COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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DONALD L. WOLFE, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
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October 5, 2006

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:

EXCLUSIVE FRANCHISE AGREEMENT FOR SOUTH SAN GABRIEL
SUPERVISORIAL DISTRICT 1
3 VOTES

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the public health, safety, and welfare require that the County award an exclusive franchise for residential solid waste handling services for the unincorporated South San Gabriel area.

2. Award an exclusive franchise to Athens Services located in City of Industry, California, to provide refuse, green waste, and recyclables collection services to residential properties in the unincorporated area of South San Gabriel commencing upon execution of both parties. The solid waste collection services will start on April 1, 2007, with a termination date of March 31, 2014, subject to compliance with all terms and conditions contained in the Franchise Agreement, with an initial monthly rate of $22.10 (including a 10 percent franchise fee) per customer for basic services.

3. Authorize the Director of Public Works to execute an Agreement with Athens Services substantially similar to the enclosed Franchise Agreement; to take all necessary and appropriate steps to carry out the exclusive Franchise Agreement, including granting extension of the termination date up to total of six months; and terminating the Agreement, if, in the opinion of the Director, it is in the best interest of the County to do so.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The State Legislature has found and declared that the amount of solid waste generated in the State of California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, have created a need for local agencies to enact and implement aggressive integrated waste management programs. Through enactment of the California Integrated Waste Management Act of 1989, the State has directed agencies, such as the County, to divert 50 percent of all solid waste from disposal based on the levels of solid waste generated in 1990, subject to adjustments for certain demographic and economic factors, through source reduction, recycling, and composting of solid waste. Failure to meet this 50 percent waste diversion mandate by the year 2000 and thereafter may subject the County to penalties of up to $10,000 per day.

The County has implemented many aggressive waste diversion programs in the unincorporated areas but has been unable to meet the State's 50 percent mandate. The State's Integrated Waste Management Board granted the County a Time Extension to allow more time for the County to implement additional diversion programs (as stipulated in the Time Extension) and other measures to improve the County's ability to document its achievement of the 50 percent mandate. These required measures include replacing the existing open-market system of waste collection with a franchise system in the unincorporated areas that are not within a garbage disposal district. The franchise system will increase waste diversion through the use of automated waste collection services and will give the County the ability to implement comprehensive reporting requirements to better document waste diversion activities in the unincorporated areas.

The franchise system will also help improve the level, quality, and efficiency of the solid waste collection services provided to unincorporated area residents. It will bring these services into parity with the best that cities currently offer while maintaining competitive rates. The majority of the 88 cities in the County of Los Angeles have a franchise system of waste collection.

On September 28, 2004, your Board adopted an ordinance authorizing Franchise Agreements for solid waste handling services in all or part of the unincorporated territory. On March 21, 2006, your Board adopted an ordinance further requiring, as consideration for the grant of a franchise, the payment of a franchise fee to the County in such amount as may be determined by your Board. On October 3, 2006, Agenda Item 46, your Board adopted a resolution to establish a franchise fee in the amount of 10 percent of monthly gross receipts.

This recommended action is to award an exclusive franchise to provide weekly, fully automated, separate collection in carts and the processing and disposal of refuse, commingled recyclable materials, and green waste generated by single-family residences and duplexes (franchise services) in the unincorporated South San Gabriel area. The Franchise Agreement also requires the franchisee to provide franchise services to multifamily and commercial properties upon request, and it allows the franchisee to provide bin service upon request to residential properties.

The franchise system will provide for automated collection service with separate recycling and green waste collection, franchisee reporting requirements, screening protocol for unpermitted waste and other safety requirements, and a customer education program. In addition, recycling programs, such as Universal/E-Waste cleanup events, Sharps Program, illegal dumping prevention and cleanup activities, and others will be implemented. The implementation of these waste management programs will provide residents with convenient opportunities to dispose of hard-to-handle wastes, increase recycling, and assist the County in meeting the State's 50 percent waste reduction mandate (AB939) and avoid penalties.

Implementation of Strategic Plan Goals

This action is consistent with the County Strategic Plan Goal of Fiscal Responsibility since the franchise fee will provide the funding necessary to administer the franchises and implement needed waste management programs for the franchise areas, thereby increasing recycling and avoiding State penalties.

This action is also consistent with the County Strategic Plan Goals of Service Excellence and Children and Families' Well-Being since the franchise program will assist in providing County residents with responsive, high-quality waste collection, recycling, and disposal services and provide for appropriate oversight to ensure compliance with the terms of the Franchise Agreement, thereby protecting the health and safety of the South San Gabriel residents and the environment and improving the quality of life in this unincorporated area of the County.

FISCAL IMPACT/FINANCING

There will be no impact on net County cost. There will be a 10 percent franchise fee imposed for the grant of a franchise to provide solid waste handling services in the County unincorporated area of South San Gabriel, in accordance with Chapter 20.70 of the Los Angeles County Code. The franchise fee will be deposited in Public Works' Solid Waste Management Fund.

The enclosed exclusive Franchise Agreement for residential solid waste collection services in the South San Gabriel area (Agreement) will allow the franchisee to charge its customers a basic monthly rate of $22.10 (which includes the 10 percent franchise fee) for these services. The solid waste collection services will start on April 1, 2007, with a termination date of March 31, 2014, and the Director may extend the Agreement for up to six months.

The Agreement allows rate adjustments for annual changes in the CPI (Consumer Price Index), PPI (Producer Price Index Series), and/or solid waste facility fees. The monthly rate will also be adjusted in the event of a change in the franchise fee.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Chapter 20.70 of the Los Angeles County Code authorizes the Board to award solid waste handling franchises to assist the County in achieving compliance with the State's waste diversion requirements, to improve the quality and efficiency of solid waste handling services, and to require payment of a franchise fee as consideration for the grant of a franchise.

Section 20.70.020 of the County Code authorizes the 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 Director executing the Agreement, which will be substantially similar to Enclosure A, the Agreement will be approved as to form by County Counsel and executed by the franchisee.

ENVIRONMENTAL DOCUMENTATION

An Initial Study was prepared for the award of exclusive Franchise Agreements to provide residential solid waste collection services in eight Los Angeles County unincorporated areas, including the South San Gabriel area (the project), in compliance with the California Environmental Quality Act (CEQA) and State and County guidelines. The Initial Study showed that there is no substantial evidence that the project may have a significant effect on the environment. Therefore, in accordance with Section 15070 of the State CEQA Guidelines, a Negative Declaration was prepared and submitted to your Board for consideration and adoption on October 3, 2006. Your Board adopted this Negative Declaration on October 3, 2006, Agenda Item 46. Based upon the Negative Declaration, the project will not have a significant effect on the environment.

Upon your Board's award of an exclusive franchise for the South San Gabriel area, we will file a Notice of Determination in accordance with the requirements of Section 21152(a) of the California Public Resources Code. A $25 processing fee will be paid to the County Clerk.

CONTRACTING PROCESS

On May 18, 2006, Public Works solicited proposals from 169 independent contractors and community business enterprises for an exclusive Franchise Agreement to provide residential solid waste collection services in the unincorporated area of South San Gabriel. Also, notice of the Request for Proposals (RFP) was placed on the County's bid website (Enclosure B), and an advertisement was placed in the *Los Angeles Times*.

On July 10, 2006, one proposal was received. The proposal was evaluated by an evaluation committee consisting of Public Works and outside agency employees with experience in the contracting process. The committee's evaluation was based on the criteria described in the RFP, which included the proposer's price, experience, work plan, financial resources, references, environmental record, and procurement/contract disputes. Based on this evaluation, the evaluation committee recommended that the Agreement be awarded to the responsive and responsible proposer, Athens Services.

Athens Services was selected upon final analysis and consideration without regard to race, creed, gender, or color.

The Agreement contains terms and conditions supporting Board-sponsored policies, such as contractor responsibility and debarment, the Safely Surrendered Baby Law, and charitable activities compliance. Jury service requirements and the local Small Business Enterprise preference program were not included since the Agreement is not a County service contract.

Proof of the required Comprehensive General and Automobile Liability insurance policies, naming the County as an additional insured, evidence of Workers' Compensation insurance, and performance assurance will be obtained from the selected franchisee before commencement of the franchise services.

As requested by your Board, the recommended franchisee has submitted its safety record. The record showed one fatality in 2002, which was investigated by Cal/OSHA. The franchisee received several violations, which were categorized as regulatory but

were not serious. This information was considered in the evaluation process, and the franchisee remained responsive and responsible.

In accordance with the Chief Administrative Officer's June 15, 2001, instructions, this is Public Works' assurance that the franchisee will not be requested to perform services that will exceed the Agreement's rate, scope of work, terms and conditions, and/or duration.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The award of this Agreement will not result in the displacement of any County employees.

CONCLUSION

One adopted copy of this letter is requested.

Respectfully submitted,

DONALD L. WOLFE
Director of Public Works

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Enc. 2

cc: Chief Administrative Office
County Counsel

THIS AGREEMENT, made and entered into on_____, 2006, by and between the County of Los Angeles, a subdivision of the State of California, a body corporate and politic (hereinafter referred to as COUNTY), and Athens Services, a California Corporation (hereinafter referred to as 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, 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 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 COUNTY with programs, records, and reports that will help 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 5-year notice under 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, 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). COUNTY will not exercise control over the disposal or other disposition of the Solid Waste handled by the FRANCHISEE, and COUNTY will not designate or determine the use of any given solid waste facility. FRANCHISEE acknowledges that by entering into this AGREEMENT, COUNTY does not assume any of FRANCHISEE'S obligation to or responsibility for providing Franchise Services, and 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 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, 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. 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 COUNTY provided multiple drafts of this AGREEMENT to these representatives.

WHEREAS, the FRANCHISEE is awarded this AGREEMENT. The Board of Supervisors determines and finds pursuant to 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. FRANCHISEE must include a description of this right in the Subscription Order.

   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 Collection at those Premises in Carts. That Person may arrange with another Person to provide MSW Management Services in Carts.

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 dispose of themselves 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. **Collection of Solid Waste in Bins at Residential Premises.** This Franchise excludes the right and privilege to provide Collection of Solid Waste in Carts for any Residential Customer requesting Bins instead of Carts. That Customer may arrange with FRANCHISEE or another Person to provide MSW Management Services in Bins.

4. **Rights Under 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 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 Public Resources Code §49520 prior to 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 execution of this AGREEMENT does not confer upon FRANCHISEE any rights under Public Resources Code §49520 and that FRANCHISEE does not have the right to make any claim under or pursuant to Public Resources Code §49520 but only pursuant to the terms of this AGREEMENT. Notwithstanding the foregoing, in accordance with Public Resources Code §49523, COUNTY and FRANCHISEE hereby agree, based upon the mutually satisfactory terms of providing Franchise Services set forth in this AGREEMENT and receipt of compensation therefore, that FRANCHISEE shall cease providing MSW Management Services in the Service Area on the Termination Date even if that Termination Date should occur prior to the expiration of the period described in Public Resources Code §49520. FRANCHISEE'S agreement and acknowledgments herein do not foreclose COUNTY from reprocuring agreements for MSW Management Services, including from FRANCHISEE, following termination of this AGREEMENT, by exclusive, 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 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 22B with respect to the Child Support Compliance Program
   - 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 1D2 with respect to Franchise Fees
   - Section 14B with respect to workers' compensation
   - Section 21F with respect to review of this AGREEMENT
   - Section 14B5c with respect to workers' compensation insurance
   - 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 such 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 following the expiration or termination of this AGREEMENT, FRANCHISEE shall cooperate fully with COUNTY and the succeeding franchisee(s), licensee(s), permittee(s) or other Person providing 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 SURVIVE THE TERM.

C. **Undepreciated Assets.** If any of FRANCHISEE'S assets remain undepreciated upon expiration or earlier termination 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 title holder 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 Franchise 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 3D2a 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 3D2b 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, FRANCHISEE shall also clean up all litter within a 10-foot radius of the site from which FRANCHISEE Collected the Bulky Item. 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 the liquid materials, treat, and/or remove those 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 use its best efforts to prevent damaging alleys, streets, and parking lots over which its Vehicles operate. FRANCHISEE shall obtain all approvals required to operate Vehicles on private alleys, streets, and parking lots. Subject to COUNTY review and approval and to Section 20C, FRANCHISEE may require Customers to sign a Subscription Order containing a waiver of liability and/or an indemnification in connection with subscribing for Franchise Services on 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;

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

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

4. Container or Bulky Items are not placed at the Set-Out Site;

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

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

7. Premises are not safely accessible to Vehicles;

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

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 the

Container(s), 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 Container(s) without surcharge to Customer not 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 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 Customer but which may not separately indicate Rates attributable to Solid Waste materials type, such as Refuse, Green Waste, Recyclables or manure;

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, Customer's refund rights upon termination of Franchise Services;

4. Holiday schedules;

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

6. Weight limitations, if any, 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 Customer's termination rights in accordance with Section 20I;

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

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

12. Customer's right to self-haul as set forth in Section 1B2 above;

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

14. COUNTY'S telephone number, which Customer may call after contacting FRANCHISEE if Customer's Service complaint is not satisfactorily resolved; and

15. Any other information requested by the Director.

FRANCHISEE shall annually distribute to Customers a summary approved by COUNTY of the Customer's Subscription Order containing the general information described in items 1 through 15, 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 following 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 USC Sections 2000e through 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. Recycled-Content Paper. Consistent with the Board of Supervisors' policy to reduce the amount of Solid Waste that is disposed of at landfills within the COUNTY, FRANCHISEE agrees to use recycled-content paper to the maximum extent possible in providing Franchise Services and maintaining Records.

H. Customer Correspondence and Other Materials. FRANCHISEE shall submit to the Director for approval at least five County Business Days prior to printing, distributing, or mailing the following materials:

1. Promotional materials;

2. Forms of correspondence directed to Customers (other than with respect to a particular Customer's Subscription Order or Franchise Services complaints); and

3. News releases developed for FRANCHISEE'S own use in the promotion of its Franchise Services program.

I. Publicity and News Media Relations.

1. **Publicity.** Except as otherwise required by subsection I2, 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, 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, Franchise 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. Copies of articles related to Franchise Services resulting from media interviews or news release shall be provided to County within five days after publication.

J. Responsiveness to County. FRANCHISEE shall return telephone calls from COUNTY to the person 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 customer subscription 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 upon those persons' experience and qualifications. FRANCHISEE shall identify those personnel (**"Key Personnel"**) in Franchisee Documentation. FRANCHISEE will provide COUNTY at least 30 days' Notice of changes in Key Personnel, including the professional experience and qualifications of the person 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 will provide COUNTY prompt Notice. During that 30-day period, COUNTY may request FRANCHISEE to propose an alternative person 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 pursuant to 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 pursuant to 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 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 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.

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 prior to 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 Customer requests.

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. Not 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. Upon COUNTY 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 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 Applicable Law and not as a result of 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, and CEDs that it Collects, including implementing its Waste Diversion Program.

SECTION 10 - RATES AND CUSTOMER BILLING

A. **Rates.** FRANCHISEE shall charge Customer Service Charges as provided in 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.

FRANCHISEE shall submit its form of Customer invoice to COUNTY promptly upon COUNTY request. 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.

Upon request of COUNTY, FRANCHISEE shall use Reasonable Business Efforts to enclose with Customer bills all inserts promoting Recycling prepared and provided by COUNTY.

FRANCHISEE shall refund any overcharges to Customer (including advance payments for Franchise Services that are subsequently canceled) within 30 days following collection thereof. FRANCHISEE shall pay 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 following 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 following 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 this subsection.

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 upon 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 in accordance with Section 1D, that failure to pay will constitute a Franchisee Default in accordance with Section 17.

D. Copies. Franchise shall provide copies of Customer 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 Waste** 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** with a complete map of the 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** with a complete map of the Service Area.

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, upon request of the Director, 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 prior to execution 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. FRANCHISEE shall make available to COUNTY promptly upon COUNTY'S request 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.** FRANCHISEE shall provide additional information reasonably and directly pertaining to this AGREEMENT (including substantiation of information submitted in Reports) promptly upon the request of the Director.

F. **Reporting Requirements for Improper Solicitations.** FRANCHISEE shall immediately report any attempt by a COUNTY officer or employee to solicit such 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 operations or its services on or following the date of this AGREEMENT, including the Franchise Services and Liabilities further detailed in the following Indemnifications contained in items 2 through 4, 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 Indemnity in item 1, 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 and/or its Subcontractors that is in violation of any Cal/OSHA regulation. This obligation includes all investigations and proceedings associated with purported violations of Title 8, California Code of Regulations §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 Indemnity in item 1, employer sanctions and any other Liabilities that may be assessed against FRANCHISEE or COUNTY or both 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 persons 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 Indemnity in item (1), any Liabilities that may be assessed against FRANCHISEE or COUNTY in connection with any alleged failure of COUNTY 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 Hazardous Waste, universal waste

described in the definition of "Solid Waste" in this Franchise, or petroleum to, in, on, at or under at any place, site, or facility where FRANCHISEE 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.

b. ***Non-Customer Materials.*** The collection, delivery, handling, recycling, processing, compo sting or disposal by FRANCHISEE 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 to undertake Unpermitted Waste training procedures required by Applicable Law or the Unpermitted Waste Screening Protocol, whichever is more stringent.

d. ***FRANCHISEE-Identified Unpermitted Waste.*** The improper or negligent collection, handling, delivery, processing, recycling, composting or disposal by FRANCHISEE of Unpermitted Waste that FRANCHISEE inadvertently collects from Customers and that FRANCHISEE identifies as Unpermitted Waste prior to its delivery, processing, recycling, composting, or disposal whether:

(i) In one or more occurrence;

(ii) Threatened or transpired;

(iii) FRANCHISEE is negligent or otherwise culpable; or

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

For purposes of this Indemnity, **"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 under this AGREEMENT will not constitute

negligence and in and of itself create any liability on the part of FRANCHISEE absent any of the circumstances described in items a through d in this item 5.

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

The foregoing indemnity is intended to operate as an agreement pursuant to 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, and shall require all of its Subcontractors to 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. 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 from sums due to FRANCHISEE any premium costs advanced by COUNTY for such 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 within ten days of 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;

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

d. Include copies of the additional insured endorsement to the commercial general liability policy, 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 such 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 such retained losses and related costs, including expenses, or both, related to investigations, claims administrations, and legal defense. The bond or letter of credit must be extended by a corporate surety licensed to transact business in the State of California; and

f. Upon COUNTY 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. FRANCHISEE must make its report within 24 hours of the occurrence;

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 "Non-employee Injury Report" form available on COUNTY'S

website at http://cao.co.la.ca.us/RMB/pdf/NonEmployeeInjuryReport.pdf.

4. **Insurance Coverage Requirements for Subcontractors.** FRANCHISEE shall insure any and all Subcontractors performing Franchise Services under this AGREEMENT by providing evidence that either:

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

   b. Subcontractors are maintaining the above required insurance coverage.

   FRANCHISEE shall promptly provide COUNTY with copies of evidence of Subcontractor insurance coverage upon COUNTY request.

5. **Insurance Coverage Requirements.** FRANCHISEE shall secure and maintain insurance coverages meeting the following requirements. FRANCHISEE may use a combination or primary and excess insurance coverage to satisfy these 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 Aggregate:	$4 million
Products/Complete 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 in accordance with Section 14A.

   b. ***Pollution Liability Coverage*** for pollution conditions resulting from transported cargo with a limit of not less than $2 million per occurrence covering loss (including cleanup costs) that FRANCHISEE becomes legally obligated to pay as a result of claims for bodily injury, property damage, and cleanup costs (including expenses required by environmental laws or incurred by federal, state, or local governments or third parties) resulting from pollution conditions caused by transported cargo (including waste). For the purpose of this subsection 14B5b, "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 such 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 in accordance with Section 14A. FRANCHISEE'S general liability policy may be endorsed to provide for pollution liability coverage.

c. ***Automobile Liability Coverage*** (written on ISO policy forms CA 00 12 pr 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 (using form CA 99 48 or its equivalent). Such insurance must cover any and 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 coverages 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

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 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 upon 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 Asset 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, accompanied by a certification signed by FRANCHISEE that all Vehicles meet any specifications provided in this AGREEMENT and all Carts meet specifications in any attachment to Exhibit 3A.

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, upon COUNTY request, FRANCHISEE shall keep Service Assets in good repair and condition. Unless Franchisee 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 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 hereby 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 Persons to provide all or a portion of Services, including driving Vehicles. Promptly upon COUNTY request, FRANCHISEE shall 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.** Upon COUNTY'S request, FRANCHISEE shall promptly provide COUNTY with immediate access and/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 commenced 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, 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. Disaster Assistance. FRANCHISEE shall make Reasonable Business Efforts to assist County in the event of major disaster, such as an earthquake, storm, riot, or civil disturbance, by providing Vehicles and drivers normally assigned to the Service Area 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 pursuant to this AGREEMENT.

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; or

5. Failure to timely pay an Indemnification.

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 following 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 following execution 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.**

   (i) 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

   (ii) 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:

   (i) Seven consecutive days; or

   (ii) 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):

   (i) More than twice in any calendar year;

   (ii) Within 30 days of Notice by COUNTY that payment is due; or

   (iii) 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:

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

   (ii) Section 23D1 Compliance with ILO Convention Concerning Minimum Age for Employment;

   (iii) Section 23E Nondiscrimination; or

   (iv) 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 any Uncontrollable Circumstance, if the event materially affects FRANCHISEE'S ability to provide Franchise Services. Nevertheless, if an Uncontrollable Circumstance interrupts 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 pursuant to 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 13A5.

C. Notice of Franchisee Default.

1. **Effective Immediately.** The Director may terminate this AGREEMENT effective immediately following 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 item 3 of subsection B (failure to provide insurance, bonds);

   c. A Franchisee Default described in item 4 of subsection B (material or repeated Violation of Applicable Law, including the County Lobbyist Ordinance);

   d. A Franchisee Default described in item 10 of subsection B (improper consideration).

2. **Effective 30 days.** The Director may terminate this AGREEMENT effective 30 days following 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 following 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 upon 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 4 of Section A1 of Exhibit 10 for a Change in Law or changes in Service Specifications or Service Standards following 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 pursuant to 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, costs incurred by COUNTY to provide or reprocure MSW Management Services in lieu of Franchise Services; and

   c. If COUNTY terminates this AGREEMENT prior to expiration for a Franchisee Default or in the event of Criminal Activity in accordance with Section 17D2a or c, 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.** 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 hereunder, and the monetary loss resulting there from is impossible to precisely quantify. Lastly, termination of this AGREEMENT for Franchisee Default and other remedies provided hereunder 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 such 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 are be 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 and duties under it, in whole or in part, and whether voluntarily or involuntarily, without an amendment to this AGREEMENT, which amendment may be executed by the Director on behalf of

COUNTY, 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 upon payment of amounts specified in Exhibit 3A.

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 its Performance Obligations.

C. Payment of County's Transfer Costs.

1. **Transfer Deposit.** FRANCHISEE must make any request for COUNTY consent to a Transfer in the manner prescribed by the Director. FRANCHISEE shall pay COUNTY a Transfer Deposit prior to COUNTY'S consideration of FRANCHISEE'S request. "Transfer Deposit" means the amount equal to COUNTY'S anticipated Transfer Costs. COUNTY will return to FRANCHISEE any FRANCHISEE payment in excess of the Transfer Deposits incurred.

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

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.

E. "Assign." For purposes of this Section, "**Assign**" 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 to other franchisees in the Service Area as provided in subsection A and except for sales or transfers to parents, grandparents, siblings, children, and grandchildren of persons 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 forgoing (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, or takeover of any of FRANCHISEE'S Performance Obligations, duties, responsibilities, or performance of same by any Person or entity 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.

F. **"Transfer."** For purposes of this Section, **"Transfer"** means Assign, transfer, convey, sublet, license, hypothecate, encumber, or otherwise transfer or dispose of.

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 by and 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, FRANCHISEES and Subcontractors, if any. 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 person for injuries arising from or connected with Franchise Services performed on behalf of FRANCHISEE pursuant to 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 following 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 FRANCHISEE'S representative, 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 upon 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 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 CUSTOMER to take affirmative, prescribed action (such as written notice within a specified time period prior to 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 upon 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 upon 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 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 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.

K. **Notice of Delay.** Within one day of learning that any actual or potential situation 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 with respect thereto, such as identifying the particular Performance Obligation(s), duration of the delay, and whether or not FRANCHISEE believes that the situation is an Uncontrollable Circumstance.

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. Such 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, 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, COUNTY may terminate this AGREEMENT or impose other penalties as specified in this AGREEMENT.

SECTION 21 - DEFINITIONS AND INTERPRETATION OF AGREEMENT

A. **Definitions.** Capitalized words in this AGREEMENT words 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 upon FRANCHISEE may not be construed as a limitation or restriction of any general liability or duty imposed upon 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 or its Attachments), 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 any and 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 said 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 herein 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 §2021.1 of Chapter 3, Division 3, Title 13, California Code of Regulations) 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 10A.

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 USC §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 pursuant to 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. FRANCHISEE acknowledges that 8 hours labor constitutes a legal day's work under Applicable Law. FRANCHISEE shall require work in excess of 8 hours a day or 40 hours during anyone week only as authorized by California Labor Code §1815. 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 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 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.** Upon request by COUNTY, FRANCHISEE shall provide documentation satisfactory to COUNTY evidencing the country/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.** Upon request of COUNTY, 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 antidiscrimination laws, including in 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.** FRANCHISEE shall 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 promptly upon request of COUNTY.

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 antidiscrimination 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 antidiscrimination laws will constitute a finding by COUNTY that FRANCHISEE has violated the antidiscrimination 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 such time as 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 any and 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 executed 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 execute 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 execute 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 these presents to be subscribed by the Director of Public Works, and FRANCHISEE has subscribed its name by and through its duly authorized officers, as of the day, month, and year first written above.

COUNTY OF LOS ANGELES

By _____
Director of Public Works

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By _____
Deputy

ATHENS SERVICES

By _____
Its President

_____
Type or Print Name

_____
Its Secretary

_____
Type or Print Name

Award information has not been added at this time.

Bid Information

Bid Number : PW-ASD 619

Bid Title : FRANCHISE AGREEMENTS FOR CITRUS, LA CRESCENTA, ROWLAND HTS, S. SAN GABRIEL, SOUTH WHITTIER, WEST WHITTER, AVOCADO HTS, VALINDA, BASSET..

Bid Type : Service

Department : Public Works

Commodity : GARBAGE/TRASH REMOVAL AND DISPOSAL SERVICE

Open Date : 5/18/2006

Closing Date : 6/15/2006 5:30 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 eight Exclusive Franchise Agreements, one for each of the following areas: Citrus, La Crescenta, Rowland Heights, South San Gabriel, South Whittier, West Whittier, Avocado Heights, and Bassett/Valinda/South San Jose Hills. Proposals submitted for each of these eight areas will be subject to separate evaluations for an exclusive franchise agreement. 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, at least three years' experience collecting and managing refuse, recyclable materials, and green waste from single-family and multifamily residences. 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/asd/franchiseagreements.pdf or from Mr. Christopher Nguyen at (626) 458 4050 Monday through Thursday, 7 a.m. to 5:45 p.m.

A Proposers' Conference will be held on Thursday, June 1, 2006, at 2 p.m. at Public Works Headquarters, 900 South Fremont Avenue, Alhambra, California 91803, in the Alhambra Room. ATTENDANCE BY THE PROPOSER OR AN AUTHORIZED REPRESENTATIVE IS MANDATORY. Public Works will reject proposals received from Proposers not signed in as attending this Conference as nonresponsive. 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 for the areas of La Crescenta, South San Gabriel, South Whittier, and West Whittier is Thursday, June 15, 2006, at 5:30 p.m.

The deadline to submit proposals for the areas of Avocado Heights, Citrus, Rowland Heights, and Basset/Valinda/South San Jose Hills is Thursday, June 29, 2006, at 5:30 p.m.

Should a Proposer be interested in submitting a proposal for more than one area, the Proposer must submit a separate, individual proposal for each area.

Please direct your questions to Mr. Nguyen at the number referenced above.

The conference facility complies with the Americans with Disabilities Act (ADA). With four business days' notice, Public Works will make all reasonable efforts to provide information in alternate formats and other accommodations for people with disabilities. For the ADA Coordinator, please call (626) 458 4081 or TDD at (626) 282 7829, Monday through Thursday, 7 a.m. to 5:30 p.m.

Contact Name : CHRISTOPHER NGUYEN

Contact Phone# : (626) 458-4050

Contact Email : cbnguyen@ladpw.org

Last Changed On : 5/18/2006 4:40:53 PM

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