse and Recyclables that it Collects at special events in accordance with subsection F3.

FRANCHISEE shall transport those materials only to the facility or facilities, including Solid Waste Facilities, that FRANCHISEE has designated in Franchisee Documentation for Recycling, Processing, or Diversion and shall Dispose of those materials that it does not Divert to the Solid Waste Facility that FRANCHISEE designates in Franchisee Documentation for Disposal. *FRANCHISEE shall pay liquidated damages for Breach under this subsection F6 in accordance with Exhibit 18D2 Liquidated Damages.*

3. **Containers.** *FRANCHISEE shall pay liquidated damages for Breach under this subsection B3 in accordance with Exhibit 18D2 Liquidated Damages.*

a. ***Delivery and Exchanges.*** Within seven days after receiving a Customer's request for commencement or changes in Collection of Refuse, Recyclables, Manure, or Green Waste, FRANCHISEE shall deliver Containers of the Customer's requested capacity or replace existing Containers with substitute Containers of the Customer's requested capacity.

b. ***Removal.*** On a regularly scheduled Collection day, no later than eight days after receiving notice from a Customer to discontinue Collection in accordance with the Customer's rights under a Subscription Order, FRANCHISEE shall remove its Containers from the Customer's Premises.

c. ***Repair and Replacement.*** FRANCHISEE shall repair or replace Containers on or before the next Service Day after COUNTY'S or a Customer's request for repair or replacement, including providing and maintaining operable lids. FRANCHISEE shall repair or replace Containers, including Containers that are stolen, without surcharge, except that if the Customer does not report the theft of a Container to the police, FRANCHISEE may charge the Customer the actual cost of replacement.

d. ***Specifications.*** FRANCHISEE shall procure, provide to Customers, maintain, and Collect using fully automated, wheeled

Carts having the specifications described in Franchisee Documentation and without surcharge to Customers unless otherwise provided on the Rate Schedule. The Refuse Cart shall be black, the Recyclables Cart shall be blue, and the Green Waste Cart shall be green or other colors approved by Director. Reference in this AGREEMENT to "96 gallons" includes substantially similar capacity upon approval of the Director.

e. ***Upright.*** FRANCHISEE shall return Carts upright.

f. ***Inventory.*** FRANCHISEE shall maintain a Cart inventory of at least 10 percent of the total number of Carts of each type and capacity provided to all Customers.

g. ***Graffiti.*** FRANCHISEE shall remove graffiti from Containers within five days (weekends accepted) of identification by FRANCHISEE or oral or written notice by COUNTY or a Customer or, if the graffiti is comprised of pictures or written obscenities, within 48 hours (weekends accepted).

h. ***Alternatives to Fully Automated 96-Gallon Carts.*** In place of fully automated 96-gallon Carts, FRANCHISEE may Collect Refuse, Recyclables and/or Green Waste in the type of Containers and in the manner described in Franchisee Documentation, at any Premises that is difficult to service with automated collection Vehicles if approved by the Director, or at any Premises if requested by the Customer. FRANCHISEE shall provide the alternative Containers having the same aggregate capacity as FRANCHISEE would have provided to that Customer in Carts for the Rate surcharge provided in the Rate Schedule.

i. ***Alternatives to 96-Gallon Carts due to Space Restrictions.*** If a Customer requests Containers other than 96-gallon Carts due to space restrictions for Cart storage or at the Set-Out Site, FRANCHISEE shall provide the type of Containers and method of Collection described in Franchisee Documentation. FRANCHISEE shall provide alternative Containers having the same aggregate capacity as FRANCHISEE would have provided to that Customer in Carts, without Rate discount or surcharge, if the Customer requests the same aggregate capacity.

j. ***32-Gallon Cart Alternatives to 96-Gallon Carts.*** If an elderly Customer as defined in Subsection G who generates small amounts of waste requests a 32-gallon Cart or Carts, FRANCHISEE shall provide the same number of 32-gallon Carts as FRANCHISEE would have provided to that Customer in 96-gallon Carts, without Rate surcharge.

4. **Vehicles.** Vehicles used for Collection must be fully automated unless permitted in subsection B3h.

5. **Subcontractors.** FRANCHISEE shall not engage any Subcontractor in an amount exceeding $50,000 for any individual Subcontractor without prior COUNTY approval of the Subcontract and Subcontractor. FRANCHISEE is responsible for directing the work of FRANCHISEE'S Subcontractors and any compensation due or payable to FRANCHISEE'S Subcontractors is the sole responsibility of FRANCHISEE. FRANCHISEE shall remove any approved Subcontractor for good cause at COUNTY'S request. FRANCHISEE shall identify all Subcontractors in Franchisee Documentation. In its Annual Report, FRANCHISEE shall disclose to COUNTY the name of all Subcontractors, the amount of Goods or Services that each Subcontractor provides to FRANCHISEE, and a description of FRANCHISEE'S relationships to each Subcontractor (including ownership interests).

6. **Routing and Container Placement.** FRANCHISEE shall provide to the Director route maps and schedules indicating the day of Collection as Franchisee Documentation and, upon County request, a list of Customers' names and addresses. FRANCHISEE shall schedule Collection one to two Service Days before streets are swept as provided in COUNTY'S schedule for street sweeping in the Service Area unless otherwise approved by the Director. For the convenience of the Parties, COUNTY'S current street sweeping schedule is attached as Attachment 1 of Exhibit 3A, and the schedule may be amended by COUNTY after the Execution Date. Franchise shall use Reasonable Business Efforts to implement the Director's requests for route and schedule changes. FRANCHISEE shall return empty Containers to their Set-Out Sites or site nearest Set-Out Site that does not impede pedestrian or vehicular traffic. The Set-Out Site must be located at the curb or as otherwise provided in County Code § 20.72.100.

7. **Collection Frequency.** In order to protect the public health and safety and control the spread of vectors, FRANCHISEE shall Collect all Refuse at least once per week.

C. Refuse Collection, Transportation, and Disposal.

1. **Scope of Franchise Services and Specifications.** FRANCHISEE shall arrange to provide for fully automated Collection, transportation, and Disposal of Refuse discarded by any Customer that requests FRANCHISEE to Collect its Refuse in Carts and agrees to pay Customer Service Charges. FRANCHISEE shall provide to each of those Customers the following for Collection of Refuse:

a. One 96-gallon Cart without surcharge; and

b. At the Customer's request, any number of additional 96-gallon Carts for the surcharge provided on the Rate Schedule.

In addition, FRANCHISEE shall Collect, up to four times each Calendar Year without surcharge, Refuse that a Customer discards in bags at the Set-Out Site on that Customer's next regularly scheduled Collection day after 24 hours advance notice by the Customer or other date agreed to between that Customer and FRANCHISEE.

2. **FRANCHISEE-Designated Solid Waste Facility.** FRANCHISEE shall transport Refuse only to the Solid Waste Facility or Facilities that FRANCHISEE has designated in Franchisee Documentation for Disposal. FRANCHISEE shall use Reasonable Business Efforts to designate a Solid Waste Facility or Facilities that utilizes Conversion technology or provides feedstock to Conversion facilities. *FRANCHISEE shall pay liquidated damages for Breach under this subsection C2 in accordance with Exhibit 18D2 Liquidated Damages.*

D. Recyclables Collection, Transportation, Processing, and Diversion.

1. **Scope of Franchise Services and Specifications.** FRANCHISEE shall arrange to provide for fully automated Collection, transportation, processing, and marketing of Recyclables discarded by any Customer for whom FRANCHISEE provides Collection of Refuse on the same day that FRANCHISEE Collects the Refuse. FRANCHISEE shall provide to each of those Customers the following for Collection of Recyclables:

   a. One 96-gallon Cart and, at the Customer's request, one additional 96-gallon Cart (for a total of two 96-gallon Carts) without surcharge; and

   b. At the Customer's request, any number of additional 96-gallon Carts for the surcharge provided on the Rate Schedule.

   FRANCHISEE may not reduce Customer Service Charges for Customers that do not discard Recyclables.

2. **FRANCHISEE-Designated Facility.** FRANCHISEE shall transport Recyclables only to the facility or facilities that FRANCHISEE has designated in Franchisee Documentation for Recycling, Processing, or Diversion, including Solid Waste Facilities, materials brokers and beneficiators. *FRANCHISEE shall pay liquidated damages for Breach under this subsection D2 in accordance with Exhibit 18D2 Liquidated Damages.*

3. **Purchase of Recyclables.** FRANCHISEE'S obligation to provide Recyclables services described in this Section D does not preclude FRANCHISEE from purchasing Recyclables from its Customers separate from Franchise Services.

4. **Scavenging - Discouragement.** FRANCHISEE shall use Reasonable Business Efforts to enforce anti-scavenging laws, including the following:

   a. Instituting civil actions against a Person alleged to have violated California Public Resources Code § 41950 for treble damages, as measured by the value of the material removed, or a civil penalty of not more than $1,000.00, whichever is greater, for each unauthorized removal, in accordance with California Public Resources Code § 41953; and

   b. Taking actions under County Code § 20.72.196 to discourage Scavenging.

5. **Prohibition on Mixing Recyclables and Green Waste with Refuse or Disposing of Recyclables or Green Waste.** Unless FRANCHISEE is obligated under this AGREEMENT to process Refuse for recovery of Recyclables, or unless as otherwise approved by the Director, FRANCHISEE shall not:

   a. Mix Recyclables or Green Waste that it Collects with Refuse; or

   b. Dispose of Recyclables or Green Waste that it Collects in a Disposal site or transformation facility, ***except* for:**

      (i) Incidental amounts of Recyclables or Green Waste that a Customer commingles with discarded Refuse;

      (ii) Green Waste used as alternate daily cover that is considered Diversion; or

      (iii) Contaminated Recyclables or Green Waste that cannot be Diverted using Reasonable Business Efforts as long as FRANCHISEE has previously exercised Reasonable Business Efforts to provide Customer education with respect to reducing that contamination.

FRANCHISEE shall pay liquidated damages for Breach under this subsection D5 in accordance with Exhibit 18D2 Liquidated Damages.

FRANCHISEE may transport residual Solid Waste remaining after processing at Solid Waste Facilities to maximum possible recovery levels and Diversion to facilities other than the Solid Waste Facility or Facilities

that FRANCHISEE designates for Disposal in Franchisee Documentation. However, FRANCHISEE shall use Reasonable Business Efforts to Divert or provide for the Diversion of residual Solid Waste remaining after processing at a materials recovery facility at Conversion facilities.

6. **Contamination Audits.**

   a. ***Initial.*** Within the first six months of commencing Franchise Services, Franchise shall check all Customers' Recyclables Containers and Green Waste Containers) once to ascertain whether Customers are discarding only Recyclables in their Recyclables Containers and only Green Waste in Green Waste Containers. Checking must include, at a minimum, manually opening the lid of Carts or Bins and visually inspecting the contents of the Cart or Bin to identify contamination.

   b. ***Annual Spot Checks.*** After the first six months of commencing Service, Franchise shall check Recyclables Containers of 20 percent of its Customers annually on a rotating basis, such that all Customers' Recyclables Containers are spot checked at least once every five years.

   c. ***Non-Collection Notices.*** If FRANCHISEE observes materials other than Recyclables during an initial or spot check, it shall not Collect that Container and it shall leave a Non-Collection notice at the Premises.

   d. ***Follow-Up.*** Within two months, FRANCHISEE shall recheck Containers set out at Premises that received a Non-Collection notice.

   e. ***Reports.*** In its Monthly Report FRANCHISEE shall summarize the results of its spot checks.

   f. ***Additional Spot Checks.*** After the first six months of commencing Service, if the Director determines that Customers are discarding a significant amount of Refuse and/or Green Waste in their Recyclables Containers or Refuse and/or Recyclables in their Green Waste Containers, then the Director may direct FRANCHISEE to check additional Containers and leave Non-Collection notices as provided in subsection D6c.

E. Green Waste Collection, Transportation, Processing, and Diversion.

1. **Scope of Franchise Services and Specifications.** FRANCHISEE shall arrange to provide for fully automated Collection, transportation, processing, and marketing of Green Waste discarded by any Customer for

whom FRANCHISEE provides Collection of Refuse on the same day FRANCHISEE Collects the Refuse. FRANCHISEE shall provide to each of those Customers the following for Collection of Green Waste:

a. One 96-gallon Cart, and at the Customer's request, one additional 96-gallon Cart (for a total of two 96-gallon Carts) without surcharge; and

b. At the Customer's request, any number of additional 96-gallon Carts for the surcharge provided on the Rate Schedule.

In addition, FRANCHISEE shall Collect, up to four times each year without surcharge, Green Waste that a Customer discards in bags at the Set-Out Site on that Customer's next regularly scheduled Collection day after 24-hours advance notice by the Customer or other date agreed to between that Customer and FRANCHISEE.

FRANCHISEE may not reduce Customer Service Charges for Customers that do not discard Green Waste.

2. **FRANCHISEE-Designated Facility.** FRANCHISEE shall transport Green Waste only to the facility or facilities that FRANCHISEE has designated in Franchisee Documentation for Recycling, Processing, or Diversion, including Solid Waste Facilities. *FRANCHISEE shall pay liquidated damages for Breach under this subsection E2 in accordance with Exhibit 18D2 Liquidated Damages.*

F. **Special Services.** FRANCHISEE shall provide the services prescribed in this Section F without surcharge to Customers or charge to COUNTY except for subsection F2d Additional On-Call Pickup with Surcharge and subsection F5 Manure Collection.

1. **Holiday Tree Collection.** During the period beginning December 26 and ending January 14, or another period established by COUNTY not to exceed three weeks, and at a Customer's request, FRANCHISEE shall Collect, transport, process, and Divert all holiday trees, such as Christmas trees and Hanukkah bushes stripped of ornaments, garlands, tinsel, flocking, and stands, placed for Collection at the Set-Out Site, on or before the Customer's next regularly scheduled Collection day.

2. **Bulky Items, CEDs, E-waste, and Excess Solid Waste Collection.**

a. ***Annual Curbside Cleanup Event.*** FRANCHISEE shall Collect unlimited amounts of Residential Customers' Bulky Items, CEDs, E-waste, and excess Solid Waste, discarded at each Set-Out Site once each Calendar Year on a day approved by COUNTY, after no

less than two weeks advance written notice to Residential Customers, without surcharge.

b. ***Two On-Call Pickups Per Year without Surcharge for Residential Customers.*** In addition to the annual curbside cleanup event described in subsection F2a, FRANCHISEE shall Collect twice each Calendar Year unlimited amounts of Residential Customers' Bulky Items, E-waste and/or CEDs discarded at the Set-Out Site of a Residential Customer on that Customer's next regularly scheduled Collection day after 24 hours advance notice by the Customer or other date agreed to between that Customer and FRANCHISEE, without surcharge.

c. ***Four On-Call Pickups Per Year without Surcharge for Multifamily Premises.*** For each Multifamily Premises, FRANCHISEE shall Collect four times each Calendar Year a maximum of two items per pickup of Multifamily Customers' Bulky Items, E-waste and/or CEDs discarded at the Set-Out Site of a Multifamily Customer on that Customer's next regularly scheduled Collection day after 24 hours advance notice by the Customer or other date agreed to between that Customer and FRANCHISEE, without surcharge.

d. ***Additional On-Call Pickup with Surcharge.*** In addition to Collection described in subsections F2a and b, at the request of a Residential Customer in excess of twice annually, as provided in subsection F2b, or at the request of a Multifamily Customer in excess of four times annually, as provided in subsection F2c, on 24 hours advance notice, FRANCHISEE shall Collect unlimited amounts of that Customer's Bulky Items, E-waste, and CEDs discarded at that Customer's Set-Out Site on that Customer's next regularly scheduled Collection day or other date agreed to between that Customer and FRANCHISEE at surcharges for additional calls listed on the Rate Schedule and surcharge for items listed in Franchisee Documentation.

e. ***Number of Workers.*** FRANCHISEE shall supply at least two workers for each Collection Vehicle during the annual curbside Cleanup event described in subsection F2a. FRANCHISEE shall also supply at least two workers for each Collection Vehicle dispatched for on-call pickup described in subsections F2b, c, and d unless FRANCHISEE determines at the time a Customer orders on-call pickup that the Customer's discarded Bulky Items will not require at least two workers to load them safely onto the Collection Vehicle.

f. ***Required Registrations and Permits.*** FRANCHISEE shall secure and maintain valid waste and used tire hauler registration therefor in accordance with California Public Resources Code § 42950 *et seq.* and any Permit required by Applicable Law for handling CEDs. FRANCHISEE shall transport tires to and Dispose of them at a facility authorized and permitted in accordance with Applicable Law to accept tires. FRANCHISEE shall comply with all applicable regulations governing the recovery of ozone-depleting refrigerants during the Disposal of air conditioning or refrigeration equipment, including 40 C.F.R. Part 82.

g. ***Annual Customer Notice.*** At least annually, FRANCHISEE shall provide Customers notice of available Franchise Services for Collection of Bulky Items, CEDs, E-waste, and excess Solid Waste, and FRANCHISEE'S charges for those Franchise Services.

h. ***FRANCHISEE-Designated Facility.*** FRANCHISEE shall transport Bulky Items, E-waste, and CEDs only to the facility or facilities that FRANCHISEE has designated in Franchisee Documentation for Recycling, Processing, or Diversion, including Solid Waste Facilities. *FRANCHISEE shall pay liquidated damages for Breach under this subsection F2 in accordance with Exhibit 18D2 Liquidated Damages.*

3. **Special Events Cleanup Services.** At the Director's request, FRANCHISEE shall provide Bins or portable containers in type, number, and capacity (such as up to 80 cubic yards) specified by the Director for discards of Solid Waste (including Bulky Items), E-waste and CEDs at each of up to four community cleanup projects or public events located throughout the Service Area during any 12 - month period. FRANCHISEE shall Collect filled Bins or portable containers immediately and partially full Bins or portable containers no later than the day after the termination of the project or event. FRANCHISEE shall provide all the necessary labor, vehicles, Bins or portable containers and other equipment, and materials or supplies (such as plastic bags in portable containers).

4. **Vehicle Billboards.** FRANCHISEE shall equip Vehicles on at least one side with frames capable of securing signs measuring 29 3/16 inches by 93 3/16 inches or other dimension approved by the Director. FRANCHISEE shall prepare and install signs promoting Recycling, Diversion and safe handling of Unpermitted Waste, with text, graphics and design approved by the Director.

5. **Manure Collection.** FRANCHISEE shall arrange to provide for fully automated Collection, transportation and Disposal of Manure discarded by a Customer for whom FRANCHISEE provides Collection of Refuse, on the

day or days agreed to with Customer, at least weekly, if the Customer requests manure collection.

FRANCHISEE shall provide to that Customer a 64-gallon Cart (or other capacity Cart approved by the Director) for Collection of Manure and upon Customer request, additional 64-gallon Cart or Carts at the surcharges for Collection of Manure listed on the Rate Schedule.

FRANCHISEE'S fees, charges, and other compensation from providing Franchise Services to Premises with respect to Manure are included in the calculation of the Franchise Fee under Section 1D.

FRANCHISEE-Designated Facility. FRANCHISEE shall transport Manure only to the facility or facilities that FRANCHISEE has designated in Franchisee Documentation for Disposal, Recycling, Processing, or Diversion, including Solid Waste Facilities. *FRANCHISEE shall pay liquidated damages for Breach under this subsection E2 in accordance with Exhibit 18D2 Liquidated Damages.*

G. Roll-Out Services. FRANCHISEE shall manually provide Cart roll-out, carry-out, or push services for all or a portion of Collection at the request of any Residential or Multifamily Customer for the surcharge provided in the Rate Schedule. These services include the following:

1. Dismounting from the Collection Vehicle, moving Containers from their storage location to the Collection Vehicle and returning them to their storage location; and

2. Carrying Bulky Items, CEDs, and E-waste from adjacent to a dwelling out to the curb.

FRANCHISEE shall provide these services without additional charge or surcharge to Residential Customers who are elderly or disabled and who meet both of the following qualifications:

1. The Customer is a head of household as evidenced by his or her name on utility or telephone bills for the involved premises, and

2. The Customer certifies that there is no able-bodied individual in the Customer's household who can roll out Carts to the curb.

As used in this Exhibit and in Attachment 2 to Exhibit 10, **"elderly"** means age 62 or older as evidenced by a driver's license or other document issued by a governmental entity, and **"disabled"** means Customers who suffer from a disability as evidenced by a letter from their medical physician.

FRANCHISEE shall describe the Customer's storage location in that Customer's Subscription Order.

Subject to COUNTY review and approval and further subject to FRANCHISEE'S obligations under Section 20C, FRANCHISEE may require those Customers who subscribe to Cart roll-out, carry-out, or push services to sign a Subscription Order containing an indemnification of FRANCHISEE for Customer negligence.

H. **Senior Discount**. FRANCHISEE shall provide 25 percent discounts in Customer Service Charges to elderly Residential Customers meeting all of the following requirements:

1. The Customer is age 62 or older as evidenced by a driver's license or other document issued by a governmental entity;

2. The Customer is a head of household as evidenced by his or her name on utility or telephone bills for the involved premises; and

3. The Customer either (1) qualifies for discounted utility rates based on financial need (such as those referred to as "life-line" rates) as evidenced by water, power, or telephone bill for the involved premises, or (2) generates small amounts of waste and uses 32-gallon containers.

I. **Transition Roll-Out Plan.** Prior to the Execution Date, FRANCHISEE shall provide to the Director for approval a start-up transition and Cart roll-out plan, including both time line and tasks, such as:

1. Ordering Vehicles and/or Containers;

2. Vehicle and/or Container delivery from manufacturer;

3. Container (such as Cart) assembly;

4. Distributing Containers to Customers;

5. Public outreach and education activities;

6. Determining routes;

7. Training route drivers;

8. Collecting old Containers;

9. Commencement date of Collection.

FRANCHISEE shall use its best efforts to implement the approved start-up transition and Cart roll-out plan. FRANCHISEE shall use its best efforts to

cooperate and work with providers of MSW Management Services before the date that FRANCHISEE commences Collection as provided in Section B1 of this Exhibit in order to ensure a smooth transition. Prior to that commencement date, Franchisee shall use its best efforts to provide MSW Management Services to Customers who do not receive MSW Management Services from other providers.

J. **FRANCHISEE Commitments Made in Its Proposal to COUNTY for Procurement of This AGREEMENT.** FRANCHISEE shall fully and timely satisfy any additional Performance Obligations set forth in item 12 of Section B of Exhibit 3D.

ATTACHMENT 1 - SERVICE AREA AND STREET SWEEPING SCHEDULE (Section B6)

[INSERT APPROVED MAP OF SERVICE AREA AND SCHEDULE HERE]

EXHIBIT 3D - FRANCHISEE DOCUMENTATION
[All documentation listed below to be attached to AGREEMENT as Exhibit 3D]

A. Notice to COUNTY Required.

1. **FRANCHISEE'S PERMIT AND PERMIT APPLICATION**, including all permits required by the County Code (such as a waste collector permit from the Los Angeles County Department of Health Services) or other Applicable Law.

2. **INVENTORY OF SERVICE ASSETS**, including all documents that encumber or limit FRANCHISEE's interest in Service Assets as described in Section 16A3b, including identifying serial numbers on Carts promptly upon acquisition.

   CART SPECIFICATIONS, including cart capacity options, container color, manufacturer's orders and invoices, label content and placement (Section 6D; Section B3d of Exhibit 3A).

3. **BACKUP SERVICE PLAN** (Section 16C)

4. **ALL FRANCHISEE MANAGERS** (Section 20J5; see definition of "Franchisee Manager" in Exhibit 21)

   AUTHORIZED REPRESENTATIVE OF FRANCHISEE, with Notice contact information (name, address, phone numbers, fax numbers, and e mail address)

   KEY PERSONNEL (Section 4L)

   SERVICES SAFETY OFFICIAL (Section 23F1)

5. **ROUTE MAPS AND SCHEDULES** (Section B6 of Exhibit 3A).

6. **FACILITIES AND SOLID WASTE FACILITIES** designated by FRANCHISEE (Exhibit 3A: Sections C2 Refuse, D2 Recyclables, E2 Green Waste, F2 Bulky Items, CEDs. E-waste, and Excess Solid Waste, and F5 Manure), including the following information:

   a. Name, location, owner, and operator, with telephone contact;

   b. Types of materials accepted and rejected;

   c. If applicable, methodology used by each Processing facility for allocating materials, including Disposed residue, to the Service Area, with sample reports.

7. **SUBCONTRACTORS,** including Subcontractors' names, the amount of Goods or Services that each Subcontractor provides to FRANCHISEE, and a description of FRANCHISEE'S relationships to each Subcontractor, including ownership interests; but excluding COUNTY-approved Subcontractors (Section B5 of Exhibit 3A).

B. **COUNTY Consent Required.**

1. **FORM OF NON-COLLECTION NOTICE** including any Green Waste exclusions (Section 4C).

2. **FORM OF SUBSCRIPTION ORDER** (Section 4D), including form of any waiver of liability (Section 4B) and form of any indemnification (Section G of Exhibit 3A)

   SUBSCRIPTION ORDER SUMMARY (Section 4D)

3. **UNPERMITTED WASTE SCREENING PROTOCOL** (Section 6; Section F4 of Exhibit 3A).

4. **OFFICE** address (Section 7A) and Franchisee Office Hours.

5. **ACKNOWLEDGMENT** of receipt of fact sheets relating to form of Non-employee Injury Report (Section 14B3) and Safely Surrendered Baby Law (Section 23C2).

6. **INSURANCE AND PERFORMANCE ASSURANCE** (Sections 14 and 15).

7. **INTERNAL REVENUE SERVICE NOTICE 1015** (Section 23C1).

8. **FRANCHISEE'S EEO CERTIFICATION (FORM PW-7)** (Section 23E3).

9. **WASTE DIVERSION PROGRAM, including Customer Recyclables Diversion Education Program** (Sections B2 and F4 of Exhibit 3A).

10. **ALTERNATIVES TO FULLY AUTOMATED OR 96-GALLON CARTS** (Sections B3h, B3i, and B3j of Exhibit 3A).

11. **COUNTY-APPROVED SUBCONTRACTORS,** including Subcontractors' names, the amount of Goods or Services that each Subcontractor provides to FRANCHISEE, and a description of FRANCHISEE'S relationships to each Subcontractor, including ownership interests (Section B5 of Exhibit 3A).

12. **ADDITIONAL FRANCHISEE COMMITMENTS MADE IN ITS PROPOSAL FOR PROCUREMENT OF THIS AGREEMENT** (Section J of Exhibit 3A).

EXHIBIT 10 - RATES

A. Rates.

1. **Rate Schedule and Rate Adjustments.** FRANCHISEE shall charge Customer Service Charges in amounts less than or equal to the Rates set forth in the Rate Schedule. These Rates will be adjusted at FRANCHISEE'S request, submitted at least 60 days in advance, or at the Director's option, as the case may be, in any of the following events:

   a. Annual changes in the CPI, DOE CNG, or DOE Diesel in accordance with the Rate adjustment protocol in subsection A2 and examples in Tables 1, 2, and 3 of Attachment 1 of this Exhibit 10;

   b. Change in FRANCHISEE'S costs of Disposal of Refuse at the Solid Waste Facility it has designated in Franchisee Documentation as provided in the Rate adjustment protocol in subsection A3 and example in Section B of Attachment 1 of this Exhibit 10; or

   c. Change in FRANCHISEE'S Direct Costs of providing Franchise Services due to Changes in Law or changes in Franchise Services or Franchise Standards as agreed to between FRANCHISEE, and the Director.

   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 in Customer Service Charges are rounded to the nearest penny (for example, $25.34).

   If any adjustments are made to Net Rates, then the amount of the Franchise Fee in effect at the time of adjustment will be re-calculated and added to the adjusted Net Rates.

   No adjustment will be effective until notice thereof has been provided to the Board of Supervisors. Net Rates will be adjusted only if there are no Breaches that have not been cured after Notice from the Director in accordance with Section 17A and no Franchisee Defaults.

   FRANCHISEE shall provide all Customers a minimum of 30 days' advance written notice of the implementation of changes in any Customer Service Charges or other notices directed by COUNTY.

   Rates will not otherwise be adjusted, including for actual changes in the price of fuel or increases in Disposal tipping fees other than as described in the preceding items a and b, respectively, of this subsection A1. If

FRANCHISEE and the Director fail to reach agreement to adjust the Rates as a result of Changes in Law or changes in Franchise Services or Franchise Standards as described in preceding item c of this subsection A1, COUNTY will have the option to terminate this AGREEMENT in accordance with Section 17D.

2. <u>Rate Adjustment for Annual Increase or Decrease in CPI, DOE CNG, or DOE Diesel</u>.

a. ***Adjustment Due to Change in CPI.*** Beginning on July 1, of the second Calendar Year of the Term and thereafter on each succeeding July 1, the Service Component will be adjusted by 75 percent of the percent change, if any, between the following:

- the CPI during the 12-month period commencing April 1 of the previous year to March 31, of the current year, and
- the CPI during the 12-month period commencing April 1 of the next previous year to March 31, of the previous year,

no greater than 5 percent, as confirmed by COUNTY'S Auditor-Controller.

b. ***Adjustment Due to Change in DOE CNG or DOE Diesel***

The DOE CNG rate adjustment will apply only to the percentage of Vehicles in a fleet that use compressed natural gas. The DOE Diesel rate adjustment will apply only to the percentage of Vehicles in a fleet that use diesel.

i. ***Adjustment Due to Change in DOE CNG.*** Beginning on July 1 of the second Calendar Year of the Term and thereafter on each succeeding July 1, the CNG Fuel Component will be adjusted by the percent change, if any, between the following:

- the DOE CNG commencing April 1, of the previous year to March 31, of the current year , and
- the DOE CNG published during the four quarter-period commencing in April of the next previous year and ending in January of the previous year

as confirmed by COUNTY'S Auditor-Controller. (Table 2 in Attachment 1 of Exhibit 10)

ii. ***Adjustment Due to Change in DOE Diesel.*** Beginning on July 1, of the second Calendar Year of the Term and thereafter on each succeeding July 1, the Diesel Fuel

Component will be adjusted by the percent change, if any, between the following:

- the DOE Diesel during the 12-month period commencing April 1 of the previous year to March 31 of the current year, and
- the DOE Diesel during the 12-month period commencing April 1 of the next previous year to March 31 of the previous year,

c. ***Rate Adjustment Definitions***.

"CNG Fuel Component" means 5 percent of the Net Rate shown on the Rate Schedule times the percentage of Vehicles that use compressed natural gas.

"CPI" means the Consumer Price Index for all Urban Consumers (Los Angeles-Riverside-Orange County) (Not Seasonally Adjusted) All items, Series ID CWURA421SA0, Base Period 1982-84=100, published by the United States Department of Labor, Bureau of Labor Statistics at http://data.bls.gov/cgi-bin/surveymost.

"Diesel Fuel Component" means 5 percent of the Net Rate shown on the Rate Schedule times the percentage of Vehicles that use diesel.

"Disposal Component" means 30 percent of the Net Rate shown on the Rate Schedule.

"DOE CNG" means the Nationwide Average Price for Fuel - Compressed Natural Gas Average Prices by Region from Clean Cities Sources, published quarterly in Energy Efficiency and Renewable Energy / Clean Cites Alternative Fuel Price Report from the United States Department of Energy website, http://www.eere.energy.gov/afdc/price_report.html or if that is permanently discontinued, another CNG price published by a state or the federal government selected by the Director.

"DOE DIESEL" means the Diesel (On Highway) – Product/All Types for Area/California (Period: Annual) price published monthly in the Official Energy Statistics from the United States Department of Energy website, http://tonto.eia.doe.gov/dnav/pet/pet_pri_gnd_dcus_sca_m.htm, or if that is permanently discontinued, Producers Price Index – Commodities Fuels and related products and power / No.2 diesel fuel Series Id: WPU057303 published by the United States Bureau of Labor Statistics at http://data.bls.gov/cgi-bin/surveymost.

"Net Rate" means Rate minus Franchise Fee.

"Service Component" means 65 percent of the Net Rate shown on the Rate Schedule.

"Weighted Rate Adjustment Percentage" means sum of the adjustments due to changes in the CPI, DOE CNG, and DOE Diesel and disposal tipping fees calculated as provided in subsections A2a, A2b, and 4A3, respectively.

d. ***Net Rate Adjustment Calculation.*** The Weighted Rate Adjustment Percentage, times the prior Net Rate, is added to the prior Net Rate to yield the adjusted Net Rate. A sample calculation is included in Section C of Attachment 1 of this Exhibit 10.

e. ***Temporarily Discontinued Indices.*** If a price or index is temporarily discontinued on the date of adjustment, the last available price or index for the required period of time (such as calendar year or other 12-month period) will be used.

3. **Rate Adjustment for Changes in Disposal Facility Fees.** Beginning on July 1, in the second full Calendar Year of the Term and thereafter on each succeeding July 1, the Disposal Component of Net Rates will be adjusted for any change in Disposal tipping fees charged FRANCHISEE by the Solid Waste Facility designated by FRANCHISEE in Franchisee Documentation during the period commencing on the Execution Date or April 1, of the prior year, as applicable, and ending on March 31, of the current year. FRANCHISEE must substantiate to the satisfaction of the Director that FRANCHISEE is experiencing that change in Disposal tipping fees. (For example, FRANCHISEE may have independently contracted for Disposal at a cost lower than posted tipping fees at the Solid Waste Facility designated by FRANCHISEE in Franchisee Documentation, or FRANCHISEE may own the Solid Waste Facility it designated for Disposal and consequently internalize Disposal costs lower than posted tipping fees at the Solid Waste Facility designated by FRANCHISEE in Franchisee Documentation. If FRANCHISEE does not substantiate to the satisfaction of the Director that FRANCHISEE is experiencing that change in Disposal tipping fees, the Disposal Component will not be adjusted.)

A sample calculation is attached in Section B of Attachment 1 of this Exhibit 10.

ATTACHMENT 1 - RATE ADJUSTMENT EXAMPLES

A. Section A2 of Exhibit 10: Annual increase or decrease in CPI, DOE CNG, or DOE Diesel.

Table 1- Adjustment Due to Change in CPI (Section A2a of Exhibit 10).

Calculate percent change in CPI (12-month average, not month-to-month)	April 1, 2006 - March 31, 2007	221.64
	April 1, 2007 - March 31, 2008	228.59
	Percent Change	3.14% (not more than 5%)
Adjustment to Service Fee Component	75 percent of percent change in CPI	**2.35%**

Table 2 - Adjustment Due to Change in DOE CNG (Section A2b of Exhibit 10).

Calculate percent change in DOE CNG (average of quarters in year – which may vary, not quarter-to-quarter)	June and October 2006 quarters and March 2007 quarter	(2.30+1.99+2.06)/3= 6.35/3= **2.12**
	July and October 2007, quarters and January 2008, quarter	(2.29+2.33+2.44)/3= 7.06/3= **2.35**
	Percent Change	(2.35-2.12)/2.12= 0.23/2.12=0.1085 **10.85%**
Adjustment to CNG Fuel Component	30 percent of percent change in DOE CNG *3/10 Vehicles)*	0.30 X 10.85%= **3.25%**

Table 3 – Adjustment Due to Change in DOE Diesel (Section A2b of Exhibit 10).

Calculate percent change in DOE Diesel (12-month average, not month-to-month)	April 1, 2006 - March 31, 2007	271.66
	April 1, 2007 - March 31, 2008	317.55
	Percent Change	16.89 percent
Adjustment to Diesel Fuel Component	70 percent of percent change in DOE Diesel (7/10 Vehicles)*	**11.82 percent**

*In this above example, the FRANCHISEE owns a total of 10 Vehicles, and 3 Vehicles use compressed natural gas and 7 Vehicles use diesel.

B. Section A1/A3 of Exhibit 10: Changes in Disposal tipping fees.

Table 4 – Adjustment Due to Change in Disposal Tipping Fees

Disposal tipping fee charges on April 1, 2007	$24.00
Disposal tipping fee charges on March 31, 2008	$35.00
Percent change	45.83 percent

C. Weighted Rate Adjustment Percentage (Section A2a, b and c of Exhibit 10).

Table 5 – Sum of Adjustments

Rate Component	Relative weight of Net Rate	Adjustment due to change in indices/change in disposal tipping fees	Weighted Rate Adjustment Percentage
Service Component (CPI)	65 percent of Net Rate	2.35 percent (CPI)	1.53 percent
Fuel Component CNB Fuel Component Diesel Fuel Component	5 percent of Net Rate	3.25 percent 11.82 percent	0.16 percent 0.59 percent
Disposal Component	30 percent of Net Rate	45.83 percent	13.75 percent
Weighted Rate Adjustment Percentage			16.03 percent

D. Adjusted Net Rate / Rate: Section A1, 2 and 3 (Annual increase or decrease in CPI /DOE Diesel/DOE CNG), (Changes in Disposal tipping fees).

If the Weighted Rate Adjustment Percentage is 16.03 percent, then a hypothetical Net Rate of $17.00 would be adjusted as follows:

$17.00 + [15.89 percent X $17.00] = $17.00 +$2.72 =
$19.72= adjusted Net Rate

The Franchise Fee is 10 percent; the adjusted (gross) Rate and the Franchise Fee would be calculated as follows:

{Adjusted Net Rate / [100 percent - Franchise Fee percent] = adjusted (gross) Rate
{$19.72 / [100 percent -10 percent]} = $21.91
$ 21.91 = adjusted Rate

adjusted Rate – adjusted Net Rate = Franchise Fee
$21.91 - $19.72 = $2.19

ATTACHMENT 2 - RATE SCHEDULE (Customer Service Charges)

	RATE/SENIOR RATE
MONTHLY RATE FOR BASIC SERVICE PER CUSTOMER FOR RESIDENTIAL PREMISES[1] AND MULTIFAMILY PREMISES:	$17.72/$13.29

1. One 96-gallon Refuse Cart, and
2. Up to two 96-gallon Recyclables Carts, and
3. Up to two 96-gallon Green Waste Carts[1]

SURCHARGES:

1.	Additional 96-gallon Carts in excess of Basic Service	$5.00/$3.75
2.	Alternatives to fully automated Carts for difficult-to-service Premises (B3h of Exhibit 3A): 25 percent of Customer's monthly Rate.	$$4.43/$3.32
3.	Each additional on-call pickup in excess of twice each Year for Residential Premises (F2d of Exhibit 3A)	$25.00/$18.75
4.	Each additional on-call pickup in excess of four times each year for Multifamily Premises (F2d of Exhibit 3A)	$25.00/
5.	Roll-out Services (other than Elderly or Disabled) (G of Exhibit 3A): 50 percent of Customer's monthly Rate	$8.86/$6.65
6.	One 64-gallon Cart for Collection of Manure	$25.00/$18.75
7.	Additional 64-gallon Carts for Collection of Manure	$20.00/$15.00

DISCOUNT FOR *[HOA SPECIFICS, eg. bulk billing, additional services]* *8 percent of total bill*

Footnote 1: For each single-family home or for each unit in a duplex.

EXHIBIT 18D2 - LIQUIDATED DAMAGES

Reference to "failure" refers to each occurrence of specified Breach (such as for each Customer and each Customer's Collection site, Record entry, or complaint) and not for aggregate occurrences of those Breaches (such as for all Customers on a given route or day).

1	For each failure over five during any Contract Year (1) to clean up litter in accordance with Section 4A1 or (2) comply with Section 4A2 (spills) or A3 (liquid leaks), respectively.	$150
2	For each occurrence over 12 occurrences during any Contract Year of excessive noise in contravention of Section 4A4.	$300
3	Failure to maintain an emergency number or make staff available thereat in accordance with Section 4A5.	$75/day
4	Failure to provide documentation for review or comment by COUNTY or obtain any approval, consent, or other permission of COUNTY required under this AGREEMENT, including any failure to timely submit, • Customer correspondence under Section 4H • Publicity materials under section 4I1; • News releases and trade journal articles related to Franchise Services, under Section 4I2 • Customer outreach materials under Section 6E and Exhibit 3A, Section B2b.	$300 for each failure per occurrence or each day before retraction or correction of misinformation identified by COUNTY
5	Each failure over one during any calendar month to return COUNTY calls in accordance with Section 4J.	$500
6	Each failure over one during any Contract Year to timely meet with COUNTY in accordance with Section 4J.	$500
7	Commingling materials from outside the Service Area with Solid Waste that FRANCHISEE Collects inside the Service Area, in contravention of Section 4K.	$400/ Vehicle-occurrence
8	For each failure to follow its Unpermitted Waste Screening Protocol in accordance with Section 6A.	$500
9	For each failure to mark any Container with discard prohibitions in accordance with Section 6D.	$50
10	Failure to maintain telephone service in accordance with Section 7B.	$75/day
11	For each failure to timely address Customer complaints in accordance with Section 7D1.	$100

12	For each failure over five occurrences during any Contract Year to timely Collect from missed Containers in accordance with Section 7D1.	$300
13	For each failure to enter log of and maintain and supply Records of complaints in accordance with Section 7D2.	$100
14	For each failure over 5 occurrences during any Contract Year to E-mail complaint information to COUNTY in accordance with Section 7D2.	$100
15	For each occurrence of charging any Customer more than the Customer owes for Franchise Services (such as for the wrong level of Franchise Services) or charging any Customer in excess of scheduled Rates (such as the incorrect dollars/Container), in Breach of Section 10.	$100
16	Failure to timely allow COUNTY to inspect, audit or copy Records in accordance with Section 11C.	$150
17	Failure to timely submit AB 939 Records in format required by COUNTY in accordance with Section 12B.	$150
18	For each occurrence over five occurrences during any Contract Year of damage to private property in contravention of Section 20C.	$150
19	If FRANCHISEE violates the nondiscrimination provisions of this AGREEMENT, including Section 23E.	$500
20	Failure of any Vehicle to deliver Solid Waste to the Solid Waste Facilities designated by FRANCHISEE in accordance with Exhibit 3A and Franchisee Documentation.	$300/ Vehicle-day
21	For each occurrence over five occurrences during any Contract Year of Collecting any Solid Waste during unauthorized hours prohibited under Section B1 of Exhibit 3A.	$250
22	For each failure over five occurrences during any Contract Year to timely respond to Container service requests (including delivery and exchanges, removal, repair, and replacement) in accordance with Sections B3a, b, and c of Exhibit 3A.	$300
23	For each failure over 12 occurrences during any Contract Year to equip Carts with operable lids or return Carts upright in breach of Sections B3c and e of Exhibit 3A.	$150
24	For each failure to timely remove graffiti in accordance with Section B3g of Exhibit 3A.	$150
25	For each failure to timely repair or replace carts in accordance with Section B3c of Exhibit 3A.	$35
26	For each occurrence over ten during any Contract Year of failing to return emptied Containers to their Set-Out Sites, or placing Containers in site that impedes pedestrian or vehicular traffic in contravention of Section B6 of Exhibit 3A.	$150
27	For each failure over 3 during any Contract Year to provide Recyclables or Green Waste services to any Customer in accordance with Sections D and E of Exhibit 3A.	$100

28	For each occurrence of disposing of Recyclables or mixing Recyclables with Refuse in Breach of Section D6 in Exhibit 3A.	$100
29	Any other liquidated damage in Exhibit 3A.	As scheduled in Exhibit 3A

Reporting. If FRANCHISEE does not timely submit the applicable information, documentation or complete report or incorporate comments, additions, and corrections made by COUNTY within five days of receipt of those comments, additions, and corrections, it shall pay the following liquidated damages. COUNTY may assess the following amounts of liquidated damages for each late day.

1	Monthly reports in accordance with Sections 13A1, B, D, and E.	$100/day
2	Quarterly reports in accordance with Sections 13A2, B, D, and E.	$200/day
3	Annual reports in accordance with Sections 13A3, B, D, and E	$300/day
4	Failure to report adverse information in accordance with Sections 13C, B, D, and E.	$300/ occurrence
5	Failure to deliver Route maps and schedules in accordance with Section B6 of Exhibit 3A.	$100/ day

By placing initials below at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of liquidated damage provisions of the time that this AGREEMENT was made.

FRANCHISEE
Initial Here: _____

COUNTY
Initial Here: _____

EXHIBIT 20G - AUTHORIZED REPRESENTATIVE OF COUNTY'S DIRECTOR OF PUBLIC WORKS

Name: Virginia Maloles

Telephone Number: (626) 458-3562

Facsimile Number: (626) 458-3593

E-mail Address: vmaloles@dpw.lacounty.gov

Address for Notices by Mail:

County of Los Angeles Department of Public Works
Environmental Programs Division
900 South Fremont Avenue
Alhambra, California 91803
Facsimile Number: (626) 458-3593
E-mail:

County Office Hours: 7:00 a.m. to 5:30 p.m.

Established by Director:

Signature: _____

Printed Name: _____

Date: _____

Acknowledged by FRANCHISEE:

Signature: _____

Printed Name and Title: _____

Date: _____

EXHIBIT 20H - FRANCHISEE'S REPRESENTATIONS AND WARRANTIES

1. **Status.** FRANCHISEE is **[INSERT DESCRIPTION OF FRANCHISEE ENTITY, E.G. CORPORATION]** duly organized, validly existing, and in good standing under the laws of and is qualified to do business in the State of California with full power and authority to execute and deliver this AGREEMENT and to perform the Performance Obligations. This AGREEMENT has been duly executed and delivered by FRANCHISEE and constitutes a legal, valid, and binding obligation of FRANCHISEE enforceable against FRANCHISEE in accordance with its terms.

2. **Statements and Information.** All information and documentation complied, drafted, made, or otherwise delivered to COUNTY by or on behalf of FRANCHISEE in connection with this AGREEMENT, including its procurement, is correct and complete in all material respects as of the Execution Date and at the time originally submitted by FRANCHISEE to COUNTY.

3. **No Conflicts.** Neither the execution or delivery by FRANCHISEE of this AGREEMENT, the performance by FRANCHISEE of Franchise Services, nor the fulfillment by FRANCHISEE of the terms and conditions of this AGREEMENT: (1) conflicts with, violates, or results in a breach of any Applicable Law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, orde,r or decree of any court, administrative agency, or other governmental authority, or any agreement or instrument to which FRANCHISEE is a party or by which FRANCHISEE properties or assets are bound, or constitutes a default thereunder.

4. **No Approvals Required.** FRANCHISEE has obtained and maintains all Permits in full force and effect during the Term. No other approval, authorization, license, permit, order, or consent of, or declaration, registration, or filing with any governmental or administrative authority, commission, board, agency, or instrumentality is required for the valid execution and delivery of this AGREEMENT by FRANCHISEE, except those as have been duly obtained from its governing body, FRANCHISEE shall immediately provide Notice to the Director of any notice of violation, revocation, or suspension of any permit.

5. **No Litigation.** As of the Execution Date, there is no action, suit, proceeding, or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency, or instrumentality pending or, to the best of FRANCHISEE'S knowledge, threatened, against FRANCHISEE wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by FRANCHISEE of its obligations under this AGREEMENT or in connection with the transactions contemplated by this AGREEMENT, or which, in any way, would adversely affect the validity or enforce ability of this AGREEMENT or any other agreement or instrument entered into by FRANCHISEE in connection with the transactions contemplated by this AGREEMENT.

6. **Due Diligence.** As of the Execution Date, FRANCHISEE has made an independent investigation, examination and research satisfactory to it of the conditions and circumstances surrounding this AGREEMENT and best and proper method of providing Franchise Services (including Franchise Services types) and labor, equipment, and materials for the volume of Franchise Services to be provided. FRANCHISEE agrees that it shall make no claim against COUNTY based on any estimates, statements, or interpretations made by any officer, employee, agent, or consultant of COUNTY in connection with the procurement of this AGREEMENT, which proves to be in any respect erroneous.

7. **Compliance with Applicable Law.** As of the Execution Date, FRANCHISEE has fully complied with all Applicable Law, including law relating to conflicts of interest and County Lobbyist Ordinance, in the course of procuring this AGREEMENT.

8. **Ability to Perform.** FRANCHISEE possesses the business, professional, and technical capabilities to provide Franchise Services; and possesses the equipment, facility, and employee resources required to fully and timely perform Franchise Services.

9. **Contingent Fees.** No Person, including a selling agency, has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by FRANCHISEE for the purpose of securing business.

10. **Opportunity to Comment.** FRANCHISEE had the opportunity to submit comments and recommended changes during the procurement process, during meetings convoked by COUNTY with the denominated "Working Group" whose members received copies of the drafts of the form of agreement or during the procurement of this AGREEMENT.

11. **Solid Waste Facilities.**

    a. The Solid Waste Facility or Facilities that FRANCHISEE designates in Franchisee Documentation for Disposal is a disposal facility that is permitted to accept and process Refuse in accordance with Applicable Law.

    b. The facility or facilities that FRANCHISEE designates in Franchisee Documentation for delivery of Recyclables is a materials recovery facility that is permitted to accept and process Recyclables in accordance with Applicable Law.

    c. The facility or facilities that FRANCHISEE designates in Franchisee Documentation for delivery of Green Waste is a facility that is permitted to accept and process Green Waste in accordance with Applicable Law.

12. **Franchisee Documentation.** As of the Execution Date, the Franchise has submitted all Franchisee Documentation in accordance with Exhibit 3D.

13. **Personnel.** FRANCHISEE fully complies with all federal and state statutes and regulations regarding employment of aliens and others, and all of its employees performing Franchise Services meet the citizenship or alien status requirements set forth in federal and state statutes and regulations.

EXHIBIT 21 - DEFINITIONS

AB 939 means the California Integrated Waste Management Act of 1989, California Public Resources Code § 40000 *et seq.*

Affiliate means a Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with FRANCHISEE. For the purpose of this definition, the meaning of the term "control" will be governed by Rule 144 of the Securities Act of 1993.

AGREEMENT means this agreement, including all exhibits and other attachments, which exhibits and other attachments are incorporated in this agreement by reference.

Annual Report is described in Section 13A3.

Applicable Law means all laws, statutes, rules, regulations, guidelines, Permits, actions, determinations, orders, or requirements of the United States, State of California, COUNTY (including its County Code together with rules and regulations promulgated thereunder and COUNTY'S Integrated Waste Management Plan), the Local Enforcement Agency, California Highway Patrol, South Coast Air Quality Management District, and other regional or local government authorities, agencies, boards, commissions, courts, or other bodies having applicable jurisdiction, that from time to time apply to or govern Franchise Services or the performance of the Parties' respective obligations under this AGREEMENT, including those that concern health, safety, fire, mitigation monitoring plans, building codes, and zoning, and further including the following:

1. **Vehicles:**

   a. California Health and Safety Code § 43000 *et seq.*, with respect to air emissions (smog checks);

   b. California Vehicle Code § 27456b, with respect to tires;

   c. California Vehicle Code § 34500 *et seq.*, with respect to documentation through its maintenance log or otherwise of a safety compliance report issued under Division 14.8 of the California Vehicle Code as applicable to each Vehicle, including bi-annual "BIT" inspections conducted by the California Highway Patrol;

   d. Rules and regulations promulgated under the California Vehicle Code with respect to Vehicle highway lighting, flashing and warning lights, clearance lights, and warning flags;

   e. Rules and regulations of the California Department of Motor Vehicles with respect to Vehicle registration;

f. Vehicle weight limits;

g. The appropriate class of drivers' licenses issued by the California Department of Motor Vehicles;

h. Control Measure for Diesel Particulate Matter from On-road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicles, 13 CCR 2020 *et seq.*; and

i. 14 CCR 17341, 17342, 17343, and 17344, with respect to equipment construction, safety, and parking and identification of operating equipment;

2. Containers:

a. 14 CCR 17314, with respect to maintenance and placement of containers; and

b. 14 CCR 17317, with respect to placing identifying name and telephone number on containers;

3. Labor:

a. Drug and alcohol testing;

b. Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), including the Solid Waste Disposal Facility Criteria promulgated by the U.S. EPA on October 9,1991, (40 C.F.R., Parts 257 and 258); and California Occupational Safety and Health Act (California Labor Code, Division 5, Parts 1-10, § 6300 *et seq.*), and rules and regulations of California Division of Occupational Safety and Health; and

c. Immigration Reform and Control Act of 1986 (PL.99-603);

4. Environmental Protection:

a. CERCLA;

b. RCRA;

c. Clean Air Act (42 U.S.C. § 1351 *et seq.*, 42 U.S.C. §§ 7401-7642); and California Clean Air Act (California Health and Safety Code § 39000 *et seq.*);

d. California Hazardous Waste Control Act (California Health and Safety Code § 25100 *et seq.*);

e. California Hazardous Materials Release Response Plan and Inventory Act (California Health and Safety Code, Division 20, Chapter 6.95, § 25500 *et seq.*);

f. Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code § 25300 *et seq.*); and

g. Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 *et seq.*); and

5. Miscellaneous:

a. County Lobbyist Ordinance;

b. Civil Rights Act of 1964 (Subchapter VI of Chapter 21 of Title 42); and

c. AB 939.

Reference to Applicable Law includes future amendments and supplements to or replacement, restatement, or recodification thereof.

Assign or **Assignment** means any of the following:

1. Selling, exchanging, or otherwise transferring Ownership or control of FRANCHISEE (through sale, exchange, or other transfer of outstanding stock, equity interest, or otherwise);

2. Issuing new stock or selling, exchanging, or otherwise transferring 20 percent or more of the then outstanding common stock of or equity interest in FRANCHISEE;

3. Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance, or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction, which results in a change of Ownership or control of FRANCHISEE;

4. Any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, or appointment of a receiver taking possession of any of FRANCHISEE'S tangible or intangible property;

5. Any sale or other transfer of 50 percent or more of the value of assets of FRANCHISEE except for sales or transfers to parents, grandparents, siblings, children, and grandchildren of individuals having a shareholder or other equity interest in Franchise as of the date of this AGREEMENT ("Immediate Family") or trust created primarily to benefit members of the Immediate Family;

6. Substitution by a surety company providing any performance bond in accordance with Section 15 of another Person for FRANCHISEE to perform Franchise Services; or

7. Any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any transfer or change of Ownership or control of FRANCHISEE or the assumption, assignment, delegation, takeover or performance of any of FRANCHISEE'S Performance Obligations, duties, or responsibilities by any Person other than FRANCHISEE, whether through assignment, subcontract (except as provided in Exhibit 3A), delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever.

Bin means any container capable of Collection with front end loading vehicles, such as those having a three to eight-yard capacity.

Board of Supervisors means the Board of Supervisors of the County of Los Angeles.

Breach means FRANCHISEE'S failure to fully and timely meet one or more Performance Obligations.

Bulky Item means any large item of Solid Waste that can be safely lifted by two individuals using a dolly, including the following:

1. Discarded furniture (such as chairs, sofas, mattresses, and rugs);

2. Appliances (such as refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, and other similar items commonly known as "white goods"); and

3. Up to two tires per Set-Out Site from passenger cars or pickup trucks.

Calendar Year means a year of 12 consecutive months beginning January 1 and ending December 31.

Notwithstanding the foregoing, **Bulky Item** does not include tires from semi-trucks or Universal Waste.

Cart means any wheeled container capable of Collection by either semi- or fully-automated vehicles.

CED means a covered electronic device as defined in California Public Resources Code Section 42463 and includes the following:

1. Cathode ray tube (CRT) device (including television and computer monitor);

2. LCD desktop monitor;

3. Laptop computer with LCD display;

4. LCD television;

5. Plasma television;

6. Any other covered electronic devices listed in the regulations adopted by the California Department of Toxic Substances Control pursuant to California Health and Safety Code Section 25214.10.1(b).

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act of 1982 (42 U.S.C. § 9601 et seq.).

Change in Law means the occurrence of any event or change in Applicable Law as follows:

1. The adoption, promulgation, modification, or change in Applicable Law or in judicial or administrative interpretation thereof occurring after the Execution Date other than laws with respect to taxes based on or measured by net income, or any unincorporated business, payroll, franchise taxes levied by any tax board (other than Franchise Fees levied by COUNTY), or employment taxes;

2. Any order or judgment of any federal, state, or local court or Regulatory Agency issued after the Execution Date hereof if:

    a. That order or judgment is not also the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and

    b. The Party relying thereon, unless excused in writing from so doing by the other Party, will make or have made, or will cause or have caused to be made, Reasonable Business Efforts to contest that order or judgment (it being understood that the contesting in good faith of that an order or judgment will not constitute or be construed as a willful misconduct or negligent action of that Party);

3. The imposition by a Regulatory Agency of any new or different material conditions in connection with the issuance, renewal, or modification of any Permit after the Execution Date; or

4. The failure of a Regulatory Agency to issue or renew, or delay in the issuance or renewal of, or the suspension, interruption or termination of, any Permit after the Execution Date; provided that the failure to issue or the suspension or termination of any Permit is not the result of the willful misconduct or negligent action or inaction of the Party relying thereon or any third party for whom the Party relying thereon is directly responsible.

Collect, Collection, or **Collecting** means Solid Waste pickup(s) made by FRANCHISEE required by and in accordance with this AGREEMENT.

Commercial means Person or thing that is not Residential or Multifamily.
Commercial Customer means Customer who owns or occupies Commercial Premises.

Commercial Premises means Premises that are not Residential Premises or Multifamily Premises, including stores; offices; industrial plants; private schools; restaurants; rooming houses; hotels; motels; manufacturing, processing, or assembly shops or plants; and hospitals, clinics, convalescent centers and nursing homes (with respect to nonmedical waste only).

Container means any Bin, Cart, compactor or other receptacle used to provide Collection.

Contract Year means each year or portion of a year during the Term commencing July 1 and ending June 30.

Conversion means an array of emerging technologies capable of converting the organic or carbon-containing materials portion of post-recycling residual solid waste, and turning it into useful products, including renewable and environmentally benign fuels, chemicals, and other sources of clean energy.

COUNTY means the County of Los Angeles.

County Business Day means any day on which COUNTY'S Department of Public Works is open to do business with the public.

County Code means the Los Angeles County Code.

County Lobbyist Ordinance means County Code Chapter 2.160.

County Office Hours means hours that COUNTY is open to do business as indicated in Exhibit 20G.

County's Reimbursement Costs means Direct Costs of COUNTY plus 35 percent thereof.

County's Related Parties means political subdivisions, agencies, entities, or organizations for which the Board of Supervisors is the governing body, their agents, officers, and employees, elected officials, assigns, volunteers, and special districts (including Garbage Disposal Districts) and each and every one of them. County's Related Parties are third party beneficiaries of provisions in this AGREEMENT that reference them.

Criminal Activity means any of the following:

1. Fraud or criminal felony offenses in connection with obtaining, attempting to obtain, procuring, or performing a public or private agreement related to recyclables, green waste, or MSW Management Services of any kind (including collection, hauling, transfer, processing, composting, or disposal), including this AGREEMENT;

2. Bribery or attempting to bribe a public officer or employee of a local, state, or federal agency;

3. Embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony;

4. Unlawful disposal of hazardous, designated, or other waste; or

5. Violation of securities laws or anti-trust laws, including laws relating to price-fixing, bid rigging and sales and market allocation, and of unfair and anticompetitive trade practice laws, including with respect to inflation of waste collection, hauling or disposal fees.

Customer means a Person who subscribes for Collection from FRANCHISEE.

Customer Service Charge means the rates, fees, charges, and other compensation that FRANCHISEE bills a Customer for providing Collection.

Day means calendar day.

Debarment or **Debar** has the meaning assigned in County Code § 2.202.020.

Direct Costs means the sum of the following:

1. Payroll costs directly related to the performance, management or supervision of any obligation under this AGREEMENT, comprised of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, workers compensation insurance, federal and state unemployment taxes and all medical and health insurance benefits, plus;

2. The costs of materials, services, direct rental costs, and supplies, plus;

3. Travel and subsistence costs, plus;

4. The reasonable costs of any payments to Subcontractors (with respect to FRANCHISEE) or contractors (with respect to COUNTY) or third parties necessary to and in connection with Performance Obligations, plus;

5. Any other cost or expense which is directly or normally associated with the task performed; which Direct Costs are substantiated by (i) a certificate signed by the principal financial officer of FRANCHISEE or the authorized representative of COUNTY, as the case may be, setting forth the amount of that cost and the reason why that cost is properly chargeable to COUNTY or FRANCHISEE, as the case may be, and stating that the cost is a competitive price, if there are competitive prices, secured in an arm's length transaction for the service or materials supplied; and (ii) if COUNTY or FRANCHISEE, as the case may be, requests that additional backup documentation as may be available to reasonably substantiate any Direct Costs, including invoices from suppliers, Subcontractors and contractors.

   Direct Costs excludes profit or return on investment.

Director means the County of Los Angeles Director of Public Works or his or her authorized representative, including the authorized representative named in Exhibit 20G.

disposal or **dispose** means disposal, as defined in California Public Resources Code § 40192, of refuse at a solid waste facility.

Disposal or **Dispose** means disposal, as defined in California Public Resources Code § 40192, at a Solid Waste Facility of Refuse that FRANCHISEE has Collected.

diversion or **divert** means activities that reduce or eliminate the amount of solid waste from disposal for the purposes of Division 13 of the California Public Resources Code, including Article 1 (commencing with § 41780).

Diversion or **Divert** means activities that reduce or eliminate the amount of Solid Waste from Disposal for the purposes of Division 13 of the California Public Resources Code, including Article 1 (commencing with § 41780).

E-waste means waste that is powered by batteries or electricity, such as computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, videocassette players/recorders, compact disc players/recorders, and calculators.

Execution Date means the date this AGREEMENT is signed by FRANCHISEE.

Franchise means the right and privilege granted by this AGREEMENT in Section 1.

FRANCHISEE means the Person executing this AGREEMENT and any assignee of FRANCHISEE consented to by COUNTY in accordance with Section 19. **FRANCHISEE** includes FRANCHISEE'S Subcontractors unless explicitly provided otherwise. References to all FRANCHISEE'S actions and Performance Obligations under this AGREEMENT include reference to Subcontractors' actions under this AGREEMENT, as applicable, without specifying in each instance that FRANCHISEE

shall directly take those actions itself, or cause its Subcontractors to take those actions on FRANCHISEE'S behalf.

Franchisee Default is described in Section 17.

Franchisee Documentation means Exhibit 3D.
Franchisee Manager means any of the following:

1. FRANCHISEE'S officers and directors;

2. The officers and directors of FRANCHISEE'S parent corporation and of each successive parent corporation's parent corporation;

3. The authorized representative of FRANCHISEE named in Franchisee Documentation; and

4. Any other Persons, including Affiliates and FRANCHISEE'S or Affiliates' employees, officers or directors, in a Position of Influence.

Franchisee Office Hours means 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 noon on Saturdays, Holidays excepted.

Franchise Fee means the fee described in Section 1D.

Franchise Services means all Performance Obligations prescribed in Exhibit 3A, Section 4D, E, and F, and Section 7.

Franchisee's Related Parties means FRANCHISEE'S partners, officers, directors, agents, employees, Subcontractors, consultants, licensees, invitees, and Affiliates.

Garbage Disposal District means a district created under County Code Chapter 20.90.

Goods or Services means goods or services used in providing Franchise Services, including labor; leases; subleases; equipment; supplies; capital; insurance, bonds or other performance security if the insurer, surety or other provider is an Affiliate or a captive of FRANCHISEE or any Affiliate; and legal, risk management, general, and administrative services.

green waste means solid waste comprised of leaves, grass clippings, brush, branches, and other forms of organic matter generated from landscapes and gardens and separated from other forms of solid waste.

Green Waste means Solid Waste comprised of leaves, grass clippings, brush, branches, and other forms of organic matter generated from landscapes and gardens and separated from other forms of Solid Waste, including holiday trees and bushes, but excluding:

1. Stumps or branches exceeding 4 inches in diameter or 4 feet in length;

2. Yucca or palm fronds, unless FRANCHISEE is able to Divert those excluded materials that may not be suitable for composting; and

3. Other County-approved items listed in the Subscription Order.

Gross Receipts means fees, charges, and other compensation that FRANCHISEE or Franchisee's Related Parties receive directly or indirectly from Customers in connection with Franchise Services before any deduction for costs or expenses such as the Franchise Fee. **Gross Receipts** does not mean fees, charges, and other compensation that FRANCHISEE or Franchisee's Related Parties receive in connection with the sale of Recyclables.

Holidays means January 1, Memorial Day, 4th of July, Labor Day, Thanksgiving, and December 25, and any other holidays designated by COUNTY in Notice to FRANCHISEE.

including or **include** or variations thereof, when used in this AGREEMENT, means "including without limitation", "including, but not limited to," and "including, at a minimum."

Indemnities or **Indemnification** means all defenses, indemnities, and releases under this AGREEMENT, including under Section 14A (generally, and with respect to the Immigration Reform and Control Act and Cal/OSHA).

Liabilities means any of the following:

1. Liabilities;

2. Lawsuits;

3. Claims;

4. Complaints;

5. Cause of actions;

6. Citations;

7. Investigations;

8. Judgments;

9. Demands;

10. Cleanup orders;

11. Damages (whether in contract or tort, including:
    a. Personal injury to or death of, at any time, FRANCHISEE'S employees, Subcontractors, COUNTY employees or third parties; and
    b. Property damage of FRANCHISEE, Subcontractors, COUNTY employees or third parties);
12. Costs and expenses, (including all costs and expenses of litigation, mediation or arbitration, attorneys fees, whether COUNTY'S or FRANCHISEE'S staff attorneys or outside attorneys, and court costs);
13. Losses;
14. Fines;
15. Penalties; and
16. Other detriments of every nature and description whatsoever, whether under State of California or federal law.

Local Enforcement Agency means the enforcement agency defined in County Code § 20.56.030.

Manure means Solid Waste comprised of animal dung or excrement, and may include straw or other absorbent.

Monthly Report is described in Section 13A1.

MSW Management Services means any of the following:

1. Collection, transportation, storage, transfer, or processing of:
    a. solid waste; or
    b. Unpermitted Waste that is collected as part of a Collection program for Bulky Items, CEDs, and E-waste described in Exhibit 3A and handled in accordance with Applicable Law (such as tires in excess of load limits, CEDs and certain E-waste); or
2. Arranging for disposal of that solid waste or Unpermitted Waste.

Multifamily means related to (1) dwellings with three or more attached dwelling units (such as apartments), each with separate cooking and bathing facilities, (2) townhouses, and (3) condominiums, whether attached or detached.

Multifamily Customer means Customer who owns or occupies Multifamily Premises.

Multifamily Premises means Premises containing a Multifamily building.

Non-Collection notice means the notice in the form included in Franchisee Documentation in accordance with Section 4C.

Notice means notice given in accordance with Section 20F.

Office means FRANCHISEE'S offices required by Section 7A to be identified in Franchisee Documentation.

Ownership has the meaning provided in the constructive ownership provisions of the Internal Revenue Code of 1986 § 318(a) as in effect on the Execution Date, except that (1) 10 percent is substituted for 50 percent in § 318(a)(2)(C) and in § 318(a)(3)(C) thereof; (2) § 318(a)(5)(C) is disregarded, and (3) ownership interest of less than ten percent is disregarded and percentage interests is determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

Party or **Parties** means COUNTY and FRANCHISEE, individually and together, respectively.

Performance Obligations means each and every obligation and liability of FRANCHISEE under this AGREEMENT.

Permit means any federal, state, county, other local, and any other governmental unit permit, order, license, approval, authorization, consent, or entitlement of whatever kind and however described that Applicable Law requires to be obtained or maintained with respect to the satisfaction of Performance Obligations, as renewed or amended from time to time, including the waste collector permit issued by the Los Angeles County Department of Health Services.

Person means any individual, firm, association, organization, partnership, corporation, trust, joint venture, state, county, municipality, special purpose district, the United States or any other entity.

Position of Influence means a position of authority or responsibility to directly or indirectly administer, manage, direct, supervise or oversee the Franchise Services or this AGREEMENT, including the following: (1) serving as director of the board of directors of FRANCHISEE or an Affiliate, (2) serving as an officer of FRANCHISEE or an Affiliate, (3) reviewing or negotiating FRANCHISEE'S contracts (including this AGREEMENT), (4) providing in-house legal services, and (5) providing insurance or other performance security if the provider is an Affiliate or is a captive of FRANCHISEE or an Affiliate; but excluding the following: (1) monitoring FRANCHISEE'S performance, (2) supervising FRANCHISEE'S finance and capital budget decisions, and (3) articulating general policies and procedures not related to a Criminal Activity.

Premises means a tract of land located in the Service Area and which is safely accessible by Vehicles.

processing means the reduction, separation, recovery, conversion or recycling of solid waste, including creating "compost" as defined in California Public Resources Code § 40116.

Processing means the reduction, separation, recovery, conversion or Recycling of Solid Waste, including creating "compost" as defined in California Public Resources Code § 40116.

prompt or **promptly** means as soon as practicable, but in no event more than two days.

Quarterly Report is described in Section 13A2.

Rates means the amounts listed on the Rate Schedule.

Rate Schedule means Attachment 2 to Exhibit 10.

RCRA means the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*).

Reasonable Business Efforts means those good faith efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of that Person's business judgment, intending to take steps calculated to satisfy the obligation, which that Person has undertaken to satisfy.

Records means documentation relating to Franchise Services and other Performance Obligations, including ledgers, books of account, invoices, vouchers, canceled checks, logs, correspondence, computations, files, plans, correspondence, reports, drawings, designs (other than those respecting facilities or facility operations not involving Collection), data, and photographs prepared by or possessed by FRANCHISEE, including the following:

1. Customer Subscription Order and Franchise Services information (including Customers' names and addresses), billing records, complaint logs, route maps, schedules, and correspondence with Customers;

2. Weight tickets, invoices, bills of lading, and receipts from Solid Waste Facilities for types and amounts of Solid Waste that FRANCHISEE Collects, transports and delivers to those Solid Waste Facilities;

3. AB 939 records, including documentation from Recyclables and Green Waste transporters, shippers, brokers, beneficiators, remanufacturers, and purchasers or other users of Recyclables and Green Waste; any reports on Processing of Recyclables or Green Waste residual that Solid Waste Facilities may make to the California Integrated Waste Management Board;

4. Vehicle maintenance, driver Permits and driver testing records;

5. Gross revenues and receipts, including Gross Receipts;

6. Franchise Fees paid to COUNTY; and

7. Records that may be relevant in the event of an action under CERCLA or similar claims.

recyclables means Solid Waste that may potentially be diverted for disposal.

Recyclables means any of the following materials:

1. Aluminum and metal cans;
2. Newspaper;
3. Glass jars and bottles;
4. Tin cans;
5. Plastic soda bottles;
6. Plastic milk and water jugs;
7. Plastic bags (e.g., bread, frozen food, grocery bags);
8. Type No. 1 plastic containers (PET-polyethylene terephthalate);
9. Type No. 2 plastic containers (HDPE-high density polyethylene);
10. All types of paper (e.g., office paper, junk mail, magazines, telephone books);
11. Corrugated cardboard;
12. White goods (such as those listed in the definition of **Bulky Items**); or
13. Additional (or deleted) items that COUNTY directs after Notice to FRANCHISEE, without adjustment of Rates unless the modification requires Franchise Services at the Set-Out Sites separate and distinct from previously Collected Recyclables.

recycle or recycling means the process of collecting, sorting, cleansing, treating, and reconstituting materials (including recyclables and green waste) that would otherwise become solid waste and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products that meet the quality standards necessary to be used in the market place. **Recycling** does not include transformation, as defined in California Public Resources Code § 40201.

Recycle or Recycling means the process of collecting, sorting, cleansing, treating, and reconstituting materials (including Recyclables and Green Waste) that would otherwise become Solid Waste and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products that meet the quality standards

necessary to be used in the market place. **Recycling** does not include transformation, as defined in California Public Resources Code § 40201.

refuse means solid waste that is not diverted.

Refuse means Solid Waste that FRANCHISEE does not Divert.

Regulatory Agency means any federal, state or local governmental agency that regulates Collection and transportation of Solid Waste (including California Department of Transportation, California Department of Motor Vehicles, EDD, U.S. Immigration and Naturalization Services, or other health and safety department thereof; COUNTY; and Local Enforcement Agency applicable to Franchise Services).

Report means Monthly Report, Quarterly Report, Annual Report and any AB 939 or other report FRANCHISEE is required to submit in accordance with this AGREEMENT.

Residential means related to detached, single family homes or duplexes, other than condominiums or townhouses.
Residential Customer means Customer who owns or occupies a detached, single-family home or a unit in a duplex.

Residential Premises means Premises containing a Residential building.

Service Area means the area described on Attachment 1 of Exhibit 3A.

Service Assets means all property of FRANCHISEE used directly or indirectly in performing Franchise Services, including Vehicles, Containers, maintenance equipment and facilities, and administrative equipment and software, both tangible and intangible (such as facility leases or equipment installment purchase agreements).

Service Day means any day Monday through Saturday, Holidays excepted.

Service Specifications means Performance Obligations prescribed in Exhibit 3A.

Service Standards means each and every obligation of FRANCHISEE prescribed in Section 4.

Set-Out Site means the place designated in the Subscription Order in accordance with Section 4D and County Code § 20.72.100, where Customers must place their Solid Waste for Collection.

solid waste means solid waste as defined in California Public Resources Code § 40191, including green waste, recyclables and refuse, but excluding Unpermitted Waste.

Solid Waste means solid waste as defined in California Public Resources Code § 40191 that is Collected in the Service Area, including Green Waste, Recyclables and Refuse, but excluding Unpermitted Waste.

solid waste facility means solid waste facility as defined in California Public Resources Code § 40194 (and any other types of facilities named by COUNTY).

Solid Waste Facility means solid waste facility as defined in California Public Resources Code § 40194 (and any other types of facilities named by COUNTY) and designated by FRANCHISEE in Franchisee Documentation.

Subscription Order is described in Section 4D.

Subcontractor means any Person that provides Goods or Services related to Collection, transportation or storage of Solid Waste or related to Service Assets, including their operation, maintenance and repair, to or on behalf of FRANCHISEE whether pursuant to any arrangement, formal or informal, written or merely in practice. **Subcontractor** does not include a Person that provides Goods or Services related to Processing, Diversion or Disposal.

Term means the period determined under Section 2 of this AGREEMENT.

Termination Date means the date this AGREEMENT expires as provided in Exhibit 3A in accordance with Section 2A or as earlier terminated in accordance with Section 17D.

Ton or **Tonnage** means a short ton of 2,000 pounds avoirdupois.

Transfer means Assign, transfer, convey, sublet, license, hypothecate, encumber, or otherwise transfer or dispose of.

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

Transfer Deposit means the amount equal to COUNTY'S anticipated Transfer Costs.

Uncontrollable Circumstances means any of the following events:

1. Riots, war, or emergency affecting the Country declared by the President of the United States or Congress of the United States, the Governor of California, or the Board of Supervisors;

2. Sabotage, civil disturbance, insurrection, explosion;

3. Natural disasters such as floods, earthquakes, landslides and fires;

4. Strikes, lockouts and other labor disturbances; or

5. Other catastrophic events that are beyond the reasonable control of FRANCHISEE despite FRANCHISEE'S exercise of due diligence, excluding (i) the financial inability of FRANCHISEE to satisfy its Performance Obligations, or (ii) failure of FRANCHISEE to obtain any necessary Permits or the right to use the facilities of any public entity.

Universal Waste means hazardous waste that the California Department of Toxic Substances Control considers universal waste, including materials listed in 22 CCR 66261.9, such as batteries, thermostats, lamps, cathode ray tubes, computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders, compact disc players/recorders, calculators, some appliances, aerosol cans and certain mercury-containing devices.

Unpermitted Waste means:

1. Materials that are not Solid Waste, including Universal Waste, household hazardous waste and other hazardous waste, medical waste, radioactive waste;
2. Waste tires in excess of the limitations prescribed in 14 CCR 17355(b) or reduced in volume as required in 14 CCR 17355(A);

3. Any other materials that cannot be Disposed of in class II sanitary landfills described in 27 CCR 20250.

Unpermitted Waste Screening Protocol means the protocol prescribed in Section 6 and included in Franchisee Documentation.

Vehicle means any truck used by FRANCHISEE to provide Franchise Services.

Violation of Applicable Law means any noncompliance with Applicable Law as evidenced by notice, assessment, or determination of any Regulatory Agency to FRANCHISEE, whether or not a fine or penalty is included, assessed, levied, or attached.

Waste Diversion Program means that program required by Section B2 of Exhibit 3A and included in Franchisee Documentation.

ATTACHMENT B

Award information has not been added at this time.

Bid Information

Bid Number : PW-ASD 682
Bid Title : Exclusive Franchise Agreement for the Area of Santa Clarita Valley
Bid Type : Service
Department : Public Works
Commodity : GARBAGE/TRASH REMOVAL AND DISPOSAL SERVICE
Open Date : 7/25/2007
Closing Date : 8/2/2007 1:00 PM
Notice of Intent to Award : View Detail
Bid Amount : N/A
Bid Download : Not Available
Bid Description : PLEASE TAKE NOTICE that Public Works requests proposals for the Exclusive Franchise Agreement for the area of Santa Clarita Valley (2007-FA061).

Minimum Requirement(s): Proposers must meet all minimum requirements set forth in the Request for Proposals (RFP) document, including, but not limited to, at the time of proposal submission, the Proposer has at least three years' experience collecting and managing refuse, recyclable materials, and green waste from a single-family and multifamily residences. The Proposer must also submit a Bid Guaranty as outlined in Section 3.A.11.a. of the RFP and provide proof that the Proposer possesses the required waste collector's permits.

If not enclosed with this letter, the RFP with contract specifications, forms, and instructions for preparing and submitting proposals may be requested by accessing this link at ftp://dpwftp.co.la.ca.us/solicitationdocuments/ExclusiveFranchise061.pdf or from Ms. Jeanette Arismendez at (626) 458-4050, Monday through Thursday, 7 a.m. to 5:30 p.m.

A Proposers' Conference will be held on Thursday, August 2, 2007, at 1 p.m. at Public Works Headquarters, 900 South Fremont Avenue, Alhambra, California 91803, in Conference Room B. ATTENDANCE BY THE PROPOSER OR AN AUTHORIZED REPRESENTATIVE AT THE CONFERENCE IS MANDATORY. Public Works will reject proposals from those whose attendance at the conference cannot be verified. Attendees should be prepared to ask questions at that time about the specifications, proposal requirements, and contract terms. After the conference, it may be impossible to respond to further requests for information.

The deadline to submit proposals is Monday, August 27, 2007, at 5:30 p.m. Please direct your questions to Ms. Arismendez at the number above.

Contact Name : Jeanette Arismendez
Contact Phone# : (626) 458-4050
Contact Email : jarismen@dpw.lacounty.gov
Last Changed On : 7/26/2007 2:58:42 PM

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