

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

June 16, 2009

**FROM: GRANVILLE M. BOWMAN, Director
Public Works Department-Solid Waste Management Division**

SUBJECT: REVISED SOLID WASTE HANDLING FRANCHISE AGREEMENTS

RECOMMENDATION(S)

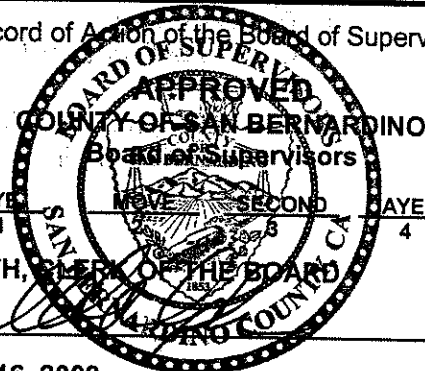
Conduct a public hearing pursuant to Proposition 218 and approve the following twenty-one (21) amended and restated Solid Waste Handling Franchise Agreements for various County Franchise Areas (CFA) within the unincorporated portion of the county:

1. Burrtec Waste Industries for CFA 1 - San Antonio Heights, Mt. Baldy, portions of Lytle Creek. **(Agreement No. 09-600)**
2. Burrtec Waste Industries for CFA 2 - sphere of the Cities of Montclair and Upland. **(Agreement No. 09-601)**
3. USA Waste of California for CFA 3 - sphere of the City of Chino. **(Agreement No. 09-602)**
4. Burrtec Waste Industries for CFA 5 - sphere of the City of Fontana. **(Agreement No. 09-603)**
5. EDCO for CFA 6 - community of Bloomington. **(Agreement No. 09-604)**
6. Cal Disposal Company for CFA 8 - Muscoy, south Cajon Pass, City of San Bernardino sphere. **(Agreement No. 09-605)**
7. EDCO for CFA 9 - El Rancho Verde community (Rialto area). **(Agreement No. 09-606)**
8. Jack's Disposal Company for CFA 10 - Devore and the sphere of the City of San Bernardino. **(Agreement No. 09-607)**
9. Burrtec Waste Industries for CFA 11 - sphere of the City of Loma Linda. **(Agreement No. 09-608)**
10. Empire Disposal for CFA 12 - Mentone, Oak Glen, sphere of the City of Redlands, Mountain Home and Angeles Oaks. **(Agreement No. 09-609)**
11. CR&R Waste Services for CFA 15 - Wrightwood community. **(Agreement No. 09-610)**
12. Mountain Disposal Company for CFA 16 - Crestline, Running Springs, Lake Arrowhead, Green Valley Lake, and Blue Jay. **(Agreement No. 09-611)**
13. Big Bear Disposal for CFA 17 - Fawnskin, Baldwin Lake, and Lake Williams. **(Agreement No. 09-612)**
14. Advance Disposal Company for CFA 18 - Spring Valley Lake; unincorporated area of Hesperia and Apple Valley. **(Agreement No. 09-613)**
15. AVCO Disposal for CFA 19 - sphere of the City of Victorville, Town of Apple Valley and City of Adelanto; Landers and Lucerne Valley. **(Agreement No. 09-614)**
16. CR&R for CFA 20 - Phelan, Pinon Hills, and the sphere of the City of Adelanto. **(Agreement No. 09-615)**

Page 1 of 3

cc: SWMD-Wulfman w/agrees
Contractor(s) c/o SWMD w/agree
ACR-Accts Payable Mgr w/agrees
EBIX-BPO. c/o Risk Mgmt w/agrees
SWMD-Bowman
Co. Counsel-Alexander-Kelley
CAO-Forster
File w/agree;
File-attachments-SWMD-General
ed 7/6/09
ITEM 092

Record of Action of the Board of Supervisors



MOTION AYE 1 MOVE SECOND AYE 4 AYE 5

DENA M. SMITH, CLERK OF THE BOARD
BY _____

DATED: June 16, 2009

**BOARD OF SUPERVISORS
REVISED SOLID WASTE HANDLING FRANCHISE AGREEMENTS
JUNE 16, 2009
PAGE 2 OF 3**

17. Benz Sanitation for CFA 21 - Trona, Windy Acres, Four Corners, and Red Mountain.
(Agreement No. 09-616)
18. AVCO for CFA 22 - unincorporated area northwest of City of Adelanto.
(Agreement No. 09-617)
19. Desert Disposal Company for CFA 23 - sphere of the City of Barstow and Lenwood-Hinkley.
(Agreement No. 09-618)
20. Burrtec Waste and Recycling for CFA 24 - Yermo, Daggett and Newberry Springs.
(Agreement No. 09-619)
21. Burrtec Waste and Recycling for CFA 25 - Joshua Tree, sphere of the Town of Yucca Valley, and Morongo Valley. (Agreement No. 09-620)

*Open hearing.

Marlene Alexander, Andy Bodewin, John D. Bodnar, Ron Mason and Dr. Ellen Masse address the Board regarding Item #92.

Close hearing.

Majority protest not reached for any Franchise Area.

(Affected Districts: All)

(Presenter: Peter H. Wulfman, Division Manager, 386-8703)

BACKGROUND INFORMATION

The Solid Waste Handling Franchise Agreements were initially adopted on May 19, 1998 to ensure that the unincorporated area community is afforded adequate solid waste handling services provided in a manner that protects the health and safety of the community and establishes waste reduction and recycling programs in compliance with the Integrated Waste Management Act of 1989 (AB939). Since that time, there have been changes in state law and County policy making the terms and conditions of the current franchise agreements inconsistent or out of date.

On June 24, 2008 (Item No. 19), the Board of Supervisors directed the Solid Waste Management Division (SWMD) to update the terms and conditions of the franchise agreements to meet the needs of the communities, enhance recycling and comply with new state mandates. In accordance with Board direction, the proposed amended and restated franchise agreements have been updated to comply with current law and County policy. The major provisions of these revised agreements are as follows:

- Eight year rolling term, changed from initial 7 year term with automatic 5 year renewal.
- Includes newly negotiated Annual Cost of Living Adjustment (COLA) using Consumer Price Index with a new provision for fuel adjustments. This calculation replaces the old formula of Producer Price Index and Employment Index.
- Adds new provision allowing for the franchises to apply for an Extraordinary Adjustment in the Total Rate in the event of extraordinary events that require a substantial change in

**BOARD OF SUPERVISORS
REVISED SOLID WASTE HANDLING FRANCHISE AGREEMENTS
JUNE 16, 2009
PAGE 3 OF 3**

operations of solid waste collection services or a substantial capital expenditure outside the control of the franchisee.

- Adds new provisions for disaster debris handling.
- Establishes new commercial waste diversion programs in individual franchise areas for which implementation is cost neutral.
- Revises reporting requirements per changes in law (AB 939).
- Updates insurance requirements to match current County Standard Practice.
- Adds new contract provisions per County Standard Practice.

Pursuant to Proposition 218 requirements, parcel owners were mailed a notice of the proposed rates and proposed methodology for the annual maximum rate increase (COLA) established in the amended and restated franchise agreements. The Proposition 218 notices were mailed to each of the affected parcels in each franchise areas on May 1, 2009. Each customer has had at least 45 days to submit a written protest to the proposed change in the fees and the new COLA calculation.

The amended and restated franchise agreements are fully consistent with the Ordinance amending Title 4 Division 6 of the County Code relating to Solid Waste Handling Franchises that was adopted on June 2, 2009.

The increase to the monthly service charge effective July 2, 2009 in the proposed amended and restated franchise agreements is a result of the increase in the County's landfill dumping charges by \$2.97/ton, approved by the Board of Supervisors on April 7, 2009 (Item No. 79). In accordance with County Ordinance 3670, the haulers are permitted to pass along these increases to their customers. With the exception of one franchise area, the rate increases are being limited to commercial accounts with no increases to residential customers.

FINANCIAL IMPACT

The financial impacts of these amended/restated solid waste handling franchise agreements have been included in the proposed FY 2009-10 budget for SWMD.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Penny Alexander-Kelley, Deputy County Counsel, 387-4270) on May 26, 2009; County Administrative Office (Tom Forster, Administrative Analyst, 387-4635) on June 9, 2009.

INTEROFFICE MEMO

DATE July 23, 2009

PHONE 386-8739
MAIL CODE 0017



FROM **KATHLEEN BINGHAM**, Solid Waste Programs Administrator
Public Works Department, Solid Waste Management Division

TO **DENA SMITH**, Clerk of Board
Board of Supervisors

SUBJECT **BOARD AGENDA ITEM - JUNE 16, 2009 ITEM NO. 92**

This memo is to clarify that the name of the franchise hauler for County Franchise Areas (CFA) 19, 22, 23, and 24 will be Burrtec Waste Industries, Inc. as stated in the signed contracts. The Board Agenda Item No. 92 for June 16, 2009 requests approval of twenty-one (21) franchise agreements with private waste haulers. Approval items numbered 15, 18, 19, and 20, under recommendation(s), lists company names the hauler will no longer use in the respective CFAs as follows:

15. Instead of AVCO, the contractor will provide services under the name Burrtec Waste Industries, Inc. in CFA 19.
18. Instead of AVCO, the contractor will provide services under the name Burrtec Waste Industries, Inc. in CFA 22.
19. Instead of Desert Disposal, the contractor will provide services under the name Burrtec Waste Industries, Inc. in CFA 23.
20. Instead of Burrtec Waste and Recycling the contractor will provide services as Burrtec Waste Industries, Inc. in CFA 24.

If you have any questions, I can be reached at 386-8739.

cc: Granville M. Bowman, Director, Department of Public Works
Peter H. Wulfman, Division Manager, DPW-Solid Waste Management Division
Robert Messinger, Deputy County Counsel
Eutricia Dolph, Board Services Specialist, Clerk of the Board



County of San Bernardino
F A S
STANDARD CONTRACT

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New	Vendor Code	SC	Dept.	A	Contract Number 09-616			
<input type="checkbox"/> Change					Contractor's License No.			
<input type="checkbox"/> Cancel					Total Contract Amount \$			
County Department DWA-Solid Waste Management SWM SWM			Dept.	Orgn.				
County Department Contract Representative Peter H. Wulfman, Division Mgr			Telephone 909)386-8703					
Contract Type <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:								
If not encumbered or revenue contract type, provide reason:								
Commodity Code		Contract Start Date 7/2/09	Contract End Date 6/30/17	Original Amount \$	Amendment Amount \$			
Fund EAA	Dept. SWM	Organization WDP	Appr.	Obj/Rev Source 8350	GRC/PROJ/JOB No.	Amount \$		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$		
Project Name Solid Waste Handling Franchise Agreement CFA 21			Estimated Payment Total by Fiscal Year					
			FY	Amount	I/D	FY	Amount	I/D

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and

Name

BENZ SANITATION, INC.

hereinafter called **GRANTEE**

Address

1401 Goodrick Drive

P.O. Box 1750

Tehachapi, CA 93561

Tehachapi, CA 93581

Telephone

(661)822 -5273

Federal ID No. or Social Security No.

95-3400854

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

AGREEMENT BETWEEN THE COUNTY OF SAN BERNARDINO

AND

BENZ SANITATION, INC.

**FOR THE COLLECTION AND TRANSPORTATION
 OF SOLID WASTE AND OTHER SERVICES SPECIFIED HEREIN**

This Franchise Agreement ("Franchise Agreement") is entered into this 16th day of June, 2009, by and between the County of San Bernardino ("County") and Benz Sanitation, Inc. ("Grantee") for the collection and transportation of Solid Waste and for other services as further specified herein in Exhibit "A".

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdiction; and

WHEREAS, pursuant to California Public Resources Code Section 40059 (a), and the Board of Supervisors has determined that that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified Solid Waste enterprise for the collection and recovery of solid waste from certain residential, industrial and commercial areas in San Bernardino County (the "County"); and

WHEREAS, the County has specifically determined that the public health, safety, and well-being requires that an Exclusive Franchise be awarded Grantee for the collection and disposal of the Solid Waste, and the providing of the other services specified herein, in the portion of the unincorporated County set forth in Exhibit "B" of this Franchise Agreement; and

WHEREAS, in order to comply with the mandates of AB 939, subsequent legislation and regulation, the County must have the ability to direct the flow of Solid Waste within the unincorporated County for the purposes of reporting, processing, recovery and disposal; and

WHEREAS, the Board of Supervisors of the County declares its intention of ensuring the delivery of adequate Solid Waste Handling services and of maintaining reasonable rates for the provision of such handling services within the unincorporated County;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. COVENANTS, REPRESENTATIONS AND WARRANTIES

(a) Covenants, Representations and Warranties of Grantee

Grantee hereby makes the following covenants, representations and warranties for the benefit of the County as of the date of this Agreement.

- (1) Grantee is (duly organized and) validly existing as a [(corporation) ~~(joint venture) (partnership)~~ (limited liability company) in good standing under the laws of the State of California]. [Sole proprietorship]
- (2) Grantee has full legal right, power, and authority to execute, deliver, and perform this Agreement, and has duly authorized the execution and delivery of this Agreement.
- (3) Each Person signing this Agreement on behalf of Grantee has been authorized by Grantee to do so, and this Agreement has been duly executed and delivered by Grantee, and constitutes a legal, valid and binding obligation of Grantee enforceable against Grantee in accordance with its terms.
- (4) To the best of Grantee's knowledge, there is no action, suit, or proceeding before any court or governmental entity against Grantee or affecting Grantee, wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Grantee.
- (5) Grantee has sufficient financial resources to perform all aspects of its obligations hereunder. There has been no material adverse change in Grantee's or, if applicable, in Grantee's parent company's,

financial circumstances since the date of the most recent financial statements or information, submitted to the County or reviewed by the County at the offices of Grantee.

- (6) Grantee has the expert, professional, and technical capability to perform all of its obligations under this Agreement.
- (7) Prior to providing any service authorized by this Agreement, Grantee will have provided to the Director or designee the performance bond, certificates of insurance, and liquidated damages accounts, as provided in Section 9 of this Agreement.
- (8) Prior to providing any service authorized by this Agreement, Grantee will have provided to the Director or designee proof that the Grantee has obtained all necessary permits, authorizations and licenses which are required for furnishing such service, including, without limitation, a Health and Safety Permit.
- (9) Grantee has read Division 6 of Title 4 of the County Code, a copy of which is attached hereto and incorporated herein as Exhibit "C", and is aware of its provisions and, further, agrees that the entry by Grantee into this Agreement constitutes its acknowledgment and confirmation of certain matters as specified in the Ordinance.

(b) Covenants, Representations and Warranties of the County

The County hereby makes the following covenants, representations and warranties to and for the benefit of Grantee as of the date of this Agreement:

- (1) The parties executing this Agreement on behalf of the County are duly authorized to do so. This Agreement constitutes the legal, valid and binding Agreement of the County and is enforceable against the County in accordance with its terms.
- (2) To the best of the County's knowledge, there is no action, suit, or proceeding against the County before any court or governmental entity wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Agreement.

SECTION 2. DEFINITIONS

Whenever any term used in this Franchise Agreement has been defined by AB 939 or in the County Code, the definitions therein, as presently defined and as they may be amended in the future shall apply unless the term is otherwise defined in this Agreement. In the event of conflict between the definition found in AB 939, in the County Code and this Agreement, the definition in this Agreement shall govern all other definitions, while the definition in the County Code shall take precedence over the definition contained in AB 939. The definitions are set forth on the attached and incorporated Exhibit "D".

SECTION 3. GRANT AND ACCEPTANCE OF EXCLUSIVE FRANCHISE RESIDENTIAL AND COMMERCIAL FRANCHISE

(a) Grant of Franchise

Pursuant to the provisions of Division 6 of Title 4 of the County Code and pursuant to AB 939, and subject to the terms and conditions of this Agreement (including all extensions or renewals), County hereby grants to Grantee the exclusive right, privilege, and franchise to provide the Solid Waste Handling services described in Exhibit "A" (Services) and Exhibit "A-1" (Services to be Provided) to this Agreement within the portion of the Unincorporated County specified in Exhibits "B-1" (County Franchise Area Map) and "B-2" (County Franchise Area Legal Description(s)) to this Agreement, and to use the County streets and roads

for such purpose to provide the Solid Waste Handling services specified in Exhibit "A" and Exhibit "A-1" and to make and enter into independent arrangements with residents of single family units, residents and/or owners of multi-family units and persons in charge of commercial, industrial, institutional and other entities in the Franchise Area for the collection, transportation and removal to solid waste processing and/or disposal facilities, of all residential, industrial and commercial solid waste (including discarded recyclables and discarded recyclable material) generated or accumulated within the Franchise Area which has been placed in an authorized solid waste container, in the areas covered by this Agreement, as described in Exhibit "B-1" and Exhibit "B-2" now constituted or may hereafter be amended.

(b) Acceptance of Franchise

Grantee agrees to be bound by and comply with all the requirements of this Franchise Agreement. Grantee waives any right or claim to serve any part of the Franchise Area under any prior grant of franchise, contract, license or permit issued or granted by any governmental entity.

(c) Exceptions to Exclusivity

The foregoing Grant of Franchise excludes the following:

- (1) **Self Haul.** Any Solid Waste otherwise within the Scope of this Agreement which is removed and personally transported from any premises by the owner or occupant using his or her own equipment thereof for the purpose of lawfully delivering same to a Solid Waste Facility authorized to receive and handle solid waste. The use of a subcontractor is not "self haul" within the meaning of this exception.
- (2) **Gardeners and Landscapers.** The collection, transportation and disposal by a gardener or landscaper of green material or yard trimmings which are generated as an incidental part of providing gardening, landscaping or landscape maintenance services, provided that the gardener or landscaper is not a hauling service or solid waste enterprise, does not separately or additionally charge for the incidental service of removing, transporting or disposing (except for tipping fee) of the green material or yard trimmings, and utilizes only his or her own employees and equipment to collect, transport and dispose of same.
- (3) **Remodelers.** The collection, transportation and disposal by a construction contractor of inert materials or demolition waste from remodeling jobs which are generated as an incidental part of providing such remodeling services, provided that the construction contractor is not a hauling service or solid waste enterprise, does not separately or additionally charge for the incidental service of removing, transporting or disposing (except for tipping fee) of the inert materials or demolition waste, and utilizes only his or her own employees and equipment to collect, transport and dispose of same.
- (4) **Sale or Gift of Recyclable Materials.** Recyclable Materials which are either donated or sold by the generator of the materials to a party other than Grantee. A mere discount or reduction in price of the franchise hauler's charges for the handling of such materials is not a sale or donation within the meaning of this Agreement. The materials shall be deemed "solid waste" within the meaning of California Public Resources Code Section 40191, and for purposes of this Agreement shall be regulated as such, whether or not they may be potentially recyclable, in either of the following instances: (a) the material is mixed or commingled with other types of solid waste, or (b) the payment of a fee, charge, or other consideration, in any form or amount, is directly or indirectly solicited or received from the generator by any person or combination of persons in exchange for collection, removal, transportation, storage, processing, handling, consulting, container rental or disposal services ("fee for service" recycling), whether or not arranged by or through a subcontractor, broker, agent, consultant, or affiliate of the provider of such service.

- (5) **Exempt Persons.** A person or entity that has been given an exemption by the County from the Uniform Handling collection ordinance.

SECTION 4. TERM

- (a) The initial term of this Agreement shall commence on the later of (i) July 1, 2009 or (ii) the date on which amendments made to the County Code for consistency purposes become effective, and expiring on June 30, 2017. Thereafter, beginning on July 1, 2010, and on each July 1 anniversary date thereafter, the term of this Agreement will be extended automatically for one (1) additional year, so as to have a rolling term of eight (8) years. Should either party desire that said automatic renewal and extension provision be terminated, such party shall give the other written notice of nonrenewal between January 1 and June 30 in any odd-numbered year, but not before the year 2011. Any such notice, properly given, shall serve to terminate the automatic one year renewal and extension provision only, and this Agreement shall remain in effect for the balance of the term then outstanding. In the event that either party exercises its right to terminate the automatic renewal and extension provision under this paragraph, the parties may subsequently reinstate the automatic renewal and extension provision by mutual written agreement.
- (b) Whether or not specifically mentioned or incorporated in this Agreement, exercise of the Franchise granted herein, and every provision of this Agreement, are subject to the terms, conditions and provisions of Division 6 of Title 4 of the County Code, as currently existing. With respect to each extended term of this Agreement, exercise of the Franchise granted herein, and every provision of the Agreement, are subject to the terms, conditions and provisions of Division 6 of Title 4 of the County Code, as currently existing or as hereinafter amended, so long as the amendment to the Division has been adopted by the Board prior to the date by which the Board is required to determine that this Franchise Agreement shall not be extended (as provided in Section 4), whether or not such amendment is effective prior to such date.

SECTION 5. FRANCHISE AREA

The Franchise Area granted by this Agreement is the portion of the Unincorporated County described in Exhibit "B-1" and as shown on Exhibit "B-2" both of which are attached hereto and incorporated herein by this reference as if fully set forth. Grantee shall perform Solid Waste Handling services pursuant to this Agreement only in such Franchise Area.

SECTION 6. SERVICES PROVIDED BY GRANTEE

In addition to the Minimum Operating Requirements and Special Collection Programs set forth in this Section 6, Grantee shall provide the Solid Waste Handling services specified in Exhibit "A" and Exhibit "A-1" in conformity with the specific manner specified in Exhibit "A" and Exhibit "A-1". The Grantee shall also, upon written request of the Director or designee, provide optional services in the Franchise Area in accordance with the terms set forth in Exhibit "A", and the rates set forth in Exhibit "E". Exhibits "A" and "E" are attached hereto and incorporated herein by reference as if fully set forth.

The following minimum operating requirements shall apply to Grantee, except to the extent any operating requirement is specifically eliminated or modified in Exhibit "A":

- (a) **Employees**
- (1) Each employee or other Person driving Grantee's vehicle shall at all times have a valid California vehicle operator's license appropriate for the vehicle being driven.
- (2) All Grantee employees shall wear clean clothing of a uniform type when engaged in collection operations.

(3) Each employee dealing with Subscribers, including without limit those engaged in collection or billing, shall at all times behave in a courteous manner.

(b) Hours of Collection

Grantee shall not collect Solid Waste within a residential area or commercial area which is contiguous to a residential area between the hours of 10:00 P.M. and 6:00 A.M. the next day.

(c) Office for Inquiries and Complaints

Grantee shall maintain an office at some fixed place and shall maintain a locally listed toll-free telephone number. Such listing shall be in the Grantee's name or in the fictitious business name under which Grantee provides Solid Waste Handling services to the Area. Grantee shall provide live telephone service lines for Subscribers from 8:00 A.M. to 5:00 P.M., during all days of Solid Waste Handling Service, to answer inquiries and receive complaints. The number of toll free telephone lines provided shall be sufficient to adequately serve the public. The Grantee shall notify the Division, in writing, seven (7) days prior to any change in business name, address, or telephone number. Such notice shall set forth the corrected information. This Section shall not require the Grantee to maintain an office which is different than or separate from the office for inquiries and complaints maintained by Grantee under Chapter 8 of Division 3 of Title 3 of the Code.

(d) Records and Reports

Grantee shall prepare, maintain and provide to the Division such records and reports as required in this Agreement, as well as those required under any other applicable law.

(e) Requested Service

Grantee shall provide Solid Waste Handling services to all Subscribers within its approved Franchise Area who request such service, except when denial or discontinuance of service is specifically authorized by this Agreement. Such service shall commence within seven (7) working (waste collection) days of the Subscriber's request. For Franchise Areas subject to Uniform Handling Service, pursuant to the County Code, Grantee shall provide Solid Waste Handling services to all Subscribers within its approved Franchise Area.

(f) Collection Frequency

For health and safety purposes, minimum collection frequency for all Solid Waste Handling Subscribers shall be as prescribed by the Department of Public Health, Division of Environmental Health Services. Grantee shall correct any missed collection of a Subscriber's Solid Waste within 2 working (waste collection) days of notice thereof, unless the next regular collection of such waste is scheduled to occur within 3 working (waste collection) days of such notice.

(g) Containers

In addition to any requirement Grantee is subject to under its Health and Safety Permit, each container shall be replaced in its proper place in a neat and orderly manner; any litter spilled from a container by Grantee's employees while emptying a container shall be cleaned up.

(h) Noise

In addition to any requirement Grantee is subject to under its Health and Safety Permit or other applicable law, Grantee shall not create any noise in excess of what is reasonable and necessary in providing Solid Waste Handling services to its Subscribers.

(i) Collection Equipment

Grantee shall provide an adequate number of vehicles and equipment to provide the Solid Waste Handling services required under its Franchise Agreement. No vehicle shall be used for the collection and transportation of Solid Waste prior to such initial and/or periodic inspection and approval by the Department of Public Health, Division of Environmental Health Services to the extent required under the Grantee's applicable Health and Safety Permit.

- (1) All motor vehicles used by Grantee under its Franchise Agreement shall be registered with the Department of Motor Vehicles of the State of California (unless otherwise allowed in writing by the Director or designee), shall be kept clean and in good repair, and shall be uniformly painted. In addition, vehicles must be in compliance with the California Air Resources Board requirements and any other applicable state or federal laws and/or regulations pertaining to the operation of Solid Waste handling equipment.
- (2) Solid Waste collection motor vehicles used in operations under any Franchise Agreement shall be washed at least once every seven (7) calendar days.
- (3) The name and local or toll free telephone number, and vehicle number, in letters and figures no less than three inches (3") high, shall be visibly displayed on all motor vehicles used by Grantee in operations under this Franchise Agreement.
- (4) The number of toll free telephone lines provided shall be sufficient to adequately service the public.

(j) Privacy

Grantee shall strictly observe and protect the rights of privacy of its Subscribers. Information identifying individual Subscribers or the composition or contents of a Subscriber's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless as part of a legitimate inquiry by a governmental unit, or as authorized by a court of law or by statute, or upon written authorization of the Subscriber. This provision shall not be construed to preclude Grantee from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939, or the County, provided that no such analysis shall identify any person or connect any person to any particular waste. In addition, Grantee shall not market, sell, convey, or donate to any Person any list with the name or address of Subscribers except that Grantee may provide such lists to authorized employees and authorized representatives of the County as necessary to comply with this Franchise Agreement.

(k) Subscriber Complaints

- (1) All Subscriber complaints shall be directed to Grantee. Grantee agrees to use its best efforts to resolve all complaints received by mail, by telephone, or in person, by close of business of the second working (waste collection) day following the date on which such complaint is received. Service complaints may be investigated by the Director or designee and Grantee shall provide reasonable cooperation to the Director or designee in the event of such investigation. Grantee shall maintain records listing the date of Subscriber complaint, the name, address and telephone number of Subscriber, the nature of the complaint or request, and the date when and nature of the action taken by the Grantee to resolve the complaint. All such records shall be maintained for at least

seven (7) years after Grantee's receipt of the complaint or inquiry and shall be available for inspection by County during all business hours.

- (2) The Grantee shall designate a "government liaison Person," which shall be responsible for working with the Division to resolve Subscriber complaints.
- (3) The Grantee shall notify Subscribers in writing of the complaint resolution procedure set forth in Section 10.3 of this Agreement at the time Subscribers apply for or are provided service, and annually thereafter.

(l) Property Damage

- (1) Any physical damage caused by the act or omissions of employees, officers, or agents of the Grantee to private or public property in operations under its Franchise Agreement shall be promptly repaired or replaced by Grantee at Grantee's sole expense.
- (2) With respect to driving surfaces, Grantee shall be responsible for damage (excluding normal wear and tear), whether or not paved, resulting from the weight of vehicles providing Solid Waste Handling services on public or private property when it can be demonstrated that such damage is the result of vehicles exceeding speed limits or maximum weight limits set by the State of California or by other negligent operation of vehicles by Grantee's employees.

(m) Gratuities

Grantee shall not, nor shall it permit any officer, agent, or employee employed by it, to request, solicit or demand, either directly or indirectly, any gratuity for services authorized or required under its Agreement.

(n) Unlawful Discrimination

In performing the Solid Waste Handling services under its Franchise Agreement, and in exercising the rights and privileges granted thereunder, Grantee shall not unlawfully discriminate for or against any Person on the ground of race, sex, age, creed, color, religion or national origin.

(o) Laws and Licenses

Grantee shall comply with all federal, state, and County laws, ordinances, rules, and regulations applicable to the performance of the Solid Waste Handling services provided under this Franchise Agreement and shall obtain and maintain in full force and effect all licenses and permits necessary to perform such services throughout the term of this Franchise Agreement.

(p) Removable Signs on Grantee's Vehicles

County may request, from time to time, Grantee's approval for the placement of removable signs on Grantee's collection vehicles to promote County programs. These signs will be designed and sized in a manner that is acceptable to and compatible with the Grantee's vehicles/equipment. The costs of such signs shall be paid by the County and Grantee shall pay costs of installation, if any.

(q) Services During Strikes, Lockouts or Other Labor Disturbances

In the event of labor strikes, lockouts, or other labor disturbances, Grantee and County agree to cooperate fully in developing and implementing contingency plans for the continued collection and handling of Solid Waste in order to safeguard public health and avert imminent and substantial threats to public health and safety. Without limitation, these cooperation efforts may include prioritizing the collection of Solid Waste

from certain businesses in order to control the accumulation of Solid Waste that may lead to more immediate threats to public health such as putrescible waste, sewage sludge, and manure or other animal waste.

SECTION 7. OWNERSHIP OF SOLID WASTE INCLUDING RECYCLABLE MATERIALS

Except as otherwise provided in state law, ownership of Solid Waste shall transfer to Grantee at such time as the Solid Waste is abandoned and discarded by the Solid Waste Handling service Subscriber of Grantee and is collected by Grantee in the location provided in Exhibit "A".

SECTION 8. WASTE DELIVERY DESIGNATION

The Grantee shall deliver all Solid Waste collected pursuant to this Agreement to the County Solid Waste Disposal System. Grantee shall notify in writing the Director, or designee, of the primary County-owned Solid Waste Facility for the franchise within 30 days of the Effective Date of this Agreement and 90 days in advance of any desired change in the primary County-owned Solid Waste Facility for the franchise. This designation shall be subject to the following:

- (a) Solid Waste that Grantee determines to be suitable for Processing may be delivered by Grantee to a Materials Recovery Facility or waste processing facility selected by Grantee that is not more than 20 miles from the County boundary, and only the Residual Solid Waste resulting from Processing will be subject to the waste delivery designation. The Director or his/her designee shall retain discretion to waive the requirement to return and deliver Residual Solid Waste originating from facilities located within 20 miles, as circumstances warrant.
- (b) If Director, or designee, and Grantee have agreed that Grantee will export Solid Waste collected pursuant to this Agreement to a Transformation, Processing, composting, or other facility located more than 20 miles outside San Bernardino County, Grantee shall not be required to deliver and return the Residual Solid Waste to the County Solid Waste Disposal System.
- (c) If the Director or his/her designee directs Grantee to deliver Solid Waste collected pursuant to this Agreement to a County-owned Solid Waste Facility that is different from the facility Grantee is then using for the disposal of such waste, or in amounts that are different than the amount that Grantee is currently delivering to that facility, and results in increased operating costs to the Grantee, Grantee shall be entitled to a corresponding rate adjustment to fully compensate Grantee for the increased costs. Notwithstanding the foregoing, the parties intend and agree that County shall have the limited right, where adverse weather conditions or other events necessitate, to periodically designate (up to 45 days cumulatively in any twelve month period) a substitute facility and to divert Grantee to that alternate facility within San Bernardino County for delivery of Grantee's Solid Waste without a rate adjustment.

SECTION 9. INDEMNIFICATION AND INSURANCE, AND PERFORMANCE BOND

Section 9.1 Indemnification of County

The Grantee agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors and omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Grantee's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

Section 9.2 Hazardous Waste Indemnification

Without limiting the generality of the foregoing, if Grantee has negligently or willfully acted or failed to act with respect to the collection, handling or transportation of Hazardous Waste, Grantee shall indemnify, defend with counsel approved by County, protect and hold harmless the County and its respective officers, employees, agents, volunteers, assigns, and any successor or successors harmless from and against all claims, actual damages (including, but not limited to, special and consequential damages), natural resources damage, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including, but not limited to, attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, County or its respective officers, employees, agents, or Grantees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste which Grantee has negligently or willfully acted or failed to act with respect to its collection, handling or transportation at any place where Grantee stores, handles, transports or disposes of Solid Waste pursuant to this Franchise Agreement. The foregoing indemnity is intended to operate and shall operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, indemnify, and hold the County harmless from liability.

Section 9.3 Diversion Program

- (a) The County and Grantee agree that the essential element to meeting state-mandated waste diversion requirements is to develop robust programs and program elements to maximize opportunities for diversion, and to maximize participation in those program elements. Grantee shall conduct diversion programs in accordance with the County's approved Source Reduction and Recycling Element, including but not limited to programs set forth in Exhibit "A-1". Performance of recycling programs set forth in Exhibit "A-1" will be measured, on an annual basis by means of a four (4) week survey of the Grantee's Subscribers, for each waste stream type, to determine the rate of participation in diversion programs provided by the Grantee. The survey will include no less than 30% of Subscribers in each diversion program. Grantee shall notify Director or designee 30 days prior to commencing the annual survey by providing the date(s), specific routes and methods of completing the survey. Compliance with this section will be based on a minimum of 80% participation by the Subscribers sampled. This compliance requirement shall be referred to as the "Program Subscriber Participation Requirement."
- (b) Annually, preferably in February, the Grantee and the Director or designee will review the recycling programs being implemented by Grantee for effectiveness. Elements of effectiveness include, but are not limited to, net volume of recycling, customer participation, and cost. As determined by the Grantee and Director, or designee, programs may be modified, added or deleted. Programs that require modification without a change in rates may be approved by the Director, or designee. Programs proposed for elimination, addition or that require a change in rates, will require approval by the Board of Supervisors. Grantee will provide information reasonably requested by the Director, or designee, as necessary to determine the effectiveness of the program(s) and such information may be in addition to information provided under Section 12.
- (c) Liquidated damages paid for failing to meet the Program Subscriber Participation Requirement in accordance with the provisions of Section 9.3 shall be calculated as \$1000 per percentage point below 80% for any program surveyed pursuant to Section 9.3(a).
- (d) If Grantee fails to meet the annual Program Subscriber Participation Requirement three (3) times, during any consecutive 5 years of the term of this Franchise Agreement, County may provide a "Notice of

Deficiency" to Grantee pursuant to Section 10 of this Agreement and Grantee's failure to correct may result in the termination of this Franchise Agreement. Before issuing a Notice of Deficiency, the Director or designee shall confer with the Grantee and the parties shall meet at least one time before the Notice of Deficiency issues.

- (e) If recycling is being performed by waste generators and others to the extent that Grantee is unable to meet its Program Subscriber Participation Requirement. Grantee shall report such circumstances to the Director or designee in writing and petition the Director or designee for an equitable adjustment of Grantee's Program Subscriber Participation Requirement based on such circumstances, which adjustment shall not be unreasonably denied.
- (f) If the County finds that additional programs are necessary to meet any AB 939 required diversion goals the County may require Grantee to provide proposals for additional diversion programs to meet the diversion requirements. Compensation for such additional programs shall be established under the terms of this Agreement as a Change in Service Level Adjustment.

Section 9.4 Diversion Indemnification

- (a) Grantee agrees, on a pro rata basis (with such basis being determined as set forth below), to protect and defend County, with counsel selected by Grantee and approved by County, which approval shall not be unreasonably withheld, and to indemnify and hold the County harmless from and against all fines or penalties imposed by the California Integrated Waste Management Board on account of AB 939 diversion goals, specified in California Public Resources Code Section 41780, not being met by County, if such diversion goals are not met as the result of acts or omissions of Grantee or failure by Grantee to implement in good faith all diversion programs required or approved by the County or as a result of Grantee's failure to provide County with necessary data reasonably available to Grantee regarding attainment of diversion goals.
- (b) Except where the Grantee's liability under this Section arises because of a failure to provide County with necessary data, the pro rata basis of Grantee's indemnification under this Subsection (b) shall be determined by comparing the amount of Solid Waste collected in the Grantee's Franchise Area in which the Grantee failed to meet its Program Subscriber Participation Requirement to the total amount of Solid Waste collected in all Franchise Areas where the Grantees, if any, failed to meet their respective Program Subscriber Participation Requirement. Where the Grantee's liability arises because of a failure to provide County with necessary data, the pro rata basis of Grantee's indemnification under this Section 9.4 shall be determined by comparing the amount of Solid Waste collected in Grantee's Franchise Area to the amount of Solid Waste collected in all Franchise Areas, if any, where any Grantee has incurred liability under this Section 9.4 for any reason.
- (c) Liquidated damages paid for failing to meet the Program Subscriber Participation Requirement in accordance with the provisions of Section 9.3 shall be credited toward the Grantee's satisfaction of the indemnification set forth in this Section 9.4.

Section 9.5 Insurance Requirements

The Grantee agrees to provide insurance set forth in accordance with the requirements herein. If the Grantee uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Grantee agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in any way affecting the indemnity herein provided and in addition thereto, the Grantee shall secure and maintain throughout the contract term the following types of insurance with limits as described below:

- (a) Workers' Compensation/Employers Liability – A program of Worker's Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Grantee and all risks to such persons under this contract.
- (b) Commercial/General Liability Insurance – the Grantee shall carry General Liability Insurance covering all operations performed by or on behalf of the Grantee providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
- (i) Premises operations and mobile equipment.
 - (ii) Products and completed operations.
 - (iii) Broad form property damage (including completed operations)
 - (iv) Explosion, collapse and underground hazards, if necessary.
 - (v) Personal Injury.
 - (vi) Contractual liability.
 - (vii) \$2,000,000 general aggregate limit.
- (c) Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million (\$1,000,000) for bodily injury and property damage, per occurrence.
- (d) Environmental Liability Insurance –
- (i) With a combined single limit of not less than five million (\$5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required additional insured endorsement shall protect the County without any restrictions.
 - (ii) If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.
- (e) All required insurance policies, except for the Workers' Compensation coverage, shall contain endorsements naming the County, and its employees, agents, volunteers and officers as additional insureds with respect to liabilities arising out of operating under the Franchise Agreement. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, GC 2010, 1185.
- (f) The Grantee shall require the carriers of the above required insurance coverage to waive all rights of subrogation against the County, its officers, agents, volunteers, employees, contractors and subcontractors with respect to liabilities arising out of operating under the Franchise Agreement. All general or auto liability insurance coverage shall not prohibit the Grantee and Grantee's employees or agents from waiving the right of subrogation prior to a loss or claim. The Grantee hereby waives all rights of subrogation against the County with respect to liabilities arising under the Franchise Agreement.
- (g) All policies required by this Section 9.5 must be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

- (h) Prior to commencing operations under the Franchise Agreement, Grantee shall furnish to the Division certificates of insurance evidencing the insurance coverage required above. Each such certificate shall provide that the insurance coverage evidenced thereby shall not be expired, canceled, terminated or reduced in amount without at least ten (10) days advance written notice to the Division. Within sixty (60) days after the effective date of the Franchise Agreement, the Grantee shall furnish to the Division certified copies of all of the policies or endorsements required by this Section 9.5. Proofs of renewal or of substitution of carriers shall be provided to the Division promptly as such events occur.
- (i) All insurance requirements are subject to annual review by the County, with the results of such review to be provided to a Grantee on or before the anniversary of the effective date of the Franchise Agreement. If the County's Risk Manager determines at any annual review that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the County's Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk. Any such change shall be treated as a Change in Law Adjustment, under the provisions of this Agreement.
- (j) Grantee shall not be required to maintain separate policies of insurance for any type of insurance required under both this Section 9.5 and Chapter 8 of Division 3 of Title 3 of the Code. However, Grantee must maintain the level of insurance which is the higher of that required in this Section 8.5 and Chapter 8 of Division 3 of Title 3 of the Code, and must obtain and maintain insurance coverage which satisfies all of the provisions of this Section 9.5 and Chapter 8 of Division 3 of Title 3 of the Code, including without limit, providing certificates of insurance to all specified divisions of the County and requiring notification of the cancellation or termination of any insurance policy be given by the insurance company to all specified divisions of the County.
- (k) Grantee agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Grantee and the County or between the County and any other insured or additional insured under the policy.
- (l) Unless otherwise approved by the Risk Management Department of the County, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".
- (m) Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management. In the event any deductibles or self-insured retention is not approved by Risk Management, Grantee may obtain a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses for any unapproved amount.
- (n) In the event that any policy or insurance required under this Franchise Agreement does not comply with the requirements, is not procured, or is cancelled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Grantee or County payments to the Grantee will be reduced to pay for County purchased insurance.

Section 9.6 Performance Bonds or Other Security

Grantee shall furnish to the County without additional charge a corporate surety bond, a letter of credit or other security device acceptable to the Division, as security for performance under this Franchise Agreement (collectively "Security"). The amount of the Security shall be the average of one month's expected Gross Receipts Less Disposal Charge. Adequate proof of the existence of the Security shall be provided (e.g., a certificate from

the surety showing that the bond premiums have been paid in full shall accompany the bond and each renewal thereof). The surety on the bond, the bank on which the letter of credit is drawn and the surety for any other Security device shall be a company acceptable to the County and shall be authorized to do business in the State of California.

Section 9.7 Liquidated Damages Deposit.

Each Grantee shall be required to maintain a bank account from which the Division will have the ability to remove, on the sole signature of the Director or designee, sums of money equal to any liquidated damages assessed against Grantee under the provisions of Section 10.2 of this Agreement. Grantee shall be required to maintain a minimum balance of \$2,500 in the account; the Grantee must restore the account to such minimum balance within 10 days after the mailing of any monthly statement from the bank showing, or written notice from the Division stating, that the balance of the account has fallen below the \$2,500 required minimum. The sums on account shall belong to Grantee and all interest on said account belongs to, and all costs related to such account shall be the responsibility of, Grantee. To the extent possible, Grantee shall require the bank to provide a copy of a monthly account statement to the Division; in the event that the bank is unwilling to provide such a statement, Grantee shall provide a true and complete copy of its monthly account statement to the Division within 5 working (waste collection) days of its receipt by the Grantee.

Section 9.8 Modification

The requirements of this Section 9 may be modified or waived in writing by the Board upon the request of Grantee, provided the Board reasonably determines such modification or waiver is in the best interest of County and of the public welfare, considering all relevant factors, including acceptable financial guarantees provided by Grantee or by a parent company of Grantee.

SECTION 10. FAILURE TO PERFORM AND REMEDIES

The rights of the Grantee and County upon the failure of either to perform as required under this Agreement shall be as provided below:

Section 10.1 Administration, Enforcement and Remedies

- (a) If the Director or designee determines at any time that the Grantee's performance of the Solid Waste Handling services authorized/required in this Franchise Agreement, or any of its other actions, are not in conformity with the provisions of the Franchise Agreement, the provisions of the County Code, the requirements of the California Integrated Waste Management Board, including but not limited to, requirements for source reduction and recycling (as to the waste stream subject to the Franchise Agreement) or any other applicable federal, state, or local law or regulation, including but not limited to the laws governing collection, transfer, storage and/or disposal of Solid Waste, the Director or designee will notify Grantee in writing of such deficiencies ("Notice of Deficiency").

Without limiting the generality of the forgoing the County may provide a Notice of Deficiency for any of the following:

- (1) If the Grantee practices, or attempts to practice, or if it is determined by the Division that the Grantee has heretofore practiced, any fraud or deceit upon the County or upon any member of the public, including any Subscriber of the Grantee;
- (2) If the Grantee becomes insolvent, unable or unwilling to pay its debts, or upon listing on an order in a bankruptcy proceeding for relief related to operations pursuant to this Franchise Agreement in favor of Grantee and acting to the detriment of County or of a Subscriber of the Grantee;

- (3) If the Grantee fails to provide or maintain in full force and effect the indemnifications, insurance, performance bonds or other Security, bank account or any other item required by Section 9 of this Agreement;
 - (4) If the Grantee willfully violates any orders or rulings of any regulatory body having jurisdiction over the Grantee in the operation of its business under this Agreement;
 - (5) If the Grantee ceases or fails to provide Solid Waste Handling services as required under this Franchise Agreement to a substantial number of Subscribers within its Franchise Area or over all, or a substantial portion of, its Franchise Area, for a period of seven (7) days or more, for any cause which was reasonably within the ability of the Grantee to have prevented or overcome, and where such cessation or failure causes an imminent and substantial threat to public health and safety. As used in this provision, a "substantial number of Subscribers" can be as few as one if the Grantee's cessation or failure to provide Solid Waste Handling services creates an imminent and substantial threat to public health or safety;
 - (6) If the Grantee willfully fails to make any payments required under the provisions of either Division 6 of Title 4 of the Code or of this Franchise Agreement and/or refuses to provide the County with requested information, manifests, reports, and/or test results in a timely manner as provided in either Division 6 of Title 4 of the Code or of this Franchise Agreement;
 - (7) Any other act or omission by the Grantee which violates the terms, warranties, conditions, or requirements of this Franchise Agreement, or of Division 6 of Title 4 of the Code, as it currently exists (or with respect to any extended term of this Agreement, as said Division is amended prior to the date specified in Section 4 of this Agreement), or of any order, directive, rule, or regulation issued by a regulatory agency;
 - (8) If the Grantee willfully and persistently, and without the consent of the Director or designee, fails to deliver the Solid Waste to the Solid Waste Facility specified in this Franchise Agreement.
 - (9) If during the course of the administration of this Franchise Agreement, the County determines that Grantee has made a material misstatement or misrepresentation or that materially inaccurate information has been provided by Grantee.
 - (10) If there is any felony conviction for a violation of any federal or state law relating to: bribery of public officials or other acts of public corruption; fraud; anti-trust; or unfair trade practices, including predatory pricing:
 - (A) of any employee of Grantee, where such felony conviction relates to actions taken by such employee in respect to Grantee's Franchise Agreement; or
 - (B) of the Chief Executive Officer, Chief Operating Officer or Chief Financial officer of Grantee.
 - (11) If Grantee fails to meet the "Program Subscriber Participation Requirement" as set forth in Section 9.3 (d).
- (b) The Notice of Deficiency may provide a reasonable time within which correction of all noted deficiencies is to be made. Unless a shorter or longer period of time is specified in the notice of deficiency sent by the Director or designee, a reasonable time for correction shall be sixty (60) days from the receipt by the Grantee of such written notice. If the Grantee cannot reasonably correct or remedy a noted deficiency within the time specified in the Notice of Deficiency, but the Grantee immediately commences to correct or remedy such deficiency within the time set forth in the Notice of Deficiency and diligently pursues such correction or remedy thereafter Grantee shall not be deemed to have failed to correct or remedy the Notice

of Deficiency. Some deficiencies are by their nature not curable, and no time period to correct or remedy such deficiency shall be given in the Notice of Deficiency (by way of example but not limitation, the deficiencies noted in subsections 10.1(a)(1), (2), (3) or (4) generally are not curable).

- (c) The Director or designee shall review the Grantee's response to the Notice of Deficiency. If the Director or designee determines that the Grantee has not cured the deficiency, or if there is no cure period provided in the Notice of Deficiency given the nature of the deficiency, the Director or designee shall either:
- (1) Refer the matter directly to the Board for decision pursuant to subsection (d) of this Section 10.1; or
 - (2) Decide the matter and notify the Grantee of that decision, in writing.
 - (A) The decision of the Director or designee may be to terminate the Franchise Agreement or may be to impose some lesser sanction;
 - (B) The decision of the Director or designee shall be final and binding on Grantee unless the Grantee files a "Notice of Appeal" with the Director or designee within thirty (30) days of receipt of the Director or designee's decision. The Notice of Appeal shall be in writing, shall contain a detailed and precise statement of the basis for the appeal, and shall be accompanied by the fee, if any, which is applicable to the filing of such an appeal.
 - (C) Within ten (10) working days of receipt of a Notice of Appeal, the Director or designee shall either refer the appeal to the Board for proceedings in accordance with subsection (d) of this Section 10.1, or refer the matter to a hearing officer for proceedings pursuant to Chapter 27 of Division 2 of Title 1 of the Code.
- (d) (1) Should the Director or designee refer the Notice of Deficiency to the Board in the first instance, or if the matter reaches the Board pursuant to a Notice of Appeal, the Board shall either:
- (A) Refer the matter to a hearing officer for proceedings pursuant to Chapter 27 of Division 2 of Title 1 of the Code; or
 - (B) Set the matter for hearing.
- (2) If the Board sets the matter for hearing:
- (A) The Board shall give Grantee, and any interested person requesting the same, fourteen (14) days written notice of the time and place of the hearing. At the hearing, the Board shall consider the report of the Director or designee indicating the deficiencies, and shall give the Grantee, or its representatives and any other interested person, a reasonable opportunity to be heard.
 - (B) Based on the evidence presented at the public hearing, the Board shall decide the appropriate action to be taken. If, based upon the record, the Board determines that as noted in the Notice of Deficiency the Grantee's performance of the Solid Waste Handling services authorized/required in this Franchise Agreement, or any of its other actions, are not in conformity with the provisions of the Franchise Agreement, the provisions of the Code, the requirements of the California Integrated Waste Management Board, including but not limited to, requirements for source reduction and recycling (as to the waste stream subject to the Franchise Agreement) or any other applicable federal, state, or local law or regulation, including but not limited to the laws governing collection, transfer, storage and/or disposal of Solid Waste, then the Board, in the exercise of its sole discretion, may terminate this

Franchise Agreement forthwith or impose such lesser sanction as it deems appropriate. The decision of the Board shall be final and conclusive.

- (e) Grantee's performance under this Franchise Agreement is not excused during the period of time prior to the Director or designee's or the Board's final determination, as the case may be, regarding the validity of, and appropriate response to, the deficiencies noted in the Notice of Deficiency.
- (f) In the event Grantee: (i) has received a Notice of Deficiency and fails to perform Solid Waste Handling services; or (ii) has had its Franchise Agreement terminated; the County, acting through the Division, reserves the right, in addition to all other rights available to the County, to take any one or combination of the following actions:
 - (1) To rent or lease from Grantee, at its respective fair and reasonable rental value, all or any part of the Grantee's equipment (including collection containers utilized by Subscribers and office equipment and billing programs), equipment yard and office utilized by Grantee in providing the Solid Waste Handling services required under this Franchise Agreement. The County may rent or lease such equipment and real estate for a period not to exceed six (6) months, for the purpose of performing the Solid Waste Handling services, or any part thereof, which Grantee is (or was), obligated to provide pursuant to its Franchise Agreement. The County may use said rented equipment and real estate to directly perform such Solid Waste Handling service or to assign it to some other Grantee or Person to act on the County's behalf. Grantee shall be held responsible for the costs to insure the County or its assignee from all liability resulting from the operation of Grantee's equipment. In the case of equipment or real estate not owned by Grantee, Grantee shall assign to the County, to the extent Grantee is permitted to do so under the instruments pursuant to which Grantee possesses and uses such equipment or real estate, the right to possess and use the equipment or real estate.
 - (2) As used in this subsection, "reasonable rental value" means the rate for such equipment as listed in the State Division of Transportation publication, "Labor Surcharge and Equipment Rental Rates," in effect at the time the County leases the equipment. If a particular piece of equipment is not listed in said publication or if said publication is not current, the reasonable rental value may be established by the Director or designee by any equitable alternative method. For real estate, the "reasonable rental value" means its market rental rate as established by the Director or designee using an equitable method.
 - (3) If the County exercises its rights under this subsection, the County shall pay or owe Grantee the reasonable rental value of the equipment and real estate so taken for the period of the County's possession thereof. The County may offset any amounts due to Grantee pursuant to this provision against any amounts due to County from Grantee.
 - (4) All revenues owed by Subscribers which are attributable to services performed by or at the direction of the County during County's assumption of Grantee's Solid Waste Handling duties shall be billed by and paid to the County. To the extent Grantee receives such revenue after County's assumption of Grantee's Solid Waste Handling duties, Grantee shall pay such revenue to County promptly after receipt thereof (or promptly after County has performed the services related to such revenue, if the revenue was received by the Grantee prior to the County's assumption of duties) and Grantee shall be deemed to have assigned to County all of Grantee's right and interest to any such revenues.
- (g) The County rights set forth in this Section 10.1 are in addition to, and not in limitation of, any other powers or rights available to the County upon failure of Grantee to perform its obligations under Division 6 of Title 4 of the Code or of this Franchise Agreement. Further, by entering into this Franchise Agreement Grantee acknowledges that its violation of the terms of Division 6 of Title 4 of the Code or its breach of the terms of this Franchise Agreement shall cause the County to suffer irreparable injury and damages sufficient to

support injunctive relief to enforce the provisions of the Franchise Agreement, and to enjoin the breach thereof.

- (h) This Section shall not apply to violations or deficiencies which fall within the sole jurisdiction of the County's Division of Public Health, Division of Environmental Health Services under Grantee's required Health and Safety Permit and which are not, and do not become, violations or deficiencies under this Franchise Agreement or of Division 6 of Title 4 of the Code.

Section 10.2 Liquidated Damages

- (a) In its quarterly report submitted to the Division in accordance with Section 12.3(b) of this Agreement, Grantee shall certify to Division that it has met its service obligations during such quarter. If Grantee cannot so certify, if its complaint record evidences, or if the Division notifies Grantee that it has failed to meet any of its service obligations in violation/breach of this Agreement, then Grantee shall pay the indicated liquidated damages for each of the following violations/breaches which have been verified to the satisfaction of the Division:
- (1) Failure to Correct Missed Service; failure to correct a missed collection in accordance with Section 6(f); Escalated Damages;
 - (2) Failure to Timely Commence Services; failure to commence service within seven (7) working (waste collection) days of Subscriber's request therefore in accordance with Section 6(e); Escalated Damages;
 - (3) Damage to Subscriber's Property; demonstrated damage reported by or complained of by Subscriber to Grantee in accordance with Section 5(l), not fixed within a reasonable amount of time, as determined by the Director based upon all the circumstances, upon such report or complaint; \$250;
 - (4) Collection Outside Permitted Hours; providing service outside hours authorized in accordance with Section 6(b); Escalated Damages;
 - (5) Failure to Timely Respond to Complaint; failure to timely respond to any complaint and correct related violations/breach in services in accordance with Section 6(k); \$100;
 - (6) Failure to Record Complaint; failure to record a complaint in accordance with Section 6(k); \$100;
 - (7) Failure to Make Records of Complaints Available to Division; failure to provide Division immediate access to records of complaints in accordance with Section 6(k); \$1000;
 - (8) Failure to Submit Reports to Division; failure to timely submit complete reports to the Division in accordance with Section 6(d) and Section 12 of this Agreement; \$1000.
- (b) At any time following the time when any of the forgoing violations/breaches have been verified to the satisfaction of the Division, the Division may remove an amount equal to the indicated liquidated damages from the \$2,500 bank deposit for liquidated damages which is required to be maintained by Grantee pursuant to Section 9.7. The Division shall provide written notice to the Grantee that it is satisfied that a violation/breach has occurred and that it has imposed and removed, or will remove, the indicated liquidated damages from the \$2,500 bank account of Grantee. Within ten (10) days of receiving such notice from the Division, Grantee may contest imposition of such liquidated damages by notice to the Division, indicating the basis for disagreement. Any dispute relating thereto shall be resolved under the Notice of Appeal provisions of Section 10.1. In the event Grantee owes the County any liquidated damages upon the termination of this Franchise Agreement, Grantee's liability shall survive the termination hereof.

- (c) A high level of collection service quality and Subscriber satisfaction and therefore consistent and reliable service, is of utmost importance to the County and the Solid Waste Handling services Subscriber. County has considered and relied on Grantee's representations as to its quality of service commitment in approving this Franchise Agreement, and any violation/breach by Grantee of its Solid Waste Handling service obligations referenced in this Section represents a loss of bargain to the County. The Grantee further acknowledges that quantified standards of performance are necessary and appropriate to ensure such consistent and reliable collection service, and if Grantee fails to meet service obligations referenced in this Section, County will suffer damages (including its Subscribers' inconvenience; complaints by Subscribers; lost Board and staff time; and loss of bargain) and that it is and will be impracticable and extremely difficult to ascertain and determine the value thereof. Therefore, the County and Grantee acknowledge that the above liquidated damages represent a reasonable estimate of the amount of such damages, considering all of the circumstances, including the relationship of the amount of the liquidated damages to the range of harm to County that reasonably could be anticipated and the anticipation that proof of actual damages would be extremely costly and inconvenient for both the Grantee and County. In entering into this Franchise Agreement the Grantee specifically affirms the accuracy of the statements made above and the fact that Grantee has had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision.
- (d) The rights of the County set forth in this Section are in addition to, and not a limitation on, any other rights which County may have against Grantee for the failure to observe any condition or term of either Division 6 of Title 4 of the Code and/or of this Franchise Agreement, including the violations/breaches of same set forth in this Section for which liquidated damages are provided.

Section 10.3 Resolution of Subscriber Complaints

Procedures for resolution of complaints and other disputes shall be as follows:

- (a) A Subscriber dissatisfied with Grantee's decision regarding a complaint may ask the Director or designee to review the complaint. To obtain this review, the Subscriber may request County review within thirty (30) days of receipt of Grantee's response to the Complaint, or within forty-five (45) days of submitting the complaint to the Grantee, if the Grantee has failed to respond to the complaint. The Director or designee may extend the time to request the County's review for good cause.
- (b) Before reviewing the complaint, the Director or designee shall refer it to the Grantee. If the Grantee fails to cure the complaint within ten (10) days after such referral, the Director or designee shall review the complaint and determine if further action is warranted. The Director or designee may request written statements from the Grantee and Subscriber, or oral presentations or both written and oral presentations.
- (c) The Director or designee shall determine if the Subscriber's complaint is justified, and if so, what remedy, if any, shall be applied. The remedy provided to the Subscriber under this Section shall be limited to a refund of Subscriber charges related to the period of violation of any of the terms of Division 6 of Title 4 of the Code or of the breach of any term of this Franchise Agreement. In addition to any other remedy of County contained in this, County may impose liquidated damages of up to one hundred dollars (\$100.00) payable to the County for any single event or series of related events, or actual damages as demonstrated during the resolution procedure.
- (d) The Director or designee may delegate the duties under this Section to a designee. The decision of the Director or designee or a designee shall be final on any matter of five thousand dollars (\$5,000.00) or less. In the event of a decision on a matter awarding more than five thousand dollars (\$5,000.00), Grantee may seek review pursuant to the Notice of Appeal procedure contained in Section 10.1 of this Agreement.

- (e) This Section shall not apply to disputes involving the implementation of the Total Rate approved by the Board or the adjustments thereto specifically authorized by this Agreement.

SECTION 11. FRANCHISE TRANSFERABILITY

The rights of the Grantee in regards to the transferability of its Franchise shall be as set forth below:

- (a) Neither this Franchise Agreement nor any right or privilege granted in this Agreement shall voluntarily or involuntarily be transferred, sold, hypothecated, sublet, assigned or leased, in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein (all collectively referred to herein as "transfer"), pass to or vest in any Person, except the Grantee, either by act of the Grantee or by operation of law, without the prior written consent of the Board. Any attempt by Grantee, or by operation of law, to transfer this Franchise Agreement without the prior written consent of the Board shall be void.
- (b) This Franchise Agreement shall terminate on any Change in Ownership of Grantee, unless such Change in Ownership has been consented to, in writing, by the Board prior to the effective date of such Change in Ownership.
- (c) The County shall review a request by Grantee that the Board approve a transfer of all or part of Grantee's interest in this Franchise Agreement, or that the County consent to a Change in Ownership of Grantee, using such criteria as it deems necessary including, but not limited to, those listed below. The County shall not unreasonably withhold its consent to the transfer of this Franchise Agreement or to any Change in Ownership of Grantee. In no event, however, will any such transfer or Change in Ownership be approved unless the proposed assignee, or Grantee under its proposed new ownership, as the case may be, is shown to the satisfaction of the Board to meet the qualifications established in Division 6 of Title 4 of the Code for the approval, in the first instance, or retention of a Franchise Agreement.

If the Grantee requests that the County consider and consent to a transfer or a Change in Ownership of Grantee, the Grantee or the proposed transferee, as applicable, shall at a minimum meet each of the following requirements:

- (1) The Grantee shall pay the County its reasonable expenses for attorney's fees and investigation costs necessary to determine the suitability of any proposed transferee or proposed new owners, and to review and finalize any documentation required as a condition for approving any such transfer or Change in Ownership.
- (2) The Grantee shall furnish the County with independently audited financial statements of the proposed transferee's operations for the immediately preceding three (3) operating years.
- (3) The Grantee shall furnish the County with satisfactory proof:
 - (A) that the proposed transferee or the proposed management of the Grantee under the proposed new owner has at least three (3) years of solid waste management experience of a scale equal to or exceeding the scale of operations conducted by Grantee under this Agreement;
 - (B) that in the last five (5) years, the proposed transferee or any company managed by the proposed new owner (or by the proposed management of the Grantee under the proposed new owner) has not received any citations, Notice of Violations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any failure to comply with state, federal or local waste management laws, where such failure either: (i) evidences a pattern of disregard for such state, federal or local waste management laws; or (ii) involves actions which endangered the lives or property of any

Person. Grantee shall supply the County with a complete list of such citations, Notices of Violations and censures, if any;

- (C) that the proposed transferee or any company managed by the proposed new owner (or by the proposed management of the Grantee under the proposed new owner) has at all times conducted its operations in an environmentally safe and conscientious fashion;
 - (D) that the proposed transferee or any company managed by the proposed new owner (or by the proposed management of the Grantee under the proposed new owner) conducts its solid waste management operations in accordance with sound waste management standards and practices and in full compliance with all federal, state and local laws regulating the collection and disposal of waste;
 - (E) of the adequate financial strength of proposed transferee or of the Grantee under the proposed new ownership; and
 - (F) of the ability of the proposed transferee or of the Grantee under the proposed new ownership to obtain and maintain required insurance and bonds.
- (d) The County may impose reasonable new conditions of approval on a Franchise Agreement transfer, or consent to a Change in Ownership of Grantee, including, but not limited to, conditions requiring acceptance of amendments to this Franchise Agreement.

SECTION 12. REPORTS

Grantee shall provide the Director or designee with such reports and information and made its records available for review as provided below:

Section 12.1 General

- (a) Grantee shall keep, and, maintain, and furnish copies of such operating records and reports as may be requested by the Division to ascertain compliance with this Agreement, and support requests for a rate adjustment. Such records may include, but are not limited to, Grantee's records containing the underlying financial and operational data relating to its basis for, and computation of all costs associated with, providing the services required of it under this Franchise Agreement. The records required to be kept are not limited to the information necessary to provide the required reports. The Division reserves the right to request that additional information be provided to it, as necessary to ascertain compliance with this Agreement or facilitate its review of a requested rate adjustment, including but not limited to the AB 939 reporting requirements.
- (b) All information required to be kept, maintained or furnished to the County shall be maintained a minimum of five (5) years after the entry of the most recent item therein;
- (c) To the extent relevant to any report, all information included in the reports shall be provided according to the source of generation. Waste generator types are defined as follows:
 - (1) Residential - Solid Waste, Recyclable Material and Green Material originating from a single-family residential unit utilizing barrel service and single family residential unit utilizing bins of one cubic yard or more.
 - (2) Commercial/Industrial - Solid Waste, Recyclable Material and Green Material from multi-family dwellings, mobile home parks with common bins, commercial and industrial sources.

- (3) Construction/Temporary Bin/Roll off - All Solid Waste or other materials placed in debris boxes.
- (4) Cleanup - Solid Waste and other materials collected through the cleanups specified in Section 46.062(a) and (c) of the Code.
- (d) The Grantee's financial and accounting records required to be maintained under the provisions of this Agreement shall be maintained on an accrual basis in accordance with the most current edition of Generally Accepted Accounting Principles published by the American Institute of Certified Public Accountants. Unless inconsistent with Generally Accepted Accounting Principles, gross receipts must be recorded as revenues.
- (e) Data and information pertaining to services performed under this Franchise Agreement become the property of the County upon submittal to the Division.

Section 12.2 Reporting Requirements

During the term of this Franchise Agreement, Grantee shall submit to the County quarterly, and more often if required by law, information reasonably required by County to meet its reporting obligations imposed by AB939, as amended, and the regulations implementing AB939, in a manner approved by the County. Grantee agrees to submit such reports and information in a format compatible with County's computers if reasonably requested by the County. Grantee agrees to render all reasonable cooperation and assistance to the County in meeting the requirements of the County's source reduction and recycling element and non-disposal facility element including but not limited to the following:

- (a) Each month the Grantee shall complete the Multi-Jurisdiction Load/Detail Report forms provided electronically by the Division.
- (b) Correct inaccurate source information collected from the driver of the refuse truck at each landfill within 10 days.
- (c) Amend split source and tonnage information, for Solid Waste loads from more than one community within 10 days.

Section 12.3 Quarterly Reports

Except as otherwise directed in writing by the Director or designee, the Grantee shall submit quarterly reports. A quarterly report is required to be submitted no later than forty-five (45) days following the completion of the quarter to which it relates. The first report is due by and shall cover the period from the effective date of this Franchise Agreement through the end of the quarter in which the Agreement first became operative. The quarterly reports shall include the information collected and summarized on a monthly basis. Specifically, Grantee shall provide the following quarterly reports:

- (a) The Grantee shall provide a report that lists the quantity of Solid Waste collected by month and the number of accounts serviced monthly ("Collection information reports"). The quantities of Solid Waste, Recyclable Materials and Green Material collected shall be reported in terms of tonnage (or cubic yards if tonnage information is not available). The Division may, at its discretion, also require reporting by volume. The Grantee shall clearly specify any assumptions, such as density factors, made in reporting the tonnage or cubic yard information.
- (b) The Grantee shall provide a report summarizing the entries made in the service log including all commendations, complaints, and notifications of missed pickups, and the Grantee responses thereto ("Service performance report"). The summary report shall identify the total number of all written or oral Subscriber comments and shall provide the number of comments received in the following categories:

commendations, litter or property damage complaints, misplacement of containers, stolen containers, personnel complaints, missed pickups, and other.

- (c) The Grantee shall submit a report summarizing the problems or barriers to implementation of services for the quarter ("Program implementation"). The report shall address how the problems and barriers were overcome or the proposed resolutions and schedule for correcting the problem.
- (d) The Grantee shall submit a report summarizing the information relating to Gross Receipts, Gross Receipts Less Disposal Charges and service charge collections. To the extent permitted by applicable law, financial information submitted to the County by the Grantee pursuant to this subsection will be kept confidential and will be available to County personnel only on a need-to-know basis.

Section 12.4 Annual Reports

The Grantee shall submit reports to the Director or designee, covering operations for each calendar year. Except as otherwise provided below, each such report shall be submitted to the Director or designee no later than March 1 of the following year. The Grantee will be responsible for providing the following reports:

- (a) The Grantee shall provide a summary of information contained in the quarterly reports required to be provided quarterly pursuant to Sections 12.3(a) and (c) ("Summary reports"). The Summary reports shall clearly indicate the diversion rate for each waste generation type. The diversion information provided shall include quantities of materials collected, and if processed by other than County Solid Waste Disposal System facilities, the quantities recycled and composted in tons (or cubic yards if tonnage information is not available) for each waste generator type. In the Summary report, the Grantee shall note unusual changes in disposal quantities and indicate potential reason(s) for this change. The Summary report shall include a discussion of noteworthy experiences, and any problems in program operation and how they were resolved.
- (b) The Grantee shall provide a complete inventory of collection equipment and other major equipment which is or may be used in its operations ("Equipment inventory report").
- (c) The Grantee shall prepare a report that identifies all future programs and facilities that may be needed but have not been planned for ("Future programs report").
- (d) The Grantee shall submit declarations of the current status of all pending criminal or civil litigation against the Grantee and its parent company, if any, and all other subsidiaries of such parent company that may have an effect on the Grantee's ability to meet the obligations of the Agreement or provide a satisfactory level of service ("Litigation information report").
- (e) Grantee shall perform an annual survey of a representative sample of residential Subscribers (i.e., not less than 30% of all Subscribers) to determine what percentage of residential Subscribers actually participate in the recycling program available to them. Such annual sampling shall be conducted over 4 consecutive weeks.
- (f) Within 120 days following the close of Grantee's fiscal year, Grantee shall furnish a summary of the reports required to be provided quarterly pursuant to Section 12.3(d). The summary must be reviewed by the Grantee's independent Certified Public Accountant, in accordance with the standards of the accounting industry, and include the appropriate statement from said Accountant relative to his or her review.
- (g) Within 120 days following the close of Grantee's fiscal year, Grantee shall organize, summarize and make available for review full and complete financial information consistent with the preparation of the Grantee's financial statements, with respect to the operations necessary to provide the services required under this Franchise Agreement, including revenues, costs and expenses. Such information is not required to be

prepared by an independent Certified Public Accountant. The Grantee shall make the financial information available for the review by the Director, or its designee, at the local office of Grantee.

- (h) Annually during the term of this Agreement, except if waived by Director or designee at Grantee's request, Grantee shall conduct a waste stream audit of all commercial accounts. Annually in January, except if waived by Director or designee at Grantee's request, Grantee shall also provide a report to the County containing at a minimum, account names, addresses, percentage of diversion being accomplished at all multi-family and commercial accounts and any recommendations for changes resulting from the information gathered in the audit.

Section 12.5 Periodic Revenue, Cost and Expense Information

At least three months prior to the date that a decision would be made under Section 4 of this Agreement regarding the denial of an extension of the term of this Franchise Agreement, Grantee shall organize, summarize and make available for review full and complete financial information, consistent with the preparation of the Grantee's financial statements, with respect to the operations necessary to provide the services required under its Franchise Agreement, including revenues, costs and expenses. Such information is required to be prepared by an independent Certified Public Accountant, but is not required to be audited. The Grantee shall make the financial information available for the review by the Director, or designee, at the local office of Grantee.

Section 12.6 Audited Financial Statements

Upon 120 days advance written notice by the Director or designee, to the extent required to ascertain Grantee compliance with this Agreement or to review a request for a rate adjustment, Grantee shall cause an audited financial statement to be prepared, and made available for review, for its most recently completed fiscal year, together with the related opinion of the independent Certified Public Accountant who prepared such audited financial statement. The Grantee shall make the audited financial statement and related opinion available for the review by the Division, or its designee, at the local office of Grantee. If Grantee is a subsidiary of another corporation, Grantee shall provide the audited financial statement of such parent corporation and need only provide a copy of the financial statement of Grantee utilized in the preparation of the audited financial statement of the parent corporation. Grantee may request that the Director or designee accept reviewed financial statements in lieu of audited financial statements and such requests will be considered based on the individual circumstances of the Grantee in Director's or designee's discretion.

Section 12.7 County Right of Audit

Grantee shall make its Subscriber base and business, operational and financial records available to the Director or designee, for audit at reasonable times for purposes relevant to review of performance and rate adjustment issues relevant to this Franchise Agreement. In the event an audit is undertaken and shows that the Franchise Fee paid by Grantee to the County (relative to any period of time in excess of three months) has been understated by at least \$50,000 or two percent (2%), whichever is less, then Grantee shall reimburse County for the cost of such audit and shall, in addition, pay the County the amount of the understated Franchise Fee, plus simple interest on such understated amount at the rate of ten percent (10%) per annum from the date originally due until paid.

SECTION 13. COMPENSATION

Section 13.1 Compensation

- (a) In accordance with applicable law, Grantee shall provide the Solid Waste Handling services described in this Agreement and its exhibits in accordance with the rates set forth in Exhibit "E". Recyclable Materials collection from commercial and industrial units are included in the rates approved for services rendered pursuant to this Agreement to the extent provided in local state and federal law. Exhibit "E" specifies the maximum rate to be charged for collection of such materials. By April 1 of each year the Grantee shall

warrant to the County, in a writing signed by an officer, that during the prior calendar year it billed all of the Solid Waste Handling service Subscribers provided service under this Franchise Agreement at the rates set forth in the Total Rate approved with and applicable to this Franchise Agreement, as such Total Rate may have been adjusted pursuant to the provisions of this Section 13 and in accordance with applicable law. Copies of Subscriber billings which demonstrate the above shall be made available to the Division on its request.

- (b) All charges for services rendered by a given Grantee shall be uniform and non-discriminatory for the type of service provided and reasonably based upon the type and/or number of containers, type of Solid Waste, whether compacted or loose, number of separate pick-up points at any place of collection, placement of container(s) or distance of carry-out, frequency of collection, remote location, terrain, disposal costs, and whether residential, commercial, construction or industrial collection.
- (c)
 - (1) If Grantee includes a Solid Waste Facility Fee amount as a separate listing on a Subscriber's bill, the County shall prescribe the amount consistent with waste generation factors established in this Franchise Agreement and the applicable Solid Waste Facility Fee.
 - (2) Grantee shall refund to each Subscriber, on a pro rata basis, any advance service payments made by such Subscriber for service not provided when service is discontinued by timely written notification to Grantee by the Subscriber. Grantee may not require written notice to be given more than fifteen (15) working (waste collection) days prior to the date on which service is desired to be discontinued.
 - (3) On a quarterly basis, the County shall be allowed to furnish, for inclusion with Grantee's billing, a message for the purpose of public education regarding waste disposal, recycling, or other environmental issues. If Grantee mails its billing in an envelope, two of the four County messages may be in the form of a one (1) page insert, provided the insert is: print ready copy which conforms to Grantee's billing, is delivered to Grantee by the Division fifteen (15) working (waste collection) days in advance of Grantee's billing date and does not cause an increase in the postal rates payable by Grantee for mailing its billing. If the message is not in the form of an insert, it shall be printed by Grantee on its bills. Such message shall not exceed twenty-five (25) characters and shall be delivered to Grantee by the Division fifteen (15) working (waste collection) days in advance of Grantee's billing date. Grantee shall include such insert in, or print such message on, each Subscriber's next billing.

Section 13.2 Adjustment to Total Rate- Residential and Commercial Service

The following annual and special rate adjustments shall be made to the Total Rate provided for in this Franchise Agreement. However, no rate adjustment shall be implemented for or during any period of time when Grantee is not in substantial compliance with all material provisions of this Agreement.

(a) Cost of Living Adjustment

- (1) From and after the first July 1, following the Effective Date of this Franchise Agreement, the Service Component Rate shall be annually adjusted upwards by adding the following cost of living adjustment to the then current Service Component Rate. The cost of living adjustment shall be equal to the CPI multiplied by the then current Service Component Rate.
- (2) Except as provided in subparagraph (b), below, the Cost of Living Adjustment shall be equal to:
 - (A) One hundred percent (100%) multiplied by the average of the month to month change for a 12 month period change in the CPI (from the first index dates of April to March of the following year).

(b) Special Cost of Fuel Adjustment for Service Component Rate

- (1) It is recognized that the cost of fuel may increase faster than the CPI set forth in subparagraph (a) above. To compensate the Grantee for increases in the cost of fuel that exceed the CPI, if the year to year accumulation (from the first index dates of April 2008 to March 2009) of the average month to month change for a 12 month period in the PPI-Diesel or PPI-CNG (no later than October 1 of each year, Grantee shall advise Director or designee of the makeup of Grantee's fleet and the applicability of the PPI will be based on 51% or more of the fuel usage of the fleet) exceeds the year to year accumulation of the average month to month change for a 12 month period in the CPI, then the following formula will be used.
- (2) The Service Component Rate adjustment shall be equal to:
 - (A) Eighty-five percent (85%) multiplied by the average of the month to month change for a 12 month period change in the CPI (from the first index dates of April to March of the following year.)
 - (B) Fifteen percent (15%) multiplied by the average annual percentage change in the PPI-Diesel or PPI-CNG between (i) the average monthly PPI-Diesel or PPI-CNG during the first index year of April 2008 to March 2009 and (ii) the average monthly PPI-Diesel or PPI-CNG during the period of April to March immediately prior to the effective date of the adjustment.

(c) Extraordinary Adjustment

The parties acknowledge that there may be infrequent extraordinary events which, although they do not prevent either party from performing, and thus do not implicate the Force Majeure provisions hereof, nevertheless increase the cost of providing service such that Grantee's compensation and the rate adjustment mechanism provided in this Agreement result in Grantee's suffering losses which are substantially outside the commercially reasonable expectations of the parties. The obligation of the parties in such event is to act reasonably toward each other in arriving at an appropriate adjustment in rates. Accordingly, at its option, Grantee may apply to the County at any time, but not more frequently than once annually, for an extraordinary rate adjustment should an event or circumstance arise that is not the result of a Change in Law or Change in Service Level which negatively impacts the economic operation of Grantee and which is in excess of the rate adjustment resulting from the application of the annual adjustment formula set for in subparagraph (a) above. An interim adjustment in rates will be deemed justified if it is necessary for the Grantee to make a substantial change in its operations, or substantial capital expenditure or investment in order to perform its obligations under this Agreement due to the occurrence of an event or circumstance other than a Change in Law or Change in Service Level which is beyond the reasonable control of Grantee. In the event of such an application for an extraordinary rate increase, it is understood that the Grantee shall have the burden of demonstrating to the reasonable satisfaction of County the basis for the extraordinary increased cost.

(d) Solid Waste Facility Fee Adjustment

The Solid Waste Facility Fee Adjustment shall be the pass-through of one hundred percent (100%) of any increase or decrease in the fee charged to the Grantee for the use of a Solid Waste Facility approved for use by the Division, calculated on a per Subscriber basis, and shall be effective as of the date of the change of such fee.

(e) Franchise Fee Adjustment

The Franchise Fee adjustment shall be the pass through of one hundred percent (100%) of any increase or decrease in the Franchise Fee, and shall be effective as of the date the Franchise Fee increase or decrease is payable by the Grantee.

(f) Change in Service Level Adjustments

- (1) The Total Rate shall be increased (or decreased) by one hundred percent (100%) of the increase (or decrease) or incremental increase (or incremental decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether fixed or variable) associated with the change in the level of the Solid Waste Handling services which may be required of, or agreed to by, Grantee. A Change in Service Level Adjustment shall be effective on and after the actual date of the requirement to or agreement to change operations which results from the change in service, but, absent the consent of the Director, or designee, not sooner than the effective date of the change in service. In no event shall any Change in Service Level Adjustment be effective prior to the Board's approval of an amendment to the Franchise Agreement.
- (2) In the event that the Director, or designee, and the Grantee claiming to be affected by the change in service level cannot agree on either the existence, or the effect on demonstrable costs, of a change in service level, the dispute resolution provisions of Section 13.3(a) shall apply.

(g) Change in Law Adjustments

- (1) The Total Rate shall be increased (or decreased) by one hundred percent (100%) of the increase (or decrease) or incremental increase (or incremental decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether fixed or variable) associated with the change in the manner or nature of conducting Solid Waste Handling services necessitated by a Change in Law. A Change in Law Adjustment shall be effective on and after the actual date of the change in operations which resulted from the Change in Law, but, absent the consent of the Director, or designee, not sooner than the effective date of the Change in Law. In no event shall any Change in Law Adjustment be effective prior to the Board's approval of an amendment to the Franchise Agreement.
- (2) In the event that the Director, or designee, and the Grantee claiming to be affected by the Change in Law cannot agree on either the existence, or the effect on demonstrable costs, of a Change in Law, the dispute resolution provisions of Section 13.3(a) shall apply.

Section 13.3 Dispute Resolution re Adjustment to Total Rates

- (a) Any dispute regarding any Change in Service Level Adjustment or Change in Law Adjustment provided for in Sections 13.2(f) and (g) above, which cannot be resolved between the Grantee and the Division within thirty (30) days of the receipt by the Division of such documents as the Division may reasonably request, shall be submitted to a mutually agreed upon expert in the subject matter area of the dispute to resolve the dispute as to either or both: (i) the existence of a Change in Service Level or a Change in Law; and/or (ii) the effect on the Grantee's demonstrable costs of a Change in Service Level or a Change in Law. The decision of the expert shall be binding on the Grantee and the County. The cost of the expert shall be borne equally by the Grantee and the County. If the Grantee and County cannot mutually agree upon an expert, either may petition the Superior Court of the County of San Bernardino to have an expert chosen by the court. The County and Grantee shall each have the right to suggest one expert to the court; the court shall choose one of the suggested experts.
- (b) Any dispute regarding the current rate schedule or rate adjustments (except those disputes related to a Change in Service Level Adjustment or Change in Law Adjustment) shall be decided by the Director or designee within ten (10) working days after receipt of a written statement from the Grantee of the nature

and basis of the dispute with a request that it be resolved by the Director or designee. Grantee shall have the right to appeal the Director or designee's decision in writing to the Board within thirty (30) days after the Director or designee has given the Grantee written notice of the decision. Such appeal shall conform to the appeal provisions set forth in Section 10.1 of this Agreement in respect to the form of the Notice of Appeal, the time limits for processing the appeal, and the amount of fees, if any, connected therewith. The Board may consider the appeal or refer said appeal to a hearing officer as provided in Section 10.1 of this Agreement.

- (c) The most recent rates approved by the Director or designee in effect at the time a dispute is submitted to either the expert or Director or designee, as the case may be, shall remain in effect pending resolution of such dispute. The effective date of any dispute resolution, whether retroactive or prospective, shall be determined by the expert, the Director or designee, the Board or a hearing officer, as appropriate.

Section 13.4 Notice to Subscribers re Certain Adjustments

No Change in Service Level Adjustment increase or Change in Law Adjustment increase which applies to five hundred (500) or more Solid Waste Handling Service Subscribers or to Subscribers cumulatively generating one thousand five hundred (1,500) or more cubic yards of Solid Waste per month may be implemented until Grantee has provided mailed notice of such adjustment increase not less than ten (10) days prior to the date upon which such adjustment increase commences.

Section 13.5 Discontinuance of Service for Non-Uniform Handling Service

Except where Uniform Handling Service is implemented, Grantee may discontinue service for non-payment of Subscriber's billing or Subscriber's failure to substantially comply with the requirements of the applicable provisions of state or local law which govern use, storage and collection of Solid Waste in accordance with the provisions of Exhibit E, Attachment 1. Any Grantee operating in a Uniform Handling Area shall not discontinue service except as allowed in Section 46.057 of the Code.

Section 13.6 Billing and Payment

Grantee shall bill and receive payment as provided in Exhibit "E", Attachment 1.

SECTION 14. FRANCHISE FEES

Grantee shall pay a Franchise Fee equal to the then current and effective Franchise Fee set forth in the County Schedule of Fees, currently found at Chapter 2 of Division 6 of Title 1 of the County Code. The payment of a Franchise Fee shall not limit the County's ability to establish and levy a business license tax, fees, charges, assessments, penalties, fines, and other requirements for monetary payment by the Grantee to the County. Payment of Franchise Fee shall be made monthly. The Franchise Fee shall constitute a cost which Grantee may recover as a part of the compensation due Grantee under this Franchise Agreement.

SECTION 15. PUBLIC RECORDS DISCLOSURE

All information received by the County from Grantee or any source concerning this Agreement, including the Agreement itself, may be treated by the County as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 *et seq.* (the "Public Records Act"). Grantee understands that although all materials received by the County in connection with this Agreement are intended for the exclusive use of the County, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which Grantee has reasonably requested County to hold in confidence is made to the County, the County shall notify Grantee of the request and shall thereafter disclose the requested information unless Grantee, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides County a legally sound basis for the

nondisclosure, and agrees to indemnify, defend, and hold the County harmless in any/all actions brought to require disclosure. Grantee will hold the County harmless in the event County fails to notify Grantee of any such disclosure request. This provision shall not be construed to create any legal right or claim that does not exist under the operation of state law.

SECTION 16. OTHER REQUIREMENTS

(a) Hazardous Materials and Waste Handling and Disposal

The Grantee shall comply with the Hazardous Waste screening and response provisions set forth in Chapter 7 of Division 6 of Title 4 of the Code.

(b) Non-performance

Non-performance by Grantee of the terms and conditions contained in Division 6 of Title 4 of the Code or in this Franchise Agreement, or the occurrence of one or more of the events set forth in Section 33.0827 of the County Code, shall provide grounds for the loss of or limitation upon the Grantee's right to provide Solid Waste Handling services pursuant to this Franchise Agreement and for the termination of this Franchise Agreement. Grantee shall perform no Solid Waste Handling services under this Franchise Agreement without possessing the required Health and Safety Permit.

SECTION 17. FORCE MAJEURE

Grantee shall not be in default under this Agreement in the event that the services provided by the Grantee are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, severe weather or other catastrophic events which are beyond the reasonable control of Grantee and which Grantee could not reasonably be expected to have prevented or controlled. Other catastrophic events do not include the financial inability of the Grantee to perform or failure of the Grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Grantee.

SECTION 18. OTHER PROVISIONS

(a) Independent Contractor

Grantee is an independent contractor and not an officer, agent, servant, or employee of County. Grantee is solely responsible for the acts and omissions of its officers, agents, and employees, if any. Nothing in this Franchise Agreement shall be construed as creating a partnership or joint venture between County and Grantee. Neither Grantee nor its officers, agents, or employees shall obtain any rights to retirement or other benefits which accrue to County employees.

(b) Right to Pass

Grantee shall have the right to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Solid Waste Handling services pursuant to its Franchise Agreement, so long as it is not in receipt of a written notice revoking permission to pass.

(c) Compliance with County Code

Grantee shall comply with those provisions of the County Code which are applicable to operations hereunder, and with any and all amendments to such provisions during the Term of this Agreement.

(d) Notices

Any notice, information, request or reply ("Notice") required or permitted to be given under the provisions of this Agreement shall be in writing and shall be given or served either personally or by mail. If given or served by mail, such Notice shall be deemed sufficiently given if: (1) (i) deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or (ii) sent by express mail, Federal Express, or other similar overnight service, provided proof of service is available; and (2) addressed to (i) the Grantee at its most recent address of record with the Division or (ii) to the Director or designee at the then-current address of the Division, as the case may be. The current addresses of the parties are as follows:

To County: County of San Bernardino
Waste Systems Administration
222 W. Hospitality Lane, 2nd Floor
San Bernardino, CA 92415-0017
Attn: Contract Administrator

Copy to: County Counsel
385 North Arrowhead Avenue, Fourth Floor
San Bernardino, CA 92415-0140

To Grantee: Benz Sanitation, Inc.

Copy to:

or to such other address or person as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or, if mailed, three (3) business days from the date such notice is deposited in the United States mail, or if by facsimile transmission, upon receipt of confirmation of delivery which confirmation may be transmitted by the same means. Service by facsimile transmission shall not be effective unless the original of the document being served is deposited in the United States mail, postage prepaid, within twenty-four (24) hours after the facsimile transmission has been confirmed.

(e) Exhibits Incorporated

Exhibits "A" through "F" are attached to and incorporated in this Agreement by this reference as if fully set forth.

(f) Laws and Licenses

County and Grantee shall comply with all federal, State, and County laws, ordinances, rules, and regulations applicable to the performance of the services hereunder and Grantee shall obtain and maintain in full force and effect throughout the term of this Agreement all licenses and permits necessary to perform the services hereunder.

(g) Waiver

No waiver by either party of any one or more defaults or breaches by the other party in the performance of this Agreement shall operate or be construed as a waiver of any already established or future defaults or breaches, whether of a like or different character or degree.

SECTION 19. SEVERABILITY

If any non-material provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

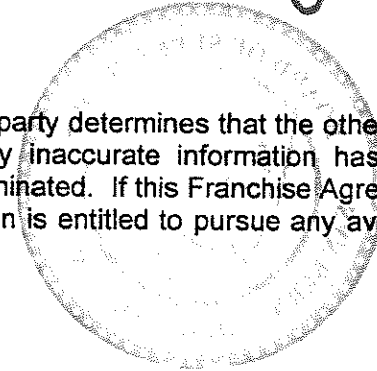
SECTION 20. ENTIRE AGREEMENT; AMENDMENT

This Agreement and its incorporated Exhibits constitute the entire agreement between the parties concerning the subject matter hereof and supersede any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the parties hereto with respect to such subject matter. This Agreement may not be modified or amended, in whole or in part, except by a writing signed by both parties hereto; notwithstanding the forgoing, the parties acknowledge that provisions of Division 4 of Title 6 of the County Code as currently enacted are included herein and, further, that if and when such County Code provisions are amended that the Code provisions, as amended, shall apply to any extended term of this Agreement, without any action being required of either party, so long as the amendment is adopted prior to the date specified in Section 4(c) of this Agreement. Further, the provisions of Division 6 of Title 4 of the Code in effect on the Effective Date of this Agreement, or in effect on the date of any subsequent amendment or automatic extension of this Agreement, shall prevail over any inconsistent provisions of this Agreement.

[Handwritten signature]

SECTION 21. MATERIAL MISREPRESENTATION

If during the course of the administration of this Franchise Agreement, either party determines that the other party has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the other party this Franchise Agreement may be immediately terminated. If this Franchise Agreement is terminated according to this provision, the party exercising such termination is entitled to pursue any available legal remedies.



SECTION 22. FORMER COUNTY OFFICIALS

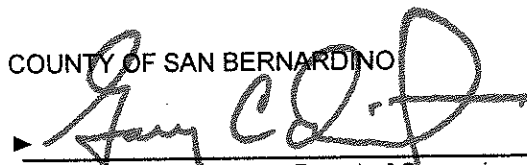
Grantee agrees to provide or has already provided as set forth in Exhibit "F", information on former County administrative officials (as defined below) who are employed by or represent Grantee. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the Grantee. The information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of the Grantee. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's Staff, County division or group head, assistance division or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

SECTION 23. CONSTRUCTION OF FRANCHISE

The parties hereto have negotiated this franchise at arm's length and with advice of their respective attorneys, and no provision contained herein shall be construed against County solely because it prepared the actual physical Agreement executed by the parties.

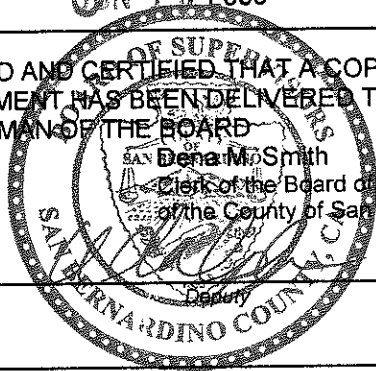
WITNESS the execution of this Agreement on the day and year written above.

COUNTY OF SAN BERNARDINO



Gary C. Ovitt, Chairman, Board of Supervisors
Dated: JUN 16 2009

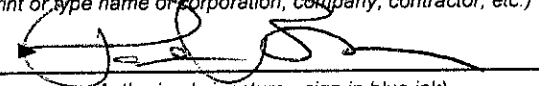
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD



Dena M. Smith
Deputy Clerk of the Board of Supervisors
of the County of San Bernardino
By _____
Deputy

BENZ SANITATION, INC.

(Print or type name of corporation, company, contractor, etc.)

By 

(Authorized signature - sign in blue ink)

Name PAUL BENZ

(Print or type name of person signing contract)

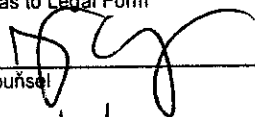
Title PRESIDENT

(Print or Type)

Dated: MAY 11, 2009

Address 1401 Goodrick Drive

Tehachapi, CA 93561

Approved as to Legal Form
County Counsel 

Date 06/04/09

Reviewed by Contract Compliance

Date _____

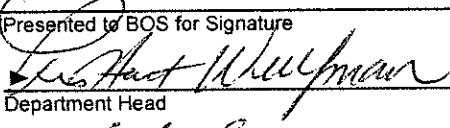
Presented to BOS for Signature

Department Head
Date 6-4-09

EXHIBIT A

PROVIDED SERVICES

This Exhibit sets forth the level of services to be provided by Grantee pursuant to its Franchise, and the manner of providing such services which are in addition to the manner of providing services specified in Section 6 of this Franchise Agreement.

Grantee shall provide the Solid Waste Handling services in conformity with all provisions of the Ordinance and this Agreement, including:

A. Single Family Residential

Weekly Service - Unless otherwise required under applicable law or regulation, once per week Grantee shall collect the Solid Waste (except bulky items and Hazardous Waste) which has been placed, kept, or accumulated in containers at residential units within the Franchise Area and placed at curbside prior to Grantee's normal weekly collection time. All Solid Waste must be placed within containers at curbside without obstructions so as to permit collection, unless otherwise agreed upon by County and Grantee. Grantee may supply containers, and may require the use of specific containers as specified in this Exhibit "A". Grantee may negotiate special pickup procedures, above and beyond the services described above, with customers for an additional fee in an amount provided in Exhibit "E".

B. Commercial, Industrial, and Multi-Residential

(1) Multi-Residential Weekly Service - Unless otherwise required under applicable law or regulation, once per week Grantee shall collect the Solid Waste (including bulky items which have been placed in a closed bin, and excepting metallic white goods and Hazardous Waste) which have been placed, kept or accumulated for collection in Solid Waste Bins at Multi-Residential Units.

(2) Commercial and Industrial Weekly Service - Unless otherwise required under applicable law or regulation, once per week Grantee shall collect the Solid Waste which have been placed, kept or accumulated for collection in Solid Waste Bins at commercial units.

C. Construction and Demolition Waste Temporary Bin/Roll off Services

Grantee shall provide construction and demolition debris removal, including temporary bin/roll off services using rates reflected in Exhibit "E" unless debris is generated by a declared emergency disaster such as floods, fires, earthquake or other such occurrence as deemed meeting the criteria of disaster debris. The County may provide for rates and services solely for the timely and efficient removal of "disaster debris" with the Grantee or other qualified public or private entity in accordance with (f), below.

D. Special Collection Programs

The following minimum special collection programs shall apply to this Franchise Agreement:

(1) Semi-Annual Cleanup: Twice a year, Grantee shall provide all residential unit Subscribers on its routes collection of Bulky Waste left on the curb, or other designated location on or adjacent to Subscriber's property, up to five (5) items that each weigh no more than 110 pounds will be removed and disposed of. Cost for this

service, excluding the cost of disposal, shall be included within the normal monthly rates chargeable by Grantee as provided in this Franchise Agreement for residential unit Solid Waste Handling. The Bulky Waste will be collected in a vehicle separate from the one used to pick up the residential unit's ordinary Solid Waste so that it can be readily identified as not requiring tipping fees when it arrives at a Solid Waste Facility within the County Solid Waste Disposal System. Grantee will make a good faith effort to divert the Bulky Waste away from any landfill and to another facility where it can be either recycled or refurbished for reuse.

- (2) Bulky Waste Collection: Grantee shall also provide residential unit Subscribers with Bulky Waste pick-up service arranged at the request of the Subscriber. Grantee shall advertise the availability of the Bulky Waste collection service and shall provide the Bulky Waste collection service within seven (7) working (waste collection) days of request by Subscriber. Grantee shall bill the Subscriber for Bulky Waste collection at the rate established in the Total Rate applicable to this Franchise Agreement. The standard Solid Waste Facility Fee shall be paid by Grantee for disposal of such Bulky Waste.
- (3) Roll-off Containers: Upon the direction of the Director or designee, Grantee shall provide, at no additional charge, large roll-off refuse containers requested by the Director or designee to respond to organized community cleanup efforts taking place within Grantee's Franchise Area. Grantee shall deliver containers to agreed-upon collection points and shall cooperate with the Director or designee and community leaders designated by the Director or designee to remove containers and dispose of collected Solid Waste. Grantee is obligated to provide the equivalent of one 40-cubic yard bin/load per year for each 500 residential unit Subscribers, or fraction thereof, serviced within the Franchise Area. The County will arrange that there shall be no disposal fees charged for such Solid Waste delivered in separate vehicles to any County Solid Waste Disposal System facility.

E. Diversion Services

- (1) Diversion services shall be furnished by Grantee the duration of this Agreement in accordance with the provisions of Exhibit "A-1" attached hereto and incorporated herein by this reference as if fully set forth.
- (2) At any time during the term of this Agreement, upon one hundred eighty (180) days written notice from the Director or designee, Grantee shall provide collection of Green Material from residential units throughout, or in designated portions of, its Franchise Area for the period of time specified by the Director or designee. Grantee's rates for this service shall be as established in Exhibit "E".

F. Emergency Disaster Debris Removal Services

- (1) In the event of a declared emergency disaster such as a fire, flood, earthquake, or other such occurrence as deemed meeting the criteria of a disaster in which debris is created, the Grantee will be given the first right of refusal in its franchise area to offer temporary bin/roll off services using rates reflected in Exhibit "E", to transport debris to a staging area or disposal facility within San Bernardino County unless otherwise designated by the Director or designee.
- (2) During any period of time that Grantee is unable to service its franchise area during such declared emergency, either for loss of transportation, lack of assistance or an

overabundance of debris material or other similar circumstances the County reserves the right to contract with any other County franchise haulers for temporary bin/roll off services using rates reflected in such other franchise hauler's contract with the County. Grantee shall notify County when it regains its ability to recommence service in its franchise area and County will, within a reasonable time period, terminate any contract with other franchise haulers for the same services.

- (3) If all additional Grantees have requested to either be excused from performing services within the County services within the County but outside their franchise area(s) or are or become unable to service their franchise area or additional County franchise areas, either due to the loss of transportation, lack of assistance or an overabundance of debris material or similar circumstances, the County reserves the right to contract with third party entities for additional bin or roll-off services during the pendency of the emergency.
- (4) The County reserves the right to contract with third party entities or perform services itself for debris site cleanup, which may include the transportation of debris to a Solid Waste Facility.
- (5) The County reserves the right to direct roll off bin service to areas that have been designated as critical due to the emergency conditions.
- (6) The County shall be given first priority to receive services during an emergency over any established or future contracts that the Grantee may have with other third parties in the County unincorporated areas.

EXHIBIT A-1 SERVICES TO BE PROVIDED

Residential Service

Benz Sanitation, Inc. provides trash collection in 96 gallon automated containers on a weekly basis.

We also provide and collect on a weekly basis frontloader containers ranging in sizes from 2 to 4 cubic yards.

Single Family Diversion Programs

Benz does not offer diversion services in the Trona area at this time.

Multi-Residential Collection

Benz will provide multi-family dwellings collection with frontloader containers ranging in size from 2 to 4 cubic yard bins, depending on the customer's needs.

Multi-Residential Diversion Programs

Recycling/Diversion services are not offered in the Trona area at this time.

Commercial/Industrial Service

Commercial collection will be provided on a weekly basis with the requested size container to meet the specific project application.

Commercial/Industrial Recycling/Diversion Services

Recycling/Diversion services are not offered in the Trona area at this time.
Krammer Junction refuse is transported to our Tehachapi MRF for processing.

Roll-off Services

Residential and Commercial collection will be provided on a weekly basis with the requested size container to meet the specific project application.

Bulky Waste Collection

Benz will provide residential customers with bulky waste pick-up service arranged at the request of the subscriber. Benz shall bill the subscriber for bulky waste at the rate established in the total rate applicable to this Franchise Agreement.

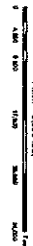
EXHIBIT B-1

MAP OF THE FRANCHISE AREA

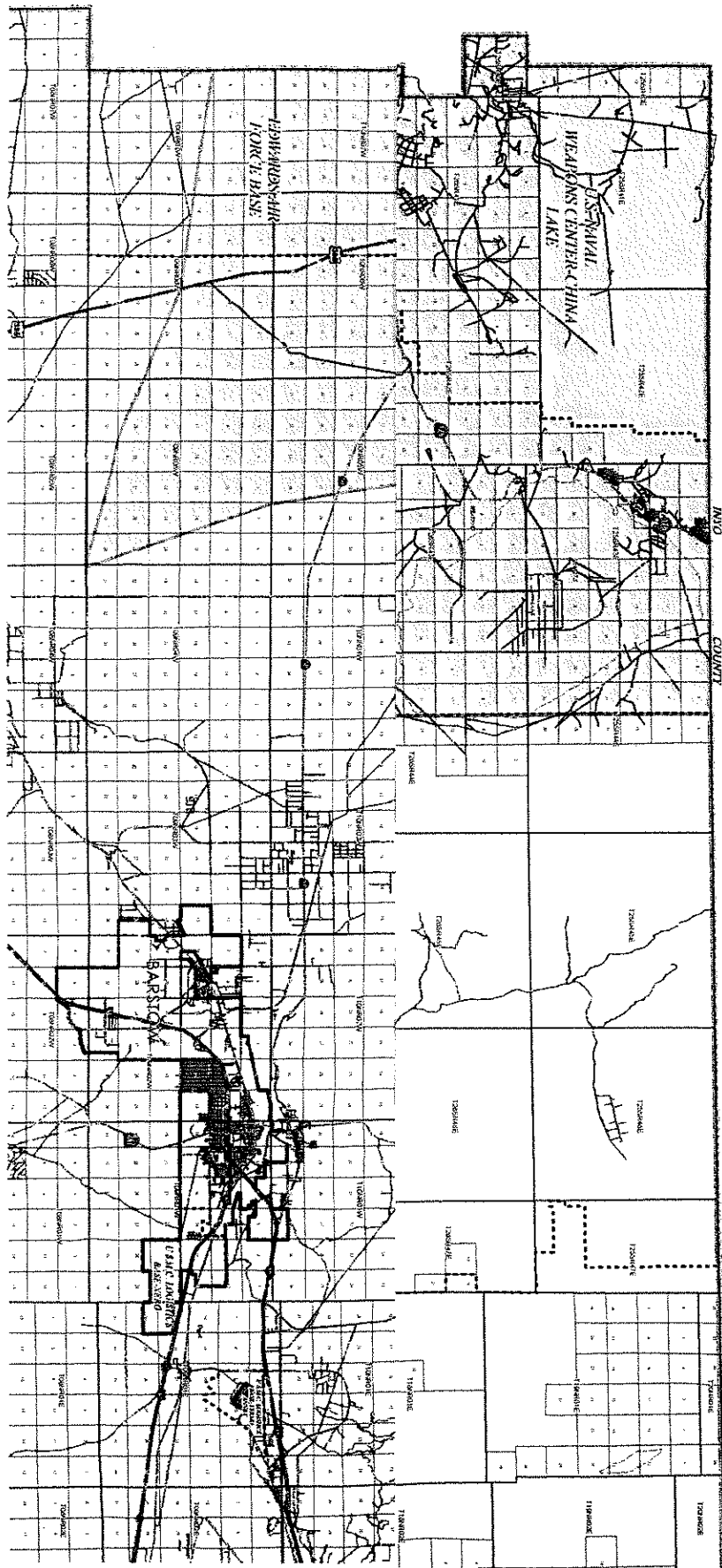
This Exhibit contains a map showing the franchise area and the legal exceptions therein, if any, where the Franchise will not be operative to the Agreement.

A. Standard Exceptions:

1. All incorporated areas;
2. All territory in which a special district or other public entity provides Solid Waste Handling services;
3. All County Service Areas which provide a Solid Waste Handling service, which was being provided prior to the effective date of this Agreement.



SAN BERNARDINO COUNTY
Waste Collection Franchise Area 21



SAN BERNARDINO COUNTY

EXHIBIT B-2

LEGAL DESCRIPTION OF FRANCHISE AREA

This Exhibit contains a description of the unincorporated territory in which the Franchise may be exercised and of the exceptions therein, if any, where the Franchise will not be operative.

COUNTY FRANCHISE AREA 21

CFA21

All that certain real property situated within the County of San Bernardino described as follows:

Beginning at the southwest corner of Section 9, Township 9 North, Range 7 West, San Bernardino Meridian, said point being on the westerly boundary of the County of San Bernardino;

Thence northerly along said westerly boundary and following said boundary through all its various courses to the northwest corner of Section 6, Township 31 South, Range 41 East, Mount Diablo Meridian, (henceforth M.D.M.);

Thence easterly along section lines to the northeast corner of Section 3, Township 31 South, Range 42 East, M.D.M.;

Thence southerly along section lines to the southeast corner of Section 27, Township 31 South, Range 42 East, M.D.M.;

Thence in a straight line southeasterly to the northeast corner of Section 32, Township 12 North, Range 5 West, S.B.M.;

Thence in a straight line southeasterly to the northeast corner of Section 3, Township 9 North, Range 5 West, S.B.M.;

Thence in a straight line southeasterly to the southeast corner of Section 36, Township 9 North, Range 5 West, S.B.M.;

Thence in a straight line northwesterly to the southwest corner of Section 28, Township 9 North, Range 5 West, S.B.M.;

Thence in a straight line northwesterly to the southwest corner of Section 15, Township 9 North, Range 6 West, S.B.M.;

Thence in a straight line to the Point of Beginning.

EXHIBIT C

DIVISION 6 OF TITLE 4 OF THE COUNTY CODE

The attached is a copy of Division 6 of Title 4 of the County Code as enacted at the time of the entry into this Franchise Agreement.

1 11. Penalties For Violation

2 12. Amendment

3

4 **CHAPTER 1: PURPOSES AND REQUIRED AUTHORIZATIONS**

5 **Sections:**

6 46.0101 Purposes.

7 46.0102 Required Authorizations.

8

9 **46.0101 Purposes.**

10 The purposes of this Division are set forth below (all terms are as defined in
11 Chapter 2):

12 (a) To allow for the establishment of SOLID WASTE HANDLING franchises
13 within the unincorporated portion of San Bernardino County, pursuant to authority cited
14 in Government Code Section 25827, in Public Resources Code Sections 40057
15 through 40059 or 49200 through 49205, in Code of Regulations Sections 17332 and
16 17333, and any other applicable State or local law. The implementation of franchises
17 through entering into FRANCHISE AGREEMENTS with GRANTEEES will assist the
18 COUNTY:

19 (1) In meeting its obligation to provide SOLID WASTE HANDLING
20 services as required in Public Resources Code Section 40057; and

21 (2) In meeting the requirements of AB 939, as amended, which
22 mandate that the COUNTY reduce the amount of SOLID WASTE disposed in
23 COUNTY landfills by certain numerical thresholds by providing its citizens with source
24 reduction, recycling and composting programs and opportunities.

25 (b) To help ensure that residents of the UNINCORPORATED COUNTY
26 receive the similar quality of waste collection and recycling services as do those
27 residents in the incorporated cities and towns of San Bernardino County;

28 (c) To ensure that programs and service levels for SOLID WASTE

1 HANDLING within the unincorporated spheres of influence of incorporated cities and
2 towns will replicate, to the extent possible, programs and service levels of adjacent
3 cities and towns;

4 (d) To minimize, to the extent possible, disruption of programs and services
5 to unincorporated residents in the event of annexations;

6 (e) To help quantify the waste stream from the UNINCORPORATED
7 COUNTY in order to comply with diversion requirements of AB 939, as amended; and

8 (f) To provide by agreement, an opportunity for predictable levels of waste at
9 COUNTY landfills to ensure adequate funding for closure/post-closure activities.

10

11 **46.0102 Required Authorizations.**

12 (a) Except as otherwise provided in Subdivisions (b) and (c) of this Section,
13 no PERSON shall engage in, solicit, contract for or provide, in the
14 UNINCORPORATED COUNTY, SOLID WASTE HANDLING services without such
15 PERSON having and maintaining:

16 (1) A HEALTH AND SAFETY PERMIT authorizing the collection,
17 transfer or removal of refuse (within the meaning of Article 2 of Chapter 8 of Division 3
18 of Title 3 of this Code); and

19 (2) (A) With respect to a FRANCHISE AREA, a FRANCHISE
20 AGREEMENT authorizing the PERSON to provide the specified SOLID WASTE
21 HANDLING service being provided; or

22 (B) With respect to a REFUSE COLLECTION AREA, or any
23 portion thereof which is not a FRANCHISE AREA subject to a FRANCHISE
24 AGREEMENT, a Class A permit or temporary permit as provided for in Article 2.1 of
25 Chapter 8 of Division 3 of Title 3 of this Code.

26 (b) (1) Notwithstanding Subdivision (a), above, any PERSON may
27 engage in or provide, in the UNINCORPORATED COUNTY, those SOLID WASTE
28 HANDLING services related to performing as a GARBAGE HAULER (within the

1 meaning of Chapter 8 of Division 3 of Title 3 of this Code), without such PERSON
2 being required to have or maintain a FRANCHISE AGREEMENT or the Class A permit
3 or temporary permit provided for in Article 2.1 of Chapter 8 of Division 3 of Title 3 of
4 this Code.

5 (2) Notwithstanding Subdivision (a), above, any PERSON may
6 engage in or provide, in the UNINCORPORATED COUNTY, those SOLID WASTE
7 HANDLING services which are related solely to one of the types of SOLID WASTE set
8 forth below, without such PERSON being required to have or maintain a FRANCHISE
9 AGREEMENT or the Class A permit or temporary permit provided for in Article 2.1 of
10 Chapter 8 of Division 3 of Title 3 of this Code.

11 (A) Abandoned vehicles and parts thereof;

12 (B) Ashes;

13 (C) Dewatered, treated or chemically fixed sewage sludge;

14 (D) Self-generated waste or waste generated and hauled by the
15 property owner;

16 (E) GREENWASTE or yard trimmings generated as an
17 incidental part of providing gardening, landscaping or landscape maintenance as a
18 professional gardener or landscaper.

19 (F) Inert materials or demolition waste from remodeling jobs
20 which are generated as an incidental part of providing such remodeling services,
21 provided that the construction contractor is not a hauling service or SOLID WASTE
22 enterprise, does not separately or additionally charge for the incidental service of
23 removing, transporting or disposing (except for the tipping fee) and transportation is
24 accomplished using the contractor's own equipment.

25 (G) RECYCLABLE MATERIALS that are sold or donated by the
26 generator of such materials to a party other than the GRANTEE of a franchise. A mere
27 discount or reduction in price of the hauler's charges for the handling of such materials
28 is not a sale or donation within the meaning of this ordinance.

1 (3) Subdivision (b)(1), above, shall have no application in any
2 FRANCHISE AREA to the extent that the COUNTY provides in the FRANCHISE
3 AGREEMENT(s) establishing such FRANCHISE AREA that any or all of the SOLID
4 WASTE HANDLING services related to either performing as a GARBAGE HAULER or
5 to the types of SOLID WASTE enumerated in Subdivision (b)(2) are to be provided
6 pursuant to a FRANCHISE AGREEMENT or agreements; so long as the PERSON
7 and/or the SOLID WASTE HANDLING service being provided do not otherwise fit
8 within one or more of the exemptions provided in Subdivision (c) of this Section. The
9 DEPARTMENT shall maintain a list of all areas of the COUNTY within which a
10 FRANCHISE AGREEMENT is required in order to provide any of the SOLID WASTE
11 HANDLING services which are related to performing as a GARBAGE HAULER or
12 solely to a type of SOLID WASTE enumerated in Subdivision (b)(2).

13 (c) The provisions of Subdivisions (a) and (b)(3) of this Section shall not
14 apply to those PERSONS and/or SOLID WASTE HANDLING services specified in
15 Section 33.0843 of this Code.

16
17 **CHAPTER 2: DEFINITIONS**

18 **Section:**

19 46.0201 Definitions.

20
21 **46.0201 Definitions.**

22 For the purposes of this Division, the following terms, when used with all
23 capitalization, shall have the meanings set forth in this Section:

24 (a) AB 939. The California Integrated Waste Management Act of 1989,
25 being Public Resources Code Sections 40000 et seq., as it may be amended from time
26 to time.

27 (b) BOARD. The San Bernardino County Board of Supervisors.

28 (c) CHANGE IN LAW. "Change in Law" means the imposition (or removal),

1 after the establishment of a TOTAL RATE relative to a FRANCHISE AGREEMENT, of
2 any duty or burden imposed upon the GRANTEE in the performance of the SOLID
3 WASTE HANDLING services required of it under its FRANCHISE AGREEMENT which
4 is or becomes additional to (or is subtracted from) or different from those duties
5 required or contemplated in its FRANCHISE AGREEMENT, or which must be
6 performed in a different manner from that in which it is initially contemplated to be
7 performed, and which results from any of the following:

8 (1) the enactment, issuance, adoption, repeal, amendment or
9 modification of any federal, state or local law, statute, ordinance or regulation.

10 (2) a regulatory agency or other administrative agency interpreting a
11 regulation, a judicial decision of a federal court interpreting federal law or statute, or a
12 judicial decision of a court having jurisdiction within California interpreting a federal,
13 state or local law, statute, ordinance or regulation, in a manner different from the
14 interpretation which had previously been generally relied upon in California within the
15 solid waste collection and hauling industry.

16 CHANGE IN LAW does not include any of the items noted in sub-
17 subsections (1) or (2) above, which relate to any tax, [other than a business license tax
18 imposed by the COUNTY on a GRANTEE'S performance of SOLID WASTE
19 HANDLING services under its FRANCHISE AGREEMENT] including without limit, any
20 tax based or measured on net or gross income, any business, payroll or franchise tax
21 or any employment tax.

22 (d) CHANGE IN LAW ADJUSTMENT. "Change in Law Adjustment" means
23 the adjustment to TOTAL RATE in the event of a CHANGE IN LAW.

24 (e) CHANGE IN OWNERSHIP. "Change in Ownership" occurs when either
25 a single transaction or event or the cumulative effect of more than one transaction or
26 event, results in fifty percent (50%) or more of the beneficial ownership of the
27 GRANTEE being different than such ownership as of the date of the approval by the
28 COUNTY of the FRANCHISE AGREEMENT or, if applicable, as of the date of the most

1 recent consent of the COUNTY to a CHANGE OF OWNERSHIP. The owners of the
2 beneficial ownership of GRANTEE on the date of the approval of the FRANCHISE
3 AGREEMENT or, if applicable, on the date of the most recent consent of the COUNTY
4 to a CHANGE OF OWNERSHIP, shall be referred to in this subsection as an "Initial
5 Owner". A CHANGE IN OWNERSHIP will be determined by application of the
6 following:

7 (1) Any beneficial interest owned by an individual related by blood or
8 marriage to an Initial Owner shall be considered as owned by an Initial Owner in
9 determining if a CHANGE IN OWNERSHIP has occurred.

10 (2) Any public offering of stock where the stock is offered for sale to
11 the general public and does not constitute a private placement shall be disregarded in
12 determining if a CHANGE IN OWNERSHIP has occurred.

13 (3) Sales, transfers, issuances or pledges of non-voting shares of
14 stock will not be considered in determining if a CHANGE IN OWNERSHIP has
15 occurred, until and unless and only to the extent that such stock is converted into
16 voting shares of stock.

17 (4) The pledge of, or any other action taken relative to, voting shares
18 of stock which results in any voting rights of such stock being exercised by other than
19 an Initial Owner shall be considered to be a transfer of such stock for the purposes of
20 determining if a CHANGE IN OWNERSHIP has occurred.

21 (f) CHANGE IN SERVICE LEVEL ADJUSTMENT. "Change in Service
22 Level Adjustment" means the adjustment to TOTAL RATE in the event of a CHANGE
23 IN SERVICE.

24 (g) COUNTY. The County of San Bernardino, State of California.

25 (h) COUNTY SOLID WASTE DISPOSAL SYSTEM. At any particular time,
26 the then-existing SOLID WASTE facilities which the COUNTY owns, leases or has a
27 contractual right to use.

28 (i) DEPARTMENT. The San Bernardino County Solid Waste Management

1 Division or such COUNTY department, division or office which is the successor thereto.

2 (j) DEPARTMENT OF PUBLIC HEALTH, DIVISION OF ENVIRONMENTAL
3 HEALTH SERVICES. The COUNTY department of that name or such COUNTY
4 department, division or office which is the successor thereto.

5 (k) DIRECTOR. The DIVISION MANAGER of the Department or the
6 designee of such PERSON.

7 (l) FRANCHISE AGREEMENT. The agreement entered into between the
8 COUNTY and the GRANTEE under the provisions of Section 46.0301 which
9 authorizes/requires the GRANTEE to provide SOLID WASTE HANDLING services in a
10 specified FRANCHISE AREA.

11 (m) FRANCHISE AREA. The geographic territory in the
12 UNINCORPORATED COUNTY for which the GRANTEE has been granted a franchise
13 to provide SOLID WASTE HANDLING services, as specified in each FRANCHISE
14 AGREEMENT.

15 (n) FRANCHISE FEE. The fee paid to the COUNTY by the GRANTEE in
16 consideration of the granting of a franchise pursuant to this Division.

17 (o) GARBAGE HAULER. Any PERSON or entity who collects garbage,
18 unmixed with rubbish, and transports it to commercial garbage-feeding hog ranch or to
19 a commercial establishment for PROCESSING for use in livestock feeding.

20 (p) GRANTEE. A PERSON granted a franchise pursuant to a FRANCHISE
21 AGREEMENT.

22 (q) GREEN MATERIAL. Discarded SOLID WASTE consisting of grass
23 clippings, leaves, branches, tree trunks and other vegetative matter.

24 (r) GROSS RECEIPTS. All monies received by GRANTEE for providing the
25 SOLID WASTE HANDLING services specified in its FRANCHISE AGREEMENT.

26 (s) HAZARDOUS WASTE. Any waste material or mixture of waste which is
27 toxic, corrosive, flammable, an irritant, a strong sensitizer, or which generates pressure
28 through decomposition, heat or other means, if such waste or mixture of waste may

1 cause substantial personal injury, serious illness or harm to humans, domestic animals
2 or wildlife during or as a proximate result of any disposal of such waste or mixture of
3 wastes as defined in Health and Safety Code Section 25117 and Code of Regulations
4 Section 66261.3. The terms "toxic," "corrosive," "flammable," "irritant," and "strong
5 sensitizer" shall be given the same meaning as in the California Hazardous
6 Substances Act (Health and Safety Code Sections 108100 et seq.).

7 (t) HEALTH AND SAFETY PERMIT. A current permit issued by the
8 DEPARTMENT OF PUBLIC HEALTH, DIVISION OF ENVIRONMENTAL HEALTH
9 SERVICES to a Refuse Collection Operator, GARBAGE HAULER or Nondomestic
10 Waste Hauler (all as defined in Section 33.0801 of this Code), in accordance with the
11 California Code of Regulations Title 14 and Title 3 of the County Code. The HEALTH
12 AND SAFETY PERMIT evidences, for a specified period of time, the health and safety
13 inspection and the approval of vehicles, facilities and equipment utilized by a refuse
14 collection operator, GARBAGE HAULER or nondomestic waste hauler.

15 (u) PERMITTEE. Any PERSON who has been issued a HEALTH AND
16 SAFETY PERMIT to collect, transfer, or remove SOLID WASTE under the provisions
17 of this Code. A PERMITTEE may include refuse collection operators, GARBAGE
18 HAULERS and/or PERSON.

19 (v) PERSON. Without limitation, individuals, associations, clubs, societies,
20 firms, partnerships, joint ventures, sole proprietorships, corporations, limited liability
21 companies, schools, colleges and all governmental agencies and entities.

22 (w) PROCESSING. The reduction, separation, recovery, conversion or
23 recycling of SOLID WASTE.

24 (x) RECYCLABLE MATERIALS. For purposes of this Division only, means
25 discarded SOLID WASTE which may be sorted, cleansed, treated, processed, and/or
26 reconstituted, and which is segregated for the purpose of reuse or recycling, including,
27 but not limited to, separated paper, glass, cardboard, plastic, ferrous materials or
28 aluminum.

1 (y) REFUSE COLLECTION AREA. That area of the UNINCORPORATED
2 COUNTY as provided for in Article 2.1 of Chapter 8 of Division 3 of Title 3 of this Code.

3 (z) SECURITY. A corporate surety bond, a letter of credit or other
4 SECURITY device acceptable to the DEPARTMENT, as provided in Section 46.0906.

5 (aa) SOLID WASTE. Except as provided in Subdivisions (1), (2), (3) and (4),
6 SOLID WASTE means all putrescible and nonputrescible solid, semisolid, and liquid
7 wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes,
8 demolition and construction wastes, abandoned vehicles and parts thereof, discarded
9 home and industrial appliances (subject to salvage and other special handling
10 requirements under applicable law and regulation), dewatered, treated, or chemically
11 fixed sewage sludge which is not HAZARDOUS WASTE, manure, vegetable or animal
12 solid and semisolid wastes, and other discarded solid and semisolid wastes, including
13 RECYCLABLE MATERIALS and GREENWASTE.

14 (1) SOLID WASTE does not include HAZARDOUS WASTE and does
15 not include low-level radioactive waste regulated under Health and Safety Code
16 Sections 114960 et seq.

17 (2) SOLID WASTE does not include medical waste (except treated
18 medical waste) which is regulated pursuant to the Medical Waste Management Act
19 (Health and Safety Code Sections 117600 et seq.).

20 (3) SOLID WASTE does not include petroleum or a petroleum product
21 or fraction thereof at reasonably detectable levels, asbestos and, with respect to a
22 particular SOLID WASTE FACILITY, any waste or material which a regulatory agency,
23 the facility's SOLID WASTE FACILITY permit or COUNTY policy, does not allow to be
24 accepted for transfer, PROCESSING, composting, TRANSFORMATION or disposal at
25 that facility.

26 (4) SOLID WASTE does not include items which would be
27 RECYCLABLE MATERIALS but for the fact that they are personally separated from
28 other SOLID WASTE by the generator thereof and are donated or sold to third parties.

1 For purposes of this Division, no donation or sale shall be deemed to have occurred in
2 any instance where a generator directly or indirectly pays any sum regardless of form
3 or amount, (including without limit as a consulting fee, container rental, broker or other
4 fees or tangible consideration) either: (i) in lieu of being directly charged for collecting,
5 transporting, PROCESSING or recycling such item; or (ii) to offset the payment to the
6 generator for the purported sale of such item to the third party. Nor shall the receipt of
7 a discount of, or reduction in, the disposal service rate on unsegregated SOLID
8 WASTE containing an item which would be RECYCLABLE MATERIALS, if separated,
9 be deemed to be the donation or sale of such an item to a third party.

10 (bb) SOLID WASTE FACILITY. Any facility that is designed to manage any
11 type of SOLID WASTE and includes transfer, PROCESSING, composting,
12 TRANSFORMATION and disposal facilities.

13 (cc) SOLID WASTE FACILITY FEE. The fee charged for use of a SOLID
14 WASTE FACILITY.

15 (dd) SOLID WASTE HANDLING. One or more of the following: the collection
16 of SOLID WASTE from a commercial, residential, construction or industrial source; the
17 transportation of such SOLID WASTE to a SOLID WASTE FACILITY; and the transfer,
18 PROCESSING, composting, TRANSFORMATION or disposal of such SOLID WASTE
19 at the SOLID WASTE FACILITY. The specific SOLID WASTE HANDLING required of
20 GRANTEE shall be specified in its FRANCHISE AGREEMENT.

21 (ee) SUBSCRIBER. "Subscriber" means any PERSON receiving SOLID
22 WASTE HANDLING services pursuant to this Agreement.

23 (ff) TOTAL RATE. The inclusive rate schedule attached to each
24 FRANCHISE AGREEMENT which provides the rates to be paid to GRANTEE by
25 SUBSCRIBERS in consideration of the SOLID WASTE HANDLING services provided
26 by GRANTEE under its FRANCHISE AGREEMENT.

27 (gg) TRANSFORMATION. "Transformation" shall have the same meaning as
28 set forth in Public Resources Code Section 40201, as it may be amended from time to

1 time.

2 (hh) UNIFORM HANDLING AREAS. A FRANCHISE AREA, or a specified
3 portion of a FRANCHISE AREA, in which UNIFORM HANDLING SERVICE has been
4 imposed, as specified in a FRANCHISE AGREEMENT.

5 (ii) UNIFORM HANDLING SERVICE. The mandatory subscription to SOLID
6 WASTE HANDLING service required of owners of specified residential, multi-
7 residential, and/or commercial units in a UNIFORM HANDLING AREA.

8 (jj) UNINCORPORATED COUNTY. Any community or other area within the
9 COUNTY which is outside the boundaries of all incorporated cities and towns.

10

11 **CHAPTER 3: FRANCHISE**

12 **Sections:**

13 46.0301 Franchise Formation and Terms.

14 46.0302 Franchise Fee.

15 46.0303 Assignment and Change of Ownership.

16 46.0304 Title to Solid Waste.

17

18 **46.0301 Franchise Formation and Terms.**

19 (a) The award by the BOARD of a franchise for SOLID WASTE HANDLING
20 shall be evidenced by approval and execution of a FRANCHISE AGREEMENT. The
21 BOARD may award exclusive or non-exclusive SOLID WASTE HANDLING franchises
22 in the UNINCORPORATED COUNTY, with or without competitive bidding, through
23 individual FRANCHISE AGREEMENTS. A FRANCHISE AGREEMENT shall be
24 granted by the BOARD when it determines that public convenience and necessity are
25 served by the award of the franchise, and where a partially or wholly exclusive
26 franchise is awarded without competitive bidding, that the granting of such a franchise
27 is in the best interests of COUNTY residents based on the health, safety and well being
28 of residents in the FRANCHISE AREA where the partially or wholly exclusive franchise

1 is awarded. Each FRANCHISE AGREEMENT shall specify the specific SOLID
2 WASTE HANDLING services to be provided by GRANTEE; a different GRANTEE may
3 be granted a franchise to provide the same, or different, SOLID WASTE HANDLING
4 services in the same FRANCHISE AREA.

5 (b) In order to qualify for the award of a franchise, an applicant must:

6 (1) Have, or obtain prior to the approval of the FRANCHISE
7 AGREEMENT by the COUNTY, and maintain for the term of its FRANCHISE
8 AGREEMENT, a current HEALTH AND SAFETY PERMIT to the extent such a permit
9 is required under the provisions of Article 2 of Chapter 8 of Division 3 of Title 3 of this
10 Code in order to provide the SOLID WASTE HANDLING services to be provided under
11 the FRANCHISE AGREEMENT; and

12 (2) Demonstrate a minimum of three years experience in providing
13 substantially the same type, class and extent of services as those for which the
14 franchise is sought; and

15 (3) Provide to the DIRECTOR the information which is required of an
16 applicant for a HEALTH AND SAFETY PERMIT pursuant to Section 33.0825 of this
17 Code.

18 (c) (1) The terms and conditions by which the GRANTEE shall be
19 obligated to provide SOLID WASTE HANDLING services shall be as set forth in this
20 Division and, with respect to the items set forth in this Subdivision (c), as set forth in
21 the FRANCHISE AGREEMENT.

22 (A) The FRANCHISE AREA, including any UNIFORM
23 HANDLING AREA.

24 (B) The specific SOLID WASTE HANDLING services to be
25 provided by GRANTEE, including appropriate operating requirements.

26 (C) The TOTAL RATES related to the specified SOLID WASTE
27 HANDLING services to be provided by GRANTEE and the method of billing its
28 SUBSCRIBERS.

1 (2) (A) If the COUNTY and the GRANTEE so agree, the
2 FRANCHISE AGREEMENT may specify the SOLID WASTE FACILITY or facilities to
3 which the GRANTEE will transport the SOLID WASTE collected pursuant to SOLID
4 WASTE HANDLING services provided under the FRANCHISE AGREEMENT.

5 (B) If the COUNTY and the GRANTEE so agree, the
6 FRANCHISE AGREEMENT may allow the COUNTY to specify a different or additional
7 SOLID WASTE FACILITY to which the GRANTEE will transport the SOLID WASTE
8 collected pursuant to the SOLID WASTE HANDLING services provided under the
9 FRANCHISE AGREEMENT. In such event, the FRANCHISE AGREEMENT may
10 contain a cost per ton mile figure which sets forth the increase in the GRANTEE'S
11 demonstrable costs related to such a change.

12 (C) If the COUNTY and the GRANTEE so agree, the
13 FRANCHISE AGREEMENT may specify that upon the effective date of the
14 FRANCHISE AGREEMENT the GRANTEE waives and forgoes any other rights it
15 might have to provide SOLID WASTE HANDLING services in other specified portions
16 of the UNINCORPORATED COUNTY, including any rights it might otherwise have
17 under Public Resources Code Section 49520 or other law to receive advance notice of
18 the cancellation of any permit or other authorization to provide such services.

19 (d) (1) The FRANCHISE AGREEMENT shall establish the initial term and
20 any extensions. Notwithstanding the forgoing, the COUNTY reserves the right to
21 increase the term or any extension if it believes that such an increase is in the best
22 interests of the SUBSCRIBERS being serviced by the GRANTEE under the
23 FRANCHISE AGREEMENT.

24 (2) A FRANCHISE AGREEMENT may provide for automatic
25 extensions, however, the Board may determine in its sole discretion that a
26 FRANCHISE AGREEMENT shall not be extended. The action to not extend a
27 FRANCHISE AGREEMENT must be taken between January 1 and June 30 in any
28 odd-numbered year, but not before December 31, 2011. Such action shall terminate

1 the automatic renewal and extension provision only and such FRANCHISE
2 AGREEMENT shall remain in effect for the balance of the term then outstanding.

3 (e) The FRANCHISE AGREEMENT shall set forth the TOTAL RATE (i.e., the
4 inclusive schedule of rates to be paid to GRANTEE for SOLID WASTE HANDLING
5 services provided to SUBSCRIBERS under its FRANCHISE AGREEMENT). The
6 TOTAL RATE shall be subject to review and adjustment pursuant to the provisions of
7 this Division. If and when adjustments to the TOTAL RATE are made pursuant to the
8 provisions of this Division, the DIRECTOR shall cause a certification of each such
9 adjustment to be lodged with the COUNTY's official copy of the FRANCHISE
10 AGREEMENT. No TOTAL RATE or adjustment to same shall be implemented until
11 approved by the BOARD or by the DIRECTOR, as provided in this Division.

12 (f) Non-performance by GRANTEE of the terms and conditions contained in
13 this Division or in its FRANCHISE AGREEMENT, or the occurrence of one or more of
14 the events set forth in Section 33.0827 of this Code, shall provide grounds for the loss
15 of or limitation upon the GRANTEE'S right to provide SOLID WASTE HANDLING
16 services pursuant to its FRANCHISE AGREEMENT and for the termination of its
17 FRANCHISE AGREEMENT. GRANTEE shall perform no SOLID WASTE HANDLING
18 services under its FRANCHISE AGREEMENT without possessing the required
19 HEALTH AND SAFETY PERMIT.

20 (g) Except when otherwise required by applicable State, Federal or local law,
21 the terms and conditions of this Division shall prevail over any inconsistent provisions
22 of a FRANCHISE AGREEMENT.

23 (h) The GRANTEE under any FRANCHISE AGREEMENT is an independent
24 contractor and not an officer, agent, servant, or employee of COUNTY. GRANTEE is
25 solely responsible for the acts and omissions of its officers, agents, and employees, if
26 any. Nothing in any FRANCHISE AGREEMENT shall be construed as creating a
27 partnership or joint venture between COUNTY and GRANTEE. Neither GRANTEE nor
28 its officers, agents, or employees, shall obtain any rights to retirement or other benefits

1 which accrue to COUNTY employees.

2

3 **46.0302 Franchise Fee.**

4 (a) Except as set forth in (b), below, each GRANTEE under a FRANCHISE
5 AGREEMENT shall pay to the COUNTY a FRANCHISE FEE equal to the then current
6 and effective FRANCHISE FEE set forth in the COUNTY Schedule of Fees, currently
7 found at Chapter 2 of Division 6 of Title 1 of the San Bernardino County Code. The
8 payment of a FRANCHISE FEE shall not limit the COUNTY'S ability to establish and
9 levy a business license tax, fees, charges, assessments, penalties, fines, and other
10 requirements for monetary payment by the GRANTEE to the COUNTY. Payment of
11 FRANCHISE FEE shall be made monthly. The FRANCHISE FEE shall constitute a
12 cost which GRANTEE may recover as a part of the compensation due GRANTEE
13 under the FRANCHISE AGREEMENT.

14 (b) In the event that a GRANTEE under a FRANCHISE AGREEMENT in a
15 UNIFORM HANDLING AREA offers a fee waiver program as set forth in Section
16 46.0505, then such GRANTEE will not be required to pay a FRANCHISE FEE to the
17 COUNTY in an amount proportionate to that waived pursuant to the Code.

18

19 **46.0303 Assignment and Change of Ownership.**

20 (a) Neither any FRANCHISE AGREEMENT nor any right or privilege granted
21 in any such agreement shall voluntarily or involuntarily be transferred, sold,
22 hypothecated, sublet, assigned or leased, in whole or in part, nor shall title thereto,
23 either legal or equitable, or any right, interest, or property therein (all collectively
24 referred to herein as "transfer"), pass to or vest in any PERSON, except the
25 GRANTEE, either by act of the GRANTEE or by operation of law, without the prior
26 written consent of the BOARD. Any attempt by GRANTEE, either by act of GRANTEE
27 or by operation of law, to transfer any FRANCHISE AGREEMENT without the prior
28 written consent of the BOARD shall be void.

1 (b) If the GRANTEE requests that the COUNTY consider and consent to a
2 transfer or a CHANGE IN OWNERSHIP of GRANTEE, the GRANTEE or the proposed
3 transferee, as applicable, shall at a minimum meet each of the following requirements:

4 (1) The GRANTEE shall pay the COUNTY its reasonable expenses
5 for attorney's fees and investigation costs necessary to determine the suitability of any
6 proposed transferee or proposed new owners, and to review and finalize any
7 documentation required as a condition for approving any such transfer or CHANGE IN
8 OWNERSHIP.

9 (2) The GRANTEE shall furnish the COUNTY with independently
10 audited financial statements of the proposed transferee's operations for the
11 immediately preceding three operating years.

12 (3) The GRANTEE shall furnish the COUNTY with satisfactory proof:

13 (A) That the proposed transferee or the proposed management
14 of the GRANTEE under the proposed new owner has at least three years of SOLID
15 WASTE management experience of a scale equal to or exceeding the scale of
16 operations conducted by GRANTEE under its FRANCHISE AGREEMENT;

17 (B) That in the last five years, the proposed transferee or any
18 company managed by the proposed new owner (or by the proposed management of
19 the GRANTEE under the proposed new owner) has not received any citations, notice
20 of violations or other censure from any Federal, State or local agency having
21 jurisdiction over its waste management operations due to any failure to comply with
22 State, Federal or local waste management laws, where such failure either: (i)
23 evidences a pattern of disregard for such State, Federal or local waste management
24 laws; or (ii) involves actions which endangered the lives or property of any PERSON.

25 GRANTEE shall supply the COUNTY with a complete list of such citations, notices of
26 violations and censures, if any;

27 (C) That the proposed transferee or any company managed by
28 the proposed new owner (or by the proposed management of the GRANTEE under the

1 proposed new owner) has at all times conducted its operations in an environmentally
2 safe and conscientious fashion;

3 (D) That the proposed transferee or any company managed by
4 the proposed new owner (or by the proposed management of the GRANTEE under the
5 proposed new owner) conducts its SOLID WASTE management operations in
6 accordance with sound waste management standards and practices and in full
7 compliance with all Federal, State and local laws regulating the collection and disposal
8 of waste;

9 (E) Of the adequate financial strength of proposed transferee or
10 of the GRANTEE under the proposed new ownership; and

11 (F) Of the ability of the proposed transferee or of the GRANTEE
12 under the proposed new ownership to obtain and maintain required insurance and
13 bonds.

14 (c) The COUNTY may impose reasonable new conditions of approval on a
15 FRANCHISE AGREEMENT transfer, or consent to a CHANGE IN OWNERSHIP of
16 GRANTEE, including, but not limited to, conditions requiring acceptance of
17 amendments to the relevant FRANCHISE AGREEMENT.

18

19 **46.0304 Title to Solid Waste.**

20 Ownership of SOLID WASTE shall transfer to GRANTEE at such time as the
21 SOLID WASTE is abandoned and discarded by the SOLID WASTE HANDLING
22 service SUBSCRIBER of GRANTEE in the location provided in Section 33.0808 of this
23 Code.

24

25 **CHAPTER 4: COMPENSATION**

26 **Sections:**

27 46.0401 Compensation.

28 46.0402 Adjustment to Total Rate.

- 1 46.0403 Notice to Subscribers re Certain Adjustments.
2 46.0404 Discontinuance of Service for Non-Uniform Handling Service.

3

4 **46.0401 Compensation.**

5 (a) Charges for SOLID WASTE HANDLING services (including, without limit,
6 for use of a SOLID WASTE FACILITY) provided to GRANTEE'S SUBSCRIBERS shall
7 be paid by such service SUBSCRIBERS in accordance with the TOTAL RATE
8 approved by the BOARD in its approval or extension of the FRANCHISE
9 AGREEMENT with GRANTEE, as such TOTAL RATE is adjusted pursuant to Section
10 46.0402.

11 (b) All charges for services rendered by a given GRANTEE shall be uniform
12 and non-discriminatory for the type of service provided and reasonably based upon the
13 type and/or number of containers, type of SOLID WASTE, whether compacted or
14 loose, number of separate pick-up points at any place of collection, placement of
15 container(s) or distance of carry-out, frequency of collection, remote location, terrain,
16 disposal costs, and whether residential, commercial, construction or industrial
17 collection.

18 (c) (1) In cases where GRANTEE includes a SOLID WASTE FACILITY
19 FEE amount as a separate listing on a SUBSCRIBER'S bill, the COUNTY shall
20 prescribe the amount consistent with waste generation factors established in the
21 FRANCHISE AGREEMENT and the applicable SOLID WASTE FACILITY FEE.

22 (2) GRANTEE shall refund to each SUBSCRIBER, on a pro rata
23 basis, any advance service payments made by such SUBSCRIBER for service not
24 provided when service is discontinued by timely written notification to GRANTEE by the
25 SUBSCRIBER. GRANTEE may not require written notice to be given more than 15
26 working (waste collection) days prior to the date on which service is desired to be
27 discontinued.

28 (3) On a quarterly basis, the COUNTY shall be allowed to furnish, for

1 inclusion with GRANTEE'S billing, a message for the purpose of public education
2 regarding waste disposal, recycling, or other environmental issues. If GRANTEE mails
3 its billing in an envelope, two of the four COUNTY messages may be in the form of a
4 one page insert, provided the insert is: print ready copy which conforms to
5 GRANTEE'S billing, is delivered to GRANTEE by the DEPARTMENT 15 working
6 (waste collection) days in advance of GRANTEE'S billing date and does not cause an
7 increase in the postal rates payable by GRANTEE for mailing its billing. If the message
8 is not in the form of an insert, it shall be printed by GRANTEE on its bills. Such
9 message shall not exceed 25 characters and shall be delivered to GRANTEE by the
10 DEPARTMENT 15 working (waste collection) days in advance of GRANTEE'S billing
11 date. GRANTEE shall include such insert in, or print such message on, each
12 SUBSCRIBER'S next billing.

13

14 **46.0402 Adjustment to Total Rate.**

15 The following annual and special rate adjustments shall be made to the TOTAL
16 RATE provided for in a FRANCHISE AGREEMENT. However, no rate adjustment
17 shall be implemented for or during any period of time when the affected GRANTEE is
18 not in substantial compliance with all material provisions of the County Code or the
19 FRANCHISE AGREEMENT.

20 (a) Cost of Living Adjustment. A Cost of Living Adjustment set forth in a
21 FRANCHISE AGREEMENT should be based on appropriate consumer or product
22 price indices and the adjustment shall be a pass through of 100 percent of any
23 increase or decrease as a part of the TOTAL RATE.

24 (b) SOLID WASTE FACILITY FEE Adjustment. The SOLID WASTE
25 FACILITY FEE adjustment shall be the pass through of 100 percent of any increase or
26 decrease in the fee charged to the GRANTEE for use of a SOLID WASTE FACILITY
27 approved for use by the DEPARTMENT, calculated on a per SUBSCRIBER basis, and
28 shall be effective as of the date of the change to such fee.

1 (c) Franchise Fee Adjustment. The FRANCHISE FEE adjustment shall be
2 the pass through of 100 percent of any increase or decrease in the FRANCHISE FEE,
3 and shall be effective as of the date the FRANCHISE FEE increase or decrease is
4 payable by the GRANTEE.

5 (d) CHANGE IN SERVICE LEVEL ADJUSTMENTS.

6 (1) The TOTAL RATE shall be increased (or decreased) by 100
7 percent of the increase (or decrease) or incremental increase (or incremental
8 decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect
9 cost, whether fixed or variable) associated with the change in the level of the SOLID
10 WASTE HANDLING services which may be required of, or agreed to by, a GRANTEE.
11 A CHANGE IN SERVICE LEVEL ADJUSTMENT shall be effective on and after the
12 actual date of the requirement to or agreement to change operations which results from
13 the change in service, but, absent the consent of the DEPARTMENT, not sooner than
14 the effective date of the change in service. In no event shall any CHANGE IN
15 SERVICE LEVEL ADJUSTMENT be effective prior to the BOARD'S approval of an
16 amendment to the applicable FRANCHISE AGREEMENT.

17 (2) In the event that the DEPARTMENT and the GRANTEE claiming
18 to be affected by the change in service level cannot agree on either the existence, or
19 the effect on demonstrable costs, of a change in service level, the dispute resolution
20 provisions of the FRANCHISE AGREEMENT shall apply.

21 (e) CHANGE IN LAW ADJUSTMENTS.

22 (1) The TOTAL RATE shall be increased (or decreased) by 100
23 percent of the increase (or decrease) or incremental increase (or incremental
24 decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect
25 cost, whether fixed or variable) associated with the change in the manner or nature of
26 conducting SOLID WASTE HANDLING services necessitated by a CHANGE IN LAW.
27 A CHANGE IN LAW ADJUSTMENT shall be effective on and after the actual date of
28 the change in operations which resulted from the CHANGE IN LAW, but, absent the

1 consent of the DEPARTMENT, not sooner than the effective date of the CHANGE IN
2 LAW. In no event shall any CHANGE IN LAW ADJUSTMENT be effective prior to the
3 BOARD'S approval of an amendment to the applicable FRANCHISE AGREEMENT.

4 (2) In the event that the DEPARTMENT and the GRANTEE claiming
5 to be affected by the CHANGE IN LAW cannot agree on either the existence, or the
6 effect on demonstrable costs, of a CHANGE IN LAW, the dispute resolution provisions
7 of the FRANCHISE AGREEMENT shall apply.

8
9 **46.0403 Notice to Subscribers re Certain Adjustments.**

10 No CHANGE IN SERVICE LEVEL ADJUSTMENT increase or CHANGE IN
11 LAW ADJUSTMENT increase which applies to 500 or more SOLID WASTE
12 HANDLING service SUBSCRIBERS or to SUBSCRIBERS cumulatively generating
13 1,500 or more cubic yards of SOLID WASTE per month may be implemented until at
14 least ten days after completion of publication of a notice of the proposed increase as
15 set forth in the FRANCHISE AGREEMENT.

16
17 **46.0404 Discontinuance of Service for Non-Uniform Handling Service.**

18 Except where UNIFORM HANDLING SERVICE is implemented, GRANTEE
19 may discontinue service for non-payment of SUBSCRIBER'S billing or
20 SUBSCRIBER'S failure to substantially comply with the requirements of the applicable
21 provisions of State or local law which govern use, storage and collection of SOLID
22 WASTE. After the GRANTEE has given 15 days' written notice to SUBSCRIBER for
23 non payment, GRANTEE shall notify the DIRECTOR in writing of any service
24 termination including a written copy of the notice to the SUBSCRIBER. Upon payment
25 of the delinquent fees, if applicable, GRANTEE shall resume collection on the next
26 regularly scheduled collection day. Any GRANTEE operating in a UNIFORM
27 HANDLING AREA shall not discontinue service except as allowed in Section 46.0507.

28

1 **CHAPTER 5: UNIFORM HANDLING SERVICE**

2 **Sections:**

- 3 46.0501 Uniform Handling Service.
- 4 46.0502 Owner Responsible for Payment for Uniform Handling Service.
- 5 46.0503 Failure to Provide Sufficient Solid Waste Containers.
- 6 46.0504 Exemption from Uniform Handling Service.
- 7 46.0505 Temporary Suspension of Service or Waiver of Fees.
- 8 46.0506 Handling of Delinquent Accounts.
- 9 46.0507 Discontinuance of Service.
- 10 46.0508 Penalties for Violations.
- 11 46.0509 Illegal Dumping Retrieval Services.

12
13 **46.0501 Uniform Handling Service.**

14 (a) UNIFORM HANDLING SERVICE and UNIFORM HANDLING AREAS
15 shall be established by the adoption, or amendment, of an individual FRANCHISE
16 AGREEMENT which contains provisions establishing same. UNIFORM HANDLING
17 SERVICE may but need not be implemented in every FRANCHISE AREA, nor in all
18 parts of a given FRANCHISE AREA, nor imposed on the owners of all classes of
19 dwellings or commercial or industrial units within a given UNIFORM HANDLING AREA.
20 If UNIFORM HANDLING SERVICE is implemented for all or part of a particular
21 FRANCHISE AREA, all owners of a dwelling or a commercial or industrial unit within
22 the UNIFORM HANDLING AREA who are required to have UNIFORM HANDLING
23 SERVICE shall, upon notice thereof, be required to accept UNIFORM HANDLING
24 SERVICE from the GRANTEE (or one of the GRANTEES) holding a FRANCHISE
25 AGREEMENT for the UNIFORM HANDLING AREA and pay the rate for such services
26 currently in effect under the TOTAL RATE of the applicable FRANCHISE
27 AGREEMENT. The DEPARTMENT shall maintain a list of all areas of the COUNTY
28 where a FRANCHISE AGREEMENT establishes a UNIFORM HANDLING AREA; the

1 list shall specify the class of owners of dwellings and/or commercial or industrial units
2 within each UNIFORM HANDLING AREA required to have UNIFORM HANDLING
3 SERVICE.

4 (b) UNIFORM HANDLING SERVICE shall not be imposed on the owner of
5 any class of dwelling or commercial or industrial unit located in an Agricultural Preserve
6 Overlay District within the sphere of influence of the City of Chino or of the City of
7 Ontario, as designated upon the land use district maps of the County General Plan.

8
9 **46.0502 Owner Responsible for Payment for Uniform Handling Service.**

10 (a) The owner of each dwelling or commercial or industrial unit subject to
11 UNIFORM HANDLING SERVICE shall be required to accept, and pay the applicable
12 rate set out in the TOTAL RATE for, the UNIFORM HANDLING SERVICE rendered to
13 such unit by a GRANTEE and shall place at a location accessible to the GRANTEE, a
14 container(s) of adequate capacity and functional design in accordance with this
15 Division and with Division 3 of Title 3 of this Code for the storage of SOLID WASTE
16 generated on the premises. Such owner shall be responsible to provide such
17 container(s) unless the FRANCHISE AGREEMENT requires the GRANTEE to provide
18 such container(s).

19 (b) Nothing in this Section is intended to prevent the entering into of an
20 arrangement, or the continuance of an existing arrangement, approved in writing by the
21 GRANTEE, under which statements or invoices for UNIFORM HANDLING SERVICE
22 are billed to and payments are made by a tenant or tenants, or any agent, on behalf of
23 the owner. However, unless otherwise provided therein, any such arrangement shall
24 not lessen or substitute for the owner's obligation to the GRANTEE or, unless
25 separately approved in writing by the DEPARTMENT, to the COUNTY under this
26 Division.

27
28 **46.0503 Failure to Provide Sufficient Solid Waste Containers.**

1 When in the judgment of the DIRECTOR (whether or not at the request of the
2 GRANTEE or owner) additional SOLID WASTE container(s) compatible with the
3 SOLID WASTE HANDLING system are required, they must be provided by the owner,
4 or by the GRANTEE if the FRANCHISE AGREEMENT requires the GRANTEE to
5 provide container(s), upon written notification by the DIRECTOR. All containers shall
6 conform to the requirements of Sections 33.0806 and 33.0807 of this Code.
7

8 **46.0504 Exemption from Uniform Handling Service.**

9 (a) Dwellings.

10 (1) The owner of any dwelling may apply to the DEPARTMENT for an
11 exemption from UNIFORM HANDLING SERVICE by submitting a Uniform Handling
12 Exemption Request form to the DIRECTOR or designee accompanied by required
13 documentation identified in the form and a non-refundable application fee requesting a
14 permit to provide self-haul SOLID WASTE HANDLING. The owner may be granted an
15 exemption provided he/she can adequately document that all SOLID WASTE
16 generated at the dwelling is transported in a safe and sanitary manner to an approved
17 SOLID WASTE FACILITY. Upon approval of the exemption request, the DIRECTOR
18 will notify the owner and the GRANTEE of the exemption. Exemptions are issued on an
19 annual basis, July 1 through June 30. Exemptions that are not obtained or renewed
20 prior to July 1st of each year will not be effective until the next billing period in
21 accordance with the FRANCHISE AGREEMENT applicable to the owner's dwelling.

22 (2) The exemption and renewal applications shall be made on forms
23 approved by the DIRECTOR or designee.

24 (3) The application fee shall include an administrative fee, if any, as
25 determined by the BOARD, in addition to the pre-payment of the average annual
26 landfill disposal cost for COUNTY residents as determined by the DIRECTOR. Each
27 application for annual renewal of such an exemption shall be accompanied by the
28 administrative fee plus the applicant's required pre-payment of the average annual

1 landfill disposal cost. This pre-payment will be retained by the DEPARTMENT as a
2 pre-payment for one year's weekly SOLID WASTE disposal. The pre-payment
3 requirement shall be waived with respect to residences located within those land use
4 areas for which parcel fees are collected for the operation of COUNTY SOLID WASTE
5 DISPOSAL SYSTEM.

6 (4) The DIRECTOR shall provide the owner who pays the pre-
7 payment of the average annual landfill disposal cost with a card or other document
8 which attests to such pre-payment and which allows weekly disposal privileges at all
9 facilities within the COUNTY SOLID WASTE DISPOSAL SYSTEM in a manner
10 consistent with the disposal rights of a resident who has paid a parcel fee for the
11 operation of COUNTY SOLID WASTE DISPOSAL SYSTEM.

12 (5) Should the owner violate any provisions of this Division or of any
13 provision of Chapter 7 or Chapter 8 of Division 3 of Title 3 of the San Bernardino
14 County Code, the DIRECTOR may, upon advance written notice to the owner, revoke
15 the exemption and require the owner to subscribe to and pay for UNIFORM
16 HANDLING SERVICE as described in this Chapter.

17 (b) Commercial/Industrial Units.

18 (1) The owner of any commercial or industrial unit may apply for
19 exemption from UNIFORM HANDLING SERVICE by submitting a written application to
20 the DIRECTOR on a form issued by the DIRECTOR, accompanied by a non-
21 refundable application fee, requesting a permit to provide self-haul SOLID WASTE
22 HANDLING and transportation. This permit, if approved, shall be valid for one year,
23 and must be renewed annually thereafter at the discretion of the DIRECTOR upon
24 submittal of application therefore and deposit of application fees to the DIRECTOR.

25 (2) The exemption and renewal applications shall be on a form
26 approved by the DIRECTOR.

27 (3) The owner may be granted an exemption provided he or she can
28 establish to the satisfaction of the DIRECTOR that he or she can properly transport all

1 SOLID WASTE generated on the premises, to an approved SOLID WASTE FACILITY,
2 in a safe and sanitary manner in accordance with each of the following conditions:

3 (A) The vehicles and equipment to be used for transporting the
4 SOLID WASTE shall be identified in the application by the owner;

5 (B) The vehicles used shall meet all the standards, if any,
6 prescribed for such use by the California Vehicle Code; and

7 (C) A credit account with the DEPARTMENT must be
8 maintained in good standing.

9 (4) The DIRECTOR may require the owner to furnish evidence of such
10 delivery of SOLID WASTE.

11 (5) The application fee shall include an administrative fee, if any, as
12 determined by the BOARD.

13 (6) Should the owner violate any provision of this Division or any
14 provision of Chapter 7 or Chapter 8 of Division 3 of Title 3 of the San Bernardino
15 County Code, the DIRECTOR may, upon advance written notice to the owner, revoke
16 the exemption and require the owner to subscribe to and pay for UNIFORM
17 HANDLING SERVICES as described in this Chapter.

18
19 **46.0505 Temporary Suspension of Service or Waiver of Fees.**

20 (a) Any residential owner may suspend UNIFORM HANDLING SERVICE by
21 a GRANTEE up to forty-five consecutive days during a given fiscal year (i.e., July 1 -
22 June 30).

23 (b) The owner shall give written notification to the GRANTEE at least 15
24 working (waste collection) days prior to the first day of the period for which suspension
25 of service is requested pursuant to this Section.

26 (c) Should an owner, after suspending service, request that service be re-
27 established, the GRANTEE may charge a resumption fee not to exceed fifty percent
28 (50%) of the cost of one month's regular UNIFORM HANDLING SERVICE as specified

1 in the applicable FRANCHISE AGREEMENT. In no event shall a resumption fee
2 exceed \$50.00.

3 (d) Any suspension of service established pursuant to this Section shall be
4 canceled if the DIRECTOR determines that the conditions cited in Subdivision (a) of
5 this Section no longer exist.

6 (e) In addition, each GRANTEE servicing a FRANCHISE AREA is authorized
7 to waive the TOTAL RATE established in the applicable FRANCHISE AGREEMENT
8 for an individual owner under circumstances approved by the DIRECTOR or designee,
9 including but not limited to infrequent use of the dwelling or when the property does not
10 require regular collection service.

11

12 **46.0506 Handling of Delinquent Accounts.**

13 (a) The TOTAL RATE owed by the owner of a dwelling or commercial or
14 industrial unit for UNIFORM HANDLING SERVICE rendered to such owner's property
15 (or which have been attempted to be rendered, if UNIFORM HANDLING SERVICE is
16 not allowed to be provided by action of the owner or tenant) shall be a civil debt owed
17 to the GRANTEE providing the UNIFORM HANDLING SERVICE. As used herein,
18 DELINQUENT FEES shall mean the fees under the TOTAL RATE which are due for
19 UNIFORM HANDLING SERVICE rendered to an owner's property (or which have been
20 attempted to be rendered, if UNIFORM HANDLING SERVICE is not allowed to be
21 provided by action of the owner or tenant) but which have not been paid for 90 days or
22 more after the mailing of the invoice related to such service.

23 (b) Any delinquent fees, and the related penalties and interest and costs of
24 collection, shall be considered a debt owed to the COUNTY.

25 (c) Annually each GRANTEE shall provide a list to the DEPARTMENT of all
26 accounts which have delinquent fees. This list shall set out the amount of the
27 delinquent fees, the time period for which the services related to the delinquent fees
28 were provided, the identity of the property to which the service has been provided and

1 the owner of such property.

2 (d) Pursuant to Health and Safety Code Sections 5473 through 5473a, the
3 COUNTY elects to have delinquent fees, and the related penalties and interest and
4 costs of collection, collected on the tax roll in the same manner, by the same PERSON,
5 and at the same time as, together with but not separately from, its general taxes. This
6 election shall remain in effect until June 30, 2025.

7 (1) Pursuant to Health and Safety Code Section 5473.10 the
8 COUNTY hereby imposes:

9 (A) A basic penalty of ten percent of the delinquent fees, which
10 shall be assessed and shall be due and owing at the same time and in the same
11 manner as the delinquent fees; and

12 (B) Simple interest on the delinquent fees of one and one-half
13 percent per month, which interest shall be assessed and shall be due and owing at the
14 same time and in the same manner as the delinquent fees.

15 (2) The COUNTY shall cause a written report to be prepared each
16 year and filed with the Clerk of the Board. The report shall contain a description of
17 each parcel of real property receiving UNIFORM HANDLING SERVICE for which
18 delinquent fees exist, and the amount of the delinquent fees (and the associated basic
19 penalty and interest and costs of collection) related to that real property.

20 (3) After providing any statutorily required notice and holding any
21 statutorily required hearing, and following the final determination of the BOARD as to
22 the delinquent fees detailed in the report, pursuant to Health & Safety Code
23 Section 5473.4, the Clerk of the Board shall, on or before August 10 of each year, file
24 with the COUNTY Auditor/Controller-Recorder a copy of the report with a statement
25 endorsed thereon over his or her signature that the report has been finally adopted by
26 the BOARD. The Auditor/Controller-Recorder shall then enter the amounts of the
27 delinquent fees (and the associated basic penalty and interest and costs of collection)
28 against the respective lot or parcel of land as they appear on the current assessment

1 roll. Pursuant to Health & Safety Code Section 5473.5 and Section 5473.6, the amount
2 of charges shall constitute a lien against the lot or parcel of land against which the
3 charge has been imposed and the tax collector shall include the amount of charges on
4 bills for taxes levied against the respective lots and parcels of land.

5 (e) Any delinquent fees (and the associated basic penalty and interest and
6 costs of collection) which are collected by the COUNTY shall be allocated as follows:

7 (1) First, to the COUNTY up to the amount of the COUNTY'S costs of
8 collection;

9 (2) Next, to the GRANTEE which provided the UNIFORM HANDLING
10 SERVICE which gave rise to the delinquent fees, up to the amount of the delinquent
11 fees and the associated interest provided for in Subdivision (d)(1)(B);

12 (3) The remainder, if any, to the COUNTY.

13 (f) As used herein, the COUNTY'S costs of collection include, but are not
14 limited to, any staff time and related expenses or DEPARTMENT charges involved in
15 preparing the report, placing the delinquent fees on the tax roll, collecting or distributing
16 the delinquent fees and determining which monies received by the DEPARTMENT
17 from the tax collector relate to which delinquent fees account.

18 (g) The COUNTY has no liability to pay the GRANTEE any amount or sum
19 for any delinquent fees and/or the associated interest to the extent same are not
20 collected by the COUNTY.

21

22 **46.0507 Discontinuance of Service.**

23 Unless GRANTEE is otherwise directed by DIRECTOR, GRANTEE shall not
24 refuse to provide, or discontinue the providing of, SOLID WASTE HANDLING service
25 to any SUBSCRIBER in a UNIFORM HANDLING AREA required to subscribe for
26 UNIFORM HANDLING SERVICE.

27

28 **46.0508 Penalties for Violations.**

1 Except as otherwise allowed in Section 46.0504, it shall be unlawful for any
2 PERSON to fail or refuse to subscribe or pay for UNIFORM HANDLING SERVICE
3 implemented under this Chapter. Such a failure or refusal to subscribe or pay for
4 required UNIFORM HANDLING SERVICE shall subject such PERSON to the penalties
5 provided in Section 46.1101.
6

7 **46.0509 Illegal Dumping Retrieval Service Fee.**

8 Within UNIFORM HANDLING AREAS, at the direction of the COUNTY,
9 GRANTEE agrees to bill SUBSCRIBERS for and collect an illegal dumping retrieval
10 service fee as established from time to time by the BOARD as part of the County Code.
11 Such fee may be changed by the BOARD, by providing 60 days written notice of a
12 change to GRANTEE. The GRANTEE, as directed in writing by the COUNTY, shall
13 either remit the fee collected to the COUNTY or provide mutually agreed upon
14 specified illegal dumping retrieval and disposal services.
15

16 **CHAPTER 6: RESERVED**

17
18 **CHAPTER 7: RESERVED**

19
20 **CHAPTER 8: REPORTING REQUIREMENTS, FINANCIAL INFORMATION AND
AUDIT RIGHTS**

21 **Sections:**

- 22 46.0801 General.
23 46.0802 Types of Reports.
24 46.0803 County Right of Audit.
25

26 **46.0801 General.**

27 (a) Each GRANTEE shall keep, maintain, and furnish copies of such
28 operating records and reports as may be requested by the DEPARTMENT to ascertain

1 compliance with this Division and as set forth in the FRANCHISE AGREEMENT. The
2 DEPARTMENT reserves the right to request that additional information be provided to
3 it, as necessary to meet its needs, including but not limited to AB 939, as amended,
4 and applicable reporting requirements.

5 (b) All information required to be kept, maintained or furnished to the
6 COUNTY shall be maintained a minimum of seven years after the entry of the most
7 recent item therein;

8 (c) The GRANTEE'S financial and accounting records required to be
9 maintained under the provisions of this Division shall be maintained on an accrual
10 basis in accordance with the most current edition of Generally Accepted Accounting
11 Principles published by the American Institute of Certified Public Accountants. Unless
12 inconsistent with Generally Accepted Accounting Principles, GROSS RECEIPTS must
13 be recorded as revenues.

14 (d) Data and information pertaining to services performed under any
15 FRANCHISE AGREEMENT become the property of the COUNTY upon submittal to
16 the DEPARTMENT.

17

18 **46.0802 Types of Reports.**

19 Each FRANCHISE AGREEMENT shall require the GRANTEE to provide
20 specific information to the COUNTY related to the operation of the franchise, including
21 but not limited to the following types of reports:

22 (a) Each month the GRANTEE shall complete report forms provided by the
23 DEPARTMENT containing sufficient information to identify the source of generation,
24 e.g., residential, commercial, and multi-jurisdictional reports that contain accurate
25 source information collected from the driver of the refuse truck at each landfill and split
26 source and tonnage information, for SOLID WASTE loads from more than one
27 community.

28 (b) Each quarter, except as otherwise directed in writing by the DIRECTOR,

1 each GRANTEE shall submit quarterly reports identified as the collection information
2 reports, service performance report, the program implementation, and a report
3 summarizing the information relating to GROSS RECEIPTS, GROSS RECEIPTS less
4 disposal charges and service charge collections. To the extent permitted by applicable
5 law, financial information submitted to the COUNTY by the GRANTEE pursuant to this
6 Subdivision will be kept confidential and will be available to COUNTY personnel only
7 on a need-to-know basis.

8 (c) Each year, the GRANTEE shall submit reports to the DEPARTMENT,
9 covering operations for each calendar year, including a summary of information
10 contained in the quarterly reports required to be provided quarterly pursuant to (b)
11 above ("summary reports"), a complete inventory of collection equipment and other
12 major equipment which is or may be used in its operations ("equipment inventory
13 report"), a report that identifies all future programs and facilities that may be needed
14 but have not been planned for ("future programs report"), declarations of the current
15 status of all pending criminal or civil litigation, if any, against the GRANTEE and its
16 parent company, and all other subsidiaries of such parent company that may have an
17 effect on the GRANTEE'S ability to meet the obligations of its agreement or provide a
18 satisfactory level of service ("litigation information report").

19 (d) Within 120 days following the close of GRANTEE'S fiscal year,
20 GRANTEE shall furnish a summary of the reports required to be provided quarterly
21 pursuant to (b), above. The summary must be reviewed by the GRANTEE'S
22 independent certified public account, in accordance with the standards of the
23 accounting industry, and include the appropriate statement from said accountant
24 relative to his or her review.

25 (e) Within 120 days following the close of GRANTEE'S fiscal year,
26 GRANTEE shall organize, summarize and make available for review full and complete
27 financial information, consistent with the preparation of the GRANTEE'S financial
28 statements, with respect to the operations necessary to provide the services required

1 under its FRANCHISE AGREEMENT, including revenues, costs and expenses. Such
2 information is not required to be certified by an independent certified public accountant.
3 The GRANTEE shall make the financial information available for the review by the
4 DEPARTMENT, or its designee, at the local office of GRANTEE.

5 (f) Periodic revenue, cost and expense information reports are required from
6 GRANTEES as soon as possible in advance of the negotiations on a proposed
7 FRANCHISE AGREEMENT, and again at least three months prior to the date that a
8 decision would be made under Section 46.0301(d)(2) regarding the denial of an
9 extension of the term of a FRANCHISE AGREEMENT. Such reports shall organize,
10 summarize and make available for review full and complete financial information,
11 consistent with the preparation of the GRANTEE'S financial statements, with respect to
12 the operations necessary to provide the services required under its FRANCHISE
13 AGREEMENT, including revenues, costs and expenses. Such information is required
14 to be certified by an independent certified public accountant. The GRANTEE shall
15 make the financial information available for the review by the DEPARTMENT, or its
16 designee, at the local office of GRANTEE. Notwithstanding the forgoing, if GRANTEE
17 and any company which is within a "controlled group of corporations" with GRANTEE
18 (within the meaning of 26 U.S.C. Section 1563) have, in the aggregate, 15 or fewer full
19 time employees, and GRANTEE petitions the DIRECTOR that the cost of required
20 certification would pose an undue hardship, the DIRECTOR may waive the certification
21 requirement and may, at DEPARTMENT expense, engage a certified public account of
22 his or her choice to conduct the necessary certification.

23 (g) GRANTEE shall be required to provide audited financial statements upon
24 120 days advance written notice by the DEPARTMENT, for its most recently completed
25 fiscal year, together with the related opinion of the independent certified public
26 accountant who certified such audited financial statement. The GRANTEE shall make
27 the audited financial statement and related opinion available for the review by the
28 DEPARTMENT, or its designee, at the local office of GRANTEE. If GRANTEE is a

1 subsidiary of another corporation, GRANTEE shall provide the audited financial
2 statement of such parent corporation and need only provide a copy of the financial
3 statement of GRANTEE utilized in the preparation of the audited financial statement of
4 the parent corporation. Notwithstanding, the forgoing, if GRANTEE and any company
5 which is within a "controlled group of corporations" with GRANTEE (within the meaning
6 of 26 U.S.C. Section 1563) have, in the aggregate, 15 or fewer full time employees,
7 and GRANTEE petitions the DIRECTOR that the cost of an audited financial statement
8 would pose an undue hardship, then DIRECTOR may waive the requirement to provide
9 an audited financial statement and may, at DEPARTMENT expense, engage an
10 auditor of his or her choice to conduct a financial audit.

11

12 **46.0803 County Right of Audit.**

13 GRANTEE shall make its SUBSCRIBER base and business, operational and
14 financial records available to the DEPARTMENT, or its designee, for audit at
15 reasonable times for purposes relevant to review of performance and rate adjustment
16 issues relevant to the GRANTEE'S FRANCHISE AGREEMENT. In the event an audit
17 is undertaken and shows that the FRANCHISE FEE paid by GRANTEE to the
18 COUNTY (relative to any period of time in excess of three months) has been
19 understated by at least \$50,000.00 or two percent, whichever is less, then GRANTEE
20 shall reimburse COUNTY for the cost of such audit and shall, in addition, pay the
21 COUNTY the amount of the understated FRANCHISE FEE, plus simple interest on
22 such understated amount at the rate of ten percent per annum from the date originally
23 due until paid.

24

25 **CHAPTER 9: INDEMNIFICATION, INSURANCE AND BONDING**

26 **Sections:**

27 46.0901 Indemnification of County.

28 46.0902 Hazardous Waste Indemnification.

- 1 46.0903 Insurance Requirements.
- 2 46.0904 Performance Bonds or Other Security.
- 3 46.0905 Liquidated Damages Deposit.
- 4 46.0906 Modification.

5

6 **46.0901 Indemnification of County.**

7 Separate and distinct from the insurance provisions required by this Division,
8 each FRANCHISE AGREEMENT shall require each GRANTEE to appear and defend
9 (with counsel approved by COUNTY) all actions against the DEPARTMENT and the
10 COUNTY, and the GRANTEE agrees to defend (with counsel approved by COUNTY),
11 indemnify, and hold the COUNTY and/or its officers, agents, volunteers and employees
12 harmless from and against, any and all claims and demands, causes of action of every
13 kind and description, damages, liabilities, costs or expenses for any damages or
14 injuries to any PERSON or property, including, but not limited to, injury to GRANTEE'S
15 officers, agents, or employees which arise directly or indirectly from or are connected
16 with or are caused or claimed to be caused by acts, errors or omissions of GRANTEE,
17 or its officers, agents, or employees, in exercising its rights or in performing its duties
18 under its FRANCHISE AGREEMENT or under this Division, and all costs and
19 expenses of investigating and defending against same, except to the extent such
20 indemnification is prohibited by law.

21

22 **46.0902 Hazardous Waste Indemnification.**

23 Without limiting the generality of the foregoing, if GRANTEE has negligently or
24 willfully acted or failed to act with respect to the collection, handling or transportation of
25 HAZARDOUS WASTE, GRANTEE shall indemnify, defend (with counsel approved by
26 COUNTY), protect and hold harmless the COUNTY and its respective officers,
27 employees, agents, volunteers, assigns, and any successor or successors harmless
28 from and against all claims, actual damages (including, but not limited to, special and

1 consequential damages), natural resources damage, punitive damages, injuries, costs,
2 response remediation and removal costs, losses, demands, debts, liens, liabilities,
3 causes of action, suits, legal or administrative proceedings, interest, fines, charges,
4 penalties, and expenses (including, but not limited to, attorneys and expert witness
5 fees and costs incurred in connection with defending against any of the foregoing or in
6 enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or
7 asserted against, COUNTY or its respective officers, employees, agents, or
8 GRANTEES arising from or attributable to any repair, cleanup or detoxification, or
9 preparation and implementation of any removal, remedial response, closure or other
10 plan (regardless of whether undertaken due to governmental action) concerning any
11 HAZARDOUS WASTE which GRANTEE has negligently or willfully acted or failed to
12 act with respect to its collection, handling or transportation at any place where
13 GRANTEE stores, handles, transports or disposes of SOLID WASTE pursuant to its
14 FRANCHISE AGREEMENT. The foregoing indemnity is intended to operate and shall
15 operate as an agreement pursuant to Section 107(e) of the Comprehensive
16 Environmental Response, Compensation and Liability Act, "CERCLA" 42 U.S.C.
17 Section 9607(e) and Health and Safety Code Section 25364, to insure, protect,
18 indemnify, and hold the COUNTY harmless from liability.

19
20 **46.0903 Insurance Requirements.**

21 (a) In order to accomplish the indemnifications provided above, but without
22 limiting the duty, each GRANTEE shall secure and maintain at its sole cost throughout
23 the term of its respective FRANCHISE AGREEMENT, insurance issued by companies
24 acceptable to the COUNTY's Risk Manager with limits as may be reasonably
25 prescribed by the COUNTY's Risk Manager as a reflection of the COUNTY's risk in
26 respect to operations under a particular FRANCHISE AGREEMENT, and with such
27 terms and provisions as may be required from time to time by the COUNTY's Risk
28 Manager. At a minimum such insurance policies include, but are not limited to:

- 1 (1) Workers Compensation.
- 2 (2) Comprehensive general and automobile liability insurance.
- 3 (3) Environmental Liability.

4 (b) Prior to commencing operations under a FRANCHISE AGREEMENT,
5 GRANTEE shall furnish to the DEPARTMENT certificates of insurance evidencing the
6 required insurance coverage. Each such certificate shall provide that the insurance
7 coverage evidenced thereby shall not be expired, canceled, terminated or reduced in
8 amount without at least 30 days advance written notice to the DEPARTMENT. Within
9 60 days after the effective date of a FRANCHISE AGREEMENT, the GRANTEE shall
10 furnish to the DEPARTMENT certified copies of all of the policies and endorsements
11 required by this Section. Proofs of renewal or of substitution of carriers shall be
12 provided to the DEPARTMENT promptly as such events occur.

13 (c) All insurance requirements are subject to annual review by the COUNTY,
14 with the results of such review to be provided to a GRANTEE on or before the
15 anniversary of the effective date of its FRANCHISE AGREEMENT. If the COUNTY's
16 Risk Manager determines at any annual review that heretofore unreasonably priced or
17 unavailable types of insurance coverage or coverage limits become reasonably priced
18 or available, the COUNTY's Risk Manager is authorized, but not required, to change
19 the above insurance requirements to require additional types of insurance coverage or
20 higher coverage limits, provided that any such change is reasonable in light of past
21 claims against the COUNTY, inflation, or any other item reasonably related to the
22 COUNTY's risk. Any such change shall be treated as a CHANGE IN LAW
23 ADJUSTMENT, under the provisions of this Division.

24 (d) GRANTEE shall not be required to maintain separate policies of
25 insurance for any type of insurance required under both this Section and Chapter 8 of
26 Division 3 of Title 3 of this Code. However, GRANTEE must maintain the level of
27 insurance which is the higher of that required in this Section and Chapter 8 of Division
28 3 of Title 3 of this Code, and must obtain and maintain insurance coverage which

1 satisfies all of the provisions of this Section and Chapter 8 of Division 3 of Title 3 of this
2 Code, including without limit, providing certificates of insurance to all specified
3 departments of the COUNTY and requiring notification of the cancellation or
4 termination of any insurance policy be given by the insurance company to all specified
5 departments of the COUNTY.

6
7 **46.0904 Performance Bonds or Other Security.**

8 GRANTEE shall furnish to the COUNTY without additional charge a corporate
9 surety bond, a letter of credit or other SECURITY device acceptable to the
10 DEPARTMENT, as SECURITY for performance under its FRANCHISE AGREEMENT
11 (collectively "SECURITY"). The amount of the SECURITY shall be the average of one
12 month's expected GROSS RECEIPTS less disposal charge. Adequate proof of the
13 existence of the SECURITY shall be provided (e.g., a certificate from the surety
14 showing that the bond premiums have been paid in full shall accompany the bond and
15 each renewal thereof). The surety on the bond, the bank on which the letter of credit is
16 drawn and the surety for any other SECURITY device shall be a company or financial
17 institution acceptable to the COUNTY and shall be authorized to do business in the
18 State of California. A surety company shall be as defined in California Code of Civil
19 Procedure Section 995.120 or any successor section. The surety must be acceptable
20 to the COUNTY and may be subject to objection to sufficiency pursuant to California
21 Code of Civil Procedure Sections 995.660 et seq., or any successor sections.

22
23 **46.0905 Liquidated Damages Deposit.**

24 Each GRANTEE shall be required to maintain a bank account from which the
25 DEPARTMENT will have the ability to remove, on the sole signature of the
26 DIRECTOR, sums of money equal to any liquidated damages assessed against
27 GRANTEE under the provisions of Section 46.1002.

28

1 **46.0906 Modification.**

2 The requirements of this Chapter may be modified or waived in writing by the
3 BOARD upon the request of GRANTEE, provided the BOARD reasonably determines
4 such modification or waiver is in the best interest of COUNTY and of the public welfare,
5 considering all relevant factors, including acceptable financial guarantees provided by
6 GRANTEE or by a parent company of GRANTEE.

7
8 **CHAPTER 10: ADMINISTRATION, ENFORCEMENT AND REMEDIES**

9 **Sections:**

- 10 46.1001 Administration, Enforcement and Remedies.
11 46.1002 Liquidated Damages.
12 46.1003 Resolution of Subscriber Complaints.
13 46.1004 Notices.

14
15 **46.1001 Administration, Enforcement and Remedies.**

16 (a) If the DIRECTOR determines at any time that the GRANTEE'S
17 performance of the SOLID WASTE HANDLING services authorized or required in its
18 FRANCHISE AGREEMENT, or any of its other actions, are not in conformity with the
19 provisions of the FRANCHISE AGREEMENT, the provisions of this Code, the
20 requirements of the California Integrated Waste Management Board, including but not
21 limited to, requirements for source reduction and recycling (as to the waste stream
22 subject to the FRANCHISE AGREEMENT) or any other applicable Federal, State, or
23 local law or regulation, including but not limited to, the laws governing collection,
24 transfer, storage and/or disposal of SOLID WASTE, the DIRECTOR will notify
25 GRANTEE in writing of such deficiencies ("notice of deficiency") as shall be defined in
26 the FRANCHISE AGREEMENT with the GRANTEE.

27 (b) The notice of deficiency may provide a reasonable time within which
28 correction of all noted deficiencies is to be made. Some deficiencies are by their

1 nature not curable, and no time period to correct or remedy such deficiency shall be
2 given in the notice of deficiency.

3 (c) The DIRECTOR shall review the GRANTEE'S response to the notice of
4 deficiency. If the DIRECTOR determines that the GRANTEE has not cured the
5 deficiency, or if there is no cure period provided in the notice of deficiency given the
6 nature of the deficiency, the DIRECTOR shall either:

7 (1) Refer the matter directly to the BOARD for decision pursuant to
8 Subdivision (d) of this Section; or

9 (2) Decide the matter and notify the GRANTEE of that decision, in
10 writing.

11 (A) The decision of the DIRECTOR may be to terminate the
12 FRANCHISE AGREEMENT or may be to impose some lesser sanction;

13 (B) The decision of the DIRECTOR shall be final and binding
14 on GRANTEE unless the GRANTEE files a "notice of appeal" with the DIRECTOR
15 within 30 days of receipt of the DIRECTOR'S decision. The notice of appeal shall be in
16 writing, shall contain a detailed and precise statement of the basis for the appeal, and
17 shall be accompanied by the fee, if any, which is applicable to the filing of such an
18 appeal.

19 (C) Within ten working days of receipt of a notice of appeal, the
20 DIRECTOR shall either refer the appeal to the BOARD for proceedings in accordance
21 with Subdivision (d) of this Section, or refer the matter to a hearing officer for
22 proceedings pursuant to Chapter 27 of Division 2 of Title 1 of this Code.

23 (d) (1) Should the DIRECTOR refer the notice of deficiency to the
24 BOARD in the first instance, or if the matter reaches the BOARD pursuant to a notice
25 of appeal, the BOARD shall either:

26 (A) Refer the matter to a hearing officer for proceedings
27 pursuant to Chapter 27 of Division 2 of Title 1 of this Code; or

28 (B) Set the matter for hearing.

1 (2) If the BOARD sets the matter for hearing:

2 (A) The BOARD shall give GRANTEE, and any interested
3 PERSON requesting the same, 14 days written notice of the time and place of the
4 public hearing. At the hearing, the BOARD shall consider the report of the DIRECTOR
5 indicating the deficiencies, and shall give the GRANTEE, or its representatives and any
6 other interested PERSON, a reasonable opportunity to be heard.

7 (B) Based on the evidence presented at the public hearing, the
8 BOARD shall decide the appropriate action to be taken. If, based upon the record, the
9 BOARD determines that as noted in the notice of deficiency, the GRANTEE'S
10 performance of the SOLID WASTE HANDLING services authorized or required in its
11 FRANCHISE AGREEMENT, or any of its other actions, are not in conformity with the
12 provisions of the FRANCHISE AGREEMENT, the provisions of this Code, the
13 requirements of the California Integrated Waste Management Board, including but not
14 limited to, requirements for source reduction and recycling (as to the waste stream
15 subject to the FRANCHISE AGREEMENT) or any other applicable Federal, State, or
16 local law or regulation, including but not limited to the laws governing collection,
17 transfer, storage and/or disposal of SOLID WASTE, then the BOARD, in the exercise
18 of its sole discretion, may terminate the FRANCHISE AGREEMENT immediately or
19 impose such lesser sanction as it deems appropriate. The decision of the BOARD
20 shall be final and conclusive.

21 (e) GRANTEE'S performance under its FRANCHISE AGREEMENT is not
22 excused during the period of time prior to the DIRECTOR'S or the BOARD'S final
23 determination, as the case may be, regarding the validity of, and appropriate response
24 to, the deficiencies noted in the notice of deficiency.

25 (f) In the event GRANTEE: (i) has received a notice of deficiency and fails
26 to perform SOLID WASTE HANDLING services; or (ii) has had its FRANCHISE
27 AGREEMENT terminated; the COUNTY, acting through the DEPARTMENT, reserves
28 the right, in addition to all other rights available to the COUNTY, to take any one or

1 combination of the following actions:

2 (1) To rent or lease from GRANTEE, at its respective fair and
3 reasonable rental value, all or any part of the GRANTEE'S equipment (including
4 collection containers utilized by SUBSCRIBERS and office equipment and billing
5 programs), equipment yard and office utilized by GRANTEE in providing the SOLID
6 WASTE HANDLING services required under its FRANCHISE AGREEMENT. The
7 COUNTY may rent or lease such equipment and real property for a period not to
8 exceed six months, for the purpose of performing the SOLID WASTE HANDLING
9 services, or any part thereof, which GRANTEE is (or was) obligated to provide
10 pursuant to its FRANCHISE AGREEMENT. The COUNTY may use said rented
11 equipment and real property to directly perform such SOLID WASTE HANDLING
12 service or to assign it to some other GRANTEE or PERSON to act on the COUNTY'S
13 behalf. GRANTEE shall be held responsible for the costs to insure the COUNTY or its
14 assignee from all liability resulting from the operation of GRANTEE'S equipment. In
15 the case of equipment or real property not owned by GRANTEE, GRANTEE shall
16 assign to the COUNTY, to the extent GRANTEE is permitted to do so under the
17 instruments pursuant to which GRANTEE possesses such equipment or real property,
18 the right to possess the equipment or real property.

19 (2) As used in this Subdivision, REASONABLE RENTAL VALUE
20 means the rate for such equipment as listed in the State Department of Transportation
21 publication, "Labor Surcharge and Equipment Rental Rates," in effect at the time the
22 COUNTY leases the equipment. If a particular piece of equipment is not listed in said
23 publication or if said publication is not current, the reasonable rental value may be
24 established by the DIRECTOR by any equitable alternative method. For real property,
25 the "reasonable rental value" means its market rental rate as established by the
26 DIRECTOR using an equitable method.

27 (3) If the COUNTY exercises its rights under this Subdivision, the
28 COUNTY shall pay or owe GRANTEE the reasonable rental value of the equipment

1 and real property so used for the period of the COUNTY'S possession thereof. The
2 COUNTY may offset any amounts due to GRANTEE pursuant to this provision against
3 any amounts due to COUNTY from GRANTEE.

4 (4) All revenues owed by SUBSCRIBERS which are attributable to
5 services performed by or at the direction of the COUNTY during COUNTY'S
6 assumption of GRANTEE'S SOLID WASTE HANDLING duties shall be billed by and
7 paid to the COUNTY. To the extent GRANTEE receives such revenue after
8 COUNTY'S assumption of GRANTEE'S SOLID WASTE HANDLING duties, GRANTEE
9 shall pay such revenue to COUNTY promptly after receipt thereof (or promptly after
10 COUNTY has performed the services related to such revenue, if the revenue was
11 received by the GRANTEE prior to the COUNTY'S assumption of duties) and
12 GRANTEE shall be deemed to have assigned to COUNTY all of GRANTEE'S right and
13 interest to any such revenues.

14 (g) The COUNTY rights set forth in this Section are in addition to, and not in
15 limitation of, any other powers or rights available to the COUNTY upon failure of
16 GRANTEE to perform its obligations under this Division or its FRANCHISE
17 AGREEMENT. Further, by entering into its FRANCHISE AGREEMENT issued
18 pursuant to this Division each GRANTEE acknowledges that its violation of the terms
19 of this Division or its breach of the terms of its FRANCHISE AGREEMENT shall cause
20 the COUNTY to suffer irreparable injury and damages sufficient to support injunctive
21 relief to enforce the provisions of the FRANCHISE AGREEMENT, and to enjoin the
22 breach thereof.

23 (h) This Section shall not apply to violations or deficiencies which fall within
24 the sole jurisdiction of the COUNTY'S DEPARTMENT OF PUBLIC HEALTH, DIVISION
25 OF ENVIRONMENTAL HEALTH SERVICES under GRANTEE'S required HEALTH
26 AND SAFETY PERMIT and which are not, and do not become, violations or
27 deficiencies under this Division.
28

1 **46.1002 Liquidated Damages.**

2 (a) Each FRANCHISE AGREEMENT shall provide for a process to establish
3 that GRANTEE has met its service obligations under the FRANCHISE AGREEMENT
4 and shall provide a schedule of liquidated damages for each violations or breach which
5 has been verified to the satisfaction of the DEPARTMENT.

6 (b) A high level of collection service quality and SUBSCRIBER satisfaction
7 and therefore consistent and reliable service, is of utmost importance to the COUNTY
8 and the SOLID WASTE HANDLING services SUBSCRIBER. COUNTY will have
9 considered and relied on GRANTEE'S representations as to its quality of service
10 commitment in approving any FRANCHISE AGREEMENT, and any violation or breach
11 by GRANTEE of its SOLID WASTE HANDLING service obligations referenced in this
12 Section represents a loss of bargain to the COUNTY. The GRANTEE further
13 acknowledges that quantified standards of performance are necessary and appropriate
14 to ensure such consistent and reliable collection service, and if GRANTEE fails to meet
15 service obligations referenced in this Section, COUNTY will suffer damages (including
16 but not limited to, its SUBSCRIBERS inconvenience; complaints by SUBSCRIBERS;
17 lost BOARD and staff time; and loss of bargain) and that it is and will be impracticable
18 and extremely difficult to ascertain and determine the value thereof. Therefore, the
19 COUNTY and GRANTEE acknowledge that the liquidated damages established by
20 schedules to each FRANCHISE AGREEMENT, represent a reasonable estimate of the
21 amount of such damages, considering all of the circumstances, including the
22 relationship of the amount of the liquidated damages to the range of harm to COUNTY
23 that reasonably could be anticipated and the anticipation that proof of actual damages
24 would be extremely costly and inconvenient for both the GRANTEE and COUNTY. By
25 entering into its FRANCHISE AGREEMENT, the GRANTEE will specifically affirm the
26 accuracy of the statements made relating to liquidated damages and the fact that
27 GRANTEE will have had ample opportunity to consult with legal counsel and obtain an
28 explanation of the liquidated damage provision contained therein.

1 (c) The rights of the COUNTY set forth in this Section are in addition to, and
2 not a limitation on, any other rights which COUNTY may have against GRANTEE for
3 the failure to observe any condition or term of this Division or its FRANCHISE
4 AGREEMENT, including the violations or breaches of same set forth in this Section for
5 which liquidated damages are provided.

6
7 **46.1003 Resolution of Subscriber Complaints.**

8 Procedures for resolution of complaints and other disputes shall be as follows:

9 (a) A SUBSCRIBER dissatisfied with GRANTEE'S decision regarding a
10 complaint may ask the DIRECTOR to review the complaint. To obtain this review, the
11 SUBSCRIBER may request COUNTY review within 30 days of receipt of GRANTEE'S
12 response to the complaint, or within 45 days of submitting the complaint to the
13 GRANTEE, if the GRANTEE has failed to respond to the complaint. The DIRECTOR
14 may extend the time to request the COUNTY'S review for good cause.

15 (b) Before reviewing the complaint, the DIRECTOR shall refer it to the
16 GRANTEE. If the GRANTEE fails to cure the complaint within ten days after such
17 referral, the DIRECTOR shall review the complaint and determine if further action is
18 warranted. The DIRECTOR may request written statements from the GRANTEE and
19 SUBSCRIBER, or oral presentations or both written and oral presentations.

20 (c) The DIRECTOR shall determine if the SUBSCRIBER'S complaint is
21 justified, and if so, what remedy, if any, shall be applied. The remedy provided to the
22 SUBSCRIBER under this Section shall be limited to a refund of SUBSCRIBER charges
23 related to the period of violation of any of the terms of this Division or of the breach of
24 any term of the applicable FRANCHISE AGREEMENT. In addition to any other
25 remedy of COUNTY contained in this Section, COUNTY may impose liquidated
26 damages of up to \$100.00 payable to the COUNTY for any single event or series of
27 related events, or actual damages as demonstrated during the resolution procedure.

28 (d) The DIRECTOR may delegate the duties under this Section to a

1 designee. The decision of the DIRECTOR or a designee shall be final on any matter of
2 \$5,000.00 or less. In the event of a decision on a matter awarding more than
3 \$5,000.00, GRANTEE may seek review pursuant to the notice of appeal procedure
4 contained in Section 46.1001.

5 (e) This Section shall not apply to disputes involving the implementation of
6 the TOTAL RATE approved by the BOARD or the adjustments thereto specifically
7 authorized by this Division.

8
9 **46.1004 Notices.**

10 Except as otherwise required by governing law, any notice, information, request
11 or reply ("notice") required or permitted to be given under the provisions of this Division
12 shall be in writing and shall be given or served either personally or by mail. If given or
13 served by mail, such notice shall be deemed sufficiently given if: (1) (i) deposited in
14 the United States mail, certified mail, return receipt requested, postage prepaid, or (ii)
15 sent by express mail, Federal Express, or other similar overnight service, provided
16 proof of service is available; and (2) addressed to (i) the GRANTEE at its most recent
17 address of record with the DEPARTMENT or (ii) to the DIRECTOR at the then-current
18 address of the DEPARTMENT, as the case may be.

19
20 **CHAPTER 11: PENALTIES FOR VIOLATION**

21 **Section:**

22 46.1101 Penalties for Violation.

23
24 **46.1101 Penalties for Violation.**

25 A violation of this Division is an infraction punishable as provided in Section
26 11.0201 of this Code. Each and every day constitutes a separate violation of this
27 provision.

1 **CHAPTER 12: AMENDMENT**

2 **Section:**

3 46.1201 Amendment.

4
5 **46.1201 Amendment.**

6 The COUNTY retains the right to amend this Division in any respect,
7 notwithstanding the existence of one or more FRANCHISE AGREEMENTS. Until the
8 commencement date of any extended term of a FRANCHISE AGREEMENT, including
9 its extension pursuant to the terms of Section 46.0301(d) of this Code, the GRANTEE
10 shall be subject to and bound by the terms of this Division as same exists on the date
11 of the granting of its FRANCHISE AGREEMENT by the COUNTY. Each GRANTEE
12 shall be subject to and bound by the terms of this Division, as amended, upon the
13 commencement date of any extension of the term of the FRANCHISE AGREEMENT of
14 the GRANTEE, including its extension pursuant to the terms of Section 46.0301(d) of
15 this Code. The amendments to this Division to which a GRANTEE shall be subject
16 upon the commencement date of its FRANCHISE AGREEMENT or of the extension of
17 its FRANCHISE AGREEMENT shall be those amendments which have been adopted
18 by the BOARD (whether or not the amendment is effective) prior to the following date,
19 as applicable: (i) the date the BOARD acts to grant GRANTEE its FRANCHISE
20 AGREEMENT; (ii) the date by which the BOARD is required to determine that the
21 GRANTEE'S FRANCHISE AGREEMENT shall not be extended, as provided in Section
22 46.0301(d) of this Code, in the event that the FRANCHISE AGREEMENT is extended
23 pursuant to the terms of Section 46.0301(d) of this Code; or (iii) the date the BOARD
24 acts to extend the term of GRANTEE'S FRANCHISE AGREEMENT, if the agreement
25 is extended other than pursuant to the provisions of Section 46.0301(d) of this Code.

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SECTION 3. This Ordinance shall take effect thirty (30) days from the date of adoption.

GARY C. OVITT, Chairman
Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

DENA M. SMITH, Clerk of the
Board of Supervisors

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss.

3 I, DENA M. SMITH, Clerk of the Board of Supervisors of the County of
4 San Bernardino, State of California, hereby certify that at a regular meeting of the
5 Board of Supervisors of said County and State, held on the _____ day of
6 _____, 2009, at which meeting were present Supervisors: _____

7 _____,
8 _____,

9 and the Clerk, the foregoing ordinance was passed and adopted by the following vote,
10 to wit:

11 AYES: SUPERVISORS:

12 NOES: SUPERVISORS:

13 ABSENT: SUPERVISORS:

14 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the
15 official seal of the Board of Supervisors this _____ day of _____, 2009.

16 DENA M. SMITH, Clerk of the Board of
17 Supervisors of the County of San
18 Bernardino, State of California.

19 _____
20 Deputy

21 Approved as to Form:

22 RUTH E. STRINGER, County Counsel

23
24 By: _____
25 Deputy County Counsel

26 Date: _____

27

28

EXHIBIT D

DEFINITIONS

For the purposes of this Franchise Agreement, the following terms, when used with initial capitalization, shall have the meanings set forth in this Section:

- (a) AB 939. "AB 939" means the California Integrated Waste Management Act of 1989, being Division 30 of the California Public Resources Code, commencing with Section 40000 thereof, as it may be amended from time to time.
- (b) BOARD. "Board" means the San Bernardino County Board of Supervisors.
- (c) BULKY WASTE. "Bulky Waste" means discarded furniture (including but not limited to chairs, sofas, mattresses, and rugs); appliances (including but not limited to refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances, and other similar items, commonly known as "white goods"); discarded stereos, televisions, computers, VCR's, and other similar items (commonly known as "Electronic-Waste"); wood waste, tree trunks and large branches if more than six inches in diameter or four feet in length, scrap wood, rocks, sod and earth. Bulky Waste does not include construction and demolition waste, or large items such as car bodies, Jacuzzi tubs or spas, or other items that cannot be handled by two persons. In addition, Bulky Waste does not include waste tires.
- (d) CHANGE IN LAW. "Change in Law" means the imposition (or removal), after the establishment of a Total Rate relative to a Franchise Agreement, of any duty or burden imposed upon the Grantee in the performance of the Solid Waste Handling services required of it under its Franchise Agreement which is or becomes additional to (or is subtracted from) or different from those duties required or contemplated in its Franchise Agreement, or which must be performed in a different manner from that in which it is initially contemplated to be performed, and which results from any of the following:
 - (1) the enactment, issuance, adoption, repeal, amendment or modification of any federal, state or local law, statute, ordinance or regulation.
 - (2) a regulatory agency or other administrative agency interpreting a regulation, a judicial decision of a federal court interpreting federal law or statute, or a judicial decision of a court having jurisdiction within California interpreting a federal, state or local law, statute, ordinance or regulation, in a manner different from the interpretation which had previously been generally relied upon in California within the solid waste collection and hauling industry.Change in Law does not include any of the items noted in sub-subsections (1) or (2) above, which relate to any tax, [other than a business license tax imposed by the County on a Grantee's performance of Solid Waste Handling services under its Franchise Agreement] including without limit, any tax based or measured on net or gross income, any business, payroll or franchise tax or any employment tax.
- (e) CHANGE IN LAW ADJUSTMENT. "Change in Law Adjustment" means the adjustment to Total Rate as determined under the provisions of Section 13.2(g) of this Agreement.

- (f) CHANGE IN OWNERSHIP. "Change in Ownership" occurs when either a single transaction or event or the cumulative effect of more than one transaction or event, results in fifty percent (50%) or more of the beneficial ownership of the Grantee being different than such ownership as of the date of the approval by the County of the Franchise Agreement or, if applicable, as of the date of the most recent consent of the County to a Change of Ownership. The owners of the beneficial ownership of Grantee on the date of the approval of the Franchise Agreement or, if applicable, on the date of the most recent consent of the County to a Change of Ownership, shall be referred to in this subsection as an "Initial Owner". A Change in Ownership will be determined by application of the following:
- (1) Any beneficial interest owned by an individual related by blood or marriage to an Initial Owner shall be considered as owned by an Initial Owner in determining if a Change in Ownership has occurred.
 - (2) Any public offering of stock where the stock is offered for sale to the general public and does not constitute a private placement shall be disregarded in determining if a Change in Ownership has occurred.
 - (3) Sales, transfers, issuances or pledges of non-voting shares of stock will not be considered in determining if a Change in Ownership has occurred, until and unless and only to the extent that such stock is converted into voting shares of stock.
 - (4) The pledge of, or any other action taken relative to, voting shares of stock which results in any voting rights of such stock being exercised by other than an Initial Owner shall be considered to be a transfer of such stock for the purposes of determining if a Change in Ownership has occurred.
- (g) CHANGE IN SERVICE LEVEL ADJUSTMENT. "Change in Service Level Adjustment" means the adjustment to Total Rate as determined under the provisions of Section 13.2(f) of this Agreement.
- (h) CONSUMER PRICE INDEX. "Consumer Price Index" or "CPI" means the Consumer Price Index, All Items, Not Seasonally Adjusted, Los Angeles-Riverside-Orange-County, California, as published by the U. S. Department of Labor, Bureau of Labor Statistics, Series Id. CUURA421SAO or CUUSA421SAO, Base Date 1982-84=100, or the most similar successor index if this index is no longer published.
- (i) COUNTY. "County" means the County of San Bernardino, State of California.
- (j) COUNTY SOLID WASTE DISPOSAL SYSTEM. "County Solid Waste Disposal System" means at any particular time, the then-existing Solid Waste Facilities which the County owns, leases or has a contractual right to use.
- (k) DIVISION. "Division" means the San Bernardino County Solid Waste Management Division or such County division, division or office which is the successor thereto.
- (l) DIVISION OF PUBLIC HEALTH, DIVISION OF ENVIRONMENTAL HEALTH SERVICES. "Division of Public Health, Division of Environmental Health Services" means the County division of that name or such County division, division or office which is the successor thereto.

- (m) DIRECTOR OR DESIGNEE. "Director or designee" means the Contract Administrator of the Division or the designee of such Person.
- (n) EFFECTIVE DATE. "Effective Date" means July 1, 2009.
- (o) ELECTRONIC WASTE. "Electronic Waste" for purposes of this Agreement means electronic waste materials generated by residential or commercial Subscribers that render the items hazardous depending upon their condition and density, such as, but not limited to, televisions, computer monitors containing Cathode Ray Tubes (CRTs), cell phones, scanners, fax machines and other items as determined by applicable laws and regulations.
- (p) FRANCHISE AGREEMENT. "Franchise Agreement" means the Agreement entered into between the County and the Grantee which authorizes/requires the Grantee to provide Solid Waste Handling services in a specified Franchise Area.
- (q) FRANCHISE AREA. "Franchise Area" means the geographic territory in the Unincorporated County for which the Grantee has been granted a franchise to provide Solid Waste Handling services, as specified in each Franchise Agreement.
- (r) FRANCHISE FEE. "Franchise Fee" means the fee paid to the County by the Grantee in consideration of the granting of a franchise pursuant to this Division.
- (s) GRANTEE. "Grantee" means a Person granted a franchise pursuant to a Franchise Agreement.
- (t) GREEN MATERIAL. "Green Material" means discarded Solid Waste consisting of grass clippings, leaves, branches, tree trunks and other vegetative matter not more than six (6) inches in diameter or four (4) feet in length.
- (u) GROSS RECEIPTS.
- (1) "Gross Receipts" means all monies received by Grantee for providing the Solid Waste Handling services specified in its Franchise Agreement.
- (2) "Gross Receipts Less Disposal Charges" means Gross Receipts less that part of the monies received by the Grantee that are collected from Subscribers for payment of the fee imposed for disposing of the Solid Waste at a Solid Waste Facility.
- (v) HAZARDOUS WASTE. "Hazardous Waste" means any waste material or mixture of waste which is toxic, corrosive, flammable, an irritant, a strong sensitizer, or which generates pressure through decomposition, heat or other means, if such waste or mixture of waste may cause substantial personal injury, serious illness or harm to humans, domestic animals or wildlife during or as a proximate result of any disposal of such waste or mixture of wastes as defined in Article 2, Chapter 6.5, Section 25117 of the California Health and Safety Code and Title 22 of California Code of Regulations, Section 66261.3. The terms "toxic," "corrosive," "flammable," "irritant," and "strong sensitizer" shall be given the same meaning as in the California Hazardous Substances Act (Chapter 12, commencing with Section 28740.1, Division 21 of the California Health and Safety Code).
- (w) HEALTH AND SAFETY PERMIT. "Health and Safety Permit" means a current permit issued by the Division of Public Health, Division of Environmental Health Services to a Refuse Collection Operator, Garbage Hauler or Nondomestic Waste Hauler (all as defined in

Section 33.081 of the County Code), in accordance with Title 14 of the California Code of Regulations and Title 3 of the County Code. The Health and Safety Permit evidences, for a specified period of time, the health and safety inspection and the approval of vehicles, facilities and equipment utilized by a Refuse Collection Operator, Garbage Hauler or Nondomestic Waste Hauler.

- (x) MATERIALS RECOVERY FACILITY. "Materials recovery facility" or "MRF" is a facility designed to remove recyclables and other valuable materials from the waste stream collected through a residential, commercial or industrial Solid Waste Handling program that is approved to operate by the appropriate state and local agencies.
- (y) MULTI-JURISDICTION LOAD REPORT. "Multi-Jurisdiction Load Report" means a report which sets out the amount, and place of collection, of Solid Waste delivered to the County Solid Waste Disposal System.
- (z) PERSON. "Person" includes, without limitation, individuals, associations, clubs, societies, firms, partnerships, joint ventures, sole proprietorships, corporations, limited liability companies, schools, colleges and all governmental agencies and entities.
- (aa) PROCESSING. "Processing" means the reduction, separation, recovery, conversion or recycling of Solid Waste.
- (bb) PRODUCER PRICE INDEX-CNG. "Producer Price Index-CNG" or "PPI-CNG" means the Producer Price Index for Fuels and Related Products and Power, commercial natural gas, Not Seasonally Adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Series Id. WPU0552, Base Date 199012, or the most similar successor index if this index is no longer published.
- (cc) PRODUCER PRICE INDEX-DIESEL. "Producer Price Index-Diesel" or "PPI-Diesel" means the Producer Price Index for Fuels and Related Products and Power, number 2 diesel fuel, commodity code 057303, Not Seasonally Adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Series Id. WPU057303, Base Date 198200, or the most similar successor index if this index is no longer published.
- (dd) RECYCLABLE MATERIALS. "Recyclable Materials", for purposes of this Division only, means discarded Solid Waste which may be sorted, cleansed, treated, processed, and/or reconstituted, and which is segregated for the purpose of reuse or recycling, including, but not limited to, separated paper, glass, cardboard, plastic, ferrous materials or aluminum.
- (ee) REFUSE COLLECTION AREA. "Refuse Collection Area" means that area of the Unincorporated County as provided for in Article 2.1 of Chapter 8 of Division 3 of Title 3 of the County Code.
- (ff) RESIDUAL SOLID WASTE. "Residual Solid Waste" means the solid waste destined for disposal, transformation, further transfer/processing as defined in section 17402(a)(30) or (31) of the California Code of Regulations Title 14, Article 6, which remains after processing has taken place.
- (gg) SECURITY. "Security" means a corporate surety bond, a letter of credit or other security device acceptable to the Division, as provided in Section 9.6.

- (hh) SERVICE COMPONENT. "Service Component Rate" means the Total Rate less all increments thereof which are passed through to the Subscriber (e.g., Solid Waste Facility Fee, Franchise Fee).
- (ii) SOLID WASTE. Except as provided in sub-subsections (1), (2), (3) and (4), "Solid Waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances (subject to salvage and other special handling requirements under applicable law and regulation), dewatered, treated, or chemically fixed sewage sludge which is not Hazardous Waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, including Recyclable Materials and Green Material.
- (1) "Solid Waste" does not include Hazardous Waste and does not include low-level radioactive waste regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code.
 - (2) "Solid Waste" does not include medical waste (except treated medical waste) which is regulated pursuant to the Medical Waste Management Act (Chapter 6.1 (commencing with Section 25015) of Division 20 of the California Health and Safety Code).
 - (3) Solid Waste does not include petroleum or a petroleum product or fraction thereof at reasonably detectable levels, asbestos and, with respect to a particular Solid Waste Facility, any waste or material which a regulatory agency, the Facility's solid waste facility permit or County policy, does not allow to be accepted for transfer, Processing, composting, transformation or disposal at that Facility.
 - (4) Solid Waste does not include items which would be Recyclable Materials but for the fact that they are personally separated from other Solid Waste by the generator thereof and are donated or sold to third parties. For purposes of this Division, no donation or sale shall be deemed to have occurred in any instance where a generator directly or indirectly pays the third party any sum (including without limit as a consulting fee, container rental or other fees or tangible consideration) either: (i) in lieu of being directly charged for collecting, transporting, processing or recycling such item; or (ii) to offset the payment to the generator for the purported sale of such item to the third party. Nor shall the receipt of a discount of, or reduction in, the disposal service rate on un-segregated Solid Waste containing such an item be deemed to be the donation or sale of such an item to a third party.
- (jj) SOLID WASTE FACILITY. "Solid Waste Facility" means any facility that is designed to manage any type of Solid Waste and includes transfer, Processing, composting, transformation and disposal facilities.
- (kk) SOLID WASTE FACILITY FEE. "Solid Waste Facility Fee" means the fee charged for use of a Solid Waste Facility.
- (ll) SOLID WASTE HANDLING. "Solid Waste Handling" means one or more of the following: the collection of Solid Waste from a commercial, residential, construction or industrial source; the transportation of such Solid Waste to a Solid Waste Facility; and the transfer, Processing, composting, transformation or disposal of such Solid Waste at the Solid Waste Facility.

- (mm) SPECIAL WASTES. "Special Wastes" means all the items and materials which are designated as such in a Franchise Agreement.
- (nn) SUBSCRIBER. "Subscriber" means any Person receiving Solid Waste Handling services pursuant to this Agreement.
- (oo) TOTAL RATE. "Total Rate" means the inclusive rate schedule attached to each Franchise Agreement which provides the rates to be paid to Grantee by Subscribers in consideration of the Solid Waste Handling services provided by Grantee under its Franchise Agreement.
- (pp) TRANSFORMATION. "Transformation" as used in this Agreement shall have the same meaning as set forth in Public Resources Code Section 40201, as it may be amended from time to time.
- (qq) UNINCORPORATED COUNTY. "Unincorporated County" means any community or other area within the County which is outside the boundaries of all incorporated cities and towns.
- (rr) UNIFORM HANDLING AREAS. "Uniform Handling Areas" means a Franchise Area, or a specified portion of a Franchise Area, in which Uniform Handling Service has been imposed, as specified in a Franchise Agreement.
- (ss) UNIFORM HANDLING SERVICE. "Uniform Handling Service" means the mandatory subscription to Solid Waste Handling service required of owners of specified residential, multi-residential, and/or commercial units in a Uniform Handling Area.

EXHIBIT E

RATES

COMMERCIAL AND INDUSTRIAL RECYCLING RATES

Grantee is permitted to charge for commercial and industrial bin and roll-off recycling services at maximum rates not to exceed the rate established for collection of Solid Waste, as set forth in the Schedule of Approved Rates. In addition, the Division reserves the right to revise the maximum rate for commercial recycling at any level deemed reasonably appropriate by the Division for purposes of complying with AB 939 diversion goals throughout the term of this Agreement.

PROCEDURES FOR BILLING AND COLLECTION

The procedures for billing and collection of rates for services provided under the terms of this Agreement are provided as Attachment 1 to this Exhibit.

HARD-TO-SERVICE RATES

Grantee may request the Director or designee to designate certain accounts or portions of its Franchise Area as Hard-to-Service. Upon approval of the Director or designee, whose approval shall not be unreasonably withheld, Grantee may charge the Hard-to-Service Rates in this Exhibit. Criteria to be used in designating Hard-to-Service areas shall be established by the Director or designee.

SCHEDULE OF APPROVED RATES:

- 1. RESIDENTIAL COLLECTION;**
- 2. COMMERCIAL COLLECTION;**
- 3. BIN SERVICE;**
- 4. ETC.**

EXHIBIT E
 FRANCHISE AREA RATES
 RESIDENTIAL SERVICE
 COMMERCIAL SERVICE

COUNTY FRANCHISE	21
ZONE	
SUBSCRIPTION	
UNIFORM	
EFFECTIVE DATE	July 1, 2008

SERVICE CATEGORY	OPERATING FEE	FRANCHISE FEE	TOTAL RATE
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RESIDENTIAL SERVICE - REFUSE

CART (96 GALLONS)	\$ 16.60	\$ 1.66	\$ 18.26
EXTRA CART (96 GALLONS)	\$ 5.92	\$ 0.59	\$ 6.51
EXTRA CART DUMP (96 GALLONS)	\$ 10.00		\$ 10.00

OTHER CHARGES

2 YRD COMMERCIAL BIN

1 X WEEK SERVICE	\$ 72.56	\$ 7.26	\$ 79.82
2 X WEEK SERVICE	\$ 145.12	\$ 14.51	\$ 159.63

3 YRD COMMERCIAL BIN

1 X WEEK SERVICE	\$ 112.92	\$ 11.29	\$ 124.21
2 X WEEK SERVICE	\$ 225.82	\$ 22.58	\$ 248.40

ROLL-OFF'S

DELIVERY CHARGE FEE	\$ 95.41	\$ 9.54	\$ 104.95
MONTHLY RENTAL FEE	\$ 175.10	\$ 17.51	\$ 192.61
PER DUMP FEE	\$ 206.53	\$ 20.65	\$ 227.18

SAN BERNARDINO COUNTY FRANCHISE 21 2009 PROPOSED RATES

SERVICE CATEGORY	CURRENT RATE	PROPOSED RATE
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RESIDENTIAL SERVICE - REFUSE

CART (96 GALLONS)	\$ 18.26	NO CHANGE
EXTRA CART (96 GALLONS)	\$ 6.51	NO CHANGE
EXTRA CART DUMP (96 GALL)	\$ 10.00	NO CHANGE

OTHER SERVICES

2 YRD COMMERCIAL BIN

1 X WEEK SERVICE	\$ 79.82	NO CHANGE
2 X WEEK SERVICE	\$ 159.63	NO CHANGE

3 YRD COMMERCIAL BIN

1 X WEEK SERVICE	\$ 124.21	NO CHANGE
2 X WEEK SERVICE	\$ 248.40	NO CHANGE

ROLL-OFF'S

DELIVERY CHARGE FEE	\$ 104.95	NO CHANGE
MONTHLY RENTAL FEE	\$ 192.61	NO CHANGE
PER DUMP FEE (6 TONS)	\$ 227.18	NO CHANGE

EXHIBIT E ATTACHMENT 1

RESIDENTIAL AND COMMERCIAL BILLINGS

Grantee shall bill Single-Family Residential accounts on a quarterly basis in advance for regularly-scheduled collection services provided under this Agreement. Commercial accounts shall be billed on a monthly basis in advance for regularly-scheduled collection services provided under this Agreement. Grantee will bill for non-routine special services or charges upon the completion of service. Payments will be due within thirty (30) days from the date of billing.

INDUSTRIAL BILLINGS

Grantee shall bill Industrial accounts on a monthly basis in arrears for regularly-scheduled collection services provided under this Agreement. Grantee will bill for non-routine special services or charges upon the completion of service. Payment will be due within thirty (30) days from the date of billing.

THE ABOVE IS A GENERAL TEMPLATE ONLY AND IT SHOULD BE MODIFIED FOR EACH INDIVIDUAL FRANCHISEE BASED ON CURRENT PRACTICES

DELINQUENCY AND SUSPENSION OF SERVICE

The following procedures apply in franchise areas that are not subject to Uniform Handling Service.

Grantee will provide an account with a notice of delinquency in the event of non-payment after forty-five days from the date of a billing for Single-Family Residential accounts, and after thirty (30) days from the date billing for all other accounts. If payment is not received within thirty (30) days from the date of the notice of delinquency, Grantee may suspend collection service at the delinquent account until payment in full has been received, including any accrued interest, payment of a reactivation fee in the amount set forth in Exhibit E, and reimbursement of any NSF bank charges or other costs of collection. Grantee may charge interest on any delinquent account at the maximum rate allowed by law for such time as the bill remains unpaid after its due date, and a late fee of \$50.00, which may be increased annually by the CPI, per delinquent billing per account. Grantee's billings shall contain statements advising accounts of Grantee's right to charge interest on delinquent bills. Grantee will provide the Director or designee a list of delinquent accounts upon request.

EXHIBIT E

Attachment 1

PROCEDURES FOR BILLING AND COLLECTION

Benz Sanitation, Inc. will bill residential customers two months in advance. Commercial customers will be billed one month in arrears in Kramer Junction and one month in advance in Trona. Upon cancellation of service the account will be pro-rated appropriately for any unused service.

Roll-Off services will be billed as service is performed.

All bills will be due by the 15th of the month of the first month of service. Residential and Commercial billings not received within 90 days are subject to cancellation.

All collections will be the sole responsibility of Benz Sanitation, Inc.

EXHIBIT F

FORMER COUNTY OFFICIALS:

LIST OF FORMER COUNTY OFFICIALS

INSTRUCTIONS: List the full name of the former COUNTY Administrative Official, the title/description of the Official's last position with the COUNTY, the date the Official terminated COUNTY employment, the Official's current employment and/or representation.

OFFICIAL'S NAME:

REQUIRED INFORMATION

Submitted by: _____
(Name and Title)

(Name of Franchisee)

Date: _____