COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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GAIL FARBER, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

May 17, 2011

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

34 May 17, 2011

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

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

Dear Supervisors:

ADOPT AMENDMENT TO FRANCHISE ORDINANCE AND AWARD OF AGREEMENTS FOR EXCLUSIVE FRANCHISE FOR THE UNINCORPORATED AREAS OF ALTADENA, KINNELOA MESA, CHATSWORTH/WESTHILLS, EL CAMINO VILLAGE/DEL AIR/WISEBURN/ALONDRA PARK, PIONEER/CARSON PARK, RANCHO DOMINGUEZ/WEST RANCHO DOMINGUEZ/ROSEWOOD, AND OCEANVIEW/LA RAMBLA/WEST CARSON (ALL SUPERVISORIAL DISTRICTS) (3 VOTES)

SUBJECT

This action is to adopt an amendment to the franchise ordinance to authorize the Director of Public Works or her designee to annually transfer from the Solid Waste Management Fund to the Road Fund, or other funds, an amount not to exceed 30 percent of franchise fee payments received during the fiscal year for purposes including, but not limited to, litter abatement activities; and to award exclusive residential franchise agreements for the unincorporated areas of Altadena, Kinneloa Mesa, Chatsworth/Westhills, El Camino Village/Del Aire/Wiseburn/Alondra Park, Pioneer/Carson Park, Rancho Dominguez/West Rancho Dominguez/Rosewood, and Oceanview/La Rambla/West Carson to provide franchise service (Task 1) consisting of refuse, green waste, and recyclables collection services to residential properties, and to provide County service (Task 2) consisting of street and alley cleanup within these unincorporated areas.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Adopt the enclosed ordinance amending Title 20 – Utilities, of the Los Angeles County Code, to authorize the Director of Public Works or her designee to annually transfer from the Solid Waste

Management Fund to the Road Fund, or other funds, an amount not to exceed 30 percent of franchise fee payments received during the fiscal year for purposes including, but not limited to, litter abatement activities. (All Supervisorial Districts)

2. Find that the public health, safety, and welfare require that the County award exclusive franchise agreements for residential solid waste handling services for the unincorporated areas of Altadena, Kinneloa Mesa, Chatsworth/Westhills, El Camino Village/Del Air/Wiseburn/Alondra Park, Pioneer/Carson Park, Rancho Dominguez/West Rancho Dominguez/Rosewood, and Oceanview/La Rambla/West Carson. (Supervisorial Districts 2, 3, 4, and 5)

3. Find that the County services (Task 2) are categorically exempt from the California Environmental Quality Act for the reasons stated in this letter and in the record of the project.

4. Award an exclusive franchise agreement for the unincorporated area of Altadena to Arakelian Enterprises, Inc., DBA Athens Services, consisting of two separate tasks: franchise service (Task 1) to provide refuse, green waste, and recyclables collection services to residential properties; and County service (Task 2) consisting of street and alley cleanup commencing upon execution of the agreement by both parties. The solid waste collection services consisting of franchise service and County service will start on or after September 1, 2011, with a termination date of seven years after the commencement of collection services, with three 1-year renewal options and month-to-month extensions up to six months, for a potential total contract period of ten years and six months, subject to compliance with all terms and conditions contained in the franchise agreement. The initial monthly rate per customer for the franchise service will be $18.06, which includes a 10 percent franchise fee. The County service (Task 2) will be for an annual contract sum of $48,000 (at $60 per ton of abandoned waste collected) with a potential maximum sum of $504,000. (Supervisorial District 5)

5. Award an exclusive franchise agreement for the unincorporated area of Kinneloa Mesa to Arakelian Enterprises, Inc., DBA Athens Services, consisting of two separate tasks: franchise service (Task 1) to provide refuse, green waste, and recyclables collection services to residential properties; and County service (Task 2) consisting of street and alley cleanup commencing upon execution of the agreement by both parties. The solid waste collection services consisting of franchise service and County service will start on or after September 1, 2011, with a termination date of seven years after the commencement of collection services, with three 1-year renewal options and month-to-month extensions up to six months, for a potential total contract period of ten years and six months, subject to compliance with all terms and conditions contained in the franchise agreement. The initial monthly rate per customer for franchise service will be $18.06, which includes a 10 percent franchise fee. The County service (Task 2) will be for an annual contract sum of $6,000 (at $60 per ton of abandoned waste collected) with a potential maximum sum of $63,000. (Supervisorial District 5)

6. Award an exclusive franchise agreement for the unincorporated area of Chatsworth/Westhills to USA Waste of California, Inc., DBA Waste Management, consisting of two separate tasks: franchise service (Task 1) to provide refuse, green waste, and recyclables collection services to residential properties; and County service (Task 2) consisting of street and alley cleanup commencing upon execution of the agreement by both parties. The solid waste collection services consisting of franchise service and County service will start on or after September 1, 2011, with a termination date of seven years after the commencement of collection services, with three 1-year renewal options and month-to-month extensions up to six months, for a potential total contract period of ten years and six months, subject to compliance with all terms and conditions contained in the franchise agreement. The initial monthly rate per customer for franchise service will be $28.47, which includes a 10

percent franchise fee. The County service (Task 2) will be for an annual contract sum of $15,000 (at $60 per ton of abandoned waste collected) with a potential maximum sum of $157,500. (Supervisorial Districts 3 and 5)

7. Award an exclusive franchise agreement for the unincorporated area of El Camino Village/Del Aire/Wiseburn/Alondra Park to USA Waste of California, Inc., DBA Waste Management, consisting of two separate tasks: franchise service (Task 1) to provide refuse, green waste, and recyclables collection services to residential properties; and County service (Task 2) consisting of street and alley cleanup commencing upon execution of the agreement by both parties. The solid waste collection services consisting of franchise service and County service will start on or after September 1, 2011, with a termination date of seven years after the commencement of collection services, with three 1-year renewal options and month-to-month extensions up to six months, for a potential total contract period of ten years and six months, subject to compliance with all terms and conditions contained in the franchise agreement. The initial monthly rate per customer for franchise service will be $18.33, which includes a 10 percent franchise fee. The County service (Task 2) will be for an annual contract sum of $12,000 (at $60 per ton of abandoned waste collected) with a potential maximum sum of $126,000. (Supervisorial District 2)

8. Award an exclusive franchise agreement for the unincorporated area of Pioneer/Carson Park to Universal Waste Systems, Inc., consisting of two separate tasks: franchise service (Task 1) to provide refuse, green waste, and recyclables collection services to residential properties; and County service (Task 2) consisting of street and alley cleanup commencing upon execution of the agreement by both parties. The solid waste collection services consisting of franchise service and County service will start on or after September 1, 2011, with a termination date of seven years after the commencement of collection services, with three 1-year renewal options and month-to-month extensions up to six months, for a potential total contract period of ten years and six months, subject to compliance with all terms and conditions contained in the franchise agreement. The initial monthly rate per customer for franchise service will be $18.20, which includes a 10 percent franchise fee. The County service (Task 2) will be for an annual contract sum of $6,000 (at $60 per ton of abandoned waste collected) with a potential maximum sum of $63,000. (Supervisorial District 4)

9. Award an exclusive franchise agreement for the unincorporated area of Rancho Dominguez/West Rancho Dominguez/Rosewood to USA Waste of California, Inc., DBA Waste Management, consisting of two separate tasks: franchise service (Task 1) to provide refuse, green waste, and recyclables collection services to residential properties; and County service (Task 2) consisting of street and alley cleanup commencing upon execution of the agreement by both parties. The solid waste collection services consisting of franchise service and County service will start on or after September 1, 2011, with a termination date of seven years after the commencement of collection services, with three 1-year renewal options and month-to-month extensions up to six months, for a potential total contract period of ten years and six months, subject to compliance with all terms and conditions contained in the franchise agreement. The initial monthly rate per customer for franchise service will be $18.92, which includes a 10 percent franchise fee. The County service (Task 2) will be for an annual contract sum of $12,000 (at $60 per ton of abandoned waste collected) with a potential maximum sum of $126,000. (Supervisorial District 2)

10. Award an exclusive franchise agreement for the unincorporated area of Oceanview/La Rambla/West Carson to Calmet Services, Inc., DBA Calsan, consisting of two separate tasks: franchise service (Task 1) to provide refuse, green waste, and recyclables collection services to residential properties; and County service (Task 2) consisting of street and alley cleanup commencing upon execution of the agreement by both parties. The solid waste collection services

consisting of franchise service and County service will start on or after September 1, 2011, with a termination date of seven years after the commencement of collection services, with three 1-year renewal options and month-to-month extensions up to six months, for a potential total contract period of ten years and six months, subject to compliance with all terms and conditions contained in the franchise agreement. The initial monthly rate per customer for franchise service (Task 1) will be $17.83, which includes a 10 percent franchise fee. The County service (Task 2) will be for an annual contract sum of $25,000 (at $60 per ton of abandoned waste collected) with a potential maximum sum of $262,500. (Supervisorial Districts 2 and 4)

11. Authorize the Director of Public Works or her designee to annually increase the contract amount for each area for County service (Task 2) up to an additional 10 percent of the annual sum for unforeseen, additional work within the scope of the contract, if required.

12. Authorize the Director of Public Works or her designee to execute two franchise agreements with Arakelian Enterprises, Inc., DBA Athens Services for the areas of Altadena and Kinneloa Mesa; to execute three agreements with USA Waste of California, Inc., DBA Waste Management for the areas of Chatsworth/Westhills, El Camino Village/Del Aire/Wiseburn/Alondra Park, and Rancho Dominguez/West Rancho Dominguez/Rosewood; execute one agreement with Universal Waste Systems, Inc., for the area of Pioneer/Carson Park; and one agreement with Calmet Services, Inc., DBA Calsan for the area of Oceanview/La Rambla/West Carson; to take all the necessary and appropriate steps to carry out these agreements; to renew these agreements for each additional renewal option if, in the opinion of the Director of Public Works or her designee, the franchisees have successfully performed during the previous agreement period; to approve and execute amendments to incorporate necessary changes within the franchisee services and specifications; and to suspend work if, in the opinion of the Director of Public Works, it is in the best interest of the County of Los Angeles to do so.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to (1) adopt an amendment to the franchise ordinance (Enclosure A), Title 20, to authorize the Director of Public Works (Director) or her designee to annually transfer from the Solid Waste Management Fund to the Road Fund or other funds, an amount not to exceed 30 percent of all franchise fee payments received during the fiscal year for purposes including, but not limited to, the collection of solid waste, street sweeping in public rights-of-way, and activities aimed at improving stormwater quality such as reducing litter that enters waterways; (2) find that the County services (Task 2) are categorically exempt from CEQA; and (3) award seven exclusive residential franchise agreements for the unincorporated areas of Altadena, Kinneloa Mesa, Chatsworth/Westhills, El Camino Village/Del Aire/Wiseburn/Alondra Park, Pioneer/Carson Park, Rancho Dominguez/West Rancho Dominguez/Rosewood, and Oceanview/La Rambla/West Carson to provide franchise service (Task 1) consisting of weekly, fully automated, separate collection in carts, processing, disposal of refuse, commingled recyclable materials, and green waste generated by single family residences and duplexes; and Task 2 consisting of street and alley cleanup within these unincorporated areas. The franchise agreements also require each franchisee to provide franchise services to multifamily and commercial properties upon request; and upon request, allow the franchisees to provide cart service for manure collection in the Altadena, Kinneloa Mesa, and Oceanview/La Rambla/West Carson areas, and to provide bear-proof carts for the Kinneloa Mesa area.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Operational Effectiveness (Goal 1) and Community and Municipal Services (Goal 3) by providing County residents with responsive, high-quality waste collection, recycling, disposal services, and the funding necessary to administer the franchise.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

Upon approval by your Board, the franchise fee resulting from Task 1 will generate an estimated $433,189 in combined revenue from the seven franchise areas for Fiscal Year 2011-12, dependent on the commencement of service by September 1, 2011. The franchise fee will provide the necessary funds to administer the franchise and provide enhanced waste collection services for the unincorporated areas of Altadena, Kinneloa Mesa, Chatsworth/Westhills, El Camino Village/Del Aire/Wiseburn/Alondra Park, Pioneer/Carson Park, Rancho Dominguez/West Rancho Dominguez/Rosewood, and Oceanview/La Rambla/West Carson. This revenue will be included in the Fiscal Year 2011-12 Final Adopted Solid Waste Management Fund Budget and will be included in the Recommended Solid Waste Management Fund Budget for the remaining contract years.

The proposed monthly rate per customer for Task 1, which includes a 10 percent franchise fee, and the annual contract amounts for Task 2 for all seven areas are listed in Enclosure B, Franchise Agreements Fiscal Impact.

These agreements allow annual rate adjustments based on annual changes in the Consumer Price Index, fuel adjustments, and/or solid waste facility fees for Task 1. There is no annual rate adjustment for Task 2 consisting of street and alley clean up in these unincorporated areas. The Director may annually increase the contract amount for each area for Task 2 up to an additional 10 percent of the annual sum for unforeseen, additional work within the scope of the contract, if required.

Funding for Task 2 is included in the Fiscal Year 2011-12 Recommended Road Fund Budget. The Solid Waste Management Fund will deposit the funds necessary for Task 2 not to exceed 30 percent of Franchise Fee payments received during the fiscal year into the Road Fund, and it is included in the Fiscal Year 2011-12 Recommended Road Fund Budget. Funds for the contracts' optional years and 10 percent additional funding for contingencies will be requested through the annual budget process.

Public Works negotiated with contractors, Universal Waste Systems, Inc., for the Pioneer/Carson Park area, and Waste Management of California, Inc., DBA Waste Management, for the Chatsworth/Westhills area. Universal Waste Systems, Inc., agreed to reduce its monthly rate from $18.55 to $18.20 for Task 1. Waste Management of California, Inc., DBA Waste Management agreed to reduce its surcharge for alternatives to fully automated carts for difficult-to-service premises rates from 25 percent to 17 percent for Task 1. Both negotiations were done without reducing the level of service.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Title 20 – Utilities, of the Los Angeles Code, Section 20.70.020, authorizes your Board to award a nonexclusive, partially exclusive, or wholly exclusive franchise for certain solid waste handling services for any given geographic area of the unincorporated territory of the County.

As consideration for the grant of a franchise awarded as provided in Section 20.70.020, the franchisee shall pay a franchise fee to the County in such amount as may be determined by your Board, expressed as a percentage of the monthly gross receipts of the franchisee arising from the use, operation, or possession of the franchise.

Title 20 – Utilities, of the Los Angeles Code, Section 20.70.021, currently requires that solid waste franchise fees be deposited into the Solid Waste Management Fund. The enclosed ordinance amends Title 20 to authorize the Director to annually transfer from the Solid Waste Management Fund to the Road Fund, or other funds, an amount not to exceed 30 percent of all franchise fee payments received during the fiscal year for purposes including, but not limited to, the collection of solid waste, street sweeping in public rights-of-way, and activities aimed at improving stormwater quality, such as reducing litter that enters waterways.

There are no restrictions imposed by State law on the use of the solid waste franchise fees. The franchise fees could be used for any of the services described above without regard to whether the services benefit the franchise area.

Streets and Highways Code, Section 953, however, requires that certain services, including street sweeping and collection of solid waste in public rights-of-way, be paid for with funds deposited in the Road Fund. Accordingly, although the Road Fund must pay for these services, other available funds, such as solid waste franchise fees, may be placed in the Road Fund to pay for street sweeping and collection of solid waste in public rights-of-way.

The recommended franchisees are Arakelian Enterprises, Inc., DBA Athens Services, located in the City of Industry, California, for the areas of Altadena and Kinneloa Mesa; USA Waste of California, Inc., DBA Waste Management, located in Long Beach, California, for the areas of Chatsworth/Westhills, El Camino Village/Del Aire/Wiseburn/Alondra Park, and Rancho Dominguez/West Rancho Dominguez/Rosewood; Universal Waste Systems, Inc., located in Santa Fe Springs, California, for the area of Pioneer/Carson Park; and CalMet Services, Inc., DBA Calsan, located in Paramount, California, for the area of Oceanview/La Rambla/West Carson. These franchise agreements will commence upon execution by the respective parties. The solid waste collection service is anticipated to start on or after September 1, 2011; and will terminate seven years from the commencement of collection service with three 1-year renewal and month-to-month extensions up to six months, for a potential total contract period of 10 years and six months. The commencement date for solid waste collection services for each franchise area may be delayed depending on operational needs, such as the availability of carts and alternative fuel trucks.

Prior to the Director executing the residential franchise agreements, which will be substantially similar to Enclosures C, D, and E, the franchisees will sign, and County Counsel will review and approve the agreements as to form. Enclosure C is a sample agreement for the unincorporated areas of Chatsworth/Westhills, El Camino Village/Del Aire/Wiseburn/Alondra Park, and Rancho Dominguez/West Rancho Dominguez/Rosewood, and Pioneer/Carson Park for Task 1 and Task 2. Enclosure D is a sample agreement for the unincorporated area of Oceanview/La Rambla/West Carson for Task 1, which includes cart services for manure collection and Task 2. Enclosure E is a

sample agreement for the unincorporated areas of Altadena and Kinneloa Mesa for Task 1, which includes cart services for manure collection for both areas and bear-proof carts requirement for Kinneloa Mesa area only and Task 2.

The award of these agreements will not result in unauthorized disclosure of confidential information and will be in full compliance with Federal, State, and County regulations. The agreements contain terms and conditions supporting your Board's ordinances, policies, and programs including, but not limited to: the County's Greater Avenues for Independence and General Relief Opportunities for Work Programs (GAIN and GROW), Board Policy No. 5.050; Contract Language to Assist in Placement of Displaced County Workers, Board Policy No. 5.110; Reporting of Improper Solicitations, Board Policy No. 5.060; Notice to Contract Employees of Newborn Abandonment Law (Safely Surrendered Baby Law), Board Policy No. 5.135; Notice to Employees Regarding the Federal Earned Income Credit (Federal Income Tax Law, Internal Revenue Service Notice 1015); Contractor Responsibility and Debarment, Los Angeles County Code, Chapter 2.202; the Los Angeles County's Child Support Compliance Program, Los Angeles County Code, Chapter 2.200; and Defaulted Property Tax Reduction Program Ordinance, Los Angeles County Code, Chapter 2.206. Contractor Employee Jury Service Program, Los Angeles County Code, Chapter 2.203 and the standard Board-directed clauses that provide for contract termination or renegotiation apply only to Task 2.

Data regarding the proposers' minority participation is on file with Public Works. Arakelian Enterprises, Inc., DBA Athens Services; USA Waste of California, Inc., DBA Waste Management; Universal Waste Systems, Inc.; and Calmet Services, Inc., DBA Calsan were selected upon final analysis and consideration without regard to race, creed, gender, or color.

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

Pursuant to the applicable memorandum of understanding, the Request for Proposals (RFP) for the seven contracted areas were submitted on June 24, 2010, to the appropriate union for review. The union has not asked to meet with Public Works regarding these solicitations.

Public Works has evaluated and determined that the Living Wage Program (Los Angeles County Code, Chapter 2.201) does not apply to these recommended franchise agreements. Franchise service is not subject to Proposition A, as authority to award the franchise agreements for solid waste handling services is expressly provided by statute. Task 2 is required on an as-needed and intermittent basis; hence, these agreements are not subject to Proposition A contracts (Los Angeles County Code, Chapter 2.121). County Counsel concurs with this determination.

These franchise agreements contain provisions for cost-of-living, fuel, and disposal fee adjustments for Task 1.

ENVIRONMENTAL DOCUMENTATION

Adoption of the enclosed amendment to the Ordinance is not a project subject to the provisions of the CEQA because it is an activity that is excluded from the definition of a project by Section 15378(b) of CEQA. The proposed action would create a government funding mechanism that does

not involve any commitment to a specific project, which may result in a potentially significant physical impact on the environment.

An Initial Study was prepared for the award of nonexclusive, partially exclusive, or wholly exclusive franchise agreements for Task 1 to provide residential solid waste collection services in specific unincorporated areas, which are in compliance with CEQA. The Initial Study showed that there is no substantial evidence that the project may have a significant effect on the environment. Based on the Initial Study, a Negative Declaration was prepared and was adopted by your Board on November 20, 2007. Based upon the Negative Declaration, the award of exclusive franchise agreements to provide residential solid waste collection services in the Altadena, Kinneloa Mesa, Chatsworth/Westhills areas, El Camino Village/Del Aire/Wiseburn/Alondra Park, Pioneer/Carson Park, Rancho Dominguez/West Rancho Dominguez/Rosewood, and Oceanview/La Rambla/West Carson areas will not have a significant effect on the environment.

The Task 2 services are categorically exempt from the provisions of CEQA. These services, the collection of solid waste and street sweeping in public rights-of-way, and activities aimed at improving stormwater quality such as reducing litter that enters waterways through streets, sidewalks and gutters, are within a class of projects that have been determined not to have a significant effect on the environment in that they meet the criteria set forth in Section 15301 (c) of CEQA.

CONTRACTING PROCESS

On June 25, 2010, Public Works solicited proposals from 282 independent contractors and community business enterprises for exclusive residential franchise agreements in the unincorporated areas of Altadena, Kinneloa Mesa, Chatsworth/Westhills, El Camino Village/Del Aire/Wiseburn/Alondra Park, Pioneer/Carson Park, Rancho Dominguez/West Rancho Dominguez/Rosewood, and Oceanview/La Rambla/West Carson. Also, a notice of the RFP was placed on the County's bid website (Enclosure F), and an advertisement was placed in the Los Angeles Times.

On August 30, 2010, five proposals were received for the Altadena and Kinneloa Mesa areas. Two proposals were received for the Chatsworth/Westhills area. Three proposals were received for the El Camino Village/Del Aire/Wiseburn/Alondra Park area. Four proposals were received for the Pioneer/Carson Park and Rancho Dominguez/West Rancho Dominguez/Rosewood areas. Seven proposals were received for the Oceanview/La Rambla/West Carson area. The proposals were first reviewed to ensure they met the minimum requirements in the RFP. All of the proposals having met the minimum requirements were then evaluated by an evaluation committee consisting of staff from Public Works and Public Health. The committee's evaluation was based on criteria described in the RFP, which included price, experience, work plan, references, disputes, actions, contests, debarments, and environmental history utilizing the informed averaging methodology for applicable criteria. Based on these evaluations, it is recommended that these agreements be awarded to the highest-rated, responsive, and responsible proposers, Arakelian Enterprises, Inc., DBA Athens Services for the unincorporated areas of Altadena and Kinneloa Mesa; USA Waste of California, Inc., DBA Waste Management for the unincorporated areas of Chatsworth/Westhills, El CaminoVillage/Del Aire/Wiseburn/Alondra Park, and Rancho Dominguez/West Rancho Dominguez/Rosewood; Universal Waste Systems, Inc., for the unincorporated area of Pioneer/Carson Park; and CalMet Services, Inc., DBA Calsan, for the unincorporated area of Oceanview/La Rambla/West Carson.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

These franchise agreements will provide improved waste collection services for these communities.

CONCLUSION

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

Respectfully submitted,

GAIL FARBER
Director

GF:GZ:cg

Enclosures

c: Chief Executive Office (Rita Robinson)
County Counsel
Executive Office

FRANCHISE AGREEMENTS FISCAL IMPACT

*Franchise Service (Task 1) revenue amounts for Fiscal Year 2011-12 are based on commencement of services on September 1, 2011.

Franchise Area	Monthly Rate for Franchise Service (Task 1)	Franchise Service (Task 1) Revenue Amounts for Fiscal Year 2011-12*	Annual Amount Sum for County Service (Task 2)
Altadena	$18.06	$214,455	$48,000
Kinneloa Mesa	$18.06	$7,379	$6,000
Chatsworth/Westhills	$28.47	$21,498	$15,000
El Camino Village/ Del Aire/Wiseburn/ Alondra Park	$18.33	$79,977	$12,000
Pioneer/Carson Park	$18.20	$9,812	$6,000
Rancho Dominguez/ West RanchoDominguez/ Rosewood	$18.92	$22,818	$12,000
Oceanview/La Rambla/ West Carson	$17.83	$77,250	$25,000
	Total:	**$433,189**	**$124,000**

ENCLOSURE A

ENCLOSURE B

SAMPLE EXCLUSIVE
FRANCHISE AGREEMENT

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

FOR
PROVISION
OF
REFUSE, RECYCLABLES, AND GREEN WASTE
AUTOMATED CART SERVICES
TO CUSTOMERS
AT
RESIDENTIAL PREMISES
AND CERTAIN MULTIFAMILY AND COMMERCIAL PREMISES

AND
ABANDONED WASTE COLLECTION SERVICES
FOR COUNTY

FOR THE SERVICE AREA OF

- **CHATSWORTH/WESTHILLS**
- **EL CAMINO VILLAGE/DEL AIRE/WISEBURN/ALONDRA PARK**
- **PIONEER/CARSON PARK**
- **RANCHO DOMINGUEZ/WEST RANCHO DOMINGUEZ/ROSEWOOD**

[INSERT DATE]

SAMPLE EXCLUSIVE FRANCHISE AGREEMENT

FOR THE AREAS OF

CHATSWORTH/WESTHILLS,
EL CAMINO VILLAGE/DEL AIRE/WISEBURN/ALONDRA PARK,
PIONEER/CARSON PARK,
RANCHO DOMINGUEZ/WEST RANCHO DOMINGUEZ/ROSEWOOD

THIS AGREEMENT is made and entered into on_____, 2010, by and between the County of Los Angeles, a political subdivision of the State of California (COUNTY), and **[Name of FRANCHISEE], [Form of Entity]** ("FRANCHISEE").

RECITALS:

WHEREAS, Municipal Solid Waste (MSW) Management Services have been provided by waste 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 waste 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; and

WHEREAS, the COUNTY is authorized to award franchises to waste 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; and

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

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

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 land filling have created an urgent need for State of California and local agencies to enact and implement an aggressive new integrated waste management program. Through enactment of AB 939, the State of California has directed agencies, such as the COUNTY, to divert 50 percent of all solid waste through source reduction, recycling, and composting activities. The California Integrated Waste Management Board has granted the COUNTY a time line to achieve compliance with the AB 939 diversion requirements. Compliance is based in part on executing and implementing this AGREEMENT in order to secure cooperation with FRANCHISEE'S AB 939 waste diversion programs, record keeping, and reporting; and

WHEREAS, the COUNTY'S Director has determined to require franchises for Franchise Services (otherwise referred to as "Task 1" in this AGREEMENT). In order to assist residents and businesses located in the Service Area to receive quality MSW Management Services and to provide the COUNTY with programs, records, and reports that will help the COUNTY comply with AB 939, the Director has determined to franchise MSW Management Services in portions of the COUNTY, under the terms of this AGREEMENT. The COUNTY issued a 5-year notice under California Public Resources Code § 49520 of the COUNTY'S intent to authorize, among other options, the exclusive franchising of MSW Management Services in portions of the COUNTY; and

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

WHEREAS, the FRANCHISEE will perform Franchise Services in accordance with the laws governing the safe collection, transport, recycling and disposal of Residential and Commercial Solid Waste, such as AB 939, Recovered Conservation and Recovery Act (RCRA), and Comprehensive Environmental Response Compensation and Liability Act (CERCLA). The COUNTY will not exercise control over the disposal or other disposition of the Solid Waste handled by the FRANCHISEE, and the COUNTY will not designate or determine the use of any given solid waste facility. FRANCHISEE acknowledges that by entering into this AGREEMENT, the COUNTY does not assume any of FRANCHISEE'S obligation to or responsibility for providing Franchise Services, and the COUNTY does not become a "generator" or an

"arranger" as those terms are used in the context of CERCLA § 107(a)(3). FRANCHISEE agrees that FRANCHISEE, an independent entity, and not the COUNTY, is arranging for Franchise Services provided under this AGREEMENT. Although minimum scope of Franchise Services, Service Specifications, and Service Standards are set forth in this AGREEMENT, the COUNTY has not, and by this AGREEMENT does not, supervise Franchise Services or assume title to Solid Waste; and

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

WHEREAS, COUNTY is responsible and provides for collection of solid waste abandoned on public rights of way and is authorized to fulfill its responsibility through contracting for collection service; and

WHEREAS, under California Streets and Highways Code section 953, COUNTY must pay for collection of abandoned waste in Public Right of Way (otherwise referred to as "Task 2" in this AGREEMENT) out of public money deposited in the County Road Fund. COUNTY cannot use Customer Service Charges (or Rates) to pay for Task 2; and

WHEREAS, the COUNTY issued a Request for Proposals (RFP) to provide Task 1 and Task 2 services under this AGREEMENT, and private waste hauling companies submitted proposals, including their proposed schedule of rates and charges. The COUNTY selected FRANCHISEE based, *inter alia*, on FRANCHISEE'S price proposal and work plan for Task 1. There was no separate evaluation of proposals with respect to Task 2 services. The compensation to be paid to the FRANCHISEE for Task 2 services has been established and stipulated by the County in Exhibit 3A2 of this AGREEMENT. Under this AGREEMENT, the FRANCHISEE cannot charge its customers more than the proposed rates and charges; and

WHEREAS, the FRANCHISEE is awarded this AGREEMENT. The Board of Supervisors determines and finds pursuant to California Public Resources Code § 40059, that the public health, safety, and welfare require that FRANCHISEE be awarded this AGREEMENT for Franchise Services (Task 1) pursuant to Chapter 20.70 of the County Code and County Services (Task 2) pursuant to California Streets and Highways Code section 953. FRANCHISEE acknowledges and understands that this AGREEMENT encompasses both Task 1 and Task 2, and shall perform both tasks pursuant to the terms set forth in this AGREEMENT; and

This AGREEMENT applies to both Task 1 and Task 2, unless specifically indicated otherwise at the beginning of a Section or subsection. However, Exhibit 3A applies only to Task 1, and Exhibit 3A2 applies only to Task 2.

NOW, THEREFORE, the parties agree as follows:

SECTION 1–GRANT OF RIGHT AND PRIVILEGE TO PROVIDE FRANCHISE SERVICES. Applicable to Task 1 only.

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, Commercial, and Multifamily Premises, subject to the exclusions in subsection B.

2. **Grant of Nonexclusive Franchise.**

   a. ***Recyclables***. COUNTY grants to FRANCHISEE the nonexclusive right and privilege together with the obligation to arrange to provide Franchise Services with respect to Recyclables discarded by Customers if prescribed in Exhibit 3A. Notwithstanding the foregoing, however, Customers may donate or sell any or all of their Recyclables to Persons other than FRANCHISEE.

   b. ***Collection in Carts at Commercial Premises and Multifamily Premises.*** COUNTY grants to FRANCHISEE the nonexclusive right and privilege to arrange to provide Franchise Services or MSW Services to Commercial Premises or Multifamily Premises for any Person who requests either of those services. FRANCHISEE is obligated to provide Franchise Services for any person who requests Franchise services at those premises. However FRANCHISEE is not obligated to provide MSW services for any person who requests MSW services at those premises. Multifamily customers are defined in Section 23 to include dwellings that are triplex or larger, condominiums, and townhouses.

B. Exclusions from Franchise.

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

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

   a. COUNTY or any other entity governed by the Board of Supervisors;

   b. The State of California;

   c. Any school district;

   d. Any entity that is excluded by law from the obligation to subscribe to Franchise Services under this AGREEMENT.

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

3. **Collection of Solid Waste in Bins.** This Franchise excludes the right and privilege to provide Collection of Solid Waste in Bins for any Residential, Commercial or Multifamily Customer requesting Bins instead of Carts, or any other exclusions provided in Exhibit 3A. That Customer may arrange with FRANCHISEE or any other person to provide MSW Management Services in Bins.

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

5. **County Services – Abandoned Waste and Litter On-Call Collection Services (Task 2 – County Services).** This Franchise excludes the right and privilege to Collect Abandoned Waste.

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

FRANCHISEE further acknowledges that the signing of this AGREEMENT does not confer on FRANCHISEE any rights under California Public Resources Code § 49520 and that FRANCHISEE does not have the right to make any claim under

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

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

SECTION 2–TERM

A. Term. This AGREEMENT commences on the date both parties have executed this AGREEMENT, and expires on the Termination Date provided in Exhibit 3A, unless extended by COUNTY. COUNTY may extend the AGREEMENT in its sole discretion in increments of one or more months, at one or more times, up to an aggregate of six months. COUNTY will give FRANCHISEE Notice of extension at least 30 days in advance of a first extension, and at least 15 days in advance of any additional extension.

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

1. **Acknowledgements.** All acknowledgments, including those in the following Sections:

   - Section 1C (inapplicability of PRC 49520)
     Section 2C (no recovery of undepreciated asset value)
   - Section 3A (no COUNTY responsibility for supervising or performing Franchise Services)
   - Section 11A (Record maintenance)
   - Section 21F (interpretation of this Agreement)

2. **Representations and Warranties.** All representations and warranties, including those made in accordance with the following Sections:

   - Section 21F with respect to review of this AGREEMENT
   - Section 24B, Authority to Execute
   - Exhibit 20H, FRANCHISEE'S Representations and Warranties

3. **Indemnities:** All Indemnities

4. **Payments:** All obligations to pay any due and payable monetary amounts, or claims for those amounts, including:

   - Any Franchise Fees
   - Payment of Transfer Deposits and Transfer Costs
   - Damages under Section 18D
   - Payment of County Service Charges under Exhibit 3A2.

5. **Records and Reports.** 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
   - Records of Disposal
   - Notice of destruction of Records of Disposal
   - Inspection and audit
   - Records of Abandoned Waste Collection including supporting documentation.

6. Any other provisions of this AGREEMENT and rights and obligations of the Parties stated to survive the Termination Date, including:

   - this subsection B (cooperation during transition; removal of Containers)
   - and C (no recovery of undepreciated asset value).

If FRANCHISEE is not awarded an agreement to allow FRANCHISEE to continue to provide MSW Management Services substantially similar to Franchise/County Services in the Service Area after the expiration or termination of this AGREEMENT, FRANCHISEE shall cooperate fully with COUNTY and the succeeding franchisee, licensee, permittee or other provider of MSW Management Services to assure a smooth, efficient, orderly, timely, and effective transition and continued delivery of MSW Management Services to FRANCHISEE'S former Customers.

With respect to Franchise Services (Task 1), FRANCHISEE shall not remove a Container from any Premises until the earlier of: (1) the date any replacement Containers are provided to the Customer, or (2) two weeks after the Termination Date.

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

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

SECTION 3–SCOPE OF SERVICES AND SPECIFICATIONS

A. Prescribed Scope.

With respect to Task 1, FRANCHISEE shall arrange to provide Franchise Services (Task 1) to Premises in the Service Area with any Person who requests them, in accordance with Exhibit 3A. With respect to Task 2, FRANCHISEE shall provide County Services (Task 2) in the Service Area to COUNTY in accordance with Exhibit 3A2.

Notwithstanding the foregoing, subject to meeting the minimum required scope of Franchise/County Services, 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/County Services. FRANCHISEE is solely responsible for choosing the Solid Waste Facilities. In addition, COUNTY is not the owner or titleholder of any material Collected, transported, Disposed of or otherwise handled by FRANCHISEE.

Any work be performed outside the Performance Specifications without COUNTY's prior written approval shall be deemed to be a gratuitous effort by FRANCHISEE, and FRANCHISEE shall have no claim, therefore, against COUNTY.

B. **County Notice.** Applicable to Task 1 only. 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. However, with respect to Task 1, the change is

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/County Services in compliance with the FRANCHISEE Documentation attached as Exhibit 3D.

2. **Changes in FRANCHISEE Documentation.**

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

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

Date: _____ Director:_____"

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

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

Date: _____ Director:_____"

SECTION 4–SERVICE STANDARDS

A. Public Health and Safety; Nuisances

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

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

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

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

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.** Applicable to Task 1 only. FRANCHISEE shall obtain all approvals required to operate Vehicles on private alleys, streets, and parking lots. Subject to COUNTY review and approval and notwithstanding FRANCHISEE's obligations under Section 20C, FRANCHISEE may require those Customers for whom FRANCHISEE is required to operate Vehicles on private property to sign a Subscription Order containing a waiver of liability with respect to damage to private driveways or pavement.

C. **Non-Collection Notice.** Applicable to Task 1 only. FRANCHISEE is not obligated to Collect in any of the following events:

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

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

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

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

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

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

7. The Premises are not safely accessible to Vehicles;

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

9. FRANCHISEE observes any other event provided in Exhibit 3A.

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

D. **Subscription Order.** Applicable to Task 1 only. Before commencing Franchise Services for an individual Customer, FRANCHISEE shall provide a Subscription Order to that Customer, substantially in the form included in FRANCHISEE Documentation, which must include at a minimum, all of the following items:

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

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

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

4. Holiday schedules in accordance with Section B1 of Exhibit 3A;

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

6. Any weight limitations of Containers;

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

8. Nondiscrimination information in accordance with subsection F;

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

10. FRANCHISEE'S Office Hours and toll-free Customer service telephone number;

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

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

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

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

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

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

17. Description of the Recyclables; and

18. Any other information requested by the Director.

FRANCHISEE shall annually distribute to Customers a summary, substantially in the form included in FRANCHISEE Documentation, of the Customer's

Subscription Order containing the general information described in items 1 through 18 and describing where a Customer can contact FRANCHISEE to obtain a copy of that Customer's Subscription Order. FRANCHISEE may distribute that summary together with other correspondence from FRANCHISEE to all Customers, such as Customer outreach and educational materials.

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

E. **Exceptions to Performance Obligations.** No exceptions to Performance Obligations described in the text of this AGREEMENT are permitted unless they are specifically identified in Section A3 of EXHIBIT 3A or Section A1 of EXHIBIT 3A2, or both Exhibits.

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

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

H. **Customer Correspondence and Other Materials.** Applicable to Task 1 only. FRANCHISEE shall submit to the Director for approval at least five County Business Days before printing, distributing, or mailing forms of written materials sent or given to Customers (other than with respect to a particular Customer's Subscription Order or Franchise Services complaints). In addition, at the request of the County, FRANCHISEE shall make Reasonable Business Efforts to distribute County authorized information materials to its Customers.

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

1. **Publicity.** Unless otherwise required by subsection H or subsection I.2, FRANCHISEE and its Affiliates, employees, consultants, agents, or subcontractors may, without COUNTY consent, publicize its Franchise/County Services or indicate in its proposals and sales materials

that it has been awarded this AGREEMENT to provide Franchise/County Services, if FRANCHISEE develops that publicity, proposals, or sales materials in a professional manner.

Neither FRANCHISEE nor any of its Affiliates, employees, consultants, agents, or Subcontractors may publish or disseminate commercial advertisements, news or press releases, opinions or feature articles using the name of COUNTY without the prior written consent of COUNTY'S Chief Administrative Officer and County Counsel. COUNTY shall not unreasonably withhold written consent. COUNTY'S 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/County 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/County Services, FRANCHISEE shall discuss FRANCHISEE'S proposed response with COUNTY.

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

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

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

K. **No Commingling of Interjurisdictional Materials.** Applicable to Task 1 only. FRANCHISEE may not commingle, in its Vehicles or otherwise, any Solid Waste that it Collects with any other materials that it collects in cities, without the express prior written consent of the Director, who may require documentation such as records of customers, including container capacities, in cities and in the Service

Area, respectively. FRANCHISEE shall maintain Records with respect to Solid Waste separately from weight and records with respect to those other materials.

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

M. **Confidentiality.** FRANCHISEE shall maintain the confidentiality of all records obtained from COUNTY under this AGREEMENT in accordance with all applicable Federal, State, and local laws, ordinances, regulations, and directives relating to confidentiality. FRANCHISEE shall inform all of its officers, employees, agents, and Subcontractors providing services hereunder of the confidentiality provisions of this AGREEMENT.

SECTION 5–PRIVACY. Applicable to Task 1 only.

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

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

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

SECTION 6–UNPERMITTED WASTE SCREENING AND REPORTING

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

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

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

3. Immediate driver response, such as load segregation;

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

5. Notification of appropriate local agency or department;

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

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

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

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

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

D. **Labels.** Applicable to Task 1 only. FRANCHISEE shall conspicuously label Containers with stickers, embossing, or other secure means, prohibiting Customers from discarding Unpermitted Waste and including illustrative examples.

E. **Safe Disposal Customer Education Program.** Applicable to Task 1 only. As part of its Unpermitted Waste Screening Protocol, FRANCHISEE shall develop and implement a Customer educational program to maximize exclusion of Unpermitted Waste from Disposal and promote safe handling of Unpermitted Waste. FRANCHISEE shall include a copy of its program in FRANCHISEE Documentation. At least once each Calendar Year, FRANCHISEE shall distribute

flyers, pamphlets, brochures, or other written information describing the safe disposal Customer education program. FRANCHISEE shall submit the materials to COUNTY at least one month before mailing them, and COUNTY may comment on them. FRANCHISEE may combine this distribution with its Customer outreach for the Waste Diversion Program as provided in Section B2b of Exhibit 3A.

SECTION 7–CUSTOMER SERVICE

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

B. Telephone Service. Applicable to Task 1 only. FRANCHISEE shall maintain a toll-free telephone number. FRANCHISEE shall list the telephone number under FRANCHISEE'S name in at least two telephone directories (white pages and yellow pages) available in the Service Area, including English and Spanish or other language as required by the Director. FRANCHISEE'S choice of directories must be approved by the Director before printing. FRANCHISEE shall be available during FRANCHISEE Office Hours at that number to receive calls (including from the Director, Customers, and the public) with respect to its Performance Obligations or Franchise Services (including Subscription Orders, Franchise Services payments, and complaints). FRANCHISEE shall provide an answering machine or answering service at that number to take reports of missed pick-ups and other complaints that are received outside of FRANCHISEE Office Hours and otherwise provide Customer service in accordance with County Code § 20.72.160 and any additional provisions in Exhibit 3A.

C. Bilingual. Applicable to Task 1 only. FRANCHISEE shall respond to Customers in English and Spanish and/or any alternative or additional language prescribed in Exhibit 3A, as requested by a Customer.

D. Customer Complaints; Missed Collections. Applicable to Task 1 only.

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

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

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

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

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

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

3. **County's Reimbursement Costs.** If COUNTY employees or agents spend either: (1) more than two hours in the aggregate resolving complaints from any single Customer that the Customer states have previously been filed with FRANCHISEE, or (2) more than one hour in any work week (Monday through Friday) resolving complaints from different Customers; then FRANCHISEE shall reimburse COUNTY its County's Reimbursement Costs incurred to resolve the complaint, as evidenced by an invoice indicating the name and address of the Customer, nature of complaint, amount of time spent, and hourly fees for employees involved and materials or other disbursements, including phone and postage costs.

SECTION 8–OWNERSHIP OF SOLID WASTE

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

SECTION 9–DIVERSION

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

SECTION 10–RATES AND CUSTOMER BILLING. Applicable to Task 1 only.

A. Rates. FRANCHISEE shall charge Customers no more than the Customer Service Charges provided in Attachment 2 of Exhibit 10. FRANCHISEE shall

charge the same, uniform rates to all Customers receiving the same services listed in Attachment 2 of Exhibit 10.

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

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

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

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

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

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

SECTION 11–FRANCHISEE RECORDS–AUDITS

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

A. Record Maintenance and Retention.

1. **All Records.** FRANCHISEE shall prepare and maintain all Records in accordance with generally accepted auditing principles during the Term and for an additional period of not less than five years after the Termination Date or any longer period required by Applicable Law.

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

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

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

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

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

B. **County Custody.** If the Director has reason to believe that Records may be lost, discarded, or destroyed for any reason, the Director may require that FRANCHISEE give COUNTY custody of any or all Records in which event access to those Records is granted to any Person duly authorized by FRANCHISEE. FRANCHISEE shall pay for storage cost.

C. **Inspection and Audit.** Upon five Service Days' advance notice by telephone or writing, or a lesser amount of time in the event of extraordinary circumstances, COUNTY and its auditors may inspect, audit (including using outside auditors), excerpt, transcribe and copy all Records at FRANCHISEE'S Office during FRANCHISEE Office Hours. FRANCHISEE may maintain Records outside of the COUNTY (1) if it promptly provides copies thereof to COUNTY at COUNTY'S offices, (2) if COUNTY, in its sole discretion, agrees to travel outside the COUNTY and FRANCHISEE pays County's Reimbursement Costs.

In addition to travel costs, 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 for the audit 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; County Service Charges paid by COUNTY, or information that FRANCHISEE submitted to COUNTY.

The Director may give Notice to FRANCHISEE identifying any discrepancy.

FRANCHISEE will pay any discrepant shortfall in Franchise Fee or other payments due COUNTY, or excess of County Service Charges, upon COUNTY demand, including fees and charges for the late payment of Franchise Fees. Failure to

make those payments will constitute a FRANCHISEE Default in accordance with Section 17. In lieu of payment, COUNTY in its sole discretion may (1) deduct that shortfall from amounts that COUNTY owes FRANCHISEE under this AGREEMENT, other contracts or any other obligation, or (2) draw that shortfall from the performance bond, letter of credit, certificate of deposit or other form of performance assurance provided by FRANCHISEE in accordance with Section 15.

COUNTY will pay any discrepant shortfall in County Service Charges due FRANCHISEE in cash up to COUNTY'S maximum obligation for County Service Charges appropriated by COUNTY for purpose of this AGREEMENT.

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

E. **Copies of Audits.** If anyone, including Federal or State auditors and auditors or accountants employed by FRANCHISEE or others, conducts an audit of FRANCHISEE specifically regarding this AGREEMENT, then within 30 days of the audit report, FRANCHISEE shall file a copy of the audit report with County's Auditor-Controller, unless otherwise provided by Applicable Law. Subject to Applicable Law, COUNTY shall make a reasonable effort to maintain the confidentiality of such audit report(s)

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.

C. **Public Record Request.**

1. The following become the exclusive property of COUNTY:

- Any Record or other document that FRANCHISEEE gives COUNTY, including in connection with the procurement of this AGREEMENT (such as proposals);

- Any Record or other document that COUNTY obtains in connection with COUNTY'S audit or inspection under this AGREEMENT, including books and accounting records;

The above Records or other documents become a matter of public record and shall be regarded as public records, *except* if FRANCHISEE marks them as a "trade secret," "confidential," or "proprietary", they will be deemed excluded from disclosure under Government Code 6250 et seq. (Public Records Act). COUNTY shall not in any way be liable or responsible for the disclosure of any such records including, with limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

2. FRANCHISEE will defend, indemnify and hold harmless County from all costs and expenses, including reasonable attorney's fees, in connection with any requested action or liability arising under the Public Records Act, including request for any of the Records or other documents marked "trade secret," "confidential," or "proprietary,". FRANCHISEE releases COUNTY from liability or responsibility for disclosing Records or other documents including those so marked, if disclosure is required by Applicable Law, including an order issued by a court of competent jurisdiction.

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:

i 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); and Abandoned Waste (in Tons or measure approved by the Director) Collected by FRANCHISEE,

ii. Materials recovered from those Recyclables, Abandoned Waste (such as CEDs or E-waste) and residual Refuse remaining after processing of Recyclables,

iii. The final destination of that Refuse, and

iv. Where FRANCHISEE delivered those Recyclables;

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

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

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

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

g. Number of households and customers served and/or invoiced for payment.

h. Records of Collection for Task 2 requested by the Director.

2. **Quarterly Reports.** Within 45 days after the last day of each March, June, September, and December FRANCHISEE shall submit the Quarterly Report for the preceding three calendar months ending with that month to COUNTY in a form satisfactory to COUNTY, including the following information:

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

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

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

d. The total number of Commercial Premises, Multifamily Premises, and Residential Premises, respectively, at which Customers set out Recyclables and Green Waste Containers,

respectively, together with Tonnage of Recyclables and Green Waste or other measurement of participation requested by COUNTY concerning these items; and

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

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

g. FRANCHISEE customer service list, which includes a list of all current and closed accounts, account numbers, name associated with each account, customer addresses, level of service provided at each address, additional services provided, billing and payment dates, payment received by each Franchise customer, and any other information associated with Franchise Services as requested by the Director.

h. Information relating to Task 2 requested by the Director.

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

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

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

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

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

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

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

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

h. each Vehicle's compliance with SCAQMD Rule 1193, Clean ON-Road Residential and Commercial Collection Vehicles, and Diesel Particulate Matter Control Measures (13 CCR 202 *et seq.*).

i. Information relating to Task 2 requested by the Director.

4. **Reports of Violators.** Applicable to Task 1 only. 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, and 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:

i. The United States or California Environmental Protection Agency;

ii. Cal Recycle;

iii. The Securities and Exchange Commission;

iv. Any other Regulatory Agency;

v. Any Federal, State, or County court.

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

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

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

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

SECTION 14–INDEMNIFICATION AND INSURANCE

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

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

2. **Cal/OSHA.** Without limiting the operations Indemnification in subsection A1, employer sanctions and any other Liabilities that may be assessed against FRANCHISEE or COUNTY or both in connection with any alleged act or omission of FRANCHISEE or any of FRANCHISEE's Related Parties

that is in violation of any Cal/OSHA regulation. This obligation includes all investigations and proceedings associated with purported violations of 8 CCR 336.10 pertaining to multiemployer work sites. FRANCHISEE shall not be obligated to so release, indemnify, defend, and hold harmless COUNTY from and against any Liabilities arising from the active negligence of COUNTY.

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

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

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

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

   b. ***Non-Customer Materials.*** The collection, delivery, handling, recycling, processing, composting or disposal by FRANCHISEE or any of FRANCHISEE's Related Parties of any materials or waste, including Unpermitted Waste, that are generated by Persons other than Customers or collected from premises other than Premises;

   c. ***Failure to Comply with Unpermitted Waste Screening Protocol.*** The failure of FRANCHISEE or any of FRANCHISEE's Related Parties to undertake Unpermitted Waste training procedures required

by Applicable Law or the Unpermitted Waste Screening Protocol, whichever is more stringent; or

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

(i) In one or more occurrence;

(ii) Threatened or transpired;

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

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

For purposes of this subsection A5, **"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 foregoing Indemnification under this subsection A5 is intended to operate as an agreement under 42 U.S.C. § 9607(e) and California Health and Safety Code § 25364, to insure, protect, hold harmless, and indemnify COUNTY from liability in accordance with this Section.

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

With respect to COUNTY's defense under this subsection A, COUNTY reserves the right to retain co-counsel at its own cost and expense and FRANCHISEE shall direct FRANCHISEE'S counsel to assist and cooperate with COUNTY'S co-counsel.

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, and in the performance of this AGREEMENT and until all of its Performance Obligations pursuant to this AGREEMENT have been met, FRANCHISEE shall provide and maintain the following programs of insurance at its own expense. Performance Obligations under this Section 14B are in addition to and separate from any other Performance Obligation in this AGREEMENT. COUNTY reserves the right to review and adjust the insurance requirements in this Section 14B if COUNTY determines that there have been changes in risk exposures. COUNTY makes no warranty that the insurance coverage terms, types and limits in this Section 14B is sufficient to protect the FRANCHISEE for liabilities that may arise from or in relation to this AGREEMENT.

1. **Primary, Excess, Non-Contributory.** All FRANCHISEE'S insurance carried under this Section 14B shall be primary with respect to any other insurance or self-insurance programs available to COUNTY.

2. **Cancellation notices.** All insurance shall contain the express condition that COUNTY is to be given written notice by mail at least 30 days in advance of cancellation, or at least 10 days in advance of cancellation for nonpayment of premium, for all policies evidenced on the certificate of insurance.

3. **Non-compliance.** Neither the COUNTY'S failure to obtain, nor the COUNTY'S receipt of, or failure to object to a non-complying insurance certificate or endorsement or any other insurance documentation or information provided by the FRANCHISEE, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any Performance Obligation under this Section 14B. If FRANCHISEE does not provide and maintain those programs of insurance, COUNTY may elect to purchase required insurance coverage without further notice to FRANCHISEE, and COUNTY may charge FRANCHISEE any premium costs advanced by COUNTY for that insurance and draw on the performance bond, letter, of credit, or other form of performance assurance provided by FRANCHISEE.

4. **Evidence of Insurance: COIs and copies of policies.** At least 30 days prior to the Execution Date and thereafter 30 days prior to each policy renewal and also within two business days of any COUNTY request, FRANCHISEE shall deliver a certificate or certificates of insurance or other evidence of coverage acceptable to the Director at the address provided for Notices. Certificates or other evidence must:

a. Specifically identify this AGREEMENT by name or number; name the insured party that matches the name of FRANCHISEE executing this AGREEMENT; provide the full name of each insurer providing coverage and the insurer's NAIC (National Association of Insurance Commissioners) identification number, and financial rating.

b. Types and limits: Clearly evidence all coverage, types and limits required in this AGREEMENT. Identify standard policy forms or their equivalent. Coverage may consist of a combination of primary and excess policies. Excess policies must provide coverage as broad as ("follow form" over) the underlying primary policies;

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

d. List additional endorsements.

i. Additional insured endorsements. Include copies of the additional insured endorsements to General Liability Policy which must add COUNTY and its Special Districts, elected officials, officers, agents and employees as additional insureds with respect to liability arising out of ongoing and completed Franchise/County Services, and applicable with respect to liability and defense of suites arising out of FRANCHISEE'S acts or omissions, whether that liability is attributable to the FRANCHISEE or the COUNTY. The full policy limits and scope of protection must apply to each of those additional insureds even if those limits or scope exceed the minimum required insurance specifications in this AGREEMENT. FRANCHISEE may use an automatic additional insured endorsement if the endorsements meet the requirements of this Section 14B.

ii. Waiver of Subrogation Endorsements. Include copies of subrogation endorsements necessary to effect FRANCHISEE'S waiver of its and its insurer(s)' rights of recovery against COUNTY under all insurance under this Section 14B, to the fullest extent permitted by law.

e. Deductibles and SIRs. Identify any deductibles or self-insured retention ("SIR") exceeding $50,000 for COUNTY'S approval. FRANCHISEE'S policies shall not obligate COUNTY to pay any portion of any FRANCHISEE deductible or SIR.

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

f. Signature verification. Include documentation acceptable to COUNTY verifying that the individual signing or countersigning the certificates, and at COUNTY'S request, the policies, endorsements, or other evidence of coverage, is authorized to do so and identifies his or her company affiliation and title.

g. COUNTY'S request, FRANCHISEE will promptly provide COUNTY with complete, certified copies of any policy of insurance that FRANCHISEE must secure and maintain under this AGREEMENT.

h. Claims Made/Retroactive Date. The policy retroactive date, which can be identified, on any insurance written on claims made basis, which must precede the Execution Date. FRANCHISEE shall maintain any claims made coverage for a period of not less than 3 years following expiration, termination or cancellation of this AGREEMENT.

i. Insured-vs.-insured. Clearly evidence that all liability policies provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured-versus-insured exclusions or limitations.

5. **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.

6. **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/County Services involving injury or property damage that may result in the filing of an insurance claim, its legal claim, or lawsuit against FRANCHISEE, any Subcontractor and/or COUNTY;

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

c. Any injury to a FRANCHISEE employee that occurs on COUNTY property, or,

d. Any loss, disappearance, destruction, misuse or theft of COUNTY property, money or securities entrusted to FRANCHISEE.

FRANCHISEE shall submit its report on a COUNTY "Nonemployee Injury Report" form available on COUNTY'S website at http://cao.co.la.ca.us/RMB/pdf/NonEmployeeInjuryReport.pdf.

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

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

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

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

b. ***Pollution Liability Coverage*** for pollution conditions resulting from transported cargo, with annual limits of not less than $2 million per occurrence and $4 million aggregate, covering loss (including cleanup costs) that FRANCHISEE becomes legally obligated to pay as a result of claims for bodily injury, property damage, and cleanup costs (including expenses required by environmental laws or incurred by Federal, State, or local governments or third parties) resulting from pollution conditions caused by transported cargo (including waste). For the purpose of this subsection 14B7b, "pollution conditions" includes the dispersal, discharge, release, or escape of any solid, liquid, gaseous or thermal irritant or contaminant (such as smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, and waste materials) into or upon land, any structure on land, the atmosphere, or any watercourse or body of water (including groundwater), provided the conditions are not naturally present in the environment in the amounts or concentrations discovered. The pollution liability coverage must provide contractual liability coverage, by endorsement, if necessary, for FRANCHISEE'S indemnification of COUNTY. FRANCHISEE'S general liability policy may be endorsed to provide the required pollution liability coverage.

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

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

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

8. **Insurance Coverage Requirements for Subcontractors.** FRANCHISEE shall ensure that all Subcontractors performing Franchise/County Services under this AGREEMENT secure and maintain the insurance coverage required in subsections B1 through 7 by providing evidence that either:

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

b. Subcontractors are maintaining the required insurance coverage.

FRANCHISE shall provide COUNTY with any Subcontractor request to modify that insurance coverage and get COUNTY approval prior to modification.

C. **Compensation for County Costs.** If FRANCHISEE fails to comply with any Performance Obligations, including Indemnification, insurance, and performance assurance and that failure results in any costs to COUNTY, FRANCHISEE shall pay full compensation for all County's Reimbursement Costs.

D. **Alternative Risk Financing Programs:** COUNTY reserves the right to review and then approve FRANCHISEE'S use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy Performance Obligations under this Section 14B. COUNTY and Persons named as additional insureds under Section 14B4d shall be designated as an Additional Covered Party under any approved program.

SECTION 15–PERFORMANCE ASSURANCE

FRANCHISEE shall secure and maintain throughout the Term a faithful performance bond, in a form satisfactory to COUNTY or, at COUNTY'S sole and absolute discretion, any alternative security acceptable to the Director, including cash, certified check payable to COUNTY, certificate of deposit, or letter of credit (together, "**Performance Assurance**"). During the first Contract Year, the amount of the Performance Assurance must be in the sum established by COUNTY in Section A of Exhibit 3A to secure full and timely satisfaction of Performance Obligations for both Task 1 and Task 2, including payment of Franchise Fees, and any liquidated damages. In all subsequent Contract Years, that amount must be not less than the sum of:

- 15 percent of FRANCHISEE'S Gross Receipts from Task 1 minus Franchise Fees for the prior Contract Year;
- 110 percent of the Franchise Fees paid by FRANCHISEE during the first six months of the prior Contract Year;
- 110 percent of any liquidated damages assessed FRANCHISEE by COUNTY during the first six months of the prior Contract Year;
- Up to $50,000, at the discretion of the Director; and
- 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/County Services but must provide for payment of moneys to COUNTY to; (1) secure substitute Franchise/County Services; (2) remedy damages incurred by COUNTY, including reasonable expenses, attorney's fees, and liquidated and compensatory damages; (3) ensure satisfaction of all Performance Obligations, including payment of Franchise Fees; and, (4) repay any money recovered from COUNTY in any bankruptcy or similar proceedings relating to FRANCHISEE. The performance bond must be conditioned on faithful performance by FRANCHISEE of all the terms and conditions of this AGREEMENT, including payment of Franchise Fees and any liquidated damages.

Each Performance Assurance must be renewed to provide for continuing liability in the above amount notwithstanding any payment or recovery thereon. At least 30 days prior to the Execution Date and 30 days prior to 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'S Right to Provide MSW Management Services.

1. **Events.** COUNTY may perform, or contract for the performance of, any or all of Franchise/County 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/County Services, it will consider contracting with other COUNTY franchisees. COUNTY has no obligation to continue providing Franchise/County Services and may at any time, in its sole discretion, cease to provide Franchise/County Services. However COUNTY'S right to provide Franchise/County Services will continue until FRANCHISEE can demonstrate to COUNTY'S satisfaction that FRANCHISEE is ready, willing, and able to resume timely and full Franchise/County Services or until COUNTY can make alternative arrangements for providing MSW Management Services comparable to Franchise/County 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/County Services, which notice is effective immediately, but must confirm oral notice with a Notice within 24 hours thereafter.

3. **Service Assets Applicable to Task I only.**

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

   b. ***Service Assets Document.*** Any document that encumbers or limits FRANCHISEE'S interest in Service Assets, including a lease,

financing contract, acquisition over time, mortgage, or other instrument establishing a security interest to or by FRANCHISEE, must allow COUNTY to assume FRANCHISEE'S obligations and to continue use of Service Assets in performing MSW Management Services.

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

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

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

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

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

Furthermore, if COUNTY has possession and/or use of FRANCHISEE'S Service Assets, FRANCHISEE shall execute whatever documentation its liability insurers require to ensure that

COUNTY and Customers are protected and covered by FRANCHISEE'S general and automobile policies, including requesting and executing endorsements to those policies. FRANCHISEE hereby gives COUNTY the right to call and confer with FRANCHISEE'S insurance broker to determine what, if any, documentation or actions are necessary to achieve protection satisfactory to COUNTY. FRANCHISEE hereby gives COUNTY the right to pay for any endorsements, additional premiums, or other costs. By executing this AGREEMENT, FRANCHISEE authorizes its insurance broker to cooperate with and respond to requests from COUNTY, which authorization FRANCHISEE may not rescind without COUNTY consent.

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

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

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

7. **Stipulations.** FRANCHISEE stipulates that COUNTY'S exercise of rights under this Section does not constitute a taking of private property for which COUNTY must compensate FRANCHISEE, shall not create any liability on the part of COUNTY to FRANCHISEE, and does not exempt FRANCHISEE from any Indemnities, which Parties acknowledge are intended to extend to circumstances arising under this Section. However, FRANCHISEE is not required to indemnify COUNTY against claims and damages arising from the negligence or misconduct of COUNTY officers and employees (other than employees of FRANCHISEE at the time COUNTY began performing Franchise/County Services)

and agents driving Vehicles. COUNTY shall indemnify FRANCHISEE, its Affiliates and its and their officers, directors, employees, and agents from and against damages, costs, or other expenses or losses they incur arising out of or relating to that negligence or misconduct.

8. Rental and Other Compensation.

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

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

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

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

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

b. ***Other Than Uncontrollable Circumstances.*** If an event enumerated in item a or b in subsection A1 is not due to Uncontrollable Circumstances, then COUNTY will not be obligated to pay the compensation enumerated in subsection A8a, and FRANCHISEE shall pay County's Reimbursement Costs in accordance with subsection A6 within 10 days of COUNTY'S

submitting an invoice therefore. If FRANCHISEE does not so timely pay, COUNTY may draw upon any performance bond, letter of credit, or other security provided under this AGREEMENT.

B. **Emergency Assistance.** FRANCHISEE shall give first consideration to County in the event that solid waste in any part of the unincorporated area of the COUNTY is not collected and in the judgment of the Director creates a danger to public health, safety or welfare, including in the event of a major disaster such as an earthquake, fire, mudslide, storm, riot, or civil disturbance, by providing vehicles and drivers to collect any solid waste as requested by COUNTY, at charges no greater than the following:

1. Rates (with respect to solid waste discarded in Carts); and

2. $60/Ton (with respect to CEDs, E-Waste, and solid waste, including Abandoned Waste, discarded in containers other than Carts);

3. rates the FRANCHISEE charges for comparable MSW Management Services (with respect to Solid Waste *not* discarded in containers)

None of these rates can be greater than the limits provided in Section D11 of Exhibit 3A2, the Director provides authorization based on information provided by FRANCHISEE substantiating the need for an increase. FRANCHISEE shall cooperate with COUNTY, State of California, and federal officials in filing information related to a regional, state, or federally-declared state of emergency or disaster as to which FRANCHISEE has provided equipment and drivers under this AGREEMENT.

C. **Backup Service Plan.** FRANCHISEE shall develop a backup service plan included in FRANCHISEE Documentation and implement that plan upon COUNTY request if Customers' Solid Waste is not Collected at Customer's Set-Out Site or Abandoned Waste is not Collected within 7 days of COUNTY request, including due to an event described in Section 16A1 or Section 16B. FRANCHISE shall include in the plan at a minimum, the following provisions:

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

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

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

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

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

6. Identify customers that require priority service.

SECTION 17–DEBARMENT BREACHES AND DEFAULTS; SUSPENSION; TERMINATION

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

1. Failure to keep Records required by this AGREEMENT;

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

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

4. Failure to timely pay the Franchise Fee;

5. Failure to timely pay an Indemnification; or

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

7. Failure to timely respond to County

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

B. FRANCHISEE Default. The following constitute FRANCHISEE Defaults:

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

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

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

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

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

   b. Any repeated Violation of Applicable Law.

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

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

   a. With respect to Task 1, seven consecutive days; or

   b. With respect to Task 1, seven days in the aggregate from the Execution Date.

c. With respect to Task 2, seven days in a calendar year.

6. **Failure to Collect for More Than Seven Days.** With respect to Task 1, 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, damages or County's Reimbursement Costs):
   a. More than twice in any Calendar Year;

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

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

8. **Specified FRANCHISEE Defaults.** FRANCHISEE Breaches any of the following Sections:
   a. Section 22B Child Support Compliance Program (if not cured within 90 days of Notice given as described in Section 17A);

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

   c. Section 23E Nondiscrimination;

   d. Section 23G County Lobbyist Ordinance; or

   e. subsection F of this Section, Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program.

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

under Section 16. This FRANCHISEE Default will not be excused if it continues for a period of more than seven days beginning on the first occurrence of this FRANCHISEE Default.

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

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

C. Notice of FRANCHISEE Default.

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

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

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

   c. A FRANCHISEE Default described in subsection B4 (material or repeated Violation of Applicable Law, including the County Lobbyist Ordinance) or as identified in Exhibit 3A2;

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

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

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

4. **Effective 10 days.** The COUNTY may terminate this AGREEMENT effective 10 days after Notice given by COUNTY for failure to comply with the County Defaulted Property Tax Reduction Program in accordance subsection F of this Section.

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;

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

   c. any other FRANCHISEE Default in Exhibit 3A or 3A2.

   During that 45-day period FRANCHISEE shall have the opportunity to demonstrate to COUNTY that FRANCHISEE can once again fully perform Franchise/County 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 COUNTY 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 COUNTY may terminate this AGREEMENT on six months' Notice if in the judgment of the Director, COUNTY and FRANCHISEE are unable to reach satisfactory agreement to adjust Rates in accordance with item c of Section A1 of Exhibit 10 for a Change in Law or changes in Service Specifications or Service Standards after good faith negotiations during a period of at least 30 days.

   c. ***Criminal Activity***. The COUNTY 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.

d. ***Annexation of Service Area***. Upon request of COUNTY, FRANCHISEE shall use Reasonable Business Efforts to cooperate with a local agency with respect to providing Franchise/County Services or MSW Management Services, in the following events:

1. the Service Area is annexed by that local agency in accordance with applicable laws, and

2. the Parties agree to amend this AGREEMENT to delete the annexed area from the definition of "Service Area".

E. FRANCHISEE Responsibility and Debarment.

1. **Child Support Compliance Program.** COUNTY may debar FRANCHISEE from doing business with COUNTY if COUNTY determines after giving notice and conducting a hearing in accordance with Chapter 2.202 of the County Code, which shall apply to this AGREEMENT, that FRANCHISEE (or any of its Subcontractors) is not responsible within the meaning of Chapter 2.202 and in accordance with COUNTY'S policy to do business with responsible contractors; FRANCHISEE'S failure to comply with the Child Support Compliance Program, as provided in Section 22B, may be cause for debarment in accordance with § 2.200.020 of the County Code.

2. **County Defaulted Property Tax Reduction Program.** COUNTY may debar FRANCHISEE from doing business with COUNTY as provided in subsection F of this Section.

F. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY DEFAULTED PROPERTY TAX REDUCTION PROGRAM.

1. **FRANCHISEE Default.** Failure of FRANCHISEE to maintain compliance with the requirements set forth in Section 22C "COMPLIANCE WITH APPLICABLE LAW / County Defaulted Property Tax Reduction Program" shall constitute a FRANCHISEE Default under subsection B8e of this Section.

2. **Termination/Debarment.** Without limiting the rights and remedies available to COUNTY under any other provision of this AGREEMENT, failure of FRANCHISEE to cure that FRANCHISEE Default within 10 days of Notice shall be grounds upon which COUNTY may terminate this AGREEMENT under subsection D2a of this Section and/or pursue debarment of FRANCHISEE pursuant to County Code Chapter 2.206 and subsection E2 of this Section.

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;

3. Assess damages under subsection D, and

4. With respect to a FRANCHISEE Default under Section 17B3 (Failure to Provide Insurance, Bonds), immediately withhold payments due FRANCHISEE.

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/County 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/County Services for the price provided under this AGREEMENT, and to negotiate new agreements therefore; and

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

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

D. Recovery of Damages.

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

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

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

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

   d. In the event of FRANCHISEE DEFAULT under 17B3 (Failure to Provide Insurance, Bond), in COUNTY'S sole discretion, obtain damages resulting from that DEFAULT.

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

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

2. **Liquidated.** COUNTY may seek liquidated damages listed in Exhibit 18D2 and Exhibit 3A2.

The Parties have set these liquidated damages in recognition of the following circumstances existing at the time of the formation of this AGREEMENT:

- 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 Franchise/County 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. FRANCHISEE is experienced in providing services like Franchise Services and County Services.

- 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. It would be difficult for the COUNTY to prove its loss resulting from FRANCHISEE'S Breaches and nonperformance or untimely, negligent, or inadequate performance of County Services.

- The AGREEMENT contains a reasonable statement of Franchise/County Services in order that the Parties' will realize their expectations. COUNTY expects that FRANCHISEE will perform Franchise/County Services with due care in a workmanlike, competent, timely, and cost-efficient manner. FRANCHISEE expects to realize a profit by performing Franchise/County Services in accordance with the terms and conditions of the AGREEMENT for County Service Charges.

- In addition, in the event of Breach or FRANCHISEE Default, urgency of protecting public health and safety may necessitate that COUNTY enter into emergency or short-term arrangements for services without competitive procurement at prices substantially greater than under this AGREEMENT, and the monetary loss resulting there from is impossible to precisely quantify. Time is of the essence.

- The FRANCHISEE accepts COUNTY'S assessment of liquidated damages for certain Breaches as part of the consideration

FRANCHISEE offers to the COUNTY for the award of this AGREEMENT to FRANCHISEE.

- Lastly, termination of this AGREEMENT for FRANCHISEE Default and other remedies provided in this AGREEMENT are, at best, a means of future correction and not remedies that make COUNTY whole for past Breaches and FRANCHISEE Defaults.

Therefore, the Parties agree that the liquidated damages listed in Exhibit 18D2 represent a reasonable estimate and fair approximation of the amount of damages COUNTY would incur as a consequence of FRACHISEE'S Breach corresponding to each item of specified liquidated 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 following:

- the accuracy of the statements made above, and
- the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this AGREEMENT was made.

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

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

SECTION 19–TRANSFER OF FRANCHISE

A. COUNTY Consent. FRANCHISEE may not Transfer this AGREEMENT, the Franchise granted under it, or any rights or duties under it, in whole or in part, and whether voluntarily or involuntarily, without COUNTY'S prior written consent, the exercise of which is in COUNTY'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 COUNTY'S consent, at COUNTY'S option, will be null and void. COUNTY'S consent must be a written amendment to this AGREEMENT that is formally approved by the Board of Supervisors and executed by (1) the FRANCHISEE and (2) the Board, or if delegated by the Board, the Director. Any Transfer, with or without consideration for any reason whatsoever without COUNTY'S (or Director's, if applicable) express prior written approval, shall be a Breach of this AGREEMENT, which many result in the termination of this AGREEMENT. In the event of such termination, COUNTY shall be entitled to pursue the same remedies against FRANCHISEE as it could pursue in the event of default by FRANCHISEE. The COUNTY may condition consent on payment of amounts specified in Exhibit 3A in consideration for the value of good will and intangibles that accrued to COUNTY and Customers in the award of this AGREEMENT to FRANCHISEE.

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

C. Payment of County's Transfer Costs.

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

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

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

Any payment by COUNTY to any approved delegate or transferee on any claim under this AGREEMENT shall be deductible, at COUNTY's sole discretion, against the claims which FRANCHISEE may have against COUNTY.

SECTION 20–GENERAL PROVISIONS

A. **Exercise of Options.** Parties will exercise any approval, disapproval, consent, judgment, option, discretion, election, opinion, or choice under this AGREEMENT, make a requirement under this AGREEMENT or interpret this AGREEMENT (**"Discretionary Action"**) reasonably. Any mediator, arbitrator, or court must find the Party's exercise to be reasonable. Recognizing the essential public health and safety protections this AGREEMENT serves, where this AGREEMENT specifically provides that the exercise of any Discretionary Action is in either Party's independent, sole, exclusive or absolute discretion, control or judgment, the other Party will not question or challenge the first Party's exercise thereof. Parties will nevertheless exercise their rights and remedies in good faith in accordance with Applicable Law.

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

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

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

E. **Changes and Amendments.**

1. **Changes following Notice.** The following changes in this AGREEMENT after the Execution Date will be effective after Notice from the Director to

FRANCHISEE (or with respect to certain changes referenced in item b, from FRANCHISEE to the Director, in accordance with Section 3D2a) as consented to by FRANCHISEE:

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

b. Changes to Exhibit 3D FRANCHISEE Documentation;

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

d. Immaterial changes to immaterial Performance Obligations.

2. **Written 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/County Services and Service Standards that result in a Rate adjustment in accordance with Section 3C or change in County Service Fee; and

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

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

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

2. Copartner, if FRANCHISEE is a partnership; or

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

Notice is deemed effective:

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

2. Three days after the date of mailing.

G. **Authorized Representative of Director.** COUNTY authorizes the Director to make requests or requirements of FRANCHISEE or give approvals under this AGREEMENT, excluding consents to Transfer or written amendments of 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.** With respect to Task 1 only, FRANCHISEE shall limit the terms of Subscription Orders to no longer than the remaining period of the Term. FRANCHISEE shall give each Customer the option to terminate its Subscription Order without cause on 90 days notice. FRANCHISEE shall also give each Customer the right to terminate service immediately in the event of emergency in accordance with Section 16A, or within 30 days if FRANCHISEE:

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

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

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

J. Criminal Activity.

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

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

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

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

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

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

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

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

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

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

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

SECTION 21–DEFINITIONS AND INTERPRETATION OF AGREEMENT

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

B. Interpretation and Construction.

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

2. **Headings; Font.** Any captions or headings following the Exhibit, Attachment, Section, subsection, paragraph, and other attachments and subdivisions of this AGREEMENT that precede the operative text of this AGREEMENT are for convenience of reference only and do not control or affect the scope, intent, meaning, construction, interpretation, or effect of this AGREEMENT. Any underlined, italicized, bold-faced, upper captioned or other font style is for ease of reading and contract administration only and does not imply relative importance or unimportance of any provision of this AGREEMENT.

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

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

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

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

7. **Inconsistencies and Conflicts.**

   a. If any provision of Exhibit 3A or 3A2 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 and 3A2 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 3A2), 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.

8. **References to Task 1 and Task 2.**

Unless specifically indicated otherwise at the beginning of a Section or subsection, this AGREEMENT applies to both Task 1 and Task 2.

However, Exhibit 3A only applies to Task 1, and Exhibit 3A2 only applies to Task 2.

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

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

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

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

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

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

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

SECTION 22–COMPLIANCE WITH LAWS AND REGULATIONS

A. Applicable Law.

1. **Compliance.** FRANCHISEE shall secure and maintain all permits, and comply with all Applicable Laws, including (as required by 13 CCR 2021.1) all applicable air pollution control laws such as Diesel Particulate Matter Control Measure of on-road heavy-duty diesel-fueled Residential and Commercial Solid Waste Collection Vehicles set forth in 13 CCR 2020 *et seq.*, and the Property Tax Reduction Ordinance. 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 A1 of Exhibit 10

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

C. **County Defaulted Property Tax Reduction Program.** FRANCHISEE acknowledges that COUNTY has established a goal of ensuring that all individuals and businesses that benefit financially from COUNTY through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon the COUNTY and its taxpayers.

Unless FRANCHISEE qualifies for an exemption or exclusion, FRANCHISEE warrants and certifies to the best of its knowledge under Exhibit 20H, that as of the Execution Date it is in compliance with County Code Chapter 2.206.

Unless FRANCHISEE qualifies for an exemption or exclusion, FRANCHISEE shall comply with Los Angeles County Code Chapter 2.206.

SECTION 23–LABOR-RELATED PROVISIONS REQUIRED IN COUNTY CONTRACTS

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

1. **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. If both laid-off County employees and GAIN and GROW participants in categories identified by COUNTY are available for hiring, FRANCHISEE shall give COUNTY employees first priority.

B. Notices to Employees.

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

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

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

operation yards, the fact sheet that is available at www.babysafela.org.

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

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

C. Prohibition Against Use of Child Labor.

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

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

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

D. 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.** At COUNTY'S request, FRANCHISEE shall promptly allow COUNTY and its auditor's access to FRANCHISEE'S employment records at FRANCHISEE'S Office during FRANCHISEE Office Hours to verify compliance with the provisions of this subsection E.

5. **Remedies for Discrimination.** If COUNTY finds that FRANCHISEE has violated any provisions of this subsection E, that violation constitutes a FRANCHISEE Default. While COUNTY reserves the right to determine independently that the 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.

E. 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/County 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 FRANCHISEE to cease providing Franchise/County Services at no cost to COUNTY until FRANCHISEE is in compliance with this Section.

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

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

SECTION 24–EXECUTION OF AGREEMENT

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

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

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

COUNTY OF LOS ANGELES

By _____
Director of Public Works

APPROVED AS TO FORM:

ANDREA ORDIN SHERIDAN
County Counsel

By _____
Deputy

NAME OF FRANCHISEE

By _____
President

_____
Type or Print Name

_____
Secretary

_____
Type or Print Name

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ENCLOSURE C

SAMPLE EXCLUSIVE
FRANCHISE AGREEMENT

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

FOR
PROVISION
OF
REFUSE, RECYCLABLES, GREEN WASTE AND MANURE
AUTOMATED CART SERVICES
TO CUSTOMERS
AT
RESIDENTIAL PREMISES
AND CERTAIN MULTIFAMILY AND COMMERCIAL PREMISES

AND
ABANDONED WASTE COLLECTION SERVICES
FOR COUNTY

FOR THE SERVICE AREA OF

OCEANVIEW/LA RAMBLA/WEST CARSON

[INSERT DATE]

SAMPLE EXCLUSIVE FRANCHISE AGREEMENT

FOR THE AREAS OF OCEANVIEW/LA RAMBLA/WEST CARSON

THIS AGREEMENT is made and entered into on_____, 2010, by and between the County of Los Angeles, a political subdivision of the State of California (COUNTY), and **[Name of FRANCHISEE], [Form of Entity]** ("FRANCHISEE").

RECITALS:

WHEREAS, Municipal Solid Waste (MSW) Management Services have been provided by waste 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 waste 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; and

WHEREAS, the COUNTY is authorized to award franchises to waste 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; and

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

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

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 land filling have created an urgent need for State of California and local agencies to enact and implement an aggressive new integrated waste management program. Through enactment of AB 939, the State of California has directed agencies, such as the COUNTY, to divert 50 percent of all solid waste through source reduction, recycling, and composting activities. The California Integrated Waste Management Board has granted the COUNTY a time line to achieve compliance with the AB 939 diversion requirements. Compliance is based in part on executing and implementing this AGREEMENT in order to secure cooperation with FRANCHISEE'S AB 939 waste diversion programs, record keeping, and reporting; and

WHEREAS, the COUNTY'S Director has determined to require franchises for Franchise Services (otherwise referred to as "Task 1" in this AGREEMENT). In order to assist residents and businesses located in the Service Area to receive quality MSW Management Services and to provide the COUNTY with programs, records, and reports that will help the COUNTY comply with AB 939, the Director has determined to franchise MSW Management Services in portions of the COUNTY, under the terms of this AGREEMENT. The COUNTY issued a 5-year notice under California Public Resources Code § 49520 of the COUNTY'S intent to authorize, among other options, the exclusive franchising of MSW Management Services in portions of the COUNTY; and

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

WHEREAS, the FRANCHISEE will perform Franchise Services in accordance with the laws governing the safe collection, transport, recycling and disposal of Residential and Commercial Solid Waste, such as AB 939, Recovered Conservation and Recovery Act (RCRA), and Comprehensive Environmental Response Compensation and Liability Act (CERCLA). The COUNTY will not exercise control over the disposal or other disposition of the Solid Waste handled by the FRANCHISEE, and the COUNTY will not designate or determine the use of any given solid waste facility. FRANCHISEE acknowledges that by entering into this AGREEMENT, the COUNTY does not assume any of FRANCHISEE'S obligation to or responsibility for

providing Franchise Services, and the COUNTY does not become a "generator" or an "arranger" as those terms are used in the context of CERCLA § 107(a)(3). FRANCHISEE agrees that FRANCHISEE, an independent entity, and not the COUNTY, is arranging for Franchise Services provided under this AGREEMENT. Although minimum scope of Franchise Services, Service Specifications, and Service Standards are set forth in this AGREEMENT, the COUNTY has not, and by this AGREEMENT does not, supervise Franchise Services or assume title to Solid Waste; and

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

WHEREAS, COUNTY is responsible and provides for collection of solid waste abandoned on public rights of way and is authorized to fulfill its responsibility through contracting for collection service; and

WHEREAS, under California Streets and Highways Code section 953, COUNTY must pay for collection of abandoned waste in Public Right of Way (otherwise referred to as "Task 2" in this AGREEMENT) out of public money deposited in the County Road Fund. COUNTY cannot use Customer Service Charges (or Rates) to pay for Task 2.

WHEREAS, the COUNTY issued a Request for Proposals (RFP) to provide Task 1 and Task 2 services under this AGREEMENT, and private waste hauling companies submitted proposals, including their proposed schedule of rates and charges. The COUNTY selected FRANCHISEE based, *inter alia*, on FRANCHISEE'S price proposal and work plan for Task 1. There was no separate evaluation of proposals with respect to Task 2 services. The compensation to be paid to the FRANCHISEE for Task 2 services has been established and stipulated by the County in Exhibit 3A2 of this AGREEMENT. Under this AGREEMENT, the FRANCHISEE cannot charge its customers more than the proposed rates and charges; and

WHEREAS, the FRANCHISEE is awarded this AGREEMENT. The Board of Supervisors determines and finds pursuant to California Public Resources Code § 40059, that the public health, safety, and welfare require that FRANCHISEE be awarded this AGREEMENT for Franchise Services (Task 1) pursuant to Chapter 20.70 of the County Code and County Services (Task 2) pursuant to California Streets and Highways Code section 953. FRANCHISEE acknowledges and understands that this AGREEMENT encompasses both Task 1 and Task 2, and shall perform both tasks pursuant to the terms set forth in this AGREEMENT; and

This AGREEMENT applies to both Task 1 and Task 2, unless specifically indicated otherwise at the beginning of a Section or subsection. However, Exhibit 3A applies only to Task 1, and Exhibit 3A2 applies only to Task 2.

NOW, THEREFORE, the parties agree as follows:

SECTION 1–GRANT OF RIGHT AND PRIVILEGE TO PROVIDE FRANCHISE SERVICES. Applicable to Task 1 only.

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, Commercial, and Multifamily Premises, subject to the exclusions in subsection B.

2. Grant of Nonexclusive Franchise.

a. ***Recyclables***. COUNTY grants to FRANCHISEE the nonexclusive right and privilege together with the obligation to arrange to provide Franchise Services with respect to Recyclables discarded by Customers if prescribed in Exhibit 3A. Notwithstanding the foregoing, however, Customers may donate or sell any or all of their Recyclables to Persons other than FRANCHISEE.

b. ***Collection in Carts at Commercial Premises and Multifamily Premises.*** COUNTY grants to FRANCHISEE the nonexclusive right and privilege to arrange to provide Franchise Services or MSW Services to Commercial Premises or Multifamily Premises for any Person who requests either of those services. FRANCHISEE is obligated to provide Franchise Services for any person who requests Franchise services at those premises. However FRANCHISEE is not obligated to provide MSW services for any person who requests MSW services at those premises. Multifamily customers are defined in Section 23 to include dwellings that are triplex or larger, condominiums, and townhouses.

B. Exclusions from Franchise.

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

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

   a. COUNTY or any other entity governed by the Board of Supervisors;

   b. The State of California;

   c. Any school district;

   d. Any entity that is excluded by law from the obligation to subscribe to Franchise Services under this AGREEMENT.

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

3. **Collection of Solid Waste in Bins.** This Franchise excludes the right and privilege to provide Collection of Solid Waste in Bins for any Residential, Commercial or Multifamily Customer requesting Bins instead of Carts, or any other exclusions provided in Exhibit 3A. That Customer may arrange with FRANCHISEE or any other person to provide MSW Management Services in Bins.

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

5. **County Services – Abandoned Waste and Litter On-Call Collection Services (Task 2 – County Services).** This Franchise excludes the right and privilege to Collect Abandoned Waste.

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

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

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

SECTION 2–TERM

A. **Term.** This AGREEMENT commences on the date both parties have executed this AGREEMENT, and expires on the Termination Date provided in Exhibit 3A, unless extended by COUNTY. COUNTY may extend the AGREEMENT in its sole discretion in increments of one or more months, at one or more times, up to an aggregate of six months. COUNTY will give FRANCHISEE Notice of extension at least 30 days in advance of a first extension, and at least 15 days in advance of any additional extension.

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

1. **Acknowledgements.** All acknowledgments, including those in the following Sections:

   - Section 1C (inapplicability of PRC 49520)
     Section 2C (no recovery of undepreciated asset value)
   - Section 3A (no COUNTY responsibility for supervising or performing Franchise Services)
   - Section 11A (Record maintenance)
   - Section 21F (interpretation of this Agreement)

2. **Representations and Warranties.** All representations and warranties, including those made in accordance with the following Sections:

   - Section 21F with respect to review of this AGREEMENT
   - Section 24B, Authority to Execute
   - Exhibit 20H, FRANCHISEE'S Representations and Warranties

3. **Indemnities:** All Indemnities

4. **Payments:** All obligations to pay any due and payable monetary amounts, or claims for those amounts, including:

   - Any Franchise Fees
   - Payment of Transfer Deposits and Transfer Costs
   - Damages under Section 18D
   - Payment of County Service Charges under Exhibit 3A2.

5. **Records and Reports.** 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
   - Records of Disposal
   - Notice of destruction of Records of Disposal
   - Inspection and audit
   - Records of Abandoned Waste Collection including supporting documentation.

6. Any other provisions of this AGREEMENT and rights and obligations of the Parties stated to survive the Termination Date, including:

   - this subsection B (cooperation during transition; removal of Containers)
   - and C (no recovery of undepreciated asset value).

If FRANCHISEE is not awarded an agreement to allow FRANCHISEE to continue to provide MSW Management Services substantially similar to

Franchise/County Services in the Service Area after the expiration or termination of this AGREEMENT, FRANCHISEE shall cooperate fully with COUNTY and the succeeding franchisee, licensee, permittee or other provider of MSW Management Services to assure a smooth, efficient, orderly, timely, and effective transition and continued delivery of MSW Management Services to FRANCHISEE'S former Customers.

With respect to Franchise Services (Task 1), FRANCHISEE shall not remove a Container from any Premises until the earlier of: (1) the date any replacement Containers are provided to the Customer, or (2) two weeks after the Termination Date.

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

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

SECTION 3–SCOPE OF SERVICES AND SPECIFICATIONS

A. Prescribed Scope.

With respect to Task 1, FRANCHISEE shall arrange to provide Franchise Services (Task 1) to Premises in the Service Area with any Person who requests them, in accordance with Exhibit 3A. With respect to Task 2, FRANCHISEE shall provide County Services (Task 2) in the Service Area to COUNTY in accordance with Exhibit 3A2.

Notwithstanding the foregoing, subject to meeting the minimum required scope of Franchise/County Services, 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/County Services. FRANCHISEE is solely responsible for choosing the Solid Waste Facilities. In addition, COUNTY is not the owner or titleholder of any material Collected, transported, Disposed of or otherwise handled by FRANCHISEE.

Any work be performed outside the Performance Specifications without COUNTY's prior written approval shall be deemed to be a gratuitous effort by FRANCHISEE, and FRANCHISEE shall have no claim, therefore, against COUNTY.

B. County Notice. Applicable to Task 1 only. 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. However, with respect to Task 1, the change is 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/County Services in compliance with the FRANCHISEE Documentation attached as Exhibit 3D.

2. **Changes in FRANCHISEE Documentation.**

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

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

Date: _____ Director:_____"

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

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

Date: _____ Director:_____"

SECTION 4–SERVICE STANDARDS

A. Public Health and Safety; Nuisances

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

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

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

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

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. Applicable to Task 1 only. FRANCHISEE shall obtain all approvals required to operate Vehicles on private alleys, streets, and parking lots. Subject to COUNTY review and approval and notwithstanding FRANCHISEE's obligations under Section 20C, FRANCHISEE may require

those Customers for whom FRANCHISEE is required to operate Vehicles on private property to sign a Subscription Order containing a waiver of liability with respect to damage to private driveways or pavement.

C. **Non-Collection Notice.** Applicable to Task 1 only. FRANCHISEE is not obligated to Collect in any of the following events:

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

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

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

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

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

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

7. The Premises are not safely accessible to Vehicles;

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

9. FRANCHISEE observes any other event provided in Exhibit 3A.

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

D. **Subscription Order.** Applicable to Task 1 only. Before commencing Franchise Services for an individual Customer, FRANCHISEE shall provide a Subscription

Order to that Customer, substantially in the form included in FRANCHISEE Documentation, which must include at a minimum, all of the following items:

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

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

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

4. Holiday schedules in accordance with Section B1 of Exhibit 3A;

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

6. Any weight limitations of Containers;

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

8. Nondiscrimination information in accordance with subsection F;

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

10. FRANCHISEE'S Office Hours and toll-free Customer service telephone number;

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

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

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

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

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

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

17. Description of the Recyclables; and

18. Any other information requested by the Director.

FRANCHISEE shall annually distribute to Customers a summary, substantially in the form included in FRANCHISEE Documentation, of the Customer's Subscription Order containing the general information described in items 1 through 18 and describing where a Customer can contact FRANCHISEE to obtain a copy of that Customer's Subscription Order. FRANCHISEE may distribute that summary together with other correspondence from FRANCHISEE to all Customers, such as Customer outreach and educational materials.

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

E. Exceptions to Performance Obligations. No exceptions to Performance Obligations described in the text of this AGREEMENT are permitted unless they are specifically identified in Section A3 of EXHIBIT 3A or Section A1 of EXHIBIT 3A2, or both Exhibits.

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

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

H. **Customer Correspondence and Other Materials.** Applicable to Task 1 only. FRANCHISEE shall submit to the Director for approval at least five County Business Days before printing, distributing, or mailing forms of written materials sent or given to Customers (other than with respect to a particular Customer's Subscription Order or Franchise Services complaints). In addition, at the request of the County, FRANCHISEE shall make Reasonable Business Efforts to distribute County authorized information materials to its Customers.

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

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

   Neither FRANCHISEE nor any of its Affiliates, employees, consultants, agents, or Subcontractors may publish or disseminate commercial advertisements, news or press releases, opinions or feature articles using the name of COUNTY without the prior written consent of COUNTY'S Chief Administrative Officer and County Counsel. COUNTY shall not unreasonably withhold written consent. COUNTY'S 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/County 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/County Services, FRANCHISEE shall discuss FRANCHISEE'S proposed response with COUNTY.

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

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

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

K. **No Commingling of Interjurisdictional Materials.** Applicable to Task 1 only. FRANCHISEE may not commingle, in its Vehicles or otherwise, any Solid Waste that it Collects with any other materials that it collects in cities, without the express prior written consent of the Director, who may require documentation such as records of customers, including container capacities, in cities and in the Service Area, respectively. FRANCHISEE shall maintain Records with respect to Solid Waste separately from weight and records with respect to those other materials.

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

M. **Confidentiality.** FRANCHISEE shall maintain the confidentiality of all records obtained from COUNTY under this AGREEMENT in accordance with all applicable Federal, State, and local laws, ordinances, regulations, and directives relating to confidentiality. FRANCHISEE shall inform all of its officers, employees, agents, and Subcontractors providing services hereunder of the confidentiality provisions of this AGREEMENT.

SECTION 5–PRIVACY. Applicable to Task 1 only.

A. **General.** FRANCHISEE shall strictly observe and protect the Trade Secrets and rights of privacy of Customers. FRANCHISEE shall not reveal to a Person other than COUNTY any information identifying individual Customers or the composition or contents of a Customer's Solid Waste to any Person unless under Section 11 or upon the authority of law or upon valid authorization of the

Customer. This provision may not be construed to excuse FRANCHISEE from its obligations to assist COUNTY in the preparation of Solid Waste characterization studies or waste stream analyses, keeping Records, making Reports, or assisting COUNTY on meeting any of the requirements of AB 939.

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

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

SECTION 6–UNPERMITTED WASTE SCREENING AND REPORTING

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

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

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

3. Immediate driver response, such as load segregation;

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

5. Notification of appropriate local agency or department;

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

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

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

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

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

D. **Labels.** Applicable to Task 1 only. FRANCHISEE shall conspicuously label Containers with stickers, embossing, or other secure means, prohibiting Customers from discarding Unpermitted Waste and including illustrative examples.

E. **Safe Disposal Customer Education Program.** Applicable to Task 1 only. As part of its Unpermitted Waste Screening Protocol, FRANCHISEE shall develop and implement a Customer educational program to maximize exclusion of Unpermitted Waste from Disposal and promote safe handling of Unpermitted Waste. FRANCHISEE shall include a copy of its program in FRANCHISEE Documentation. At least once each Calendar Year, FRANCHISEE shall distribute flyers, pamphlets, brochures, or other written information describing the safe disposal Customer education program. FRANCHISEE shall submit the materials to COUNTY at least one month before mailing them, and COUNTY may comment on them. FRANCHISEE may combine this distribution with its Customer outreach for the Waste Diversion Program as provided in Section B2b of Exhibit 3A.

SECTION 7–CUSTOMER SERVICE

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

B. **Telephone Service.** Applicable to Task 1 only. FRANCHISEE shall maintain a toll-free telephone number. FRANCHISEE shall list the telephone number under FRANCHISEE'S name in at least two telephone directories (white pages and yellow pages) available in the Service Area, including English and Spanish or other language as required by the Director. FRANCHISEE'S choice of directories must be approved by the Director before printing. FRANCHISEE shall be available during FRANCHISEE Office Hours at that number to receive calls (including from the Director, Customers, and the public) with respect to its Performance Obligations or Franchise Services (including Subscription Orders, Franchise Services payments, and complaints). FRANCHISEE shall provide an answering machine or answering service at that number to take reports of missed pick-ups and other complaints that are received outside of FRANCHISEE Office Hours and otherwise provide Customer service in accordance with County Code § 20.72.160 and any additional provisions in Exhibit 3A.

C. **Bilingual.** Applicable to Task 1 only. FRANCHISEE shall respond to Customers in English and Spanish and/or any alternative or additional language prescribed in Exhibit 3A, as requested by a Customer.

D. **Customer Complaints; Missed Collections. Applicable to Task 1 only.**

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

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

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

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

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

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

3. **County's Reimbursement Costs.** If COUNTY employees or agents spend either: (1) more than two hours in the aggregate resolving complaints from any single Customer that the Customer states have previously been filed with FRANCHISEE, or (2) more than one hour in any work week (Monday through Friday) resolving complaints from different Customers; then FRANCHISEE shall reimburse COUNTY its County's Reimbursement Costs incurred to resolve the complaint, as evidenced by an invoice indicating the name and address of the Customer, nature of complaint, amount of time spent, and hourly fees for employees involved and materials or other disbursements, including phone and postage costs.

SECTION 8–OWNERSHIP OF SOLID WASTE

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

SECTION 9–DIVERSION

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

SECTION 10–RATES AND CUSTOMER BILLING. Applicable to Task 1 only.

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

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

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

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

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

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

FRANCHISEE shall refund any overcharges to a Customer (including advance payments for Franchise Services that are subsequently

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

SECTION 11–FRANCHISEE RECORDS–AUDITS

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

A. Record Maintenance and Retention.

1. **All Records.** FRANCHISEE shall prepare and maintain all Records in accordance with generally accepted auditing principles during the Term and for an additional period of not less than five years after the Termination Date or any longer period required by Applicable Law.

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

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

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

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

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

B. County Custody. If the Director has reason to believe that Records may be lost, discarded, or destroyed for any reason, the Director may require that FRANCHISEE give COUNTY custody of any or all Records in which event access to those Records is granted to any Person duly authorized by FRANCHISEE. FRANCHISEE shall pay for storage cost.

C. Inspection and Audit. Upon five Service Days' advance notice by telephone or writing, or a lesser amount of time in the event of extraordinary circumstances, COUNTY and its auditors may inspect, audit (including using outside auditors), excerpt, transcribe and copy all Records at FRANCHISEE'S Office during FRANCHISEE Office Hours. FRANCHISEE may maintain Records outside of the

COUNTY (1) if it promptly provides copies thereof to COUNTY at COUNTY'S offices, (2) if COUNTY, in its sole discretion, agrees to travel outside the COUNTY and FRANCHISEE pays County's Reimbursement Costs.

In addition to travel costs, 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 for the audit 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; County Service Charges paid by COUNTY, or information that FRANCHISEE submitted to COUNTY.

The Director may give Notice to FRANCHISEE identifying any discrepancy.

FRANCHISEE will pay any discrepant shortfall in Franchise Fee or other payments due COUNTY, or excess of County Service Charges, upon COUNTY demand, including fees and charges for the late payment of Franchise Fees. Failure to make those payments will constitute a FRANCHISEE Default in accordance with Section 17. In lieu of payment, COUNTY in its sole discretion may (1) deduct that shortfall from amounts that COUNTY owes FRANCHISEE under this AGREEMENT, other contracts or any other obligation, or (2) draw that shortfall from the performance bond, letter of credit, certificate of deposit or other form of performance assurance provided by FRANCHISEE in accordance with Section 15.

COUNTY will pay any discrepant shortfall in County Service Charges due FRANCHISEE in cash up to COUNTY'S maximum obligation for County Service Charges appropriated by COUNTY for purpose of this AGREEMENT.

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

E. **Copies of Audits.** If anyone, including Federal or State auditors and auditors or accountants employed by FRANCHISEE or others, conducts an audit of FRANCHISEE specifically regarding this AGREEMENT, then within 30 days of the audit report, FRANCHISEE shall file a copy of the audit report with County's Auditor-Controller, unless otherwise provided by Applicable Law. Subject to Applicable Law, COUNTY shall make a reasonable effort to maintain the confidentiality of such audit report(s)

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.

C. Public Record Request.

1. The following become the exclusive property of COUNTY:

- Any Record or other document that FRANCHISEEE gives COUNTY, including in connection with the procurement of this AGREEMENT (such as proposals);

- Any Record or other document that COUNTY obtains in connection with COUNTY'S audit or inspection under this AGREEMENT, including books and accounting records;

The above Records or other documents become a matter of public record and shall be regarded as public records, *except* if FRANCHISEE marks them as a "trade secret," "confidential," or "proprietary", they will be deemed excluded from disclosure under Government Code 6250 et seq. (Public Records Act). COUNTY shall not in any way be liable or responsible for the disclosure of any such records including, with limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

2. FRANCHISEE will defend, indemnify and hold harmless County from all costs and expenses, including reasonable attorney's fees, in connection with any requested action or liability arising under the Public Records Act, including request for any of the Records or other documents marked "trade secret," "confidential," or "proprietary,". FRANCHISEE releases COUNTY from liability or responsibility for disclosing Records or other documents including those so marked, if disclosure is required by

Applicable Law, including an order issued by a court of competent jurisdiction.

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:

      i 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); and Abandoned Waste (in Tons or measure approved by the Director) Collected by FRANCHISEE,

      ii. Materials recovered from those Recyclables, Abandoned Waste (such as CEDs or E-waste) and residual Refuse remaining after processing of Recyclables,

      iii. The final destination of that Refuse, and

      iv. Where FRANCHISEE delivered those Recyclables;

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

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

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

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

g. Number of households and customers served and/or invoiced for payment.

h. Records of Collection for Task 2 requested by the Director.

2. **Quarterly Reports.** Within 45 days after the last day of each March, June, September, and December FRANCHISEE shall submit the Quarterly Report for the preceding three calendar months ending with that month to COUNTY in a form satisfactory to COUNTY, including the following information:

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

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

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

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

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

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

g. FRANCHISEE customer service list, which includes a list of all current and closed accounts, account numbers, name associated with each account, customer addresses, level of service provided at each address, additional services provided, billing and payment dates, payment received by each Franchise customer, and any other information associated with Franchise Services as requested by the Director.

h. Information relating to Task 2 requested by the Director.

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

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

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

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

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

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

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

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

   h. each Vehicle's compliance with SCAQMD Rule 1193, Clean ON-Road Residential and Commercial Collection Vehicles, and Diesel Particulate Matter Control Measures (13 CCR 202 *et seq.*).

   i. Information relating to Task 2 requested by the Director.

4. **Reports of Violators.** Applicable to Task 1 only. 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, and 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:

i. The United States or California Environmental Protection Agency;

ii. Cal Recycle;

iii. The Securities and Exchange Commission;

iv. Any other Regulatory Agency;

v. Any Federal, State, or County court.

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

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

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

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

SECTION 14–INDEMNIFICATION AND INSURANCE

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

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

2. **Cal/OSHA.** Without limiting the operations Indemnification in subsection A1, employer sanctions and any other Liabilities that may be assessed against FRANCHISEE or COUNTY or both in connection with any alleged act or omission of FRANCHISEE or any of FRANCHISEE's Related Parties that is in violation of any Cal/OSHA regulation. This obligation includes all investigations and proceedings associated with purported violations of 8 CCR 336.10 pertaining to multiemployer work sites. FRANCHISEE shall not be obligated to so release, indemnify, defend, and hold harmless COUNTY from and against any Liabilities arising from the active negligence of COUNTY.

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

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

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

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

   b. ***Non-Customer Materials.*** The collection, delivery, handling, recycling, processing, composting or disposal by FRANCHISEE or any of FRANCHISEE's Related Parties of any materials or waste, including Unpermitted Waste, that are generated by Persons other than Customers or collected from premises other than Premises;

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

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

      (i) In one or more occurrence;

      (ii) Threatened or transpired;

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

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

For purposes of this subsection A5, **"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 foregoing Indemnification under this subsection A5 is intended to operate as an agreement under 42 U.S.C. § 9607(e) and California Health and Safety Code § 25364, to insure, protect, hold harmless, and indemnify COUNTY from liability in accordance with this Section.

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

With respect to COUNTY's defense under this subsection A, COUNTY reserves the right to retain co-counsel at its own cost and expense and FRANCHISEE shall direct FRANCHISEE'S counsel to assist and cooperate with COUNTY'S co counsel.

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, and in the performance of this AGREEMENT and until all of its Performance Obligations pursuant to this AGREEMENT have been met, FRANCHISEE shall provide and maintain the following programs of insurance at its own expense. Performance Obligations under this Section 14B are in addition to and separate from any other Performance Obligation in this AGREEMENT. COUNTY reserves the right to review and adjust the insurance requirements in this Section 14B if COUNTY determines that there have been changes in risk exposures. COUNTY makes no warranty that the insurance coverage terms, types and limits in this Section 14B

is sufficient to protect the FRANCHISEE for liabilities that may arise from or in relation to this AGREEMENT.

1. **Primary, Excess, Non-Contributory.** All FRANCHISEE'S insurance carried under this Section 14B shall be primary with respect to any other insurance or self-insurance programs available to COUNTY.

2. **Cancellation notices.** All insurance shall contain the express condition that COUNTY is to be given written notice by mail at least 30 days in advance of cancellation, or at least 10 days in advance of cancellation for nonpayment of premium, for all policies evidenced on the certificate of insurance.

3. **Non-compliance.** Neither the COUNTY'S failure to obtain, nor the COUNTY'S receipt of, or failure to object to a non-complying insurance certificate or endorsement or any other insurance documentation or information provided by the FRANCHISEE, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any Performance Obligation under this Section 14B. If FRANCHISEE does not provide and maintain those programs of insurance, COUNTY may elect to purchase required insurance coverage without further notice to FRANCHISEE, and COUNTY may charge FRANCHISEE any premium costs advanced by COUNTY for that insurance and draw on the performance bond, letter, of credit, or other form of performance assurance provided by FRANCHISEE.

4. **Evidence of Insurance: COIs and copies of policies.** At least 30 days prior to the Execution Date and thereafter 30 days prior to each policy renewal and also within two business days of any COUNTY request, FRANCHISEE shall deliver a certificate or certificates of insurance or other evidence of coverage acceptable to the Director at the address provided for Notices. Certificates or other evidence must:

   a. Specifically identify this AGREEMENT by name or number; name the insured party that matches the name of FRANCHISEE executing this AGREEMENT; provide the full name of each insurer providing coverage and the insurer's NAIC (National Association of Insurance Commissioners) identification number, and financial rating.

   b. Types and limits: Clearly evidence all coverage, types and limits required in this AGREEMENT. Identify standard policy forms or their equivalent. Coverage may consist of a combination of primary and excess policies. Excess policies must provide coverage as broad as ("follow form" over) the underlying primary policies;

   c. Cancellation notice. Contain the express condition that COUNTY is to be given written notice by mail at least 30 days in advance of

cancellation (10 days for nonpayment of premium) for all policies evidenced on the certificate of insurance;

d. List additional endorsements.

i. Additional insured endorsements. Include copies of the additional insured endorsements to General Liability Policy which must add COUNTY and its Special Districts, elected officials, officers, agents and employees as additional insureds with respect to liability arising out of ongoing and completed Franchise/County Services, and applicable with respect to liability and defense of suites arising out of FRANCHISEE'S acts or omissions, whether that liability is attributable to the FRANCHISEE or the COUNTY. The full policy limits and scope of protection must apply to each of those additional insureds even if those limits or scope exceed the minimum required insurance specifications in this AGREEMENT. FRANCHISEE may use an automatic additional insured endorsement if the endorsements meet the requirements of this Section 14B.

ii. Waiver of Subrogation Endorsements. Include copies of subrogation endorsements necessary to effect FRANCHISEE'S waiver of its and its insurer(s)' rights of recovery against COUNTY under all insurance under this Section 14B, to the fullest extent permitted by law.

e. Deductibles and SIRs. Identify any deductibles or self-insured retention ("SIR") exceeding $50,000 for COUNTY'S approval. FRANCHISEE'S policies shall not obligate COUNTY to pay any portion of any FRANCHISEE deductible or SIR.

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

f. Signature verification. Include documentation acceptable to COUNTY verifying that the individual signing or countersigning the certificates, and at COUNTY'S request, the policies, endorsements, or other evidence of coverage, is authorized to do so and identifies his or her company affiliation and title.

g. COUNTY'S request, FRANCHISEE will promptly provide COUNTY with complete, certified copies of any policy of insurance that FRANCHISEE must secure and maintain under this AGREEMENT.

h. Claims Made/Retroactive Date. The policy retroactive date, which can be identified, on any insurance written on claims made basis, which must precede the Execution Date. FRANCHISEE shall maintain any claims made coverage for a period of not less than 3 years following expiration, termination or cancellation of this AGREEMENT.

i. Insured-vs.-insured. Clearly evidence that all liability policies provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured-versus-insured exclusions or limitations.

5. **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.

6. **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/County Services involving injury or property damage that may result in the filing of an insurance claim, its legal claim, or lawsuit against FRANCHISEE, any Subcontractor and/or COUNTY;

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

c. Any injury to a FRANCHISEE employee that occurs on COUNTY property, or,

d. Any loss, disappearance, destruction, misuse or theft of COUNTY property, money or securities entrusted to FRANCHISEE.

FRANCHISEE shall submit its report on a COUNTY "Nonemployee Injury Report" form available on COUNTY'S website at http://cao.co.la.ca.us/RMB/pdf/NonEmployeeInjuryReport.pdf.

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

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

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

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

b. ***Pollution Liability Coverage*** for pollution conditions resulting from transported cargo, with annual limits of not less than $2 million per occurrence and $4 million aggregate, covering loss (including cleanup costs) that FRANCHISEE becomes legally obligated to pay as a result of claims for bodily injury, property damage, and cleanup costs (including expenses required by environmental laws or incurred by Federal, State, or local governments or third parties) resulting from pollution conditions caused by transported cargo (including waste). For the purpose of this subsection 14B7b, "pollution conditions" includes the dispersal, discharge, release, or escape of any solid, liquid, gaseous or thermal irritant or contaminant (such as smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, and waste materials) into or upon land, any structure on land, the atmosphere, or any watercourse or body of water (including groundwater), provided the conditions are not naturally present in the environment in the amounts or concentrations discovered. The pollution liability coverage must provide contractual liability coverage, by endorsement, if necessary, for FRANCHISEE'S indemnification of COUNTY. FRANCHISEE'S general liability policy may be endorsed to provide the required pollution liability coverage.

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

d. ***Workers' Compensation and Employers' Liability*** insurance providing workers' compensation benefits required by the California Labor Code or by any other state labor law, and for which

FRANCHISEE is responsible. In all cases, this insurance must also include Employers' Liability coverage with limits of not less than the following:

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

8. **Insurance Coverage Requirements for Subcontractors.** FRANCHISEE shall ensure that all Subcontractors performing Franchise/County Services under this AGREEMENT secure and maintain the insurance coverage required in subsections B1 through 7 by providing evidence that either:

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

   b. Subcontractors are maintaining the required insurance coverage.

   FRANCHISE shall provide COUNTY with any Subcontractor request to modify that insurance coverage and get COUNTY approval prior to modification.

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.

D. **Alternative Risk Financing Programs:** COUNTY reserves the right to review and then approve FRANCHISEE'S use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy Performance Obligations under this Section 14B. COUNTY and Persons named as additional insureds under Section 14B4d shall be designated as an Additional Covered Party under any approved program.

SECTION 15–PERFORMANCE ASSURANCE

FRANCHISEE shall secure and maintain throughout the Term a faithful performance bond, in a form satisfactory to COUNTY or, at COUNTY'S sole and absolute discretion, any alternative security acceptable to the Director, including cash, certified check payable to COUNTY, certificate of deposit, or letter of credit (together, "**Performance Assurance**"). During the first Contract Year, the amount of the Performance Assurance must be in the sum established by COUNTY in Section A of Exhibit 3A to secure full and timely satisfaction of Performance Obligations for both Task 1 and Task 2, including payment of Franchise Fees, and any liquidated damages.

In all subsequent Contract Years, that amount must be not less than the sum of:

- 15 percent of FRANCHISEE'S Gross Receipts from Task 1 minus Franchise Fees for the prior Contract Year;
- 110 percent of the Franchise Fees paid by FRANCHISEE during the first six months of the prior Contract Year;
- 110 percent of any liquidated damages assessed FRANCHISEE by COUNTY during the first six months of the prior Contract Year;
- Up to $50,000, at the discretion of the Director; and
- 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/County Services but must provide for payment of moneys to COUNTY to, (1) secure substitute Franchise/County Services; (2) remedy damages incurred by COUNTY, including reasonable expenses, attorney's fees, and liquidated and compensatory damages; (3) ensure satisfaction of all Performance Obligations, including payment of Franchise Fees; and (4) repay any money recovered from COUNTY in any bankruptcy or similar proceedings relating to FRANCHISEE. The performance bond must be conditioned on faithful performance by FRANCHISEE of all the terms and conditions of this AGREEMENT, including payment of Franchise Fees and any liquidated damages.

Each Performance Assurance must be renewed to provide for continuing liability in the above amount notwithstanding any payment or recovery thereon. At least 30 days prior to the Execution Date and 30 days prior to 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'S Right to Provide MSW Management Services.

1. **Events.** COUNTY may perform, or contract for the performance of, any or all of Franchise/County 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/County Services, it will consider contracting with other COUNTY franchisees. COUNTY has no obligation to continue providing Franchise/County Services and may at any time, in its sole discretion, cease to provide Franchise/County Services. However COUNTY'S right to provide Franchise/County Services will continue until FRANCHISEE can demonstrate to COUNTY'S satisfaction that FRANCHISEE is ready, willing, and able to resume timely and full Franchise/County Services or until COUNTY can make alternative arrangements for providing MSW Management Services comparable to Franchise/County 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/County Services, which notice is effective immediately, but must confirm oral notice with a Notice within 24 hours thereafter.

3. **Service Assets Applicable to Task I only.**

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

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

c. ***Updated Inventory.*** In each Annual Report and at any other time requested by COUNTY, FRANCHISEE shall update its inventory of Service Assets included in FRANCHISEE Documentation to reflect

acquisition or replacement of Service Assets or additional or amended Service Assets document described in Section 16A3b, accompanied by a certification signed by FRANCHISEE that all Vehicles meet any specifications provided in this AGREEMENT and all Carts meet the specifications described in FRANCHISEE Documentation.

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

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

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

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

Furthermore, if COUNTY has possession and/or use of FRANCHISEE'S Service Assets, FRANCHISEE shall execute whatever documentation its liability insurers require to ensure that COUNTY and Customers are protected and covered by FRANCHISEE'S general and automobile policies, including requesting and executing endorsements to those policies. FRANCHISEE hereby gives COUNTY the right to call and confer with FRANCHISEE'S insurance broker to determine what, if any, documentation or actions are necessary to achieve protection satisfactory to COUNTY. FRANCHISEE hereby gives COUNTY the right to pay for any endorsements, additional premiums, or other costs. By executing this AGREEMENT,

FRANCHISEE authorizes its insurance broker to cooperate with and respond to requests from COUNTY, which authorization FRANCHISEE may not rescind without COUNTY consent.

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

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

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

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

8. Rental and Other Compensation.

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

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

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

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

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

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

B. **Emergency Assistance.** FRANCHISEE shall give first consideration to County in the event that solid waste in any part of the unincorporated area of the COUNTY is not collected and in the judgment of the Director creates a danger to public health, safety or welfare, including in the event of a major disaster such as an earthquake, fire, mudslide, storm, riot, or civil disturbance, by providing vehicles and drivers to collect any solid waste as requested by COUNTY, at charges no greater than the following:

1. Rates (with respect to solid waste discarded in Carts); and

2. $60/Ton (with respect to CEDs, E-Waste, and solid waste, including Abandoned Waste, discarded in containers other than Carts);

3. rates the FRANCHISEE charges for comparable MSW Management Services (with respect to Solid Waste *not* discarded in containers)

None of these rates can be greater than the limits provided in Section D11 of Exhibit 3A2, the Director provides authorization based on information provided by FRANCHISEE substantiating the need for an increase. FRANCHISEE shall cooperate with COUNTY, State of California, and federal officials in filing information related to a regional, state, or federally-declared state of emergency or disaster as to which FRANCHISEE has provided equipment and drivers under this AGREEMENT.

C. **Backup Service Plan.** FRANCHISEE shall develop a backup service plan included in FRANCHISEE Documentation and implement that plan upon COUNTY request if Customers' Solid Waste is not Collected at Customer's Set-Out Site or Abandoned Waste is not Collected within 7 days of COUNTY request, including due to an event described in Section 16A1 or Section 16B. FRANCHISE shall include in the plan at a minimum, the following provisions:

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

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

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

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

5. Provide replacements for drivers and other employees who are not providing Collection or other Franchise/County Services

(such as supervisory personnel or management, or employees of Affiliates or other solid waste management companies) and security for those drivers and other employees; and

6. Identify customers that require priority service.

SECTION 17–DEBARMENT BREACHES AND DEFAULTS; SUSPENSION; TERMINATION

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

1. Failure to keep Records required by this AGREEMENT;

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

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

4. Failure to timely pay the Franchise Fee;

5. Failure to timely pay an Indemnification; or

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

7. Failure to timely respond to County

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

B. **FRANCHISEE Default.** The following constitute FRANCHISEE Defaults:

1. **Fraud, Misrepresentation, or Breach of Warranties.** FRANCHISEE committed any fraud or deceit or made any intentional misrepresentations in the procurement of this AGREEMENT; commits, or attempts to commit, any fraud or deceit upon COUNTY after the Execution Date of this

AGREEMENT; makes any material misrepresentations or breaches any warranties in this AGREEMENT (including Exhibit 20H); or includes any materially false or misleading statement, representation, or warranty in any Record or Report.

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

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

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

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

   b. Any repeated Violation of Applicable Law.

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

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

   a. With respect to Task 1, seven consecutive days; or

   b. With respect to Task 1, seven days in the aggregate from the Execution Date.

   c. With respect to Task 2, seven days in a calendar year.

6. **Failure to Collect for More Than Seven Days.** With respect to Task 1, 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, damages or County's Reimbursement Costs):

   a. More than twice in any Calendar Year;

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

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

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

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

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

   c. Section 23E Nondiscrimination;

   d. Section 23G County Lobbyist Ordinance; or

   e. subsection F of this Section, Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program.

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

10. **Improper Consideration.** COUNTY finds that consideration, in any form, was offered or given by FRANCHISEE either directly or through an

intermediary to any COUNTY officer, employee, or agent with the intent of securing this AGREEMENT or securing favorable treatment with respect to the award, amendment, or extension of this AGREEMENT or the making of any determinations with respect to FRANCHISEE'S performance under this AGREEMENT where that consideration may take any form including cash; discounts; service; or the provision of travel, entertainment, or tangible gifts.

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

C. Notice of FRANCHISEE Default.

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

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

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

   c. A FRANCHISEE Default described in subsection B4 (material or repeated Violation of Applicable Law, including the County Lobbyist Ordinance) or as identified in Exhibit 3A2;

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

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

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

4. **Effective 10 days.** The COUNTY may terminate this AGREEMENT effective 10 days after Notice given by COUNTY for failure to comply with the County Defaulted Property Tax Reduction Program in accordance subsection F of this Section.

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;

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

   c. any other FRANCHISEE Default in Exhibit 3A or 3A2.

   During that 45-day period FRANCHISEE shall have the opportunity to demonstrate to COUNTY that FRANCHISEE can once again fully perform Franchise/County 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 COUNTY 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 COUNTY may terminate this AGREEMENT on six months' Notice if in the judgment of the Director, COUNTY and FRANCHISEE are unable to reach satisfactory agreement to adjust Rates in accordance with item c of Section A1 of Exhibit 10 for a Change in Law or changes in Service Specifications or Service Standards after good faith negotiations during a period of at least 30 days.

   c. ***Criminal Activity***. The COUNTY 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.

   d. ***Annexation of Service Area***. Upon request of COUNTY, FRANCHISEE shall use Reasonable Business Efforts to cooperate

with a local agency with respect to providing Franchise/County Services or MSW Management Services, in the following events:

1. the Service Area is annexed by that local agency in accordance with applicable laws, and

2. the Parties agree to amend this AGREEMENT to delete the annexed area from the definition of "Service Area".

E. FRANCHISEE Responsibility and Debarment.

1. **Child Support Compliance Program.** COUNTY may debar FRANCHISEE from doing business with COUNTY if COUNTY determines after giving notice and conducting a hearing in accordance with Chapter 2.202 of the County Code, which shall apply to this AGREEMENT, that FRANCHISEE (or any of its Subcontractors) is not responsible within the meaning of Chapter 2.202 and in accordance with COUNTY'S policy to do business with responsible contractors; FRANCHISEE'S failure to comply with the Child Support Compliance Program, as provided in Section 22B, may be cause for debarment in accordance with § 2.200.020 of the County Code.

2. **County Defaulted Property Tax Reduction Program.** COUNTY may debar FRANCHISEE from doing business with COUNTY as provided in subsection F of this Section.

F. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY DEFAULTED PROPERTY TAX REDUCTION PROGRAM.

1. **FRANCHISEE Default.** Failure of FRANCHISEE to maintain compliance with the requirements set forth in Section 22C "COMPLIANCE WITH APPLICABLE LAW / County Defaulted Property Tax Reduction Program" shall constitute a FRANCHISEE Default under subsection B8e of this Section.

2. **Termination/Debarment.** Without limiting the rights and remedies available to COUNTY under any other provision of this AGREEMENT, failure of FRANCHISEE to cure that FRANCHISEE Default within 10 days of Notice shall be grounds upon which COUNTY may terminate this AGREEMENT under subsection D2a of this Section and/or pursue debarment of FRANCHISEE pursuant to County Code Chapter 2.206 and subsection E2 of this Section.

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;

3. Assess damages under subsection D, and

4. With respect to a FRANCHISEE Default under Section 17B3 (Failure to Provide Insurance, Bonds), immediately withhold payments due FRANCHISEE.

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/County 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/County Services for the price provided under this AGREEMENT, and to negotiate new agreements therefore; and

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

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

D. Recovery of Damages.

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

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

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

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

   d. In the event of FRANCHISEE DEFAULT under 17B3 (Failure to Provide Insurance, Bond), in COUNTY'S sole discretion, obtain damages resulting from that DEFAULT.

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

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

2. **Liquidated.** COUNTY may seek liquidated damages listed in Exhibit 18D2 and Exhibit 3A2.

   The Parties have set these liquidated damages in recognition of the following circumstances existing at the time of the formation of this AGREEMENT:

   - 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 Franchise/County 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. FRANCHISEE is experienced in providing services like Franchise Services and County Services.

- 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. It would be difficult for the COUNTY to prove its loss resulting from FRANCHISEE'S Breaches and nonperformance or untimely, negligent, or inadequate performance of County Services.

- The AGREEMENT contains a reasonable statement of Franchise/County Services in order that the Parties' will realize their expectations. COUNTY expects that FRANCHISEE will perform Franchise/County Services with due care in a workmanlike, competent, timely, and cost-efficient manner. FRANCHISEE expects to realize a profit by performing Franchise/County Services in accordance with the terms and conditions of the AGREEMENT for County Service Charges.

- In addition, in the event of Breach or FRANCHISEE Default, urgency of protecting public health and safety may necessitate that COUNTY enter into emergency or short-term arrangements for services without competitive procurement at prices substantially greater than under this AGREEMENT, and the monetary loss resulting there from is impossible to precisely quantify. Time is of the essence.

- The FRANCHISEE accepts COUNTY'S assessment of liquidated damages for certain Breaches as part of the consideration FRANCHISEE offers to the COUNTY for the award of this AGREEMENT to FRANCHISEE.

- Lastly, termination of this AGREEMENT for FRANCHISEE Default and other remedies provided in this AGREEMENT are, at best, a means of future correction and not remedies that make COUNTY whole for past Breaches and FRANCHISEE Defaults.

Therefore, the Parties agree that the liquidated damages listed in Exhibit 18D2 represent a reasonable estimate and fair approximation of the amount of damages COUNTY would incur as a consequence of FRACHISEE'S Breach corresponding to each item of specified liquidated 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 following:

- the accuracy of the statements made above, and
- the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this AGREEMENT was made.

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

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

SECTION 19–TRANSFER OF FRANCHISE

A. COUNTY Consent. FRANCHISEE may not Transfer this AGREEMENT, the Franchise granted under it, or any rights or duties under it, in whole or in part, and whether voluntarily or involuntarily, without COUNTY'S prior written consent, the exercise of which is in COUNTY'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 COUNTY'S consent, at COUNTY'S option, will be null and void. COUNTY'S consent must be a written amendment to this AGREEMENT that is formally approved by the Board of Supervisors and

executed by (1) the FRANCHISEE and (2) the Board, or if delegated by the Board, the Director. Any Transfer, with or without consideration for any reason whatsoever without COUNTY'S (or Director's, if applicable) express prior written approval, shall be a Breach of this AGREEMENT, which many result in the termination of this AGREEMENT. In the event of such termination, COUNTY shall be entitled to pursue the same remedies against FRANCHISEE as it could pursue in the event of default by FRANCHISEE. The COUNTY may condition consent on payment of amounts specified in Exhibit 3A in consideration for the value of good will and intangibles that accrued to COUNTY and Customers in the award of this AGREEMENT to FRANCHISEE.

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

C. Payment of County's Transfer Costs.

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

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

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

Any payment by COUNTY to any approved delegate or transferee on any claim under this AGREEMENT shall be deductible, at COUNTY's sole discretion, against the claims which FRANCHISEE may have against COUNTY.

SECTION 20–GENERAL PROVISIONS

A. Exercise of Options. Parties will exercise any approval, disapproval, consent, judgment, option, discretion, election, opinion, or choice under this AGREEMENT, make a requirement under this AGREEMENT or interpret this AGREEMENT (**"Discretionary Action"**) reasonably. Any mediator, arbitrator, or

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

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

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

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

E. Changes and Amendments.

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

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

b. Changes to Exhibit 3D FRANCHISEE Documentation;

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

d. Immaterial changes to immaterial Performance Obligations.

2. **Written 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/County Services and Service Standards that result in a Rate adjustment in accordance with Section 3C or change in County Service Fee; and

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

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

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

2. Copartner, if FRANCHISEE is a partnership; or

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

Notice is deemed effective:

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

2. Three days after the date of mailing.

G. **Authorized Representative of Director.** COUNTY authorizes the Director to make requests or requirements of FRANCHISEE or give approvals under this AGREEMENT, excluding consents to Transfer or written amendments of 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.** With respect to Task 1 only, FRANCHISEE shall limit the terms of Subscription Orders to no longer than the remaining period of the Term. FRANCHISEE shall give each Customer the option to terminate its Subscription Order without cause on 90 days notice. FRANCHISEE shall also give each Customer the right to terminate service immediately in the event of emergency in accordance with Section 16A, or within 30 days if FRANCHISEE:

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

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

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

J. Criminal Activity.

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

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

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

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

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

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

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

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

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

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

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

SECTION 21–DEFINITIONS AND INTERPRETATION OF AGREEMENT

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

B. Interpretation and Construction.

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

2. **Headings; Font.** Any captions or headings following the Exhibit, Attachment, Section, subsection, paragraph, and other attachments and subdivisions of this AGREEMENT that precede the operative text of this AGREEMENT are for convenience of reference only and do not control or affect the scope, intent, meaning, construction, interpretation, or effect of this AGREEMENT. Any underlined, italicized, bold-faced, upper captioned or other font style is for ease of reading and contract administration only and does not imply relative importance or unimportance of any provision of this AGREEMENT.

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

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

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

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

7. **Inconsistencies and Conflicts.**

   a. If any provision of Exhibit 3A or 3A2 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 and 3A2 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 3A2), 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.

8. **References to Task 1 and Task 2.**
Unless specifically indicated otherwise at the beginning of a Section or subsection, this AGREEMENT applies to both Task 1 and Task 2.

However, Exhibit 3A only applies to Task 1, and Exhibit 3A2 only applies to Task 2.

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

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

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

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

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

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

E. **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/County Services in the Service Area and to execute this AGREEMENT upon FRANCHISEE'S own choice and initiative. Each Party represents and warrants that it and its counsel have reviewed this AGREEMENT, and the Parties agree that no provision in this AGREEMENT will be construed against the drafting Party.

SECTION 22–COMPLIANCE WITH LAWS AND REGULATIONS

A. Applicable Law.

1. **Compliance.** FRANCHISEE shall secure and maintain all permits, and comply with all Applicable Laws, including (as required by 13 CCR 2021.1) all applicable air pollution control laws such as Diesel Particulate Matter Control Measure of on-road heavy-duty diesel-fueled Residential and Commercial Solid Waste Collection Vehicles set forth in 13 CCR 2020 *et seq.*, and the Property Tax Reduction Ordinance. 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 A1 of Exhibit 10

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

C. **County Defaulted Property Tax Reduction Program.** FRANCHISEE acknowledges that COUNTY has established a goal of ensuring that all individuals and businesses that benefit financially from COUNTY through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon the COUNTY and its taxpayers.

   Unless FRANCHISEE qualifies for an exemption or exclusion, FRANCHISEE warrants and certifies to the best of its knowledge under Exhibit 20H, that as of the Execution Date it is in compliance with County Code Chapter 2.206.

   Unless FRANCHISEE qualifies for an exemption or exclusion, FRANCHISEE shall comply with Los Angeles County Code Chapter 2.206.

SECTION 23–LABOR-RELATED PROVISIONS REQUIRED IN COUNTY CONTRACTS

A. **Labor Code.** FRANCHISEE and its agents and employees are bound by and shall comply with all applicable provisions of the California Labor Code as well as all other Applicable Laws related to labor. By and through its execution of this

AGREEMENT, FRANCHISEE represents and warrants that it is aware of and understands the provisions of California Labor Code § 3700, which requires every employer to be insured against liability of Workers' Compensation or to undertake self-insurance in accordance with those provisions before commencing the performance of work under this AGREEMENT and agrees to fully comply with those provisions.

1. **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. If both laid-off County employees and GAIN and GROW participants in categories identified by COUNTY are available for hiring, FRANCHISEE shall give COUNTY employees first priority.

B. Notices to Employees.

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

2. **Regarding Safely Surrendered Baby Law.** FRANCHISEE acknowledges that COUNTY places a high priority on the implementation of the Safely Surrendered Baby Law (SB 1368).
   a. ***Fact Sheet.*** FRANCHISEE shall notify and provide to its employees and shall require each Subcontractor performing Franchise/County Services to notify and provide to Subcontractors' employees a fact sheet regarding the Safely Surrendered Baby Law, its implementation in the COUNTY, and where and how to safely surrender a baby. FRANCHISEE shall print and make available in every facility where its employees are present, including offices and operation yards, the fact sheet that is available at www.babysafela.org.

   b. ***Poster.*** FRANCHISEE understands that it is COUNTY'S policy to encourage all COUNTY contractors to voluntarily post COUNTY'S "Safely Surrendered Baby Law" poster in a prominent position at the contractor's place of business. FRANCHISEE shall also

encourage its Subcontractors to post this poster in a prominent position in the Subcontractors' place of business. COUNTY'S Department of Children and Family Services will supply FRANCHISEE with the poster to be used.

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

C. Prohibition Against Use of Child Labor.

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

2. **Provide COUNTY with Records.** At COUNTY'S request, FRANCHISEE shall provide documentation satisfactory to COUNTY evidencing the country or countries of origin of any products, goods, supplies, or other personal property FRANCHISEE sells or supplies to COUNTY or any Customer in connection with Franchise/County Services.
3. **Provide COUNTY with Manufacturers' Certification.** At COUNTY'S request, FRANCHISEE shall provide to COUNTY the manufacturer's certification of compliance with the Convention Concerning Minimum Age for Employment or other all-international child labor conventions.

D. 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.** At COUNTY'S request, FRANCHISEE shall promptly allow COUNTY and its auditor's access to FRANCHISEE'S employment records at FRANCHISEE'S Office during FRANCHISEE Office Hours to verify compliance with the provisions of this subsection E.

5. **Remedies for Discrimination.** If COUNTY finds that FRANCHISEE has violated any provisions of this subsection E, that violation constitutes a FRANCHISEE Default. While COUNTY reserves the right to determine independently that the 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.

E. 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/County 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 FRANCHISEE to cease providing Franchise/County Services at no cost to COUNTY until FRANCHISEE is in compliance with this Section.

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

protective equipment, and shall take all actions appropriate to providing a safe job environment.

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

SECTION 24–EXECUTION OF AGREEMENT

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

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

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

COUNTY OF LOS ANGELES

By _____
Director of Public Works

APPROVED AS TO FORM:

ANDREA ORDIN SHERIDAN
County Counsel

By _____
Deputy

NAME OF FRANCHISEE

By _____
President

_____
Type or Print Name

_____
Secretary

_____
Type or Print Name

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ENCLOSURE D

SAMPLE EXCLUSIVE FRANCHISE AGREEMENT

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

FOR
PROVISION
OF
REFUSE, RECYCLABLES, GREEN WASTE AND MANURE
AUTOMATED CART SERVICES
TO CUSTOMERS
AT
RESIDENTIAL PREMISES
AND CERTAIN MULTIFAMILY AND COMMERCIAL PREMISES

AND
ABANDONED WASTE COLLECTION SERVICES
FOR COUNTY

FOR THE SERVICE AREA OF

ALTADENA/KINNELOA MESA

[INSERT DATE]

SAMPLE EXCLUSIVE FRANCHISE AGREEMENT

FOR THE AREAS OF ALTADENA/KINNELOA MESA

THIS AGREEMENT is made and entered into on_____, 2010, by and between the County of Los Angeles, a political subdivision of the State of California (COUNTY), and **[Name of FRANCHISEE], [Form of Entity]** ("FRANCHISEE").

RECITALS:

WHEREAS, Municipal Solid Waste (MSW) Management Services have been provided by waste 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 waste 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; and

WHEREAS, the COUNTY is authorized to award franchises to waste 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; and

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

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

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 land filling have created an urgent need for State of California and local agencies to enact and implement an aggressive new integrated waste management program. Through enactment of AB 939, the State of California has directed agencies, such as the COUNTY, to divert 50 percent of all solid waste through source reduction, recycling, and composting activities. The California Integrated Waste Management Board has granted the COUNTY a time line to achieve compliance with the AB 939 diversion requirements. Compliance is based in part on executing and implementing this AGREEMENT in order to secure cooperation with FRANCHISEE'S AB 939 waste diversion programs, record keeping, and reporting; and

WHEREAS, the COUNTY'S Director has determined to require franchises for Franchise Services (otherwise referred to as "Task 1" in this AGREEMENT). In order to assist residents and businesses located in the Service Area to receive quality MSW Management Services and to provide the COUNTY with programs, records, and reports that will help the COUNTY comply with AB 939, the Director has determined to franchise MSW Management Services in portions of the COUNTY, under the terms of this AGREEMENT. The COUNTY issued a 5-year notice under California Public Resources Code § 49520 of the COUNTY'S intent to authorize, among other options, the exclusive franchising of MSW Management Services in portions of the COUNTY; and

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

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

this AGREEMENT does not, supervise Franchise Services or assume title to Solid Waste; and

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

WHEREAS, COUNTY is responsible and provides for collection of solid waste abandoned on public rights of way and is authorized to fulfill its responsibility through contracting for collection service; and

WHEREAS, under California Streets and Highways Code section 953, COUNTY must pay for collection of abandoned waste in Public Right of Way (otherwise referred to as "Task 2" in this AGREEMENT) out of public money deposited in the County Road Fund. COUNTY cannot use Customer Service Charges (or Rates) to pay for Task 2; and

WHEREAS, the COUNTY issued a Request for Proposals (RFP) to provide Task 1 and Task 2 services under this AGREEMENT, and private waste hauling companies submitted proposals, including their proposed schedule of rates and charges. The COUNTY selected FRANCHISEE based, *inter alia*, on FRANCHISEE'S price proposal and work plan for Task 1. There was no separate evaluation of proposals with respect to Task 2 services. The compensation to be paid to the FRANCHISEE for Task 2 services has been established and stipulated by the County in Exhibit 3A2 of this AGREEMENT. Under this AGREEMENT, the FRANCHISEE cannot charge its customers more than the proposed rates and charges; and

WHEREAS, the FRANCHISEE is awarded this AGREEMENT. The Board of Supervisors determines and finds pursuant to California Public Resources Code § 40059, that the public health, safety, and welfare require that FRANCHISEE be awarded this AGREEMENT for Franchise Services (Task 1) pursuant to Chapter 20.70 of the County Code and County Services (Task 2) pursuant to California Streets and Highways Code section 953. FRANCHISEE acknowledges and understands that this AGREEMENT encompasses both Task 1 and Task 2, and shall perform both tasks pursuant to the terms set forth in this AGREEMENT; and

This AGREEMENT applies to both Task 1 and Task 2, unless specifically indicated otherwise at the beginning of a Section or subsection. However, Exhibit 3A applies only to Task 1, and Exhibit 3A2 applies only to Task 2.

NOW, THEREFORE, the parties agree as follows:

SECTION 1–GRANT OF RIGHT AND PRIVILEGE TO PROVIDE FRANCHISE SERVICES. Applicable to Task 1 only.

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, Commercial, and Multifamily Premises, subject to the exclusions in subsection B.

2. **Grant of Nonexclusive Franchise.**

   a. ***Recyclables***. COUNTY grants to FRANCHISEE the nonexclusive right and privilege together with the obligation to arrange to provide Franchise Services with respect to Recyclables discarded by Customers if prescribed in Exhibit 3A. Notwithstanding the foregoing, however, Customers may donate or sell any or all of their Recyclables to Persons other than FRANCHISEE.

   b. ***Collection in Carts at Commercial Premises and Multifamily Premises.*** COUNTY grants to FRANCHISEE the nonexclusive right and privilege to arrange to provide Franchise Services or MSW Services to Commercial Premises or Multifamily Premises for any Person who requests either of those services. FRANCHISEE is obligated to provide Franchise Services for any person who requests Franchise services at those premises. However FRANCHISEE is not obligated to provide MSW services for any person who requests MSW services at those premises. Multifamily customers are defined in Section 23 to include dwellings that are triplex or larger, condominiums, and townhouses.

B. Exclusions from Franchise.

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

FRANCHISEE, transport in their own vehicles, and themselves dispose of some or all of the Solid Waste generated at those Premises.

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

   a. COUNTY or any other entity governed by the Board of Supervisors;

   b. The State of California;

   c. Any school district;

   d. Any entity that is excluded by law from the obligation to subscribe to Franchise Services under this AGREEMENT.

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

3. **Collection of Solid Waste in Bins.** This Franchise excludes the right and privilege to provide Collection of Solid Waste in Bins for any Residential, Commercial or Multifamily Customer requesting Bins instead of Carts, or any other exclusions provided in Exhibit 3A. That Customer may arrange with FRANCHISEE or any other person to provide MSW Management Services in Bins.

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

5. **County Services – Abandoned Waste and Litter On-Call Collection Services (Task 2 – County Services).** This Franchise excludes the right and privilege to Collect Abandoned Waste.

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

FRANCHISEE further acknowledges that the signing of this AGREEMENT does not confer on FRANCHISEE any rights under California Public Resources Code §

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

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

SECTION 2–TERM

A. Term. This AGREEMENT commences on the date both parties have executed this AGREEMENT, and expires on the Termination Date provided in Exhibit 3A, unless extended by COUNTY. COUNTY may extend the AGREEMENT in its sole discretion in increments of one or more months, at one or more times, up to an aggregate of six months. COUNTY will give FRANCHISEE Notice of extension at least 30 days in advance of a first extension, and at least 15 days in advance of any additional extension.

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

1. **Acknowledgements.** All acknowledgments, including those in the following Sections:

   - Section 1C (inapplicability of PRC 49520)
     Section 2C (no recovery of undepreciated asset value)
   - Section 3A (no COUNTY responsibility for supervising or performing Franchise Services)
   - Section 11A (Record maintenance)
   - Section 21F (interpretation of this Agreement)

2. **Representations and Warranties.** All representations and warranties, including those made in accordance with the following Sections:

   - Section 21F with respect to review of this AGREEMENT
   - Section 24B, Authority to Execute
   - Exhibit 20H, FRANCHISEE'S Representations and Warranties

3. **Indemnities:** All Indemnities

4. **Payments:** All obligations to pay any due and payable monetary amounts, or claims for those amounts, including:

   - Any Franchise Fees
   - Payment of Transfer Deposits and Transfer Costs
   - Damages under Section 18D
   - Payment of County Service Charges under Exhibit 3A2.

5. **Records and Reports.** 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
   - Records of Disposal
   - Notice of destruction of Records of Disposal
   - Inspection and audit
   - Records of Abandoned Waste Collection including supporting documentation.

6. Any other provisions of this AGREEMENT and rights and obligations of the Parties stated to survive the Termination Date, including:

   - this subsection B (cooperation during transition; removal of Containers)
   - and C (no recovery of undepreciated asset value).

If FRANCHISEE is not awarded an agreement to allow FRANCHISEE to continue to provide MSW Management Services substantially similar to Franchise/County Services in the Service Area after the expiration or termination of this AGREEMENT, FRANCHISEE shall cooperate fully with COUNTY and the succeeding franchisee, licensee, permittee or other provider of MSW Management Services to assure a smooth, efficient, orderly, timely, and effective transition and continued delivery of MSW Management Services to FRANCHISEE'S former Customers.

With respect to Franchise Services (Task 1), FRANCHISEE shall not remove a Container from any Premises until the earlier of: (1) the date any replacement Containers are provided to the Customer, or (2) two weeks after the Termination Date.

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

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

SECTION 3–SCOPE OF SERVICES AND SPECIFICATIONS

A. Prescribed Scope.

With respect to Task 1, FRANCHISEE shall arrange to provide Franchise Services (Task 1) to Premises in the Service Area with any Person who requests them, in accordance with Exhibit 3A. With respect to Task 2, FRANCHISEE shall provide County Services (Task 2) in the Service Area to COUNTY in accordance with Exhibit 3A2.

Notwithstanding the foregoing, subject to meeting the minimum required scope of Franchise/County Services, 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/County Services. FRANCHISEE is solely responsible for choosing the Solid Waste Facilities. In addition, COUNTY is not the owner or titleholder of any material Collected, transported, Disposed of or otherwise handled by FRANCHISEE.

Any work be performed outside the Performance Specifications without COUNTY's prior written approval shall be deemed to be a gratuitous effort by FRANCHISEE, and FRANCHISEE shall have no claim, therefore, against COUNTY.

B. **County Notice.** Applicable to Task 1 only. 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. However, with respect to Task 1, the change is

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/County Services in compliance with the FRANCHISEE Documentation attached as Exhibit 3D.

2. **Changes in FRANCHISEE Documentation.**

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

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

Date: _____ Director:_____"

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

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

Date: _____ Director:_____"

SECTION 4–SERVICE STANDARDS

A. Public Health and Safety; Nuisances

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

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

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

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

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.** Applicable to Task 1 only. FRANCHISEE shall obtain all approvals required to operate Vehicles on private alleys, streets, and parking lots. Subject to COUNTY review and approval and notwithstanding FRANCHISEE's obligations under Section 20C, FRANCHISEE may require those Customers for whom FRANCHISEE is required to operate Vehicles on private property to sign a Subscription Order containing a waiver of liability with respect to damage to private driveways or pavement.

C. **Non-Collection Notice.** Applicable to Task 1 only. FRANCHISEE is not obligated to Collect in any of the following events:

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

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

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

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

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

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

7. The Premises are not safely accessible to Vehicles;

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

9. FRANCHISEE observes any other event provided in Exhibit 3A.

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

D. **Subscription Order.** Applicable to Task 1 only. Before commencing Franchise Services for an individual Customer, FRANCHISEE shall provide a Subscription Order to that Customer, substantially in the form included in FRANCHISEE Documentation, which must include at a minimum, all of the following items:

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

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

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

4. Holiday schedules in accordance with Section B1 of Exhibit 3A;

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

6. Any weight limitations of Containers;

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

8. Nondiscrimination information in accordance with subsection F;

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

10. FRANCHISEE'S Office Hours and toll-free Customer service telephone number;

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

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

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

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

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

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

17. Description of the Recyclables; and

18. Any other information requested by the Director.

FRANCHISEE shall annually distribute to Customers a summary, substantially in the form included in FRANCHISEE Documentation, of the Customer's

Subscription Order containing the general information described in items 1 through 18 and describing where a Customer can contact FRANCHISEE to obtain a copy of that Customer's Subscription Order. FRANCHISEE may distribute that summary together with other correspondence from FRANCHISEE to all Customers, such as Customer outreach and educational materials.

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

E. **Exceptions to Performance Obligations.** No exceptions to Performance Obligations described in the text of this AGREEMENT are permitted unless they are specifically identified in Section A3 of EXHIBIT 3A or Section A1 of EXHIBIT 3A2, or both Exhibits.

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

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

H. **Customer Correspondence and Other Materials.** Applicable to Task 1 only. FRANCHISEE shall submit to the Director for approval at least five County Business Days before printing, distributing, or mailing forms of written materials sent or given to Customers (other than with respect to a particular Customer's Subscription Order or Franchise Services complaints). In addition, at the request of the County, FRANCHISEE shall make Reasonable Business Efforts to distribute County authorized information materials to its Customers.

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

1. **Publicity.** Unless otherwise required by subsection H or subsection I.2, FRANCHISEE and its Affiliates, employees, consultants, agents, or subcontractors may, without COUNTY consent, publicize its Franchise/County Services or indicate in its proposals and sales materials

that it has been awarded this AGREEMENT to provide Franchise/County Services, if FRANCHISEE develops that publicity, proposals, or sales materials in a professional manner.

Neither FRANCHISEE nor any of its Affiliates, employees, consultants, agents, or Subcontractors may publish or disseminate commercial advertisements, news or press releases, opinions or feature articles using the name of COUNTY without the prior written consent of COUNTY'S Chief Administrative Officer and County Counsel. COUNTY shall not unreasonably withhold written consent. COUNTY'S 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/County 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/County Services, FRANCHISEE shall discuss FRANCHISEE'S proposed response with COUNTY.

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

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

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

K. **No Commingling of Interjurisdictional Materials.** Applicable to Task 1 only. FRANCHISEE may not commingle, in its Vehicles or otherwise, any Solid Waste that it Collects with any other materials that it collects in cities, without the express prior written consent of the Director, who may require documentation such as records of customers, including container capacities, in cities and in the Service

Area, respectively. FRANCHISEE shall maintain Records with respect to Solid Waste separately from weight and records with respect to those other materials.

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

M. **Confidentiality.** FRANCHISEE shall maintain the confidentiality of all records obtained from COUNTY under this AGREEMENT in accordance with all applicable Federal, State, and local laws, ordinances, regulations, and directives relating to confidentiality. FRANCHISEE shall inform all of its officers, employees, agents, and Subcontractors providing services hereunder of the confidentiality provisions of this AGREEMENT.

SECTION 5–PRIVACY. Applicable to Task 1 only.

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

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

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

SECTION 6–UNPERMITTED WASTE SCREENING AND REPORTING

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

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

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

3. Immediate driver response, such as load segregation;

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

5. Notification of appropriate local agency or department;

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

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

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

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

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

D. **Labels.** Applicable to Task 1 only. FRANCHISEE shall conspicuously label Containers with stickers, embossing, or other secure means, prohibiting Customers from discarding Unpermitted Waste and including illustrative examples.

E. **Safe Disposal Customer Education Program.** Applicable to Task 1 only. As part of its Unpermitted Waste Screening Protocol, FRANCHISEE shall develop and implement a Customer educational program to maximize exclusion of Unpermitted Waste from Disposal and promote safe handling of Unpermitted Waste. FRANCHISEE shall include a copy of its program in FRANCHISEE Documentation. At least once each Calendar Year, FRANCHISEE shall distribute flyers, pamphlets, brochures, or other written information describing the safe disposal Customer education program. FRANCHISEE shall submit the materials to COUNTY at least one month before mailing them, and COUNTY may comment on them. FRANCHISEE may combine this distribution with its Customer outreach for the Waste Diversion Program as provided in Section B2b of Exhibit 3A.

SECTION 7–CUSTOMER SERVICE

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

B. **Telephone Service.** Applicable to Task 1 only. FRANCHISEE shall maintain a toll-free telephone number. FRANCHISEE shall list the telephone number under FRANCHISEE'S name in at least two telephone directories (white pages and yellow pages) available in the Service Area, including English and Spanish or other language as required by the Director. FRANCHISEE'S choice of directories must be approved by the Director before printing. FRANCHISEE shall be available during FRANCHISEE Office Hours at that number to receive calls (including from the Director, Customers, and the public) with respect to its Performance Obligations or Franchise Services (including Subscription Orders, Franchise Services payments, and complaints). FRANCHISEE shall provide an answering machine or answering service at that number to take reports of missed pick-ups and other complaints that are received outside of FRANCHISEE Office Hours and otherwise provide Customer service in accordance with County Code § 20.72.160 and any additional provisions in Exhibit 3A.

C. **Bilingual.** Applicable to Task 1 only. FRANCHISEE shall respond to Customers in English and Spanish and/or any alternative or additional language prescribed in Exhibit 3A, as requested by a Customer.

D. **Customer Complaints; Missed Collections. Applicable to Task 1 only.**

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

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

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

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

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

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

3. **County's Reimbursement Costs.** If COUNTY employees or agents spend either: (1) more than two hours in the aggregate resolving complaints from any single Customer that the Customer states have previously been filed with FRANCHISEE, or (2) more than one hour in any work week (Monday through Friday) resolving complaints from different Customers; then FRANCHISEE shall reimburse COUNTY its County's Reimbursement Costs incurred to resolve the complaint, as evidenced by an invoice indicating the name and address of the Customer, nature of complaint, amount of time spent, and hourly fees for employees involved and materials or other disbursements, including phone and postage costs.

SECTION 8–OWNERSHIP OF SOLID WASTE

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

SECTION 9–DIVERSION

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

SECTION 10–RATES AND CUSTOMER BILLING. Applicable to Task 1 only.

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

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

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

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

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

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

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

SECTION 11–FRANCHISEE RECORDS–AUDITS

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

A. Record Maintenance and Retention.

1. **All Records.** FRANCHISEE shall prepare and maintain all Records in accordance with generally accepted auditing principles during the Term and for an additional period of not less than five years after the Termination Date or any longer period required by Applicable Law.

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

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

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

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

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

B. **County Custody.** If the Director has reason to believe that Records may be lost, discarded, or destroyed for any reason, the Director may require that FRANCHISEE give COUNTY custody of any or all Records in which event access to those Records is granted to any Person duly authorized by FRANCHISEE. FRANCHISEE shall pay for storage cost.

C. **Inspection and Audit.** Upon five Service Days' advance notice by telephone or writing, or a lesser amount of time in the event of extraordinary circumstances, COUNTY and its auditors may inspect, audit (including using outside auditors), excerpt, transcribe and copy all Records at FRANCHISEE'S Office during FRANCHISEE Office Hours. FRANCHISEE may maintain Records outside of the COUNTY (1) if it promptly provides copies thereof to COUNTY at COUNTY'S offices, (2) if COUNTY, in its sole discretion, agrees to travel outside the COUNTY and FRANCHISEE pays County's Reimbursement Costs.

   In addition to travel costs, 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 for the audit 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; County Service Charges paid by COUNTY, or information that FRANCHISEE submitted to COUNTY.

The Director may give Notice to FRANCHISEE identifying any discrepancy.

FRANCHISEE will pay any discrepant shortfall in Franchise Fee or other payments due COUNTY, or excess of County Service Charges, upon COUNTY demand, including fees and charges for the late payment of Franchise Fees. Failure to make those payments will constitute a FRANCHISEE Default in accordance with Section 17. In lieu of payment, COUNTY in its sole discretion may (1) deduct that shortfall from amounts that COUNTY owes FRANCHISEE under this AGREEMENT, other contracts or any other obligation, or (2) draw that shortfall from the performance bond, letter of credit, certificate of deposit or other form of performance assurance provided by FRANCHISEE in accordance with Section 15.

COUNTY will pay any discrepant shortfall in County Service Charges due FRANCHISEE in cash up to COUNTY'S maximum obligation for County Service Charges appropriated by COUNTY for purpose of this AGREEMENT.

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

E. **Copies of Audits.** If anyone, including Federal or State auditors and auditors or accountants employed by FRANCHISEE or others, conducts an audit of FRANCHISEE specifically regarding this AGREEMENT, then within 30 days of the audit report, FRANCHISEE shall file a copy of the audit report with County's Auditor-Controller, unless otherwise provided by Applicable Law. Subject to Applicable Law, COUNTY shall make a reasonable effort to maintain the confidentiality of such audit report(s)

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.

C. Public Record Request.

1. The following become the exclusive property of COUNTY:

- Any Record or other document that FRANCHISEEE gives COUNTY, including in connection with the procurement of this AGREEMENT (such as proposals);

- Any Record or other document that COUNTY obtains in connection with COUNTY'S audit or inspection under this AGREEMENT, including books and accounting records;

The above Records or other documents become a matter of public record and shall be regarded as public records, *except* if FRANCHISEE marks them as a "trade secret," "confidential," or "proprietary", they will be deemed excluded from disclosure under Government Code 6250 et seq. (Public Records Act). COUNTY shall not in any way be liable or responsible for the disclosure of any such records including, with limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

2. FRANCHISEE will defend, indemnify and hold harmless County from all costs and expenses, including reasonable attorney's fees, in connection with any requested action or liability arising under the Public Records Act, including request for any of the Records or other documents marked "trade secret," "confidential," or "proprietary,". FRANCHISEE releases COUNTY from liability or responsibility for disclosing Records or other documents including those so marked, if disclosure is required by Applicable Law, including an order issued by a court of competent jurisdiction.

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:

i 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); and Abandoned Waste (in Tons or measure approved by the Director) Collected by FRANCHISEE,

ii. Materials recovered from those Recyclables, Abandoned Waste (such as CEDs or E-waste) and residual Refuse remaining after processing of Recyclables,

iii. The final destination of that Refuse, and

iv. Where FRANCHISEE delivered those Recyclables;

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

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

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

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

g. Number of households and customers served and/or invoiced for payment.

h. Records of Collection for Task 2 requested by the Director.

2. **Quarterly Reports.** Within 45 days after the last day of each March, June, September, and December FRANCHISEE shall submit the Quarterly Report for the preceding three calendar months ending with that month to COUNTY in a form satisfactory to COUNTY, including the following information:

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

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

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

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

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

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

g. FRANCHISEE customer service list, which includes a list of all current and closed accounts, account numbers, name associated with each account, customer addresses, level of service provided at each address, additional services provided, billing and payment dates, payment received by each Franchise customer, and any other information associated with Franchise Services as requested by the Director.

h. Information relating to Task 2 requested by the Director.

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

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

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

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

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

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

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

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

h. each Vehicle's compliance with SCAQMD Rule 1193, Clean ON-Road Residential and Commercial Collection Vehicles, and Diesel Particulate Matter Control Measures (13 CCR 202 *et seq.*).

i. Information relating to Task 2 requested by the Director.

4. **Reports of Violators.** Applicable to Task 1 only. 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, and 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:

i. The United States or California Environmental Protection Agency;

ii. Cal Recycle;

iii. The Securities and Exchange Commission;

iv. Any other Regulatory Agency;

v. Any Federal, State, or County court.

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

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

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

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

SECTION 14–INDEMNIFICATION AND INSURANCE

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

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

2. **Cal/OSHA.** Without limiting the operations Indemnification in subsection A1, employer sanctions and any other Liabilities that may be assessed against

FRANCHISEE or COUNTY or both in connection with any alleged act or omission of FRANCHISEE or any of FRANCHISEE's Related Parties that is in violation of any Cal/OSHA regulation. This obligation includes all investigations and proceedings associated with purported violations of 8 CCR 336.10 pertaining to multiemployer work sites. FRANCHISEE shall not be obligated to so release, indemnify, defend, and hold harmless COUNTY from and against any Liabilities arising from the active negligence of COUNTY.

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

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

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

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

   b. ***Non-Customer Materials.*** The collection, delivery, handling, recycling, processing, composting or disposal by FRANCHISEE or any of FRANCHISEE's Related Parties of any materials or waste, including Unpermitted Waste, that are generated by Persons other than Customers or collected from premises other than Premises;

   c. ***Failure to Comply with Unpermitted Waste Screening Protocol.*** The failure of FRANCHISEE or any of FRANCHISEE's Related Parties to undertake Unpermitted Waste training procedures required

by Applicable Law or the Unpermitted Waste Screening Protocol, whichever is more stringent; or

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

(i) In one or more occurrence;

(ii) Threatened or transpired;

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

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

For purposes of this subsection A5, **"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 foregoing Indemnification under this subsection A5 is intended to operate as an agreement under 42 U.S.C. § 9607(e) and California Health and Safety Code § 25364, to insure, protect, hold harmless, and indemnify COUNTY from liability in accordance with this Section.

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

With respect to COUNTY's defense under this subsection A, COUNTY reserves the right to retain co-counsel at its own cost and expense and FRANCHISEE shall direct FRANCHISEE'S counsel to assist and cooperate with COUNTY'S co counsel.

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, and in the performance of this AGREEMENT and until all of its Performance Obligations pursuant to this AGREEMENT have been met, FRANCHISEE shall provide and maintain the following programs of insurance at its own expense. Performance Obligations under this Section 14B are in addition to and separate from any other Performance Obligation in this AGREEMENT. COUNTY reserves the right to review and adjust the insurance requirements in this Section 14B if COUNTY determines that there have been changes in risk exposures. COUNTY makes no warranty that the insurance coverage terms, types and limits in this Section 14B is sufficient to protect the FRANCHISEE for liabilities that may arise from or in relation to this AGREEMENT.

1. **Primary, Excess, Non-Contributory.** All FRANCHISEE'S insurance carried under this Section 14B shall be primary with respect to any other insurance or self-insurance programs available to COUNTY.

2. **Cancellation notices.** All insurance shall contain the express condition that COUNTY is to be given written notice by mail at least 30 days in advance of cancellation, or at least 10 days in advance of cancellation for nonpayment of premium, for all policies evidenced on the certificate of insurance.

3. **Non-compliance.** Neither the COUNTY'S failure to obtain, nor the COUNTY'S receipt of, or failure to object to a non-complying insurance certificate or endorsement or any other insurance documentation or information provided by the FRANCHISEE, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any Performance Obligation under this Section 14B. If FRANCHISEE does not provide and maintain those programs of insurance, COUNTY may elect to purchase required insurance coverage without further notice to FRANCHISEE, and COUNTY may charge FRANCHISEE any premium costs advanced by COUNTY for that insurance and draw on the performance bond, letter, of credit, or other form of performance assurance provided by FRANCHISEE.

4. **Evidence of Insurance: COIs and copies of policies.** At least 30 days prior to the Execution Date and thereafter 30 days prior to each policy renewal and also within two business days of any COUNTY request, FRANCHISEE shall deliver a certificate or certificates of insurance or other evidence of coverage acceptable to the Director at the address provided for Notices. Certificates or other evidence must:

   a. Specifically identify this AGREEMENT by name or number; name the insured party that matches the name of FRANCHISEE executing this AGREEMENT; provide the full name of each insurer providing

coverage and the insurer's NAIC (National Association of Insurance Commissioners) identification number, and financial rating.

b. Types and limits: Clearly evidence all coverage, types and limits required in this AGREEMENT. Identify standard policy forms or their equivalent. Coverage may consist of a combination of primary and excess policies. Excess policies must provide coverage as broad as ("follow form" over) the underlying primary policies;

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

d. List additional endorsements.

i. Additional insured endorsements. Include copies of the additional insured endorsements to General Liability Policy which must add COUNTY and its Special Districts, elected officials, officers, agents and employees as additional insureds with respect to liability arising out of ongoing and completed Franchise/County Services, and applicable with respect to liability and defense of suites arising out of FRANCHISEE'S acts or omissions, whether that liability is attributable to the FRANCHISEE or the COUNTY. The full policy limits and scope of protection must apply to each of those additional insureds even if those limits or scope exceed the minimum required insurance specifications in this AGREEMENT. FRANCHISEE may use an automatic additional insured endorsement if the endorsements meet the requirements of this Section 14B.

ii. Waiver of Subrogation Endorsements. Include copies of subrogation endorsements necessary to effect FRANCHISEE'S waiver of its and its insurer(s)' rights of recovery against COUNTY under all insurance under this Section 14B, to the fullest extent permitted by law.

e. Deductibles and SIRs. Identify any deductibles or self-insured retention ("SIR") exceeding $50,000 for COUNTY'S approval. FRANCHISEE'S policies shall not obligate COUNTY to pay any portion of any FRANCHISEE deductible or SIR.

COUNTY retains the right to require FRANCHISEE to reduce any deductibles or self-insured retention as they apply to COUNTY or to require FRANCHISEE to provide a bond, letter of credit,

or certificate of deposit guaranteeing payment of all retained losses and related costs, including expenses, or both, related to investigations, claims administrations, and defense. The bond must be executed by a corporate surety licensed to transact business in the State of California; the letter of credit must be issued by a bank or other financial institution acceptable to the COUNTY; and

f. Signature verification. Include documentation acceptable to COUNTY verifying that the individual signing or countersigning the certificates, and at COUNTY'S request, the policies, endorsements, or other evidence of coverage, is authorized to do so and identifies his or her company affiliation and title.

g. COUNTY'S request, FRANCHISEE will promptly provide COUNTY with complete, certified copies of any policy of insurance that FRANCHISEE must secure and maintain under this AGREEMENT.

h. Claims Made/Retroactive Date. The policy retroactive date, which can be identified, on any insurance written on claims made basis, which must precede the Execution Date. FRANCHISEE shall maintain any claims made coverage for a period of not less than 3 years following expiration, termination or cancellation of this AGREEMENT.

i. Insured-vs.-insured. Clearly evidence that all liability policies provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured-versus-insured exclusions or limitations.

5. **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.

6. **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/County Services involving injury or property damage that may result in the filing of an insurance claim, its legal claim, or lawsuit against FRANCHISEE, any Subcontractor and/or COUNTY;

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

c. Any injury to a FRANCHISEE employee that occurs on COUNTY property, or,

d. Any loss, disappearance, destruction, misuse or theft of COUNTY property, money or securities entrusted to FRANCHISEE.

FRANCHISEE shall submit its report on a COUNTY "Nonemployee Injury Report" form available on COUNTY'S website at http://cao.co.la.ca.us/RMB/pdf/NonEmployeeInjuryReport.pdf.

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

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

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

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

b. ***Pollution Liability Coverage*** for pollution conditions resulting from transported cargo, with annual limits of not less than $2 million per occurrence and $4 million aggregate, covering loss (including cleanup costs) that FRANCHISEE becomes legally obligated to pay as a result of claims for bodily injury, property damage, and cleanup costs (including expenses required by environmental laws or incurred by Federal, State, or local governments or third parties) resulting from pollution conditions caused by transported cargo (including waste). For the purpose of this subsection 14B7b, "pollution conditions" includes the dispersal, discharge, release, or escape of any solid, liquid, gaseous or thermal irritant or contaminant (such as smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, and waste materials) into or upon land, any structure on land, the atmosphere, or any watercourse or body of water (including groundwater), provided the conditions are not naturally present in the environment in the amounts or concentrations discovered. The pollution liability coverage must provide contractual liability coverage, by endorsement, if necessary, for FRANCHISEE'S indemnification of COUNTY. FRANCHISEE'S general liability policy may be endorsed to provide the required pollution liability coverage.

c. ***Automobile Liability Coverage*** (written on ISO policy forms CA 00 12 or CA 00 20 or their equivalent) with a limit of liability not less than $2 million for each accident and endorsed to include pollution liability

(written on form CA 99 48 or its equivalent). The insurance must cover all vehicles used by FRANCHISEE pursuant to its operations and services and the terms of this AGREEMENT. FRANCHISEES subject to federal regulations also shall maintain any other coverage necessary to satisfy state or federal financial responsibility requirements.

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

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

8. **Insurance Coverage Requirements for Subcontractors.** FRANCHISEE shall ensure that all Subcontractors performing Franchise/County Services under this AGREEMENT secure and maintain the insurance coverage required in subsections B1 through 7 by providing evidence that either:

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

b. Subcontractors are maintaining the required insurance coverage.

FRANCHISE shall provide COUNTY with any Subcontractor request to modify that insurance coverage and get COUNTY approval prior to modification.

C. Compensation for County Costs. If FRANCHISEE fails to comply with any Performance Obligations, including Indemnification, insurance, and performance assurance and that failure results in any costs to COUNTY, FRANCHISEE shall pay full compensation for all County's Reimbursement Costs.

D. Alternative Risk Financing Programs: COUNTY reserves the right to review and then approve FRANCHISEE'S use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy Performance Obligations under this Section 14B. COUNTY and Persons named as additional insureds under Section 14B4d shall be designated as an Additional Covered Party under any approved program.

SECTION 15–PERFORMANCE ASSURANCE

FRANCHISEE shall secure and maintain throughout the Term a faithful performance bond, in a form satisfactory to COUNTY or, at COUNTY'S sole and absolute discretion,

any alternative security acceptable to the Director, including cash, certified check payable to COUNTY, certificate of deposit, or letter of credit (together, "**Performance Assurance**"). During the first Contract Year, the amount of the Performance Assurance must be in the sum established by COUNTY in Section A of Exhibit 3A to secure full and timely satisfaction of Performance Obligations for both Task 1 and Task 2, including payment of Franchise Fees, and any liquidated damages. In all subsequent Contract Years, that amount must be not less than the sum of:

- 15 percent of FRANCHISEE'S Gross Receipts from Task 1 minus Franchise Fees for the prior Contract Year;
- 110 percent of the Franchise Fees paid by FRANCHISEE during the first six months of the prior Contract Year;
- 110 percent of any liquidated damages assessed FRANCHISEE by COUNTY during the first six months of the prior Contract Year;
- Up to $50,000, at the discretion of the Director; and
- 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/County Services but must provide for payment of moneys to COUNTY to; (1) secure substitute Franchise/County Services; (2) remedy damages incurred by COUNTY, including reasonable expenses, attorney's fees, and liquidated and compensatory damages; (3) ensure satisfaction of all Performance Obligations, including payment of Franchise Fees; and, (4) repay any money recovered from COUNTY in any bankruptcy or similar proceedings relating to FRANCHISEE. The performance bond must be conditioned on faithful performance by FRANCHISEE of all the terms and conditions of this AGREEMENT, including payment of Franchise Fees and any liquidated damages.

Each Performance Assurance must be renewed to provide for continuing liability in the above amount notwithstanding any payment or recovery thereon. At least 30 days prior to the Execution Date and 30 days prior to 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'S Right to Provide MSW Management Services.

1. **Events**. COUNTY may perform, or contract for the performance of, any or all of Franchise/County 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/County Services, it will consider contracting with other COUNTY franchisees. COUNTY has no obligation to continue providing Franchise/County Services and may at any time, in its sole discretion, cease to provide Franchise/County Services. However COUNTY'S right to provide Franchise/County Services will continue until FRANCHISEE can demonstrate to COUNTY'S satisfaction that FRANCHISEE is ready, willing, and able to resume timely and full Franchise/County Services or until COUNTY can make alternative arrangements for providing MSW Management Services comparable to Franchise/County 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/County Services, which notice is effective immediately, but must confirm oral notice with a Notice within 24 hours thereafter.

3. **Service Assets Applicable to Task I only**.

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

   b. ***Service Assets Document.*** Any document that encumbers or limits FRANCHISEE'S interest in Service Assets, including a lease, financing contract, acquisition over time, mortgage, or other

instrument establishing a security interest to or by FRANCHISEE, must allow COUNTY to assume FRANCHISEE'S obligations and to continue use of Service Assets in performing MSW Management Services.

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

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

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

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

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

Furthermore, if COUNTY has possession and/or use of FRANCHISEE'S Service Assets, FRANCHISEE shall execute whatever documentation its liability insurers require to ensure that COUNTY and Customers are protected and covered by FRANCHISEE'S general and automobile policies, including requesting

and executing endorsements to those policies. FRANCHISEE hereby gives COUNTY the right to call and confer with FRANCHISEE'S insurance broker to determine what, if any, documentation or actions are necessary to achieve protection satisfactory to COUNTY. FRANCHISEE hereby gives COUNTY the right to pay for any endorsements, additional premiums, or other costs. By executing this AGREEMENT, FRANCHISEE authorizes its insurance broker to cooperate with and respond to requests from COUNTY, which authorization FRANCHISEE may not rescind without COUNTY consent.

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

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

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

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

and against damages, costs, or other expenses or losses they incur arising out of or relating to that negligence or misconduct.

8. Rental and Other Compensation.

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

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

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

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

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

b. ***Other Than Uncontrollable Circumstances.*** If an event enumerated in item a or b in subsection A1 is not due to Uncontrollable Circumstances, then COUNTY will not be obligated to pay the compensation enumerated in subsection A8a, and FRANCHISEE shall pay County's Reimbursement Costs in accordance with subsection A6 within 10 days of COUNTY'S submitting an invoice therefore. If FRANCHISEE does not so timely

pay, COUNTY may draw upon any performance bond, letter of credit, or other security provided under this AGREEMENT.

B. Emergency Assistance. FRANCHISEE shall give first consideration to County in the event that solid waste in any part of the unincorporated area of the COUNTY is not collected and in the judgment of the Director creates a danger to public health, safety or welfare, including in the event of a major disaster such as an earthquake, fire, mudslide, storm, riot, or civil disturbance, by providing vehicles and drivers to collect any solid waste as requested by COUNTY, at charges no greater than the following:

1. Rates (with respect to solid waste discarded in Carts); and

2. $60/Ton (with respect to CEDs, E-Waste, and solid waste, including Abandoned Waste, discarded in containers other than Carts);

3. Rates the FRANCHISEE charges for comparable MSW Management Services (with respect to Solid Waste *not* discarded in containers)

None of these rates can be greater than the limits provided in Section D11 of Exhibit 3A2, the Director provides authorization based on information provided by FRANCHISEE substantiating the need for an increase. FRANCHISEE shall cooperate with COUNTY, State of California, and federal officials in filing information related to a regional, state, or federally-declared state of emergency or disaster as to which FRANCHISEE has provided equipment and drivers under this AGREEMENT.

C. Backup Service Plan. FRANCHISEE shall develop a backup service plan included in FRANCHISEE Documentation and implement that plan upon COUNTY request if Customers' Solid Waste is not Collected at Customer's Set-Out Site or Abandoned Waste is not Collected within 7 days of COUNTY request, including due to an event described in Section 16A1 or Section 16B. FRANCHISE shall include in the plan at a minimum, the following provisions:

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

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

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

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

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

6. Identify customers that require priority service.

SECTION 17–DEBARMENT BREACHES AND DEFAULTS; SUSPENSION; TERMINATION

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

1. Failure to keep Records required by this AGREEMENT;

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

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

4. Failure to timely pay the Franchise Fee;

5. Failure to timely pay an Indemnification; or

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

7. Failure to timely respond to County

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

B. **FRANCHISEE Default.** The following constitute FRANCHISEE Defaults:

1. **Fraud, Misrepresentation, or Breach of Warranties.** FRANCHISEE committed any fraud or deceit or made any intentional misrepresentations in

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

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

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

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

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

   b. Any repeated Violation of Applicable Law.

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

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

   a. With respect to Task 1, seven consecutive days; or

   b. With respect to Task 1, seven days in the aggregate from the Execution Date.

   c. With respect to Task 2, seven days in a calendar year.

6. **Failure to Collect for More Than Seven Days.** With respect to Task 1, 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, damages or County's Reimbursement Costs):

   a. More than twice in any Calendar Year;

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

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

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

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

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

   c. Section 23E Nondiscrimination;

   d. Section 23G County Lobbyist Ordinance; or

   e. subsection F of this Section, Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program.

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

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

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

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

C. Notice of FRANCHISEE Default.

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

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

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

   c. A FRANCHISEE Default described in subsection B4 (material or repeated Violation of Applicable Law, including the County Lobbyist Ordinance) or as identified in Exhibit 3A2;

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

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

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

4. **Effective 10 days.** The COUNTY may terminate this AGREEMENT effective 10 days after Notice given by COUNTY for failure to comply with

the County Defaulted Property Tax Reduction Program in accordance subsection F of this Section.

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;

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

   c. any other FRANCHISEE Default in Exhibit 3A or 3A2.

   During that 45-day period FRANCHISEE shall have the opportunity to demonstrate to COUNTY that FRANCHISEE can once again fully perform Franchise/County 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 COUNTY 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 COUNTY may terminate this AGREEMENT on six months' Notice if in the judgment of the Director, COUNTY and FRANCHISEE are unable to reach satisfactory agreement to adjust Rates in accordance with item c of Section A1 of Exhibit 10 for a Change in Law or changes in Service Specifications or Service Standards after good faith negotiations during a period of at least 30 days.

   c. ***Criminal Activity***. The COUNTY 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.

d. ***Annexation of Service Area***. Upon request of COUNTY, FRANCHISEE shall use Reasonable Business Efforts to cooperate with a local agency with respect to providing Franchise/County Services or MSW Management Services, in the following events:

1. the Service Area is annexed by that local agency in accordance with applicable laws, and

2. the Parties agree to amend this AGREEMENT to delete the annexed area from the definition of "Service Area".

E. FRANCHISEE Responsibility and Debarment.

1. **Child Support Compliance Program.** COUNTY may debar FRANCHISEE from doing business with COUNTY if COUNTY determines after giving notice and conducting a hearing in accordance with Chapter 2.202 of the County Code, which shall apply to this AGREEMENT, that FRANCHISEE (or any of its Subcontractors) is not responsible within the meaning of Chapter 2.202 and in accordance with COUNTY'S policy to do business with responsible contractors; FRANCHISEE'S failure to comply with the Child Support Compliance Program, as provided in Section 22B, may be cause for debarment in accordance with § 2.200.020 of the County Code.

2. **County Defaulted Property Tax Reduction Program.** COUNTY may debar FRANCHISEE from doing business with COUNTY as provided in subsection F of this Section.

F. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY DEFAULTED PROPERTY TAX REDUCTION PROGRAM.

1. **FRANCHISEE Default.** Failure of FRANCHISEE to maintain compliance with the requirements set forth in Section 22C "COMPLIANCE WITH APPLICABLE LAW / County Defaulted Property Tax Reduction Program" shall constitute a FRANCHISEE Default under subsection B8e of this Section.

2. **Termination/Debarment.** Without limiting the rights and remedies available to COUNTY under any other provision of this AGREEMENT, failure of FRANCHISEE to cure that FRANCHISEE Default within 10 days of Notice shall be grounds upon which COUNTY may terminate this AGREEMENT under subsection D2a of this Section and/or pursue debarment of FRANCHISEE pursuant to County Code Chapter 2.206 and subsection E2 of this Section.

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;

3. Assess damages under subsection D, and

4. With respect to a FRANCHISEE Default under Section 17B3 (Failure to Provide Insurance, Bonds), immediately withhold payments due FRANCHISEE.

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/County 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/County Services for the price provided under this AGREEMENT, and to negotiate new agreements therefore; and

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

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

D. Recovery of Damages.

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

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

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

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

   d. In the event of FRANCHISEE DEFAULT under 17B3 (Failure to Provide Insurance, Bond), in COUNTY'S sole discretion, obtain damages resulting from that DEFAULT.

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

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

2. **Liquidated**. COUNTY may seek liquidated damages listed in Exhibit 18D2 and Exhibit 3A2.

   The Parties have set these liquidated damages in recognition of the following circumstances existing at the time of the formation of this AGREEMENT:

   - 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

Franchise/County 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. FRANCHISEE is experienced in providing services like Franchise Services and County Services.

- 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. It would be difficult for the COUNTY to prove its loss resulting from FRANCHISEE'S Breaches and nonperformance or untimely, negligent, or inadequate performance of County Services.

- The AGREEMENT contains a reasonable statement of Franchise/County Services in order that the Parties' will realize their expectations. COUNTY expects that FRANCHISEE will perform Franchise/County Services with due care in a workmanlike, competent, timely, and cost-efficient manner. FRANCHISEE expects to realize a profit by performing Franchise/County Services in accordance with the terms and conditions of the AGREEMENT for County Service Charges.

- In addition, in the event of Breach or FRANCHISEE Default, urgency of protecting public health and safety may necessitate that COUNTY enter into emergency or short-term arrangements for services without competitive procurement at prices substantially greater than under this AGREEMENT, and the monetary loss resulting there from is impossible to precisely quantify. Time is of the essence.

- The FRANCHISEE accepts COUNTY'S assessment of liquidated damages for certain Breaches as part of the consideration FRANCHISEE offers to the COUNTY for the award of this AGREEMENT to FRANCHISEE.

- Lastly, termination of this AGREEMENT for FRANCHISEE Default and other remedies provided in this AGREEMENT are, at best, a means of future correction and not remedies that make COUNTY whole for past Breaches and FRANCHISEE Defaults.

Therefore, the Parties agree that the liquidated damages listed in Exhibit 18D2 represent a reasonable estimate and fair approximation of the amount of damages COUNTY would incur as a consequence of FRACHISEE'S Breach corresponding to each item of specified liquidated 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 following:

- the accuracy of the statements made above, and
- the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this AGREEMENT was made.

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

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

SECTION 19–TRANSFER OF FRANCHISE

A. **COUNTY Consent.** FRANCHISEE may not Transfer this AGREEMENT, the Franchise granted under it, or any rights or duties under it, in whole or in part, and whether voluntarily or involuntarily, without COUNTY'S prior written consent, the exercise of which is in COUNTY'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 COUNTY'S consent, at COUNTY'S option, will be null and void. COUNTY'S consent must be a written amendment to this AGREEMENT that is formally approved by the Board of Supervisors and executed by (1) the FRANCHISEE and (2) the Board, or if delegated by the Board, the Director. Any Transfer, with or without consideration for any reason whatsoever without COUNTY'S (or Director's, if applicable) express prior written approval, shall be a Breach of this AGREEMENT, which many result in the termination of this AGREEMENT. In the event of such termination, COUNTY shall be entitled to

pursue the same remedies against FRANCHISEE as it could pursue in the event of default by FRANCHISEE. The COUNTY may condition consent on payment of amounts specified in Exhibit 3A in consideration for the value of good will and intangibles that accrued to COUNTY and Customers in the award of this AGREEMENT to FRANCHISEE.

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

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

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

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

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

Any payment by COUNTY to any approved delegate or transferee on any claim under this AGREEMENT shall be deductible, at COUNTY's sole discretion, against the claims which FRANCHISEE may have against COUNTY.

SECTION 20–GENERAL PROVISIONS

A. **Exercise of Options.** Parties will exercise any approval, disapproval, consent, judgment, option, discretion, election, opinion, or choice under this AGREEMENT, make a requirement under this AGREEMENT or interpret this AGREEMENT (**"Discretionary Action"**) reasonably. Any mediator, arbitrator, or court must find the Party's exercise to be reasonable. Recognizing the essential public health and safety protections this AGREEMENT serves, where this AGREEMENT specifically provides that the exercise of any Discretionary Action is in either Party's independent, sole, exclusive or absolute discretion, control or judgment, the other Party will not question or challenge the first Party's exercise thereof. Parties will

nevertheless exercise their rights and remedies in good faith in accordance with Applicable Law.

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

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

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

E. Changes and Amendments.

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

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

   b. Changes to Exhibit 3D FRANCHISEE Documentation;

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

d. Immaterial changes to immaterial Performance Obligations.

2. **Written 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/County Services and Service Standards that result in a Rate adjustment in accordance with Section 3C or change in County Service Fee; and

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

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

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

2. Copartner, if FRANCHISEE is a partnership; or

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

Notice is deemed effective:

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

2. Three days after the date of mailing.

G. **Authorized Representative of Director.** COUNTY authorizes the Director to make requests or requirements of FRANCHISEE or give approvals under this AGREEMENT, excluding consents to Transfer or written amendments of 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. With respect to Task 1 only, FRANCHISEE shall limit the terms of Subscription Orders to no longer than the remaining period of the Term. FRANCHISEE shall give each Customer the option to terminate its Subscription Order without cause on 90 days notice. FRANCHISEE shall also give each Customer the right to terminate service immediately in the event of emergency in accordance with Section 16A, or within 30 days if FRANCHISEE:

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

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

FRANCHISEE may not include in the terms of Subscription Orders any automatic renewals or extensions, colloquially referred to as "evergreen" clauses, which obligate a Customer to take affirmative, prescribed action (such as written notice

within a specified time period before the stated expiration of the Subscription Order) in order to terminate the Subscription Order.

J. Criminal Activity.

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

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

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

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

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

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

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

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

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

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

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

SECTION 21–DEFINITIONS AND INTERPRETATION OF AGREEMENT

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

B. **Interpretation and Construction.**

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

2. **Headings; Font.** Any captions or headings following the Exhibit, Attachment, Section, subsection, paragraph, and other attachments and subdivisions of this AGREEMENT that precede the operative text of this AGREEMENT are for convenience of reference only and do not control or affect the scope, intent, meaning, construction, interpretation, or effect of this AGREEMENT. Any underlined, italicized, bold-faced, upper captioned or other font style is for ease of reading and contract administration only and does not imply relative importance or unimportance of any provision of this AGREEMENT.

3. **References to Parts.** References to Sections refer to Sections of this AGREEMENT, unless specified otherwise. References to Exhibits and Attachments refer to Exhibits and Attachments attached to this

AGREEMENT. Reference to "subsections" refers to the subsection contained in the same Section in which the reference occurs, unless otherwise referenced.

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

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

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

7. **Inconsistencies and Conflicts.**

   a. If any provision of Exhibit 3A or 3A2 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 and 3A2 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 3A2), 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.

8. **References to Task 1 and Task 2.**

   Unless specifically indicated otherwise at the beginning of a Section or subsection, this AGREEMENT applies to both Task 1 and Task 2. However, Exhibit 3A only applies to Task 1, and Exhibit 3A2 only applies to Task 2.

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

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

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

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

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

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

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

SECTION 22–COMPLIANCE WITH LAWS AND REGULATIONS

A. Applicable Law.

1. **Compliance.** FRANCHISEE shall secure and maintain all permits, and comply with all Applicable Laws, including (as required by 13 CCR 2021.1) all applicable air pollution control laws such as Diesel Particulate Matter Control Measure of on-road heavy-duty diesel-fueled Residential and Commercial Solid Waste Collection Vehicles set forth in 13 CCR 2020 *et seq.*, and the Property Tax Reduction Ordinance. 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 A1 of Exhibit 10

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

C. **County Defaulted Property Tax Reduction Program.** FRANCHISEE acknowledges that COUNTY has established a goal of ensuring that all individuals and businesses that benefit financially from COUNTY through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon the COUNTY and its taxpayers.

Unless FRANCHISEE qualifies for an exemption or exclusion, FRANCHISEE warrants and certifies to the best of its knowledge under Exhibit 20H, that as of the Execution Date it is in compliance with County Code Chapter 2.206.

Unless FRANCHISEE qualifies for an exemption or exclusion, FRANCHISEE shall comply with Los Angeles County Code Chapter 2.206.

SECTION 23–LABOR-RELATED PROVISIONS REQUIRED IN COUNTY CONTRACTS

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

1. **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. If both laid-off County employees and GAIN and GROW

participants in categories identified by COUNTY are available for hiring, FRANCHISEE shall give COUNTY employees first priority.

B. Notices to Employees.

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

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

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

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

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

C. Prohibition Against Use of Child Labor.

1. **Compliance with ILO Convention Concerning Minimum Age for Employment.** FRANCHISEE shall not knowingly sell or supply to COUNTY or Customers any products, goods, supplies, or other personal property

manufactured in violation of child labor standards set by the International Labor Organization through its 1973 Convention Concerning Minimum Age for Employment (the **"Convention Concerning Minimum Age for Employment"**). If FRANCHISEE discovers that any products, goods, supplies, or other personal property sold or supplied by FRANCHISEE to COUNTY or any Customer are produced in violation of that Convention, FRANCHISEE shall immediately provide an alternative source of supply that complies with that Convention.

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

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

D. 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.** At COUNTY'S request, FRANCHISEE shall promptly allow COUNTY and its auditor's access to FRANCHISEE'S employment records at FRANCHISEE'S Office during FRANCHISEE Office Hours to verify compliance with the provisions of this subsection E.

5. **Remedies for Discrimination.** If COUNTY finds that FRANCHISEE has violated any provisions of this subsection E, that violation constitutes a

FRANCHISEE Default. While COUNTY reserves the right to determine independently that the 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.

E. 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/County 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 FRANCHISEE to cease providing Franchise/County Services at no cost to COUNTY until FRANCHISEE is in compliance with this Section.

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

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

SECTION 24–EXECUTION OF AGREEMENT

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

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

AGREEMENT below has been duly authorized by FRANCHISEE to sign this AGREEMENT on behalf of FRANCHISEE and has the full right, power, and authority to bind FRANCHISEE to this AGREEMENT.

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

COUNTY OF LOS ANGELES

By _____
Director of Public Works

APPROVED AS TO FORM:

ANDREA ORDIN SHERIDAN
County Counsel

By _____
Deputy

NAME OF FRANCHISEE

By _____
President

_____
Type or Print Name

_____
Secretary

_____
Type or Print Name

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ENCLOSURE E.1

Bid Detail Information

Bid Number : PW-ASD 786

Bid Title : Exclusive Franchise Agreement for the Areas of Chatsworth/Westhills, El Camino Village/Del Aire/Wiseburn/Alondra Park, Pioneer/Carson Park, & Rancho

Bid Type : Service

Department : Public Works

Commodity : GARBAGE/TRASH REMOVAL AND DISPOSAL SERVICE

Open Date : 6/25/2010

Closing Date : 7/12/2010 9:00 AM

Bid Amount : N/A

Bid Download : Not Available

Bid Description : NOTICE OF REQUEST FOR PROPOSALS FOR THE EXCLUSIVE FRANCHISE AGREEMENT FOR THE AREAS OF CHATSWORTH/WESTHILLS, EL CAMINO VILLAGE/DEL AIRE/WISEBURN/ALONDRA PARK, PIONEER/CARSON PARK,
AND RANCHO DOMINGUEZ/WEST RANCHO DOMINGUEZ/ROSEWOOD
(2010-FA004)

PLEASE TAKE NOTICE that Public Works requests proposals for the Exclusive Franchise Agreement for the areas of Chatsworth/Westhills, El Camino Village/Del Aire/Wiseburn/Alondra Park, Pioneer/Carson Park, and Rancho Dominguez/West Rancho Dominguez/Rosewood (2010 FA004).

Please note that each area will be awarded and evaluated independently. Proposers may submit a proposal for one or more areas. Proposers may submit one proposal package for multiple areas. However, the Work Plan must be customized for each area.

If not enclosed with this letter, the Request for Proposals (RFP) with contract specifications, forms, and instructions for preparing and submitting proposals may be accessed at http://dpw.lacounty.gov/asd/contracts or may be requested from Mr. Benjamin Sandoval at (626) 458-7334 or bsandoval@dpw.lacounty.gov, or from Ms. Jeanette Arismendez at (626) 458-4050 or jarismen@dpw.lacounty.gov, Monday through Thursday, 7 a.m. to 5 p.m.

PLEASE CHECK THE WEBSITE FREQUENTLY FOR ANY CHANGES TO THIS SOLICITATION. ALL ADDENDA, INFORMATIONAL UPDATES, FREQUENTLY ASKED QUESTIONS, AND ANY ADDITIONAL INFORMATION WILL BE POSTED AT http://dpw.lacounty.gov/asd/contracts.

PLEASE NOTE THAT A PRINTED COPY OF THIS RFP WILL NOT BE PROVIDED AT THE CONFERENCE. PROPOSERS MUST ACCESS THE RFP AT THE ABOVE-MENTIONED LINK AND DOWNLOAD A COPY FOR THEIR USE.

Minimum Requirement(s): Proposers must meet all minimum requirements set forth in the RFP document including, but not limited to, at the time of proposal submission:

1. Proposer must have three years experience collecting and managing refuse, recyclable materials, and green waste from single-family and multifamily residences. (Please use Form PW-25, Proposer's Compliance with the Minimum Mandatory Requirements.)

2. Proposer must possess the required valid Waste Collector Permit naming the Proposer as the permittee or a copy of the application for a Waste Collector Permit naming the Proposer as the permittee issued by the County Department of Public Health at the time of proposal submission. (Please use Form PW-25, Proposer's Compliance with the Minimum Mandatory Requirements.)

3. The Proposer must also submit a Bid Guaranty as outlined in Part I, Section 3.A.16., Bid Guaranty. (Please use Form PW-25, Proposer's Compliance with the Minimum Mandatory Requirements.)

PLEASE NOTE THAT PROPOSERS ARE RESPONSIBLE FOR INDEPENDENTLY INVESTIGATING SERVICE CONDITIONS IN THE SERVICE AREAS PRIOR TO PROPOSAL SUBMISSION.

A Proposers' Conference will be held on Monday, July 12, 2010, at 9 a.m.
at Public Works Headquarters, 900 South Fremont Avenue, Alhambra, California 91803, in the Alhambra Room. ATTENDANCE BY THE PROPOSER OR AN AUTHORIZED REPRESENTATIVE AT THE CONFERENCE IS MANDATORY. Public Works will reject proposals from those whose attendance at the conference cannot be verified. Attendees should be prepared to ask questions at that time about the specifications, proposal requirements, and contract terms.

After the conference, Proposers must submit questions in writing and request information for this solicitation within 14 calendar days from the date of the conference. After the fourteenth day, it may be impossible to respond to further requests for information.

The deadline to submit proposals is Monday, August 23, 2010, at 5:30 p.m.
Please direct your questions to contract analysts, Mr. Sandoval or Ms. Arismendez, at the numbers listed on page 1. Proposers are instructed not to contact any County personnel other than the Contract Analysts listed above regarding this solicitation.

Contact Name : Benjamin Sandoval

Contact Phone# : (626) 458-7334
Contact Email : bsandoval@dpw.lacounty.gov
Last Changed On : 6/25/2010 8:59:41 AM

ENCLOSURE E.1

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ENCLOSURE E.2

Bid Detail Information

Bid Number : PW-ASD 787
Bid Title : Exclusive Franchise Agreement for the Area of Oceanview/La Rambla/West Carson (2010-FA005)
Bid Type : Service
Department : Public Works
Commodity : GARBAGE/TRASH REMOVAL AND DISPOSAL SERVICE
Open Date : 6/25/2010
Closing Date : 7/12/2010 9:00 AM
Bid Amount : N/A
Bid Download : Not Available
Bid Description : NOTICE OF REQUEST FOR PROPOSALS FOR THE EXCLUSIVE FRANCHISE AGREEMENT FOR THE AREA OF OCEANVIEW/LA RAMBLA/WEST CARSON (2010-FA005)

PLEASE TAKE NOTICE that Public Works requests proposals for the Exclusive Franchise Agreement for the area of Oceanview/La Rambla/West Carson (2010 FA005).

If not enclosed with this letter, the Request for Proposals (RFP) with contract specifications, forms, and instructions for preparing and submitting proposals may be accessed at http://dpw.lacounty.gov/asd/contracts or may be requested from Mr. Benjamin Sandoval at (626) 458-7334 or bsandoval@dpw.lacounty.gov, or from Ms. Jeanette Arismendez at (626) 458 4050 or jarismen@dpw.lacounty.gov, Monday through Thursday, 7 a.m. to 5 p.m.

PLEASE CHECK THE WEBSITE FREQUENTLY FOR ANY CHANGES TO THIS SOLICITATION. ALL ADDENDA, INFORMATIONAL UPDATES, FREQUENTLY ASKED QUESTIONS, AND ANY ADDITIONAL INFORMATION WILL BE POSTED AT http://dpw.lacounty.gov/asd/contracts.

PLEASE NOTE THAT A PRINTED COPY OF THIS RFP WILL NOT BE PROVIDED AT THE CONFERENCE. PROPOSERS MUST ACCESS THE RFP AT THE ABOVE-MENTIONED LINK AND DOWNLOAD A COPY FOR THEIR USE.

Minimum Requirement(s): Proposers must meet all minimum requirements set forth in the RFP document including, but not limited to, at the time of proposal submission:

1. Proposer must have three years experience collecting and managing refuse, recyclable materials, and green waste from single-family and multifamily residences. (Please use Form PW-25, Proposer's Compliance with the Minimum Mandatory Requirements.)

2. Proposer must possess the required valid Waste Collector Permit naming the Proposer as the permittee or a copy of the application for a Waste Collector Permit naming the Proposer as the permittee issued by the County Department of Public Health at the time of proposal submission. (Please use Form PW-25, Proposer's Compliance with the Minimum Mandatory Requirements.)

3. The Proposer must also submit a Bid Guaranty as outlined in Part I, Section 3.A.16., Bid Guaranty. (Please use Form PW-25, Proposer's Compliance with the Minimum Mandatory Requirements.)

PLEASE NOTE THAT PROPOSERS ARE RESPONSIBLE FOR INDEPENDENTLY INVESTIGATING SERVICE CONDITIONS IN THE SERVICE AREA PRIOR TO PROPOSAL SUBMISSION.

A Proposers' Conference will be held on Monday, July 12, 2010, at 9 a.m.
at Public Works Headquarters, 900 South Fremont Avenue, Alhambra, California 91803, in the Alhambra Room. ATTENDANCE BY THE PROPOSER OR AN AUTHORIZED REPRESENTATIVE AT THE CONFERENCE IS MANDATORY. Public Works will reject proposals from those whose attendance at the conference cannot be verified. Attendees should be prepared to ask questions at that time about the specifications, proposal requirements, and contract terms.

After the conference, Proposers must submit questions in writing and request information for this solicitation within 14 calendar days from the date of the conference. After the fourteenth day, it may be impossible to respond to further requests for information.

The deadline to submit proposals is Monday, August 23, 2010, at 5:30 p.m.

Please direct your questions to contract analysts, Mr. Sandoval or Ms. Arismendez, at the numbers listed on page 1. Proposers are instructed not to contact any County personnel other than the Contract Analysts listed above regarding this solicitation.

Contact Name : Benjamin Sandoval
Contact Phone# : (626) 458-7334
Contact Email : bsandoval@dpw.lacounty.gov
Last Changed On : 6/25/2010 9:03:14 AM

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ENCLOSURE E.3

Bid Detail Information

Bid Number : PW-ASD 788
Bid Title : Exclusive Franchise Agreement for the Areas of Altadena and Kinneloa Mesa (2010-FA006)
Bid Type : Service
Department : Public Works
Commodity : GARBAGE/TRASH REMOVAL AND DISPOSAL SERVICE
Open Date : 6/25/2010
Closing Date : 7/12/2010 9:00 AM
Bid Amount : N/A
Bid Download : Not Available
Bid Description : NOTICE OF REQUEST FOR PROPOSALS FOR THE EXCLUSIVE FRANCHISE AGREEMENT FOR THE AREAS OF ALTADENA AND KINNELOA MESA
(2010-FA006)

PLEASE TAKE NOTICE that Public Works requests proposals for the Exclusive Franchise Agreement for the areas of Altadena and Kinneloa Mesa (2010 FA006).

The Proposer must submit a proposal for all three conditions (Condition A - Altadena, condition B – Kinneloa Mesa, and Condition C – Altadena and Kinneloa Mesa combined); otherwise, the Proposer will be found nonresponsive and immediately disqualified. Proposers must submit one proposal package for all three conditions. However, the Work Plan must be customized for each condition.

The Request for Proposals (RFP) with contract specifications, forms, and instructions for preparing and submitting proposals may be accessed at http://dpw.lacounty.gov/asd/contracts or may be requested from Mr. Benjamin Sandoval at (626) 458-7334 or bsandoval@dpw.lacounty.gov, or from Ms. Jeanette Arismendez at (626) 458 4050 or jarismen@dpw.lacounty.gov, Monday through Thursday, 7 a.m. to 5 p.m.

PLEASE CHECK THE WEBSITE FREQUENTLY FOR ANY CHANGES TO THIS SOLICITATION. ALL ADDENDA, INFORMATIONAL UPDATES, FREQUENTLY ASKED QUESTIONS, AND ANY ADDITIONAL INFORMATION WILL BE POSTED AT http://dpw.lacounty.gov/asd/contracts.

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Minimum Requirement(s): Proposers must meet all minimum requirements set forth in the RFP document including, but not limited to, at the time of proposal submission:

1. Proposer must have three years experience collecting and managing refuse, recyclable materials, and green waste from single-family and multifamily residences. (Please use Form PW-25, Proposer's Compliance with the Minimum Mandatory Requirements.)

2. Proposer must possess the required valid Waste Collector Permit naming the Proposer as the permittee or a copy of the application for a Waste Collector Permit naming the Proposer as the permittee issued by the County Department of Public Health at the time of proposal submission. (Please use Form PW-25, Proposer's Compliance with the Minimum Mandatory Requirements.)

3. The Proposer must also submit a Bid Guaranty as outlined in Part I, Section 3.A.16., Bid Guaranty. (Please use Form PW-25, Proposer's Compliance with the Minimum Mandatory Requirements.)

PLEASE NOTE THAT PROPOSERS ARE RESPONSIBLE FOR INDEPENDENTLY INVESTIGATING SERVICE CONDITIONS IN THE SERVICE AREAS PRIOR TO PROPOSAL SUBMISSION.

A Proposers' Conference will be held on Monday, July 12, 2010, at 9 a.m. at Public Works Headquarters, 900 South Fremont Avenue, Alhambra, California 91803, in the Alhambra Room. ATTENDANCE BY THE PROPOSER OR AN AUTHORIZED REPRESENTATIVE AT THE CONFERENCE IS MANDATORY. Public Works will reject proposals from those whose attendance at the conference cannot be verified. Attendees should be prepared to ask questions at that time about the specifications, proposal requirements, and contract terms. After the conference, Proposers must submit questions in writing and request information for this solicitation within 14 calendar days from the date of the conference. After the fourteenth day,
it may be impossible to respond to further requests for information.

The deadline to submit proposals is Monday, August 23, 2010, at 5:30 p.m.

Please direct your questions to contract analysts, Mr. Sandoval or Ms. Arismendez, at the numbers listed above. Proposers are instructed not to contact any County personnel other than the Contract Analysts listed above regarding this solicitation.

Contact Name : Benjamin Sandoval
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Contact Email : bsandoval@dpw.lacounty.gov
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