

Agenda



County of Inyo Board of Supervisors

Board of Supervisors Room
County Administrative Center
224 North Edwards
Independence, California

NOTICE TO THE PUBLIC: In order to minimize the spread of the COVID-19 virus, Governor Newsom has issued Executive Orders that temporarily suspend certain requirements of the Brown Act. Please be advised that the Board of Supervisors Chambers are closed to the public, the Board will be conducting its meetings exclusively online.

Board Members and Staff will participate via Zoom webinar, accessible to the public at <https://zoom.us/j/868254781>. Individuals will be asked to provide their name and an email address in order to access the videoconference. Anyone who does not want to provide their email address may use the following generic, non-functioning address to gain access: donotreply@inyocounty.us.

Anyone wishing to make either a general public comment or a comment on a specific agenda item prior to the meeting or as the item is being heard, may do so either in writing or by utilizing the Zoom "hand-raising feature" when appropriate during the meeting (the Chair will call on those who wish to speak). Written public comment, limited to **250 words or less**, may be emailed to the Assistant Clerk of the Board at boardclerk@inyocounty.us. Your comments may or may not be read aloud, but all comments will be made a part of the record. Please make sure to submit a separate email for each item that you wish to comment upon.

Public Notices: (1) In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting please contact the Clerk of the Board at (760) 878-0373. (28 CFR 35.102-35.104 ADA Title II). Notification 48 hours prior to the meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting. Should you because of a disability require appropriate alternative formatting of this agenda, please notify the Clerk of the Board 72 hours prior to the meeting to enable the County to make the agenda available in a reasonable alternative format. (Government Code Section 54954.2). (2) If a writing, that is a public record relating to an agenda item for an open session of a regular meeting of the Board of Supervisors, is distributed less than 72 hours prior to the meeting, the writing shall be available for public inspection at the Office of the Clerk of the Board of Supervisors, 224 N. Edwards, Independence, California and is available per Government Code § 54957.5(b)(1).

Note: Historically the Board does break for lunch; the timing of a lunch break is made at the discretion of the Chairperson and at the Board's convenience.

February 2, 2021 - 8:30 A.M.

****AMENDED****

1. **PUBLIC COMMENT** (Join meeting via Zoom [here](#))

CLOSED SESSION

2. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION – Pursuant to Government Code §54957]** – Title: Public Works Director
3. **CONFERENCE WITH COUNTY'S LABOR NEGOTIATORS – Pursuant to Government Code §54957.6** – Regarding employee organizations: Deputy Sheriff's Association (DSA); Elected Officials Assistant Association (EOAA); Inyo County Correctional Officers Association (ICCOA); Inyo County Employees Association (ICEA); Inyo County Probation Peace Officers Association (ICPPOA); IHSS Workers; Law Enforcement Administrators' Association (LEAA). Unrepresented employees: all. County designated representatives – Administrative Officer Clint Quilter, Assistant County Administrator Leslie Chapman, Deputy Personnel Director Sue Dishion, County Counsel Marshall Rudolph, Health and Human Services Director Marilyn Mann, and Chief Probation Officer Jeff Thomson.
4. **PUBLIC EMPLOYMENT – Pursuant to Government Code §54957** – Title: Veterans Service Officer

OPEN SESSION (With the exception of timed items, all open-session items may be considered at any time and in any order during the meeting in the Board's discretion.)

- 10 A.M.
5. ***PLEDGE OF ALLEGIANCE***
 6. ***REPORT ON CLOSED SESSION AS REQUIRED BY LAW.***
 7. ***PUBLIC COMMENT***
 8. ***COUNTY DEPARTMENT REPORTS*** (*Reports limited to two minutes*)
 9. ***COVID-19 STAFF UPDATE***

DEPARTMENTAL - PERSONNEL ACTIONS

10. **District Attorney** - Request Board change the Authorized Strength in the District Attorney's Office by deleting one full-time District Attorney Investigator Assistant, Range 64 (\$4,124 - \$5,011) and add one full-time Criminal Investigator I-II, Range 71-74 SA-SF (\$5,349-\$7,937) authorize the hiring up to F step depending on qualifications.

CONSENT AGENDA (Approval recommended by the County Administrator)

11. **Agricultural Commissioner - ESWMA** - Request Board authorize the Agricultural Commissioner and the Director of the Water Department to sign a Letters of Intent between the County of Inyo and Sierra Nevada Alliance for the provision of three (3) Field Assistants from the Sierra Nevada AmeriCorps Membership in an amount not to exceed \$21,375 for the period of April 5, 2021 through September 18, 2021, contingent on approval of the 2020-2021 Fiscal Year Midyear Budget.
12. **Health & Human Services - Health/Prevention** - Request Board approve the California Department of Technology Snowflake Database Data Use and Disclosure Agreement between County of Inyo Health and Human Services and the California Department of Public Health for the purpose of the receipt and use of data relating to COVID-19 in Skilled Nursing Facilities and General Acute Care Hospitals, and authorize the HHS Director to sign.
13. **Probation** - Request Board approve the contract between the County of Inyo and Inyo Council for the Arts of Bishop, CA for the provision of an after-school music and arts program to youth in an amount not to exceed \$12,600 for the period of February 8, 2021 through December 31, 2021, contingent upon the Board's approval of the Fiscal Year 2021-2022 Budget, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.

DEPARTMENTAL (To be considered at the Board's convenience)

14. **County Administrator** - Request Board approve and authorize the Chairperson to sign a letter of support for Eastern Sierra Transit Authority's FTA Section 5304 grant application for fleet electrification planning.

15. **County Administrator - Recycling & Waste Management** - Request Board consider request from Preferred Septic and Disposal, Inc. to assign the Franchise Agreement Between the County of Inyo and Preferred Septic and Disposal, Inc. for Collection of Solid Waste from Residential and Commercial Customers (Agreement) to Madera Disposal Systems, Inc. dba Bishop Waste Disposal, and either:
- A) approve Preferred Septic and Disposal's request and direct staff to prepare the Resolution required by Section 17.01 of the agreement;
 - B) find that the request is not reasonable because assigning the Agreement to the only remaining franchisee is contrary to the intent of the agreement: "to provide Customers and the County with improved Collection Services while maintaining the benefits of competition" (Section 10.01); or
 - C) Direct staff to work with the existing waste haulers to develop an amendment or replacement for the existing franchise agreement that would allow Preferred Septic and Disposal, Inc. to sell its stock while maintaining the opportunity for a second franchisee to enter the Inyo County solid waste collection market (staff recommendation).
16. **Public Works** - Request Board:
- A) Amend the Fiscal Year 2020-2021 Bishop Air Rehab Runway 12-30 Budget (631100) as follows:
 - 1. Increase estimated revenue in Federal Grants Revenue Code 4555 by \$492,066;
 - 2. Increase appropriations in Construction in Progress Object Code 5700 by \$492,066;
 - 3. Decrease appropriations in Professional Services Object Code 5265 by \$40,265; and
 - 4. Increase appropriations in External Charges Object Code 5124 by \$40,265 (*4/5ths vote required*);
 - B) Approve the proposed Resolution No. 2021-14, titled, "A Resolution of the Board of Supervisors, County of Inyo, State of California, Ratifying Change Orders to the Contract with Granite Construction Inc. for the Runway 12-30 Rehabilitation Project at the Bishop Airport," and authorize the Chairperson to sign; and
 - C) Approve the proposed Resolution No. 2021-15, titled, "A Resolution of the Board of Supervisors of the County of Inyo, State of California Authorizing the Recording of a Notice of Completion for the Bishop Airport - Runway 12-30 Rehabilitation Project," and authorize the Chairperson to sign.
17. **County Administrator - Risk Management** - Request Board ratify and approve the agreement between the County of Inyo and Rivera Hewitt Paul LLC of Sacramento, CA for the provision of legal services in an amount not to exceed \$100,000 for the period of January 22, 2021 until the subject litigation is completed, contingent upon the Board's approval of the Fiscal Year 2021-2022 Budget, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.
18. **Clerk of the Board** - Request Board approve the minutes of the regular Board of Supervisors meeting of January 5, 2021, January 12, 2021, and January 19, 2021.

COMMENT (Portion of the Agenda when the Board takes comment from the public and County staff)

19. **PUBLIC COMMENT**



County of Inyo



District Attorney

DEPARTMENTAL - PERSONNEL ACTIONS - ACTION REQUIRED

MEETING: February 2, 2021

FROM: Tom Hardy

SUBJECT: Approval of (1) eliminating one full-time position, the District Attorney Investigator Assistant and (2) hiring of one full-time position, District Attorney Criminal Investigator I or II

RECOMMENDED ACTION:

Request Board change the Authorized Strength in the District Attorney's Office by deleting one full-time District Attorney Investigator Assistant, Range 64 (\$4,124 - \$5,011) and add one full-time Criminal Investigator I-II, Range 71-74 SA-SF (\$5,349-\$7,937) authorize the hiring up to F step depending on qualifications.

SUMMARY/JUSTIFICATION:

In 2017, the District Attorney's office, in the spirit of "service redesign", asked to not fill a third Criminal Investigator position and instead hire a non-sworn Investigator Assistant. The Investigator Assistant position became vacant in October, 2020 due to a resignation. For reasons set forth in the "Background/History of Board Actions" section, below, the District Attorney is seeking to defund the Investigator Assistant position and to fill the vacant third Criminal Investigator position, returning the office to pre-2017 staffing levels.

BACKGROUND/HISTORY OF BOARD ACTIONS:

Historically, and for many years, the DA's Office employed three sworn law enforcement personnel in the Investigations Unit. Traditionally, the Chief Investigator and one Criminal Investigator were assigned primarily to assisting DA attorneys with follow-up investigation and trial preparation work, while one Investigator was assigned to INET (the Inyo Narcotics Enforcement Team). The INET Investigator position was funded by the then INET grant and, while available to assist with non-drug enforcement activities, the INET Investigator spent the vast majority of his/her time working drug investigations.

Prior to my appointment as DA in September, 2013, the INET grant no longer funded the third Investigator position and it had become a general fund position. Subsequently, the entire INET grant ended, and INET was "converted" to MINT—the Major Investigations and Narcotics Team—a cooperative investigatory team primarily composed by Sheriff Department Investigators, assisted by the two DA Investigators. While the City of Bishop Police Department was originally part of MINT, it has not been an active participant for a number of years.

In 2017, in the spirit of the County's "Service Re-Design" efforts, new Chief Investigator Stephanie Rennie and I, with the support of County Administration, decided to try an experiment replacing the third Investigator position with a non-sworn "Investigator Assistant" position. The theory behind this was that (1) it would save money, and

(2) promote efficiencies by taking certain work that did not require a sworn peace officer position and putting it in the hands of the non-sworn Assistant. It was thought that this could be helpful with the welfare fraud caseload (which is paperwork intensive) and other types of mostly “white collar” cases which are paper-heavy. In simple terms, we thought that there was a good likelihood that we could provide the same level of service at a lower cost by using a non-sworn position.

In late 2017/early 2018 we completed our first recruitment. The first person to hold the position did not complete probation. The second person completed probation, but resigned from the position in October, 2020. Having now had the opportunity to review our experiment with the Investigative Assistant position, my evaluation is that we have not been able to provide a satisfactory level of service and that it would be more beneficial to the citizens of Inyo County to return to a third, sworn Investigator position.

We have found it difficult to fill the non-sworn position with a person of sufficient education and discretion to handle the sensitive nature of the work, and we have also found that while the Investigator Assistant was able to handle some of the routine, administrative duties of an Investigator, the benefit did not make up for the loss. Only sworn investigators can handle the preparation and issuance of search warrants and, quite frankly, the subsequent analysis of information obtained as a result of those warrants. The non-sworn position is, generally, not able to testify to findings and conclusions in court. Further, only sworn investigators are available for after-hours call-outs, and the ability of a non-sworn position to assist other agencies is very limited. It also appeared that our sworn Investigators were spending more time guiding the work of the Investigator Assistant than they would have taken in just doing the work themselves.

Anecdotally, there has not seemed to be increased levels of criminal behavior, but we are seeing more serious cases. The DA’s office is now handling a relatively complex, gang-related situation involving the use of deadly force, and an Officer Involved Shooting involving a Sheriff’s Deputy, as well as a homicide that occurred in Southeastern Inyo County. We have also observed that our partner agencies (primarily the Sheriff’s Department and the Bishop Police Department) have been experiencing personnel stress as a result of the Covid-19 pandemic. While we are optimistic that that situation will resolve in the coming year, it reflexes the challenges of operating small departments in a relatively vast geographical area.

In essence, a third sworn investigator can do everything that we need, while the non-sworn Investigator Assistant cannot.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Not authorize the hiring of the requested DA Criminal Investigator. While the District Attorney’s office could “survive” with only two investigators, we would be required to significantly curtail our assistance to other agencies, possibly creating the need for an additional Sheriff’s Department Investigator and diminishing the quality of service to the citizens and visitors of Inyo County.

OTHER AGENCY INVOLVEMENT:

N/A

FINANCING:

This proposed change was not budgeted in the FY 2020-2021 budget—however, appropriate modifications have been included in the mid-year budget review and, as this is written, it is anticipated that those modifications will be approved. Personnel costs in the DA general budget would be reduced, while DA safety would increase. These are changes to the general fund expenditures. There could be some minor increases to other operating expenses, such as motor pool and training. Since DA Investigators are not first responders, any new law enforcement equipment can be provided for out of our modest COPS allocation. It is anticipated that the result will be a net increase in general fund expenditures of approximately \$64,000.00 annually. Due to the time to recruit and hire for the position it is anticipated that there will be continued salary savings until at least mid-spring.

ATTACHMENTS:

APPROVALS:

Maureen McVicker
Darcy Ellis
Maureen McVicker
Sue Dishion
Amy Shepherd
Tom Hardy

Created/Initiated - 1/11/2021
Approved - 1/11/2021
Approved - 1/19/2021
Approved - 1/20/2021
Approved - 1/21/2021
Final Approval - 1/21/2021



County of Inyo



Agricultural Commissioner - ESWMA

CONSENT - ACTION REQUIRED

MEETING: February 2, 2021

FROM: Nathan Reade, Aaron Steinwand, Alexandra Barbella

SUBJECT: Request Board authorize the Agricultural Commissioner and the Director of the Water Department to sign a Letter of Intent between the County of Inyo and Sierra Nevada Alliance

RECOMMENDED ACTION:

Request Board authorize the Agricultural Commissioner and the Director of the Water Department to sign a Letters of Intent between the County of Inyo and Sierra Nevada Alliance for the provision of three (3) Field Assistants from the Sierra Nevada AmeriCorps Membership in an amount not to exceed \$21,375 for the period of April 5, 2021 through September 18, 2021, contingent on approval of the 2020-2021 Fiscal Year Midyear Budget.

SUMMARY/JUSTIFICATION:

The Eastern Sierra Weed Management (ESWMA) division of the Agricultural Commissioner's Office and the Inyo County Water Department (ICWD) seek to obtain three (3) seasonal field assistants through an agreement with the Sierra Nevada Alliance (SNA) for invasive plant control work during the 2021 season. A letter of intent must be received by SNA prior to March 15, 2021 in order to move forward with the process of contracting with SNA for these personnel services.

If authorized and a contract is entered into between the County of Inyo and SNA, these seasonal positions would provide extra help needed to complete field work funded by various grants. The ESWMA budget and the ICWD budget will benefit from a partnership with the SNA since significant cost savings will result.

For the current field season, April through September 2021, the County is responsible for \$7,125 per member for a total of \$21,375. ESWMA will be responsible for two (2) members for a total of \$14,250. ICWD will be responsible for one (1) member for a total of \$7,125. The Letter of Intent states that funds are contingent on the approval of the 2020-2021 fiscal year mid-year budgets.

BACKGROUND/HISTORY OF BOARD ACTIONS:

The Sierra Nevada AmeriCorps Partnership is administered by the Sierra Nevada Alliance. This program places individuals who are interested in environmental management in early career positions. The program covers half of the wages and benefits. Last field season, April through September 2020, the ESWMA contracted with SNA for (1) Field Assistant. This partnership was successful and strengthened our relationship with the AmeriCorps program, off-set labor costs, helped introduce an early career land manager to the Eastern Sierra, and expanded our field crew's ability to meet the ESWMA and Agriculture Department mission of treating noxious weeds.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The Board could not approve the action outlined in the Departmental Recommendation. This alternative would limit the scope of noxious weed abatement treatments, allowing for an increase in noxious weed populations in Inyo and Mono Counties, and potentially preclude this program from fulfilling commitments to current grant funding requirements and contracted work for other agencies.

This alternative would also limit the ability of the ICWD to meet commitments for riparian monitoring along the Middle and Lower Owens River and experimental restoration techniques to be tested on the Lower Owens River Project.

OTHER AGENCY INVOLVEMENT:

In the 2021 field season, the ESWMA and ICWD are entering into the program together to share administrative responsibilities. We are excited to continue our partnership with the Sierra Nevada Alliance which is a local non-profit organization that directs federal AmeriCorps resources to the communities of the Sierra Nevada.

FINANCING:

Sufficient funds are available for these positions from April 4, 2021 through June 30, 2021 in the ESWMA fiscal year 2020-2021 budget (unit 621300, object code 5265, Professional and Special Services) pending approval of the mid-year budget by the Board of Supervisors. Since these positions are paid in-full by March 15, 2021, there is no need to consider the fiscal year 2021-2022. The ESWMA is a non-general fund program. There will be no fiscal impact to the Inyo County General Fund.

Sufficient funds are available for these positions from April 4, 2021 through June 30, 2021 in the ICWD fiscal year 2020-2021 budget (unit 024102, object code 5265, Professional and Special Services) pending approval of the mid-year budget by the Board of Supervisors. Since these positions are paid in-full by March 15, 2021, there is no need to consider the fiscal year 2021-2022. The ICWD is a non-general fund program. There will be no fiscal impact to the Inyo County General Fund.

ATTACHMENTS:

1. ICWD HalfTerm Member Service Plan 2021
2. Ag/ESWMA HalfTerm Member Service Plan 2021
3. ICWD Letter of Intent 2021
4. Ag/ESWMA Letter of Intent 2021

APPROVALS:

Alexandra Barbella	Created/Initiated - 1/21/2021
Darcy Ellis	Approved - 1/21/2021
Alexandra Barbella	Approved - 1/21/2021
Nathan Reade	Approved - 1/21/2021
Aaron Steinwand	Approved - 1/21/2021
Sue Dishion	Approved - 1/22/2021
Marshall Rudolph	Approved - 1/22/2021
Amy Shepherd	Approved - 1/22/2021
Nathan Reade	Approved - 1/25/2021
Aaron Steinwand	Final Approval - 1/26/2021



CALIFORNIA
VOLUNTEERS



Member Service Plan Sierra Nevada AmeriCorps Partnership

Host Site: Inyo County Water Department

Position Title: Field Assistant – Vegetation Monitoring

Designated Site Supervisor: Meredith Jabis, Senior Scientist, mjabis@inyocounty.us

Term of Service: April 5 – September 18, 2021

Organizational Background:

The Inyo County Water Department monitors the vegetation, soil water, and hydrology within the Owens Valley, CA in accordance with a Long Term Water Agreement (LTWA) with the City of Los Angeles to manage ground and surface water exportation while maintaining local environmental conditions. One of the primary LTWA goals is to manage water resources while maintaining vegetation community types in the Owens Valley in the same condition as existed during a 'baseline' period (1984-1987). The Inyo County Water Department (ICWD) monitors a variety of vegetation types, including within ground water dependent (phreatophytic) and riparian vegetation communities, as well as monitoring hydrologic conditions in subsurface test wells, surface water flows, and soil moisture at sites across the Owens Valley from the Pleasant Valley Dam in the north to Owens Lake in the south. ICWD has participated in cooperative studies to better understand water needs of groundwater dependent vegetation communities and has a substantial long term vegetation community dataset. We also assess mitigation project conditions across the valley including a large scale river re-watering and restoration project on the Lower Owens River through which we work collaboratively and adaptively with several parties to realize project goals.

Organizational/Program Goals 2021:

Each year ICWD monitors a set of permanent vegetation transects within groundwater dependent vegetation communities including alkali meadows, wet meadows, or saltbush and rabbitbrush mixed scrub-meadows or scrub communities. The Water Department is also concurrently involved in a new study of the riparian system along the Owens River. Riparian forest is specifically targeted because it is one of the most vulnerable community types in the Owens Valley, the land area of this community type has declined on the lower Owens River, and riparian forest establishment is a goal of the Lower Owens River Project (LORP), a large scale mitigation and river restoration project identified in the LTWA. Our program for 2021 will thus focus on historic and current riparian tree recruitment along the Middle and Lower Owens River as well as to describe local stand age and size structure of populations to assess

population dynamics and long term viability.

Member Service Plan Overview and Outcomes:

Due to the varied environmental datasets ICWD is involved in collecting, SNAP volunteers may be exposed to various vegetation, soil, or hydrologic sampling techniques. Primary activities will involve vegetation sampling within groundwater dependent vegetation communities or as part of novel riparian studies. Ongoing long-term vegetation monitoring includes revisiting permanent vegetation transects using a combination of GPS and printed maps, and identifying and recording plant species present. Riparian studies will involve working in a crew of 2 or 3 with a team leader, locating new transect startpoints, setting up transects, marking start and end locations, recording vegetation along the centerline, recording canopy cover, and identifying and recording riparian tree positions within a 10-m wide belt transect. At these riparian transects members may also collect soil samples, record fluvial geomorphic surfaces, or assist in collecting tree core samples. SNAP members may also be involved in restoration efforts on the LORP including removing encroaching marsh vegetation (primarily cattail and hard stem bulrush) currently competing with riparian tree recruitment, and recording riparian sapling size and height measurements.

Service Position Major Projects:

1. Watershed Restoration and Assessment:

- a. **Priority Project:** As a result of the re-watering of 62 miles of the Lower Owens River at relatively low flows, tules (primarily *Typha spp.* and *Schoenoplectus acutus*) have invaded former point bars and other potential recruitment locations for riparian trees, competing with successful riparian tree establishment. The SNAP member will assist staff in marsh vegetation removal using hand tools on small sections of Owens River bank approximately 3-5 m wide by 5-10 m long from the water's edge through marsh vegetation into the drier vegetation transition such as wet meadow. The member will gain experience identifying wetland vegetation, assessing health of riparian tree saplings along the river bank, and applying river restoration methods. This is an experiment and therefore does not cover a substantial area in this first year but is critical to inform future restoration work in subsequent years.

- i. **Projected Hours:** 160

- ii. **Estimated Acres Restored:** 1

1. **Acres Restored by Member (ONLY):** 0.5

****Members may participate in one, or a combination of the following projects (not to exceed 600 hours total):**

- b. **Priority Project:** Members will assist in riparian vegetation monitoring and studies as part of a 2-3 person team. Member tasks may include navigation to transect start points using GPS, setting up start and end points, identifying plants to the species level, locating and recording riparian trees within a 10-m wide belt, collecting soils, or recording fluvial geomorphic type. Members will learn to identify riparian, wetland and marsh species and to perform a set of riparian measurements.

- i. **Projected Hours:** 300

- ii. **Estimated Acres Restored:** NA

1. **Acres Restored by Member (ONLY):** NA

- c. **Priority Project:** Ongoing vegetation monitoring within groundwater dependent

vegetation communities. The SNAP member may be involved in the ICWD annual assessment of vegetation conditions within alkali meadow, wet meadow, or saltbush-rabbitbrush scrub communities on the floor of the Owens Valley created by subsurface flows which create relatively shallow groundwater conditions in an area with only 5-6 in of annual precipitation thus supporting meadow systems. Members will be trained in vegetation identification to the species level and both learn and master the line-point vegetation monitoring technique.

i. Projected Hours: 300

ii. Estimated Acres Restored: NA

1. **Acres Restored by Member (ONLY):** NA

d. Watershed Restoration and Assessment Totals:

i. Total Projected Hours: 760

ii. Total Estimated Acres Restored: 1

1. **Total Member Acres Restored:** 0.5

2. Environmental Education

a. Priority Project: not applicable

i. Projected Hours:

ii. Estimated Education Outcomes:

1. **Presentations:** not applicable

3. Volunteer Recruitment and Support:

a. Priority Project: not applicable

i. Projected Hours:

ii. Estimated Outcomes:

1. **Number of Volunteers Recruited:**

2. **Total # of Hours Served by Volunteers:**

4. Resource Attainment:

a. Priority Project: not applicable

i. Projected Hours:

ii. Estimated Outcomes:

1. **Number of Donations (Grants, Services, Goods, etc):**

2. **Dollar Amount of Donation:**

5. Green Jobs Training and Member Development:

a. SNAP Specific Trainings: Required SNAP Member Orientation and Spring Training and Service Projects, Fall Training and Graduation, Monthly Webinars

i. Projected Hours: 75 Hours

b. Site Specific Orientation: Line Point Vegetation Monitoring

i. Projected Hours: 20

c. Site Specific Training: Riparian Vegetation Monitoring

i. Projected Hours: 30

d. Site Specific Training: Marsh Vegetation Removal

i. Projected Hours: 5

e. Site Specific Training: Safety Training

i. Projected Hours: 10

f. Member Training and Development Totals:

i. **Total Projected Hours: 140**

6. Total Hours: 900

7. Member- driven projects based on individual interests and skills: 40

8. Percentage Totals:

a. Watershed Restoration and Assessment: 80%

b. Watershed Education and Outreach: 0%

c. Volunteer Recruitment and Support: 0%

d. Resource Attainment: 0%

e. Member Training and Development: 15%

f. Member-driven Projects: 5%



Member Service Plan

Sierra Nevada AmeriCorps Partnership

Host Site: Inyo County Department of Agriculture, Eastern Sierra Weed Management Area

Position Title: Field Assistant I - Seasonal

Designated Site Supervisor: Alexandra Barbella, Project Coordinator, abarbella@inyomonoag.us

Term of Service: April 5 – September 18, 2021

Service Commitment: 900 hours total, approximately 40 hours per week

Organizational Background:

The Eastern Sierra Weed Management Area (ESWMA) is tasked with monitoring new and existing noxious weeds, creating channels of communication between agencies, and educating the public about noxious weeds for Inyo and Mono Counties. The ESWMA is administered out of the Inyo County Department of Agriculture, and is a collaborative of many of the land managers in the Eastern Sierras including Inyo National Forest, Bureau of Land Management, Los Angeles Department of Water and Power, California Department of Transportation and the Inyo County Department of Agriculture. The members meet biannually to discuss weed treatment strategies and how to best collaborate to exterminate key noxious weeds from Inyo and Mono counties. The activities of the ESWMA are directed by a strategic plan drafted by and voted on by all the members.

Organizational/Program Goals 2021: The goals of the Eastern Sierra Weed Management Area:

- Overall goals: treat and eradicate invasive noxious weeds as possible; contain noxious weeds when eradication is not possible
- Treat Pepperweed, tamarisk, and knapweed sites

Member Service Plan Overview and Outcomes:

The member will be responsible for Perennial Pepperweed Removal on the Owens River with the Inyo County Department of Agriculture. This is divided into two different projects totalling about 20000 acres that needs surveyed and treated (as needed) every season. The member will be one of four to five people responsible for this task.

The member will also be responsible for Tamarisk Tree removal in remote areas managed by the Inyo National Forest and the Bureau of Land Management.

Depending on the interests of the member there are opportunities for the member to participate in writing California state grant proposals, shadow a land management professional from the Inyo County Water Department (Botany specialist), Inyo National Forest, or BLM (as COVID and the field season allow).

Service Position Major Projects:

- Perennial Pepperweed Removal from the Owens River
- Tamarisk Tree removal from select canyons in the White Mountains

1. Watershed Restoration and Assessment:

a. **Priority Project:** Perennial Pepperweed Removal from the Owens River -

i. **Projected Hours:** 455

ii. **Estimated Acres Restored:** 8165 acres are surveyed for Perennial Pepperweed for the Wildlife Conservation Board Grant plus another 12000 acres are surveyed for the Lower Owens River Restoration Project; on average less than 50 acres needs herbicide intervention.

1. **Acres Restored by Member (ONLY):** Depending on how many seasonal employees are recruited, the Member will be responsible for surveying and treating 4,033 acres to 6,721 acres using a combination of ATV and on-foot surveillance. On average one person will actively treat 10-15 acres with herbicide.

b. **Priority Project:** Tamarisk Tree removal from canyons in the White Mountains

i. **Projected Hours:** 60

ii. **Estimated Acres Restored:** 10

1. **Acres Restored by Member (ONLY):** 5 (responsibility is split by project team member)

c. **Priority Project:** Inyo National Forest Miscellaneous Weed Management Projects

i. **Projected Hours:** 90

ii. **Estimated Acres Restored:** 30

1. **Acres Restored by Member (ONLY):** 30

d. **Priority Project:** Bureau of Land Management Miscellaneous Weed Management Projects

i. **Projected Hours:** 90

ii. **Estimated Acres Restored:** 30

1. **Acres Restored by Member (ONLY):** 30

e. **Watershed Restoration and Assessment Totals:**

i. **Total Projected Hours:** 670

ii. **Total Estimated Acres Restored:** 100

1. **Total Member Acres Restored:** 75-80

2. Watershed Education

a. **Priority Project:** Not Applicable

i. **Projected Hours:** 0

ii. **Estimated Education Outcomes:** N/A

1. **Presentations** (Presentations and/or Service Learning projects of at least 30 minutes in which the Member will be able to query participants with a pre- and post-test): N/A

b. **Watershed Education Totals:**

- i.* **Total Projected Hours: 0**
- ii.* **Total Estimated Outcomes:**
 - 1.* **Presentations: N/A**

3. Volunteer Recruitment and Support:

- a.* **Priority Project: Not Applicable**
 - i.* **Projected Hours: 0**
 - ii.* **Estimated Outcomes:**
 - 1.* **Number of Volunteers Recruited: 0**
 - 2.* **Total # of Hours Served by Volunteers: 0**
- b.* **Volunteer Recruitment and Support Totals:**
 - i.* **Total Projected Hours: 0**
 - ii.* **Total Estimated Outcomes:**
 - 1.* **Number of Volunteers Recruited: 0**
 - 2.* **Total # of Hours Served by Volunteers: 0**

4. Resource Attainment:

- a.* **Priority Project:**
 - i.* **Projected Hours: 0**
 - ii.* **Estimated Outcomes:**
 - 1.* **Number of Donations (Grants, Services, Goods, etc):**
 - 2.* **Dollar Amount of Donation:**
- b.* **Priority Project:**
 - i.* **Projected Hours:**
 - ii.* **Estimated Outcomes:**
 - 1.* **Number of Donations (Grants, Services, Goods, etc):**
 - 2.* **Dollar Amount of Donation:**
- c.* **Resource Attainment Totals:**
 - i.* **Total Projected Hours:**
 - ii.* **Total Estimated Outcomes:**
 - 1.* **Number of Donations:**
 - 2.* **# of Hours Served by Volunteers:**

5. Member Training and Development: (Please note that Members can complete no more than 180 hours of training – 75 hours are provided by SNAP, up to 105 hours provided by host site.)

- a.* **SNAP Specific Trainings:** Required SNAP Member Orientation, Spring Training and Service Projects, Fall Training and Sierra Nevada Alliance Annual Conference, and Graduation
 - i.* **Projected Hours:** 75 Hours provide through SNAP
- b.* **Site Specific Orientation:** Herbicide Use and Safety Training
 - i.* **Projected Hours:** 35
- c.* **Site Specific Training:** ATV Use and Safety Training
 - i.* **Projected Hours:** 35
- d.* **Site Specific Training:** Orientation to Inyo County procedures and work sites
 - i.* **Projected Hours:** 10
- e.* **Member Training and Development Totals:**
 - i.* **Total Projected Hours:** 155

6. Member- driven projects based on individual interests and skills: 50

Total Service Hours: 900

Percentage Totals:

- a. Watershed Restoration and Assessment: 77.8%**
- b. Watershed Education and Outreach: 0%**
- c. Volunteer Recruitment and Support: 0%**
- d. Resource Attainment: 0%**
- e. Member Training and Development: 17.2%**
- f. Member-driven Projects: 5.6%**



(760) 878-0001
FAX: (760) 878-2552

P.O. Box 337
135 South Jackson Street
Independence, CA 93526
WEB: <http://www.inyowater.org>

**COUNTY OF INYO
WATER DEPARTMENT**

[Date of Signature]

Sierra Nevada Alliance
S. Lake Tahoe Office
3079 Harrison Ave
South Lake Tahoe, CA 96150

Subject: Letter of Intent

Dear Jenny Hatch,

The Inyo County Water Department submits a Letter of Intent to partner with the Sierra Nevada AmeriCorps Partnership and the Sierra Nevada Alliance for the 2020-21 program year for the following position:

- Field Assistant x 1

We will be paying \$7,125 cash match as stated in the SNAP Host Site Application by March 15, 2021. This payment and letter are contingent upon the Inyo County Board of Supervisors approving the fiscal year (2020-2021) mid-year budget amendments.

If you have any questions, please contact the Water Department at (760) 878-0001.

Sincerely,

Aaron Steinwand
Director, Inyo County Water Department



COUNTIES OF INYO AND MONO

AGRICULTURE • WEIGHTS & MEASURES • OWENS VALLEY MOSQUITO ABATEMENT PROGRAM • EASTERN SIERRA WEED MANAGEMENT AREA



Sierra Nevada Alliance
S. Lake Tahoe Office
3079 Harrison Ave
South Lake Tahoe, CA 96150

Date: Date of Signature

Dear Jenny Hatch,

The Inyo County Department of Agriculture submits a Letter of Intent to partner with the Sierra Nevada AmeriCorps Partnership and the Sierra Nevada Alliance for the 2020-2021 program year for the following position(s):

- Field Assistant, Level 1 (x2)

We will be paying \$14,250 cash match as stated in the SNAP Host Site Application by March 15, 2021. This payment and letter are contingent on the Inyo County Board of Supervisors approving the 2020-2021 fiscal year mid-year budget admendments.

If you have any questions, please contact the Department of Agriculture Project Coordinator, Alexandra Barbella, at (760) 878-8446.

Sincerely,

Nathan Reade
Agricultural Commissioner



County of Inyo



Health & Human Services - Health/Prevention

CONSENT - ACTION REQUIRED

MEETING: February 2, 2021

FROM: Rhiannon Baker

SUBJECT: California Department of Technology Snowflake Database Data Use and Disclosure Agreement between Inyo County Health and Human Services and California Department of Public Health (CDPH)

RECOMMENDED ACTION:

Request Board approve the California Department of Technology Snowflake Database Data Use and Disclosure Agreement between County of Inyo Health and Human Services and the California Department of Public Health for the purpose of the receipt and use of data relating to COVID-19 in Skilled Nursing Facilities and General Acute Care Hospitals, and authorize the HHS Director to sign.

SUMMARY/JUSTIFICATION:

The California Department of Technology Snowflake Database (CDTSD) is a system of applications that encompasses the core surveillance and reporting application Data Warehouse (DW), and Data Distribution Portal (DDP) that the CDPH has implemented for web-based COVID-19 reporting and surveillance. The system is intended to improve the efficiency of surveillance activities and the early detection of public health events through the collection of more complete and timely surveillance information on a state-wide basis. CDTSD is a secure, web-based electronic system for health care providers to report COVID-19 cases and data and for CDPH to report to local Public Health jurisdictions. CDTSD is the system of record for COVID-19 disease surveillance data within California and allows for 24/7/365 reporting and receipt of results.

The Department of Health and Human Services is respectfully requesting your Board's approval of the Data Use and Disclosure Agreement with the California Department of Public Health.

BACKGROUND/HISTORY OF BOARD ACTIONS:

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The Board could choose not to approve this agreement therefore terminating Inyo County Health and Human Services' ability to receive COVID-19 related data necessary in case investigation, disease prevention, and surveillance.

OTHER AGENCY INVOLVEMENT:

None

FINANCING:

There is no funding associated with this agreement.

ATTACHMENTS:

1. California Department of Technology Snowflake Database Data Use And Disclosure Agreement

APPROVALS:

Rhiannon Baker	Created/Initiated - 1/15/2021
Darcy Ellis	Approved - 1/15/2021
Anna Scott	Approved - 1/15/2021
Melissa Best-Baker	Approved - 1/15/2021
Marilyn Mann	Approved - 1/19/2021
Marshall Rudolph	Approved - 1/19/2021
Marilyn Mann	Final Approval - 1/20/2021

California Department of Technology Snowflake Database Data Use And Disclosure Agreement

This California Department of Technology Snowflake Database (CDTSD) Data Use And Disclosure Agreement (“Agreement”) sets forth the information privacy and security requirements that the Department of Public Health (“Participant”), and the California Department of Public Health (“CDPH”) are obligated to follow with respect to all CDTSD Data (as defined herein) collected or created within the CDTSD. By entering into this Agreement, CDPH and Participant agree to protect the privacy and provide for the security of all CDTSD Data in compliance with all state and federal laws applicable to the CDTSD Data. Permission to receive, use and disclose CDTSD Data requires execution of this Agreement that describes the terms, conditions, and limitations of Participant’s collection, use, and disclosure of the CDTSD Data.

- I. Supersession: This Agreement supersedes any prior CDTSD Agreement between CDPH and Participant.
- II. Definitions: For purposes of this Agreement, the following definitions shall apply:

A. Breach: “Breach” means:

1. the acquisition, access, use, or disclosure of CDTSD Data in violation of any state or federal law or in a manner not permitted under this Agreement that compromises the privacy, security or integrity of the information. For purposes of this definition, “compromises the privacy, security or integrity of the information” means poses a significant risk of financial, reputational, or other harm to an individual or individuals; or
2. the same as the definition of "breach of the security of the system" set forth in California Civil Code section 1798.29, subdivision (f). The “system” referenced in Civil Code section 1798.29 shall be interpreted for purposes of this Agreement to reference the CDTSD, only.

B. CDTSD Data: “CDTSD Data” means data in CDTSD cloud data warehouse supported and maintained by California Department of Technology (CDT) including resident and health care worker test status, facility staffing levels, and requested needs for the purposes of case investigation, disease prevention, and surveillance.

1. CDTSD Data specifically includes information contained in or derived from the following:
 - a. Confidential Morbidity Report (CMR) required by Title 17 of the California Code of Regulations CCR sections 2500, 2593, 2641.5-2643.20, and 2800-2812 Reportable Diseases and Conditions.
 - b. Laboratory Test and Result information required by Title 17 of the CCR sections 2505 and 2641.5 - 2643.20.

- c. Communicable Disease Control Report Forms (required for specific diseases and conditions that are mandated by state laws and regulations to be reported by healthcare providers and laboratories to local health officers).
- d. Data collected through facility level surveys detailing total resident and health care worker confirmed cases of SARS-CoV-2 and influenza, as well as deaths related to these infections.

2. CDTSD Data specifically excludes the following information:

a. [Reserved.]

C. Disclosure: “Disclosure” means the release, transfer, provision of, access to, or divulging in any other manner of information.

D. Security Incident: “Security Incident” means:

- 1. an attempted breach;
- 2. the attempted or successful modification or destruction of CDTSD Data in the CDTSD, in violation of any state or federal law or in a manner not permitted under this Agreement; or
- 3. the attempted or successful modification or destruction of, or interference with, system operations in the CDTSD that negatively impacts the confidentiality, availability or integrity of CDTSD Data, or hinders or makes impossible the receipt, collection, creation, storage, transmission or use of CDTSD Data in the CDTSD.

E. Use: “Use” means the sharing, employment, application, utilization, examination, or analysis of information.

F. Workforce Member: “Workforce Member” means an employee, volunteer, trainee, or other person whose conduct, in the performance of work for Participant, is under the direct control of Participant, whether or not they are paid by the Participant.

G. [Reserved.]

III. Background and Purpose: The CDTSD is a system of applications that encompasses the core surveillance and reporting application Data Warehouse (DW), and Data Distribution Portal (DDP) that the CDPH has implemented for web-based SARS-CoV-2 reporting and surveillance. The purpose of this application is to improve the efficiency of surveillance activities and the early detection of public health events through the collection of more complete and timely surveillance information on a state-wide basis. CDTSD is a secure, web-based electronic solution for health care providers to report cases of conditions of public health interest and for CDPH to report to LHDs and the general public. CDTSD is an integral part of the overall California public health emergency preparedness and response strategy where completion and implementation of CDTSD allows for 24/7/365 reporting and receipt of notifiable conditions. CDTSD is the system of record for SARS-CoV-2 disease surveillance data within California.

IV. Legal Authority for Collection, Use and Disclosure of CDTSD Data: The legal authority for CDPH and Participant to collect, use and disclose CDTSD Data is set forth in Attachment A, which is made part of this Agreement by this reference.

V. Health Insurance Portability and Accountability Act of 1996 (HIPAA) Authority:

A. CDPH and CDTSD HIPAA Status: CDPH is a “hybrid entity” for purposes of applicability of the federal regulations entitled “Standards for Privacy of Individually Identifiable Health Information” (“Privacy Rule”) (45 C.F.R. Parts 160, 162, and 164) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. §§ 1320d - 1320d-8) (as amended by Subtitle D Privacy, of the Health Information Technology for Economic and Clinical Health (HITECH) Act (Pub. L. 111–5, 123 Stat. 265–66)). The CDTSD has not been designated by the CDPH as, and is not, one of the HIPAA-covered “health care components” of CDPH. (45 C.F.R. § 164.504(c)(3)(iii).) The legal basis for this determination is as follows:

1. The CDTSD is not a component of CDPH that would meet the definition of a covered entity or business associate if it were a separate legal entity. (45 C.F.R. §§ 160.105(a)(2)(iii)(D); 160.103 (definition of “covered entity”)); And
2. The HIPAA Privacy Rule creates a special rule for a subset of public health activities whereby HIPAA cannot preempt state law if, “[t]he provision of state law, including state procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.” (45 C.F.R. § 60.203(c) [HITECH Act, § 13421, sub. (a)].) [NOTE: See State laws and regulations listed in Attachment A; and,

B. Parties Are “Public Health Authorities”: CDPH and Participant are each a “public health authority” as that term is defined in the Privacy Rule. (45 C.F.R. §§ 164.501; 164.512(b)(1)(i).)

C. CDTSD Data Use and Disclosure Permitted by HIPAA: To the extent a disclosure or use of CDTSD Data may also be considered a disclosure or use of “Protected Health Information” (PHI) of an individual, as that term is defined in Section 160.103 of Title 45, Code of Federal Regulations, the following Privacy Rule provisions apply to permit such CDTSD Data disclosure and/or use by CDPH and Participant, without the consent or authorization of the individual who is the subject of the PHI:

1. HIPAA cannot preempt state law if, “[t]he provision of state law, including state procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.” (45 C.F.R. § 60.203(c) [HITECH Act, § 13421, sub. (a)].) [NOTE: See state laws and regulations listed in Attachment A];
2. A covered entity may disclose PHI to a “public health authority” carrying out public health activities authorized by law; (45 C.F.R. § 164.512(b).);
3. A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with

and is limited to the relevant requirements of such law.” (Title 45 C.F.R. §§ 164.502 (a)(1)(vii), 164.512(a)(1).) and,

4. Other, non-public health-specific provisions of HIPAA may also provide the legal basis for all or specific CDTSD Data uses and disclosures.

D. No HIPAA Business Associate Agreement or Relationship Between CDPH and Participant: This Agreement and the relationship it memorializes between CDPH and Participant do not constitute a business associate agreement or business associate relationship pursuant to Title 45, CFR, Part 160.103 (definition of “business associate”). The basis for this determination is Section 160.203(c) of Title 45 of the Code of Federal Regulations (see, also, [HITECH Act, § 13421, subdivision. (a)].) [NOTE: See state laws and regulations listed in Attachment A]. Accordingly, this Agreement is not intended to nor at any time shall result in or be interpreted or construed as to create a business associate relationship between CDPH and Participant. By the execution of this Agreement, CDPH and Participant expressly disclaim the existence of any business associate relationship.

- VI. Permitted Disclosures:** The Participant and its workforce members and agents, shall safeguard the CDTSD Data to which they have access to from unauthorized disclosure. The Participant, and its workforce members and agents, shall not disclose any CDTSD Data for any purpose other than carrying out the Participant's obligations under the statutes and regulations set forth in Attachment A, or as otherwise allowed or required by state or federal law.
- VII. Permitted Use:** The Participant, and its workforce members and agents, shall safeguard the CDTSD Data to which they have access to from unauthorized use. The Participant, and its workforce members and agents, shall not use any CDTSD Data for any purpose other than carrying out the Participant's obligations under the statutes and regulations set forth in Attachment A or as otherwise allowed or required by state or federal law.
- VIII. Restricted Disclosures and Uses:**

A. [Reserved.]

- IX. Safeguards:** Participant shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the privacy, confidentiality, security, integrity, and availability of CDTSD Data. The Participant shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Participant's operations and the nature and scope of its activities in performing its legal obligations and duties (including performance of its duties and obligations under this Agreement), and which incorporates the requirements of Section X, Security, below. Participant shall provide CDPH with Participant's current and updated policies.
- X. Security:** The Participant shall take all steps necessary to ensure the continuous security of all computerized data systems containing CDTSD Data. These steps shall include, at a minimum:
 - A.** Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, and/or NIST 800-53 (version 4 or subsequent approved versions) which sets forth guidelines for automated information systems in Federal agencies; and

B. in case of a conflict between any of the security standards contained in any of the aforementioned sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to CDTSD Data from breaches and security incidents.

XI. Security Officer: The Participant shall designate a Security Officer to oversee its compliance with this Agreement and for communicating with CDPH on matters concerning this Agreement. Such designation is set forth in Attachment B, which is made a part of this Agreement by this reference.

XII. Training: The Participant shall provide training on its obligations under this Agreement, at its own expense, to all of its workforce members who assist in the performance of Participant's obligations under this Agreement, or otherwise use or disclose CDTSD Data.

A. The Participant shall require each workforce member who receives training to receive and sign a certification, indicating the workforce member's name and the date on which the training was completed.

B. The Participant shall retain each workforce member's written certifications for CDPH inspection for a period of three years following contract termination.

XIII. Workforce member Discipline: Participant shall discipline such workforce members who intentionally violate any provisions of this Agreement, including, if warranted, by termination of employment.

XIV. Participant Breach and Security Incident Responsibilities:

A. Notification to CDPH of Breach or Security Incident: The Participant shall notify CDPH **immediately by telephone call plus email or fax** upon the discovery of a breach (as defined in this Agreement), **or within twenty-four (24) hours by email or fax** of the discovery of any security incident (as defined in this Agreement). Notification shall be provided to the CDPH Program Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XX(G), below. If the breach or security incident occurs after business hours or on a weekend or holiday and involves CDTSD Data in electronic or computerized form, notification to CDPH shall be provided by calling the CDPH IT Service Desk at the telephone numbers listed in Section XX(G), below. For purposes of this Section, breaches and security incidents shall be treated as discovered by Participant as of the first day on which such breach or security incident is known to the Participant, or, by exercising reasonable diligence would have been known to the Participant. Participant shall be deemed to have knowledge of a breach or security incident if such breach or security incident is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach or security incident, who is a workforce member or agent of the Participant.

Participant shall take:

1. prompt corrective action to mitigate any risks or damages involved with the breach or security incident and to protect the CDTSD operating environment; and,
2. any action pertaining to a breach required by applicable federal or state laws, including, specifically, California Civil Code section 1798.29.

- B. Investigation of Breach:** The Participant shall immediately investigate such breach or security incident, and within seventy-two (72) hours of the discovery, shall inform the CDPH Program Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:
1. what data elements were involved and the extent of the data involved in the breach, including, specifically, the number of individuals whose personal information was breached; and
 2. a description of the unauthorized persons known or reasonably believed to have improperly used the CDTSD Data and/or a description of the unauthorized persons known or reasonably believed to have improperly accessed or acquired the CDTSD Data, or to whom it is known (or reasonably believed) to have had the CDTSD Data improperly disclosed to them; and
 3. a description of where the CDTSD Data is known or believed to have been improperly used or disclosed; and
 4. a description of the known or probable causes of the breach or security incident; and
 5. whether Civil Code section 1798.29 or any other federal or state laws requiring individual notifications of breaches have been triggered.
- C. Written Report:** The Participant shall provide a written report of the investigation to the CDPH Program Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer within five (5) working days of the discovery of the breach or security incident. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the breach or security incident, and measures to be taken to prevent the recurrence of such breach or security incident.
- D. Notification to Individuals:** If notification to individuals whose information was breached is required under state or federal law, and regardless of whether Participant is considered only a custodian and/or non-owner of the CDTSD Data, Participant shall, at its sole expense, and at the sole election of CDPH, either:
1. make notification to the individuals affected by the breach (including substitute notification), pursuant to the content and timeliness provisions of such applicable state or federal breach notice laws. The CDPH Privacy Officer shall approve, in writing, the time, manner and content of any such notifications, prior to the transmission of such notifications to the individual(s); or
 2. cooperate with and assist CDPH in its notification (including substitute notification) to the individuals affected by the breach.
- E. Submission of Sample Notification to California Attorney General:** If notification to more than 500 individuals is required pursuant to California Civil Code section 1798.29, Participant shall, at its sole expense, and at the sole election of CDPH, either:

1. electronically submit a single sample copy of the security breach notification, excluding any personally identifiable information, to the California Attorney General pursuant to the format., content and timeliness provisions of Section 1798.29, subdivision (e). Participant shall inform the CDPH Privacy Officer of the time, manner and content of any such submissions, prior to the transmission of such submissions to the Attorney General; or
 2. cooperate with and assist CDPH in its submission of a sample copy of the notification to the California Attorney General.
- F. Public Statements:** Participant shall cooperate with CDPH in developing content for any public statements regarding Breaches or Security Incidents related to Participant and shall not provide any public statements without the express written permission of CDPH. Requests for public statement(s) by any non-party about a breach or security incidents shall be directed to the CDPH Program Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XIII(E), below.
- G. CDPH Contact Information:** To direct communications to the above referenced CDPH staff, the Participant shall initiate contact as indicated below. CDPH reserves the right to make changes to the contact information by giving written notice to the Participant. Said changes shall not require an amendment to this Agreement.

[This space intentionally left blank – Continued on next page.]

CDPH Program Manager	CDPH Privacy Officer	CDPH Chief Information Security Officer (and CDPH IT Service Desk)
<p>CDPH-CHCQ Duty Officer California Department of Public Health Center for Health Care Quality 1615 Capitol Avenue, 4th Floor Sacramento, CA 95899 California Department of Public Health</p> <p>Email: CHCQDutyOfficer@cdph.ca.gov Telephone: (916) 330-0664</p>	<p>Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health 1415 L Street, Suite 500 Sacramento, CA 95814</p> <p>Email: privacy@cdph.ca.gov Telephone: (877) 421-9634</p>	<p>Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413</p> <p>Email: cdphiso@cdph.ca.gov Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874</p>

- XV.** CDPH Breach and Security Incident Responsibilities: CDPH shall notify Participant immediately by telephone call plus email or fax upon the discovery of a breach (as defined in this Agreement), or within twenty-four (24) hours by email or fax of the discovery of any security incident (as defined in this Agreement) that involves CDTSD Data that was created or collected by Participant in the CDTSD. Notification shall be provided by CDPH to the Participant Representative, using the contact information listed in Attachment C, which is made a part of this Agreement by this reference. For purposes of this Section, breaches and security incidents shall be treated as discovered by CDPH as of the first day on which such breach or security incident is known to CDPH, or, by exercising reasonable diligence would have been known to CDPH. CDPH shall be deemed to have knowledge of a breach or security incident if such breach or security incident is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach or security incident, who is a workforce member or agent of CDPH.
- A.** Participant Contact Information: To direct communications to the Participant's breach/security incident response staff, CDPH shall initiate contact as indicated by Participant in Attachment C. Participant's contact information must be provided to CDPH prior to execution of this Agreement. Participant reserves the right to make changes to the contact information in Attachment C. Said changes shall not require an amendment to this Agreement.
- XVI.** Compliance with California Health and safety Code Section 121022(h): CDPH and Participant shall comply, when required, with California Health and safety Code Section 121022, subdivision (h), which provides as follows: "Any potential or actual breach of confidentiality of HIV-related public health records shall be investigated by the local health officer, in coordination with the department, when appropriate. The local health officer shall immediately report any evidence of an actual breach of confidentiality of HIV-related public health records at a city or county level to the department and the appropriate law enforcement agency. The department shall investigate any potential or actual breach of confidentiality of HIV-related public health records at the state level, and shall report any evidence of such a breach of confidentiality to an appropriate law enforcement agency."
- XVII.** Indemnification: Each party hereby agrees to indemnify, hold harmless, and defend the other party from and against any and all claims, losses, liabilities, damages, costs and other expenses (including attorneys' fees) that result from or arise directly or indirectly out of or in connection with any negligent act or omission or willful misconduct of Participant or CDPH, its officers, workforce members or agents relative to the CDTSD Data, including, without limitation, any violations of Participant's or CDPH's responsibilities under this Agreement.
- XVIII.** Term of Agreement: Unless otherwise terminated earlier in accordance with the provisions set forth herein, this Agreement shall remain in effect for three (3) years after the latest signature date in the signature block below. After three (3) years, this Agreement will expire without further action. If the parties wish to extend this Agreement, they may do so by reviewing, updating, and reauthorizing this Agreement. If one or both of the parties wish to terminate this Agreement prematurely, they may do so upon 30 days advanced notice. CDPH may also terminate this Agreement pursuant to Section XIX, below.
- XIX.** Termination for Cause:
- A.** Termination Upon Breach: A breach by either party of any provision of this Agreement, as determined by CDPH or Participant, shall constitute a material breach of the Agreement and

grounds for immediate termination of the Agreement by CDPH or Participant. At its sole discretion, CDPH or Participant may give the breaching party 30 days to cure the breach.

B. Judicial or Administrative Proceedings: CDPH and Participant shall notify the other party if it is named as a defendant in a criminal proceeding related to a violation of this Agreement. CDPH or Participant may terminate the Agreement if the other party is found guilty of a criminal violation related to a violation of this Agreement. CDPH or Participant may terminate the Agreement if a finding or stipulation that the other party has violated any security or privacy laws is made in any administrative or civil proceeding in which the other party is a party or has been joined.

XX. Amendment: The parties acknowledge that Federal and State laws relating to information security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such laws. The parties specifically agree to take such action as is necessary to implement new standards and requirements imposed by regulations and other applicable laws relating to the security or privacy of CDTSD Data. Upon CDPH's request, Participant agrees to promptly enter into negotiations with CDPH concerning an amendment to this Agreement embodying written assurances consistent with new standards and requirements imposed by regulations and other applicable laws. CDPH may terminate this Agreement upon thirty (30) days written notice in the event:

A. Participant does not promptly enter into negotiations to amend this Agreement when requested by CDPH pursuant to this Section, or

B. Participant does not enter into an amendment providing assurances regarding the safeguarding of CDTSD Data that CDPH in its sole discretion deems sufficient to satisfy the standards and requirements of applicable laws and regulations relating to the security or privacy of CDTSD Data.

XXI. Assistance in Litigation or Administrative Proceedings: Each party shall make itself and any workforce members or agents assisting in the performance of obligations under this Agreement available to the other party at no cost to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced based upon claimed violation of laws relating to security and privacy, which involve inactions or actions by CDPH or Participant, except where CDPH and Participant or their workforce members or agents are a named adverse party.

XXII. Disclaimer: CDPH makes no warranty or representation that compliance by Participant with this Agreement will be adequate or satisfactory for Participant's own purposes or that any information in Participant's possession or control, or transmitted or received by Participant, is or will be secure from unauthorized use or disclosure. Participant is solely responsible for all decisions made by Participant regarding the safeguarding of CDTSD Data.

XXIII. Transfer of Rights: Participant has no right and shall not delegate, assign, or otherwise transfer or delegate any of its rights or obligations under this Agreement to any other person or entity. Any such transfer of rights shall be null and void.

XXIV. No Third-Party Beneficiaries: Nothing express or implied in the terms and conditions of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CDPH or Participant, any rights, remedies, obligations or liabilities whatsoever.

- XXV.** Interpretation: The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with regulations and applicable State and Federal laws. The parties agree that any ambiguity in the terms and conditions of this Agreement shall be resolved in favor of a meaning that complies and is consistent with Federal and State laws.
- XXVI.** Survival: The respective rights and obligations of Participant under Sections VII, IX, XIII and XVII of this Agreement shall survive the termination or expiration of this Agreement.
- XXVII.** Attachments: The parties mutually agree that the following specified Attachments are part of this Agreement:
- A.** Attachment A: State Law Authority for: (1) Use and Disclosure of CDTSD Data; and, (2) Application of HIPAA preemption exception for public health (45 C.F.R. § 160.203(c))”.
 - B.** Attachment B: Participant Breach and Security Incident Contact Information.
- XXVIII.** Entire Agreement: This Agreement, including all attachments, constitutes the entire agreement between CDPH and Participant. Any and all modifications of this Agreement must be in writing and signed by all parties. Any oral representations or agreements between the parties shall be of no force or effect.
- XXIX.** Severability: The invalidity in whole or in part of any provisions of this Agreement shall not void or affect the validity of any other provisions of this Agreement.
- XXX.** Choice of Law and Venue: The laws of the state of California will govern any dispute from or relating to this Agreement. The parties submit to the exclusive jurisdiction of the state of California and federal courts for or in Sacramento and agree that any legal action or proceeding relating to the Agreement may only be brought in those courts.

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XXXI. Signatures:

IN WITNESS, WHEREOF, the Parties have executed this Agreement as follows:

On behalf of the **Participant**, the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

_____	_____
Name (Print)	Name (Sign)
_____	_____
Title [Health Officer (or other authorized official)]	Date
_____ Department of Public Health	
County/City Name (Print)	

On behalf of the **Department of Public Health**, the undersigned individual(s) hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

_____	_____
Heidi W. Steinecker	Date
Deputy Director, Center for Health Care Quality	
California Department of Public Health	

Attachment A

State Law Authority for:

- (1) Use and Disclosure of CDTSD Data; and,
- (2) Application of HIPAA preemption exception for public health (45 C.F.R. § 160.203(c)).

General Authority:

1) Information Practices Act

- a. CA Civil Code section 1798.24(e) An agency shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed, as follows: (e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.

Specific Authority:

1) Functions and Duties of the Department of Public Health, Reportable Diseases and Conditions from Providers and Labs

- a. California Health and Safety Code section 120130
 - i. Subdivision (a): The department shall establish a list of reportable diseases and conditions. For each reportable disease and condition, the department shall specify the timeliness requirements related to the reporting of each disease and condition, and the mechanisms required for, and the content to be included in, reports made pursuant to this section... Those diseases listed as reportable shall be properly reported as required to the department by the health officer."
 - ii. Subdivision (g): Commencing July 1, 2009, or within one year of the establishment of a state electronic laboratory reporting system, whichever is later, a report generated pursuant to this section, or Section 121022, by a laboratory shall be submitted electronically in a manner specified by the department. The department shall allow laboratories that receive incomplete patient information to report the name of the provider who submitted the request to the local health officer.
- b. Title 17. Public Health Division 1. State Department of Health Services Chapter 4. Preventive Medical Service
 - i. Article 1 Reporting:
 1. Section 2500: Provider Reporting of Diseases and Conditions to the Local Health Officer and Confidentiality of Reports
 2. Section 2501: Investigation of Reported Case, Unusual Disease, or Outbreak of Occurrence
 3. Section 2502: Reports by Local Health Officer to State Department of Public Health.
 4. Section 2505: Notification of Diseases and Conditions by Laboratories

- 2) HIV Specific Laws related to Reporting, Surveillance Sharing and Confidentiality, Penalties for Disclosure:
- a. Health and Safety Code section 121022, HIV Reporting by Providers and Labs
 - b. Health and Safety Code section 121023, Lab Reporting of CD4+ T-Cell test results
 - c. Health and Safety Code section 121025 (b) disclosure of HIV records between state and local public health agencies for when the confidential information is necessary to carry out the duties of the agency in the investigation, control, or surveillance of disease, as determined by the state or local public health agency.
 - d. Title 17. Public Health Division 1. State Department of Health Services Chapter 4. Preventive Medical Service
 - i. Article 3.5, Reporting of HIV, Sub article 4 Sections: 2641.5-2643.20
 - e. California HIV/AIDS-Specific Statutes Pertaining to Confidential Public Health Records and Penalties for Disclosures (this list is not comprehensive):
 - i. All HIV/AIDS case reports and any HIV/AIDS related information collected or maintained by CDPH (or its agents or contractors) or a local health department or agency (or its agent or contractors), that may directly or indirectly identify an individual are considered confidential public health record(s) under California Health and Safety Code (HSC) section 121035(c) and must be handled with the utmost confidentiality.
 - ii. HSC section 121025(a) prohibits the disclosure of HIV/AIDS-related public health records that contain any personally identifying information to any third-party, unless authorized by law for public health purposes, or by the written consent of the individual identified in the record or his/her guardian/conservator. Except as permitted by law, any person who negligently discloses information contained in a confidential public health record to a third party is subject to a civil penalty of up to \$5,000 plus court costs, as provided in HSC section 121025(e)(1). Any person who willfully or maliciously discloses the content of a public health record, except as authorized by law, is subject to a civil penalty of \$5,000-\$25,000 plus court costs as provided by HSC 121025(e)(2). Any willfully, malicious, or negligent disclosure of information contained in a public health record in violation of state law that results in economic, bodily, psychological harm to a person named in the record is a misdemeanor, punishable by imprisonment for a period of up to one year and/or a fine of up to \$25,000 plus court costs [HSC section 121025(e)(3)]. Any person who is guilty of a confidentiality infringement of the foregoing type may be sued by the injured party and shall be personally liable for all actual damages incurred for economic, bodily, or psychological harm as a result of the breach [HSC section 121025(e)(4)]. Each disclosure in violation of California law is a separate, actionable offense [HSC section 121025(e)(5)].

Attachment B

Participant Contact Information

The following contact information must be provided prior to execution of this Agreement.

Participant Program Manager	Participant Privacy Officer	Participant Chief Information Security Officer (and IT Service Desk Telephone)
XXXX Email: XXXX Telephone: (XXX) XXX-XXXX	XXXX Email: XXXX Telephone: (XXX) XXX-XXXX	XXXX Email: XXXX Telephone: (XXX) XXX-XXXX Telephone: IT Service Desk (XXX) XXX-XXXX



County of Inyo



Probation

CONSENT - ACTION REQUIRED

MEETING: February 2, 2021

FROM: Jeffrey Thomson

SUBJECT: Approval of contract with Inyo Council for the Arts Grants in Support of Program

RECOMMENDED ACTION:

Request Board approve the contract between the County of Inyo and Inyo Council for the Arts of Bishop, CA for the provision of an after-school music and arts program to youth in an amount not to exceed \$12,600 for the period of February 8, 2021 through December 31, 2021, contingent upon the Board's approval of the Fiscal Year 2021-2022 Budget, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.

SUMMARY/JUSTIFICATION:

The Probation Department has a great opportunity to partner with the Inyo Council for the Arts (ICA) to provide an after-school music and arts program to youth throughout Inyo County. The program will be administered by ICA, with collaboration and financial support from the Inyo County Probation Department (ICPD). Based on the evidence that arts-based programs serving at-risk populations can be therapeutic in themselves, the program will generally focus on improving academic achievement by providing passionate teaching artists who specialize in working with youth, a safe and comfortable studio space, and thoughtful and engaging lesson plans.

BACKGROUND/HISTORY OF BOARD ACTIONS:

Inyo County Probation Department has renewed this contract with Inyo Council for the Arts for the past two (2) Fiscal Years.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The Board could choose not to approve the contract with Inyo Council for the Arts, however this is not recommended as funds have been identified and these types of after-school programs are a great benefit to our area youth.

OTHER AGENCY INVOLVEMENT:

N/A

FINANCING:

This contract would be expended out of the Juvenile Institutions Budget 023100, Professional Services Object Code 5265 and funded from YOBG grant monies.

ATTACHMENTS:

1. FY 20-21 Inyo Council for the Arts Contract

APPROVALS:

Krystal Leonard	Created/Initiated - 1/13/2021
Darcy Ellis	Approved - 1/14/2021
Krystal Leonard	Approved - 1/14/2021
Marshall Rudolph	Approved - 1/14/2021
Amy Shepherd	Approved - 1/14/2021
Sue Dishion	Approved - 1/19/2021
Aaron Holmberg	Approved - 1/19/2021
Krystal Leonard	Approved - 1/19/2021
Jeffrey Thomson	Final Approval - 1/20/2021

AGREEMENT BETWEEN COUNTY OF INYO
AND INYO COUNCIL FOR THE ARTS
FOR THE PROVISION OF GRANT IS SUPPORT OF PROGRAM SERVICES

INTRODUCTION

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the grant in support of program services of Inyo Council for the Arts of Inyo County (hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. SCOPE OF WORK.

The Contractor shall furnish to the County, upon its request, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein. Requests by the County to the Contractor to perform under this Agreement will be made by Jeffrey L. Thomson or his designee, whose title is: Chief Probation Officer. Requests to the Contractor for work or services to be performed under this Agreement will be based upon the County's need for such services. The County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if County should have some need for such services or work during the term of this Agreement.

Services and work provided by the Contractor at the County's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those which are referred to in this Agreement.

2. TERM.

The term of this Agreement shall be from February 8, 2021 to December 31, 2021 unless sooner terminated as provided below.

3. CONSIDERATION.

A. Compensation. County shall pay to Contractor in accordance with the Schedule of Fees (set forth as Attachment B) for the services and work described in Attachment A which are performed by Contractor at the County's request.

B. Travel and per diem. Contractor will not be paid or reimbursed for travel expenses or per diem which Contractor incurs in providing services and work requested by County under this Agreement.

C. No additional consideration. Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive, from County, any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

D. Limit upon amount payable under Agreement. The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed Twelve thousand six hundred and no/100 Dollars

(\$ 12,600.00) (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

E. Billing and payment. Contractor shall submit to the County, once a month, an itemized statement of all services and work described in Attachment A, which were done at the County's request. This statement will be submitted to the County not later than the fifth (5th) day of the month. The statement to be submitted will cover the period from the first (1st) day of the preceding month through and including the last day of the preceding month. This statement will identify the date on which the services and work were performed and describe the nature of the services and work which were performed on each day. Upon timely receipt of the statement by the fifth (5th) day of the month, County shall make payment to Contractor on the last day of the month.

F. Federal and State taxes.

(1) Except as provided in subparagraph (2) below, County will not withhold any federal or state income taxes or social security from any payments made by County to Contractor under the terms and conditions of this Agreement.

(2) County will withhold California State income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor under this Agreement will exceed one thousand four hundred ninety nine dollars (\$1,499.00).

(3) Except as set forth above, County has no obligation to withhold any taxes or payments from sums paid by County to Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

(4) The total amounts paid by County to Contractor, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the California State Franchise Tax Board. To facilitate this reporting, Contractor shall complete and submit to the County an Internal Revenue Service (IRS) Form W-9 upon executing this Agreement.

4. WORK SCHEDULE.

Contractor's obligation is to perform, in a timely manner, those services and work identified in Attachment A which are requested by the County. It is understood by Contractor that the performance of these services and work will require a varied schedule. Contractor will arrange his/her own schedule, but will coordinate with County to ensure that all services and work requested by County under this Agreement will be performed within the time frame set forth by County.

5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.

A. Any licenses, certificates, or permits required by the federal, state, county, municipal governments, for contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement or as otherwise may be required. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County. Contractor will provide County, upon execution of this Agreement, with evidence of current and valid licenses, certificates and permits which are required to perform the services identified in Attachment A. Where there is a dispute between Contractor and County as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, County reserves the right to make such determinations for purposes of this Agreement.

B. Contractor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Contractor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration available at: <http://www.sam.gov>.

6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ET CETERA.

Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Contractor to provide the services identified in Attachment A to this Agreement. County is not obligated to reimburse or pay Contractor, for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

7. COUNTY PROPERTY.

A. Personal Property of County. Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, etc. provided to Contractor by County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of County. Contractor will use reasonable care to protect, safeguard and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, which is the result of Contractor's negligence.

B. Products of Contractor's Work and Services. Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Contractor's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Contractor will convey possession and title to all such properties to County.

8. INSURANCE.

For the duration of this Agreement Contractor shall procure and maintain insurance of the scope and amount specified in Attachment C and with the provisions specified in that attachment.

9. STATUS OF CONTRACTOR.

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Attachment A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of the Contractor is to be considered an employee of County. It is understood by both Contractor and County that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. As an independent contractor:

A. Contractor shall determine the method, details, and means of performing the work and services to be provided by Contractor under this Agreement.

B. Contractor shall be responsible to County only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

C. Contractor, its agents, officers, and employees are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent contractors, and not as employees of County.

10. DEFENSE AND INDEMNIFICATION.

Contractor shall hold harmless, defend and indemnify County and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damages which was caused by the sole negligence or willful misconduct of the County.

11. RECORDS AND AUDIT.

A. Records. Contractor shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, county, municipal, ordinances, regulations, and directions. Contractor shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. Contractor may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, microphotographs, or other authentic reproduction of such records.

B. Inspections and Audits. Any authorized representative of County shall have access to any books, documents, papers, records, including, but not limited to, financial records of Contractor, which County determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

12. NONDISCRIMINATION.

During the performance of this Agreement, Contractor, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. Contractor and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said act.

13. CANCELLATION.

This Agreement may be canceled by County without cause, and at will, for any reason by giving to Contractor thirty (30) days written notice of such intent to cancel. Contractor may cancel this Agreement without cause, and at will, for any reason whatsoever by giving thirty (30) days written notice of such intent to cancel to County.

14. ASSIGNMENT.

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience, and training of Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, or any part of it, without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

15. DEFAULT.

If the Contractor abandons the work, or fails to proceed with the work and services requested by County in a timely manner, or fails in any way as required to conduct the work and services as required by County, County may declare the Contractor in default and terminate this Agreement upon five (5) days written notice to Contractor. Upon such termination by default, County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed to the date of termination.

16. WAIVER OF DEFAULT.

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph twenty-two (22) below.

17. CONFIDENTIALITY.

Contractor further agrees to comply with the various provisions of the federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Contractor in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Contractor agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Contractor only with the express written consent of the County. Any disclosure of confidential information by Contractor without the County's written consent is solely and exclusively the legal responsibility of Contractor in all respects.

Notwithstanding anything in the Agreement to the contrary, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 45, Code of Federal Regulations Section 205.50, the Health Insurance Portability and Accountability Act of 1996, and Sections 10850 and 14100.2 of the Welfare and Institutions Code, and regulations adopted pursuant thereto. For the purpose of this Agreement, all information, records, and data elements pertaining to beneficiaries shall be protected by the provider from unauthorized disclosure.

18. CONFLICTS.

Contractor agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

19. POST AGREEMENT COVENANT.

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the County in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Contractor agrees for a period of two years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with the County, or who has been an adverse party in litigation with the County, and concerning such, Contractor by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

20. SEVERABILITY.

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

21. FUNDING LIMITATION.

The ability of County to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, County has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying Contractor of the cancellation, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements of paragraph twenty-two (22) (Amendment).

22. AMENDMENT.

This Agreement may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

23. NOTICE.

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the terms of this Agreement, which Contractor or County shall be required, or may desire, to make, shall be in writing and may be personally served, or sent by prepaid first class mail to, the respective parties as follows:

County of Inyo	
<u>Inyo County Probation Department</u>	Department
<u>P.O. Box T</u>	Address
<u>Independence, CA 93526</u>	City and State

Contractor:	
<u>Inyo Council for the Arts</u>	Name
<u>150 Willow Street</u>	Address
<u>Bishop, CA 93514</u>	City and State

24. ENTIRE AGREEMENT.

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

////

////

**AGREEMENT BETWEEN COUNTY OF INYO
AND INYO COUNCIL FOR THE ARTS**
FOR THE PROVISION OF GRANT IN SUPPORT OF PROGRAM **SERVICES**

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS
THIS _____ DAY OF _____.

COUNTY OF INYO

By: _____
Signature

Print or Type Name
Dated: _____

CONTRACTOR

By: Lynn Cooper
Signature
Lynn Cooper
Print or Type Name
Dated: 12-29-2020

APPROVED AS TO FORM AND LEGALITY:

County Counsel

APPROVED AS TO ACCOUNTING FORM:

County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

Personnel Services

APPROVED AS TO INSURANCE REQUIREMENTS:

County Risk Manager

ATTACHMENT A

**AGREEMENT BETWEEN COUNTY OF INYO
AND INYO COUNCIL FOR THE ARTS
FOR THE PROVISION OF GRANT IN SUPPORT OF PROGRAM SERVICES**

TERM:

FROM: February 8, 2021 **TO:** December 31, 2021

SCOPE OF WORK:

Exemplary teaching artists from across Inyo County will provide comprehensive, standards-based, fine art, after school classes for Inyo County students. The classes will be offered to all county students, with a focus on at-risk and justice-involved youth. The program will be administered by Inyo Council for the Arts (ICA), with collaboration and financial support from the Inyo County Probation Department (ICPD). Based on the evidence that arts-based programs serving at-risk populations can be therapeutic in themselves, our program will generally focus on improving outcomes such as prosocial behaviors, resilience, problem-solving skills, self-regulation, and academic achievement by providing passionate teaching artists who specialize in working with youth, a safe and comfortable studio space, and thoughtful and engaging lesson plans.

Students will acquire an understanding of the elements and principles of art. Each unit will teach specialized skills, language, and cultural relevance. We will be offering classes that are rarely, if ever, available in our county, giving students opportunities for artistic and personal growth. Our rural location means we enjoy a low student to teacher ratio, allowing assessment of each student's knowledge, talents, and struggles. Teaching artists will mentor each student and provide positive feedback and support.

In a safe, supportive environment, students will enjoy the additional developmental benefits of confidence, patience, collaboration, and personal growth. When the pressure of external factors are eliminated, youth can relax and be confident in ways they may otherwise struggle with, letting them get in touch with what makes them unique. We hope to see this translate into incredible art and a more self-aware, confident, and thoughtful youth.

TOTAL FUNDED COSTS \$ 12,600.00

ATTACHMENT B

**AGREEMENT BETWEEN COUNTY OF INYO
AND INYO COUNCIL FOR THE ARTS
FOR THE PROVISION OF GRANT IN SUPPORT OF PROGRAM SERVICES**

TERM:

FROM: February 8, 2021 **TO:** December 31, 2021

SCHEDULE OF FEES:

1. Funded Activities/Service (Grant-in-Support):

Funded Costs:

a.

- | | |
|---|------------|
| • Teaching artists, including payroll taxes and work comp | \$8,500.00 |
| • Materials | \$1,500.00 |
| • Mileage | \$200.00 |
| • Administrative costs - hiring/scheduling/coordination payroll | \$2,400.00 |

b. List of Activities:

After school art and music classes

TOTAL FUNDED COSTS \$ 12,600.00

ATTACHMENT C

**AGREEMENT BETWEEN COUNTY OF INYO
AND INYO COUNCIL FOR THE ARTS
FOR THE PROVISION OF GRANT IN SUPPORT OF PROGRAM SERVICES**

TERM:

FROM: February 8, 2021 **TO:** December 31, 2021

SEE ATTACHED INSURANCE PROVISIONS

Specifications 1
Insurance Requirements for Most Contracts
(Not for Professional Services or Construction Contracts)

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$500,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If the contractor maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Verification of Coverage

Contractor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.



County of Inyo



County Administrator

DEPARTMENTAL - ACTION REQUIRED

MEETING: February 2, 2021

FROM: Assistant Clerk of the Board

SUBJECT: Letter in Support of ESTA Grant Application

RECOMMENDED ACTION:

Request Board approve and authorize the Chairperson to sign a letter of support for Eastern Sierra Transit Authority's FTA Section 5304 grant application for fleet electrification planning.

SUMMARY/JUSTIFICATION:

Eastern Sierra Transit Authority is applying for a Federal Transit Act Section 5304 grant through Caltrans and is asking the Inyo County Board of Supervisors to submit a letter to Caltrans in support of its application.

According to ESTA, the grant funding is being sought to fund its efforts to plan for zero-emission vehicles in its fleet. Pages 56-57 of Inyo County's Regional Transportation Plan, as quoted in the attached letter, support ESTA's efforts.

Staff recommends the Board review the draft letter, suggest any desired revisions and/or additions, and authorize the Chairperson to sign the letter, which ESTA is hoping to have in its possession by February 8.

BACKGROUND/HISTORY OF BOARD ACTIONS:

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The Board could choose not to approve the letter of support but this is not recommended, as ESTA needs funding assistance for planning efforts critical to addressing future public transit needs in the Eastern Sierra.

OTHER AGENCY INVOLVEMENT:

Eastern Sierra Transit Authority

FINANCING:

There is no fiscal impact associated with approving the letter of support.

ATTACHMENTS:

1. Letter Supporting ESTA FTA Grant Application

APPROVALS:

Darcy Ellis
Clint Quilter

Created/Initiated - 1/28/2021
Final Approval - 1/28/2021



EL CAMINO SIERRA

BOARD OF SUPERVISORS COUNTY OF INYO

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DARCY ELLIS
Assistant Clerk of the Board

February 2, 2021

California Department of Transportation
Division of Transportation Planning
1120 N Street
Sacramento, CA 95814

Dear Grant Administrator:

On behalf of Inyo County Board of Supervisors, I would like to express our support for the Eastern Sierra Transit Authority's FTA Section 5304 grant application for fleet electrification planning.

Pages 56-57 of Inyo County's Regional Transportation Plan states:

"AIR QUALITY

Air quality is a significant consideration in planning for and evaluation of transportation systems. Both state and federal law contain significant regulations concerning the impact of transportation projects on air quality. Under state law, local and regional air pollution control districts have the primary responsibility for controlling air pollutant emissions from all sources other than vehicular sources. Control of vehicular air pollution is the responsibility of the California Air Resources Board (CARB). CARB divides California into air basins and adopts standards of quality for each air basin. Inyo County is part of the Great Basin Valleys Air Basin with air quality managed by the Great Basin Unified Air Pollution Control District.

The United States Environmental Protection Agency (EPA) established standards for air pollutants that affect the public health and welfare. Likewise, CARB established state standards and are higher than the federal standards. The six criteria pollutants are Carbon Monoxide (CO), Nitrogen Dioxide (NO₂), Ozone (O₃), Particulate Matter (PM), Lead (Pb), and Sulfur Dioxide (SO₂).

Inyo County is considered "in attainment" or unclassified for every federal air quality standard except for the PM-10 standard, which is not in attainment in the Owens Valley area. As for state standards, Inyo County is not in attainment for PM-2.5 and PM-10.

PM-2.5 and PM-10 are caused by a combination of sources, including fugitive dust, combustion from automobiles and heating, road salt, conifers, and others. The difference between the two pollutants is the size of the particles—PM-10 is particulate matter with an average maximum size of 10 microns and PM-2.5 is PM that is 2.5 microns or smaller. Constituents that comprise suspended particulates include organic, sulfate, and nitrate aerosols that are formed in the air from emitted hydrocarbons, chloride, sulfur oxides, and oxides of nitrogen. Particulates reduce visibility and pose a health hazard by causing respiratory and related problems. In the Owens Valley area, PM-10 pollution is directly related to windblown dust from the dry Owens Lake Bed.

The Great Basin Unified Air Pollution Control District prepared a SIP for PM-10 in 2008 with a 2013 amendment. The majority of the SIP addresses mitigation measures for LADWP to reduce windblown dust in the Owens Lake area. The plan does not attribute PM-10 levels to transportation. However, as indicated in the SIP and the input letter from the Great Basin Unified Air Pollution Control District regarding this RTP, all transportation projects must comply with district rules 400 – 402, asphalt plants require district permitting, diesel vehicles must comply with state regulations, and PM10 emissions must be quantified for transportation-related projects in the Owens Valley.

CLIMATE CHANGE

Global climate change or “global warming” is an important issue which is closely related to transportation. Climate change is caused by the release of greenhouse gases (GHG’s) such as carbon dioxide, methane, nitrous oxide, hydro fluorocarbons, perfluorocarbons, and sulfur hexafluoride into the atmosphere that traps heat and increases temperatures near the earth’s surface. Motorized vehicles emit carbon dioxide and are large contributors to GHG emissions. In fact, according to the CARB GHG Inventory for 2012, transportation accounts for roughly 37.5 percent of total GHG emissions in California. Forecasted, long-term consequences of climate change range from a rise in the sea level to a significant loss of the Sierra snowpack. Despite potentially devastating long term affects, climate change does not have immediately visible effects such as smog. However, GHG emissions are an important air quality issue which needs to be addressed in regional transportation planning documents. State climate change policies and strategies to further reduce GHG emissions locally in Inyo County are discussed further in Chapters 3 and 4.”

These sections clearly support ESTA’s efforts to plan for zero emissions vehicles.

As a member of our communities, and elected officials, the Board can attest to Eastern Sierra Transit's dedication to serving the needs of Inyo County. Their staff understands the needs of our community and provides the highest quality of service to the entire region.

The regional and local services provided by ESTA are beneficial to Inyo County and the Eastern Sierra region as a whole. Please feel welcome to contact Mike Errante, Director of Public Works, with any questions at merrante@inyocounty.us or (760) 878-0201 with any questions.

Sincerely,

Jeff Griffiths, Chair
Inyo County Board of Supervisors



County of Inyo



County Administrator - Recycling & Waste Management

DEPARTMENTAL - ACTION REQUIRED

MEETING: February 2, 2021

FROM: Leslie Chapman

SUBJECT: Preferred Septic and Disposal, Inc. request to assign Franchise Agreement to Madera Disposal dba Bishop Waste Disposal.

RECOMMENDED ACTION:

Request Board consider request from Preferred Septic and Disposal, Inc. to assign the Franchise Agreement Between the County of Inyo and Preferred Septic and Disposal, Inc. for Collection of Solid Waste from Residential and Commercial Customers (Agreement) to Madera Disposal Systems, Inc. dba Bishop Waste Disposal, and either:

- A) approve Preferred Septic and Disposal's request and direct staff to prepare the Resolution required by Section 17.01 of the agreement,
- B) find that the request is not reasonable because assigning the Agreement to the only remaining franchisee is contrary to the intent of the agreement: "to provide Customers and the County with improved Collection Services while maintaining the benefits of competition" (Section 10.01), or
- C) Direct staff to work with the existing waste haulers to develop an amendment or replacement for the existing franchise agreement that would allow Preferred Septic and Disposal, Inc. to sell its stock while maintaining the opportunity for a second franchisee to enter the Inyo County solid waste collection market (staff recommendation).

SUMMARY/JUSTIFICATION:

Mr. Dale Comontofski, President of Preferred Septic and Disposal Inc. formally submitted a written request, dated December 18, 2020, (attached) to transfer its Franchise Agreement to Madera Disposal Systems, Inc., dba Bishop Waste Disposal. The letter was submitted in accordance with the terms of Franchise Agreement. Section 16.01(b) says, "Franchisee may not Assign this Agreement except upon prior written consent of the County expressed by resolution." The Assignment that Mr. Comontofski is requesting is defined in Section 16.01(c)(1) which states, "selling, exchanging or otherwise transferring effective control of management of the Franchisee (through sale, exchange or other transfer of outstanding stock or otherwise." Additionally, Mr. Comotofski has submitted a check for \$5,000 as a good faith deposit toward the Franchise Transfer fee to cover all direct and indirect costs in accordance with Section 16.01(f).

Section 16.01(e) lists conditions that must be satisfied before the County is obligated to consider a proposal. The contract with the full text is attached and the elements are paraphrased here:

1. Ninety days written notice
2. Assignee must be qualified by financial condition, background, and experience, to be able to fully assume and satisfactorily perform all of Franchisee's obligations.
3. Franchisee must not be in default under any of the material terms and conditions
4. Assignee must be willing to assume all Franchise obligations.

While this transaction appears to meet all of the criteria for an assignee, Bishop Waste is an existing franchisee, and assignment of the Agreement would leave one large waste hauler servicing the area. While the County is happy with the services provided by Bishop Waste and it appears to have the means to absorb the business of Preferred Waste, this transaction appears contrary to the intent of the County's policy, which is referenced in Section 10.01 of the Franchise Agreement as being, "to provide Customers and the County with improved Collection Services while maintaining the benefits of open competition." Additionally, based on review of historical documentation during the creation of the franchise agreement, competition was intended to provide the opportunity for smaller businesses to compete through the imposition of a floor rate, which is a minimum amount that any hauler may charge for services. The theory is that without a floor rate, a large waste hauler would have the ability to undercut the prices of a smaller company, forcing the small company out of business, at which time the large company could exercise free will in price setting. Therefore, if your Board determines that the transfer is appropriate, staff recommends making it conditional on a contract amendment to change the floor rate to a ceiling rate, and addressing quality control requirements that would otherwise be a function of competition.

Another consideration for you Board is the attached letter from D&S Waste. Upon learning of Preferred Septic and Disposal's intent to sell the business, they submitted the attached letter declaring their interest in expanding to Inyo County. They have been in the waste hauling business for 43 years and currently operate out of Yerington and Mono County. While there is no provision in the current franchise agreement to add a waste disposal company, the letter demonstrates that there are competitors interested in the market.

While it is not the County's intent to interfere with the sale of a private business, it also should be cautious not to assist in the creation of a local monopoly or create barriers to competition. The existing Franchise Agreement has certain safeguards that "level the playing field" and reduce risk for a smaller business while providing competitive benefits to our community such as maintaining affordable pricing and keeping standards of customer service high. Therefore, staff recommends option #3 which will support the sale while maintaining a place in the market for smaller competitors.

BACKGROUND/HISTORY OF BOARD ACTIONS:

The County is responsible for protection of public health and the environment. The County is authorized and required to provide solid waste handling services to its citizens under the provision of the California Integrated Waste Management Act, which is under the California Public Resources Code, Section 40000 et. Seq., including source reduction, recycling, composting, and the collection, transfer and disposal of solid waste within the unincorporated County area. Solid Waste services within the City of Bishop are administered by the County pursuant to a joint Solid Waste Management Plan.

Effective May 1, 2019, the County switched from three year agreement with the waste haulers to the current Franchise Agreements with Bishop Waste Disposal and Preferred Septic and Disposal, Inc. to provide those businesses providing solid waste handling services in Inyo County with certainty as to the long-term viability of their enterprises and to clarify the County's ability to specify and regulate those services, while continuing to provide the benefits of a non-exclusive permit or franchise system.

The Franchise Agreement expires on December 31, 2026 with limited options for termination or transfer without amending the agreement.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

OTHER AGENCY INVOLVEMENT:

Preferred Septic and Disposal
Madera Disposal Systems, Inc. dba Bishop Disposal

FINANCING:

Preferred Septic has submitted a deposit of \$5,000 to be applied towards the direct and indirect costs of the transfer. Recovery of costs is capped at \$10,000 per the Franchise Agreement.

ATTACHMENTS:

1. Preferred Franchise Agreement 2019
2. Preferred Franchise Assignment Letter 12-18-20
3. D&S Letter to Supervisors 2021

APPROVALS:

Leslie Chapman	Created/Initiated - 1/27/2021
Darcy Ellis	Approved - 1/27/2021
Leslie Chapman	Approved - 1/27/2021
Sue Dishion	Approved - 1/27/2021
Marshall Rudolph	Approved - 1/28/2021
Amy Shepherd	Final Approval - 1/28/2021

FRANCHISE AGREEMENT
BETWEEN THE COUNTY OF INYO
AND
PREFERRED SEPTIC AND DISPOSAL, INC.
FOR COLLECTION OF SOLID WASTE
FROM RESIDENTIAL AND COMMERCIAL CUSTOMERS
WITHIN INYO COUNTY

Commencement Date: May 1, 2019
Expiration Date: December 31, 2026

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TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS AND CONTRACT INTERPRETATION	5
1.01 Definitions.....	6
1.02 Interpretation and Construction	6
1.03 Integration	6
1.04 Severability	7
1.05 Interpretation.....	7
ARTICLE 2. REPRESENTATIONS AND WARRANTIES	7
2.01 Franchisee	7
2.02 County.....	7
ARTICLE 3. TERM OF AGREEMENT	8
3.01 Term.....	8
3.02 Survival of Certain Provisions	8
3.03 Effect on Prior Agreements	8
3.04 Limit on Number of Service Providers	9
ARTICLE 4. COLLECTION	10
4.01 Scope of Basic Franchise Services	10
4.02 Pickup of Excess and Bulky Waste	14
4.03 Service Standards.....	14
4.04 Service Exceptions	15
4.05 Customer Service	16
4.06 Public Education and Community Relations	17
4.07 Customers' Privacy.....	17
4.08 No Discrimination.....	17
4.09 Franchisee Billing	17
4.10 Description of Customers' Rights.....	18
4.11 Customer Satisfaction Survey.....	18
4.12 Performance Review.....	18
4.13 Enforcement of Franchise	21
ARTICLE 5. OPERATIONS.....	21
5.01 Routing.....	21
5.02 Vehicles, Service Assets, and Drivers	22
5.03 Personnel.....	23
5.04 Unpermitted Waste	22
ARTICLE 6. DIVERSION	23
6.01 Diversion Reporting	23
6.02 Additional Programs	25

ARTICLE 7. SOLID WASTE DISPOSAL	26
7.01 Transportation to Designated Disposal Facility.....	26
7.02 Defense and Indemnification; Release.....	27
7.03 Disposal Fees	27
ARTICLE 8. MISCELLANEOUS SERVICE PROVISIONS	28
8.01 Emergency Services.....	28
8.02 Compliance with Applicable Law	29
8.03 Cooperation with Waste Studies.....	30
8.04 Waste Studies.....	30
8.05 Service Materials Belong to County	30
8.06 Recycled Materials.....	30
8.07 Responsiveness to County	30
8.08 Changes in Scope or Specifications of Franchise Services	30
8.09 Failure to Report	31
ARTICLE 9. INTENTIONALLY OMMITTED.....	31
ARTICLE 10. RECORDS AND REPORTING	31
10.01 Intent and Review	31
10.02 Reporting.....	32
ARTICLE 11. INSURANCE, INDEMNIFICATION AND PERFORMANCE ASSURANCES.....	34
11.01 Insurance	34
11.02 Franchisee Defense and Indemnification.....	36
11.03 Letter of Credit/Performance Bond	38
ARTICLE 12. SERVICE FEES.....	38
12.01 Service Fees	39
12.02 Franchise Fee Payable by Franchisee	43
12.03 Fee Disputes.....	44
ARTICLE 13. BREACHES, DEFAULTS, DAMAGES AND OTHER REMEDIES	45
13.01 Certain Breaches and Damages	45
13.02 Remedies Upon Default.....	47
13.03 Remedies Not Exclusive	47
13.04 Waivers	47
13.05 Jurisdiction, Venue	48
13.06 Costs.....	48
13.07 Assurance of Performance	48
13.08 County Right to Perform Franchise Services.....	49

ARTICLE 14. FRANCHISEE’S OBLIGATIONS UPON EXPIRATION OR TERMINATION	50
14.01 Pay Outstanding Amounts	50
14.02 Cooperation During Transition	50
ARTICLE 15. THE PARTIES.....	50
15.01 Franchisee is Independent Contractor.....	49
15.02 Parties in Interest.....	49
15.03 Binding on Successors	49
15.04 Further Acts	49
15.05 Actions of the County in Its Governmental Capacity	49
15.06 Franchisee’s Obligations Performed at Its Sole Expense	49
15.07 Parties’ Representatives	50
15.08 Due Diligence	50
15.09 Subcontracting	50
15.10 No Use of County Name.....	51
ARTICLE 16. ASSIGNMENT & Amendments	52
16.01 Assignment	52
16.02 Amendments	53
ARTICLE 17. NOTICES, CONSENTS, APPROVALS, ETC	53
18.01 Notices	54
18.02 Consents and Approvals	54
ARTICLE 18. EXECUTION OF AGREEMENT	56

EXHIBITS

EXHIBIT 1.01:	DEFINITIONS.....	i
EXHIBIT 2.01:	REPRESENTATIONS AND WARRANTIES	xiii
EXHIBIT 4.01a:	SERVICE AREA.....	xv
EXHIBIT 4.05e:	CUSTOMER COMPLAINT AND BILLING DISPUTE RESOLUTION PROTOCOL.....	xvi
EXHIBIT 5.02g:	SERVICE ASSET INVENTORY	xvii
EXHIBIT 5.06:	UNPERMITTED WASTE SCREENING PROTOCOL	xviii
EXHIBIT 10.01a:	RECORDS	xx
EXHIBIT 10.02a:	QUARTERLY REPORTS	xxii
EXHIBIT 10.02b:	ANNUAL REPORTS	xxiv
EXHIBIT 13.01a:	SERVICE FEE FLOORS	xxvi
EXHIBIT 13.01	EXISTING AGREEMENTS.....	xxviii
EXHIBIT 14.01:	COMPENSATORY AND LIQUIDATED DAMAGES	xxix

This Agreement (“**Agreement**”) is made and entered into by and between the County of Inyo, a political subdivision of the State of California, (the “**County**”) and Preferred Septic and Disposal, Inc. (“**Franchisee**” and together, the “**Parties**”), on the later date of execution by the Parties indicated on the execution page of this Agreement.

RECITALS:

WHEREAS, The County is responsible for protection of public health and the environment. The County is authorized and required to provide solid waste handling services to its citizens under the provisions of the California Integrated Waste Management Act (the “**Act**”), which is under the California Public Resources Code at Section 40000, *et seq.*, including source reduction, recycling, composting, and the collection, transfer and disposal of solid waste within the unincorporated County area; and

WHEREAS, Pursuant to a joint Solid Waste Management Plan between the County and the City of Bishop, solid waste hauling services within the City of Bishop are administered by the County; and

WHEREAS, The County is liable for its solid waste by virtue of fines up to \$10,000 per day levied for noncompliance with the Act. Local public agencies like the County have also generally been held liable under federal Superfund laws for the costs of cleaning up Hazardous and Unpermitted Waste sites that accepted solid waste generated within the jurisdiction of the local public agency. Therefore, the County is prudent to provide for terms and conditions of its solid waste processing and disposal under this Agreement; and

WHEREAS, Franchisee has been providing quality and cost-effective solid waste handling services in Inyo County and within the City of Bishop. As an existing provider of solid waste handling services within the unincorporated area of Inyo County and within the City of Bishop, Franchisee has developed customer relationships and experience which will enable it to provide quality services throughout the region; and

WHEREAS, It is desirable to transition from a three-year permit system to a longer-term Franchise Agreement to provide those businesses providing solid waste handling services in Inyo County with certainty as to the long-term viability of their enterprises and to clarify the County’s ability to specify and regulate those services, while continuing to provide the benefits of a non-exclusive permit or franchise system; and,

WHEREAS, It is necessary to require Franchisee to deliver solid waste to a solid waste facility owned or otherwise specified by the County. In order to sustain its solid waste program, minimize its risk of liability for waste generated within its borders, and continue to provide beneficial solid waste services, such as education and recycling, to its residents and to visitors to the area, it is necessary to require that solid waste collected by franchisees be delivered to a solid waste facility owned and/or operated by the County unless otherwise specified by the County.

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

ARTICLE 1. DEFINITIONS AND CONTRACT INTERPRETATION

1.01 Definitions

In this Agreement words have the meanings defined in Exhibit 1.01, which controls in the event of any conflict with the definitions used in the preamble and recitals above.

1.02 Interpretation and Construction

a. Gender and Plurality. Words of the masculine gender include correlative words of the feminine and neuter genders, and vice versa. Words importing the singular number include the plural number, and vice versa, unless the context demands otherwise.

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

c. References to Parts. References to Sections and Articles refer to Sections and Articles of this Agreement, unless specified otherwise. References to Exhibits refer to Exhibits attached to this Agreement. Reference to "subsections" refers to the subsection contained in the same Section in which the reference occurs, unless otherwise provided.

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

e. Specifics No Limitation on Generalities. The mention of any specific duty or liability imposed upon the Franchisee may not be construed as a limitation or restriction of any general liability or duty imposed upon the Franchisee by this Agreement or Applicable Law.

f. Exhibits. The Exhibits to this Agreement are part of this Agreement to the same extent and effect as if included in the text of Articles 1 through 19.

1.03 Integration.

This Agreement contains the entire agreement between the Parties with respect to the rights and responsibilities of the Parties under this Agreement, including the enforcement and administration of this Agreement. This Agreement completely and fully supersedes all prior

understandings and agreements between the Parties with respect to their rights and responsibilities, including those contained in Procurement Proceedings.

It is the intention of the Board of Supervisors to revise the Inyo County Code to conform to this agreement.

1.04 Severability.

a. Substitute Provision. If any clause, sentence, provision, subsection, Section or Article of this Agreement (an “**Agreement Provision**”) is ruled unconstitutional, illegal, invalid, non-binding or unenforceable by any court of competent jurisdiction, then the Parties will, in good faith,:

- (1) promptly meet and attempt to negotiate a substitute for the Agreement Provision and any related amendments, deletions or additions to other provisions of this Agreement that together effect the Parties’ original intent to the greatest extent allowable under Applicable Law; and
- (2) If necessary or desirable to accomplish item (1), apply to the court that declared that invalidity for a judicial construction of the substituted Agreement Provision and any amendments, deletions or additions to this Agreement.

The Parties will split the costs of such application equally.

b. Remaining Provisions. The unconstitutionality, illegality, invalidity, non-binding nature or unenforceability of any Agreement Provision will not affect any of the remaining provisions of this Agreement.

1.05 Interpretation.

This Agreement must be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting. Franchisee acknowledges that it determined to participate in the procurement of this Agreement upon its own choice and initiative and during the course of that procurement County met and conferred with Franchisee and solicited Franchisee’s comments, exceptions and proposals with respect to provisions in the Agreement. The Parties have negotiated this Agreement at arms length and with advice of their respective attorneys, and no provision herein is construed against the County solely because it prepared this Agreement in its executed form.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.01 Franchisee. Franchisee represents and warrants as contained in Exhibit 2.01.

2.02 County. The County represents and warrants as contained in Exhibit 2.01.

ARTICLE 3. TERM OF AGREEMENT

3.01 Term.

a. Term. The Term of the Agreement commences on the Commencement Date and expires on December 31, 2026, unless terminated earlier.

b. Optional Extension Right. The Franchisee may request to extend the Term for up to two additional 5 year terms commencing, respectively, on January 1, 2027, and terminating December 31, 2031; and commencing January 1, 2032, and terminating on December 31, 2036, and the request(s) for extension shall not be unreasonably withheld, conditioned, or delayed by the County if the Franchisee has maintained compliance and remains in compliance with the terms and conditions of this Agreement, both at the time the option is exercised and on the day that the renewal term is to commence.

Notice of the exercise of said options shall be given to the County, in writing, no earlier than eight (8) months prior to the commencement of each such renewal period, but no later than five (5) months before the commencement of each such renewal period; provided, however, that County shall notify Franchisee if County does not receive the required notice from Franchisee within said time frame, and Franchisee shall have fourteen (14) days from Franchisee's receipt of the County's notice in which to cure the failure to give Franchisee's notice of renewal of the Franchise by serving the County with written notice of Franchisee's request to exercise the renewal option. If, within fourteen (14) days after receipt of the notice from the County, Franchisee fails to deliver to the County written notice exercising its renewal option, then Franchisee will be conclusively presumed to have waived its right to renew the term for the option period and this Agreement shall terminate at midnight on the last day of the term hereof.

3.02 Survival of Certain Provisions. The following provisions survive the Term:

- All representations, warranties, certifications and acknowledgements;
- Indemnities;
- Performance Obligations to pay County, including any County Payment Obligations;
- Obligations to maintain Records and submit Records and reports to County, including the final Annual Report;
- Confidentiality provisions; and
- Any other rights and obligations of the Parties stated to survive the Term.

3.03 Effect On Prior Agreements. Franchisee is currently one of two Persons authorized to provide solid waste handling services in the Waste Collection Area on a nonexclusive basis via a nonexclusive solid waste Permit as defined in Inyo County Ordinance Code Section 7.08 (the "Permit"). This authorization shall remain in effect, and Franchisee shall continue to collect, transfer, process, recycle, and dispose of solid waste in the Waste Collection Area pursuant to the Permit, until the Commencement Date of this Agreement. Notwithstanding any other provision of this Agreement or of the Permit, upon the Commencement Date, the Permit shall expire and be of no further force or effect, except that:

- Any provisions of the Permit providing for either party to defend and/or indemnify the other party for acts, omissions, or occurrences prior to the Commencement Date, or which provide for insurance or record-keeping duties, shall survive termination of the Permit;
- Any provisions of the Permit expressly stating that they shall survive expiration of the term or termination of the Permit shall survive; and
- Any amounts owed by Franchisee to the County pursuant to the Permit shall remain due and payable in accordance with the terms of the Permit.

Notwithstanding the foregoing, the Permit shall not be deemed terminated by this section, and shall be automatically reinstated, if this Agreement is invalidated as a result of litigation or other proceeding challenging the award of this Agreement.

3.04 Limit on Number of Service Providers. As of the Commencement Date, there are two service providers authorized by non-exclusive Permits issued by the County to provide Solid Waste Handling Services in the Waste Collection Areas. County and Franchisee agree that the number of Persons authorized to provide nonexclusive Solid Waste and Recycling Handling Services in the Waste Collection Areas, whether by franchise or otherwise, will not be increased during the term of this Agreement beyond the existing level of service authorized for the two existing Solid Waste Handling Service providers unless the Board of Supervisors finds and determines, by resolution, the following:

- There is an unmet need for Solid Waste Handling Services and/or Recycling Handling Services as determined by the County and the existing service providers, including Franchisee, are incapable of meeting that need at a reasonable cost to subscribers, as determined by the County;
- OR
- There is an unmet need for Solid Waste Handling Services and/or Recycling Handling Services as determined by the County and the existing service providers, including Franchisee have not demonstrated to the County's satisfaction the ability and/or willingness to provide said service at a reasonable cost to subscribers, as determined by the County.

Before being considered by the Board, a potential new service provider must demonstrate that granting an additional franchise is in the public interest and that the provider will satisfy an unmet need.

The failure of a customer to subscribe to Solid Waste Handling and/or Recycling Handling Services offered by Franchisee shall not constitute an unmet need.

ARTICLE 4. COLLECTION

4.01 Scope of Basic Franchise Services.

a. Service Area and Exclusive Franchised Services. County grants Franchisee the franchise, right and privilege to offer to provide Franchise Services to Customers within the Franchise Area to the extent it has authority to do so, so long as Franchisee is at all times ready, willing and able to provide Franchise Services and is fully and timely satisfying its Performance Obligations. Franchisee accepts that franchise, right and privilege in accordance with this Agreement. Franchisee further waives any right or claim to serve any part of the Waste Collection Areas (as set forth in Exhibit 4.01(a)) under any prior grant of franchise, contract, license, or Permit issued or granted by any governmental entity.

In addition to the provisions herein, Franchisee shall comply, and shall ensure its agreements with Customers comply, with any additional requirements of the Inyo County Code Chapter 7.08, as may be amended. Provided, however, County will not amend said Chapter during the term of this Agreement to circumvent or avoid the contractual commitments of County herein made and the Parties acknowledge that any changes to said Chapter that impact Franchisees cost of operations can be considered through the rate adjustment process specified in Article 12.

b. Limitations on Right to Provide Franchise Services. Franchisee's franchise right and privilege to provide Franchise Services is limited. Persons, including both the owners and occupants of premises and persons performing services at premises, may themselves transport and dispose of Solid Waste, C&D Waste, and/or Recyclables that they generate in the use and occupancy of those premises or as a by-product of services performed at those premises themselves, unless or until the County implements a mandatory solid waste collection ordinance and/or recycling collection ordinance. For example, landscapers, gardeners, or construction contractors or demolition contractors may collect and transport Yard Waste and C&D Waste they generate in the course of performing their services in their owned or rented dump trucks, end dumps, flatbed trucks, or similar vehicles. Also, owners and occupants of a premise may transport and dispose of solid waste that they generate on their own premises using their own vehicles.

c. Regularly-Scheduled Franchise Services. Subject to the terms and conditions of this Agreement, Franchisee will independently arrange to provide Franchise Services at the frequency, capacity, price and other terms agreed to with its Customers. Franchisee acknowledges that County is not responsible for supervising or performing Franchise Services. Franchisee's obligation to offer and provide services includes, but is not limited to, Customers on non-County maintained private roads, provided that said roads are kept in a safe and good traveling condition and will accommodate Franchisee's collection vehicles. In the event any road is unsafe or in such a state of disrepair that such will be either hazardous or potentially

cause injury to the vehicle(s) of Franchisee, Franchisee shall not be required to provide service to customers on said road.

1. Residential Solid Waste.

(i) *Collection.* Franchisee will continue to collect all Solid Waste set out by Persons who are existing customers of Franchisee as of the Commencement Date at the Residential Set-out Site of Residential premises located within the Franchise Area. Franchisee will commence collecting all Solid Waste set out at the Residential Set-out Site of Residential premises located in the Franchise Area within 7 days of anyone's request for Collection Service at that premise.

(ii) *Cancellation of Services.* Upon oral or written direction of any existing Residential Customer, Franchisee will cease providing Franchise Service immediately or at any other time specified by that Person, without penalty, and refund any pre-paid Service Fees pursuant to Section 4.09b. Franchisee will notify Customers of cancellation rights, pursuant to Section 4.10. New Residential Customers (having had service of six months or less) may be charged a cancellation fee not to exceed 1 month Service Fee provided said fee is disclosed by Franchisee in advance.

(iii) *Containers.* Franchisee will provide all Residential Customers located within the Franchise Area with one or more cans or Carts for the deposit of Solid Waste having a nominal capacity of up to 96 gallons ("**Residential Containers**") or, at Customer's request, with a Bin. Franchisee must provide Residential Containers that are clean, water tight, constructed of a material of suitable strength and durability (such as heavy plastic), tight sealed, and otherwise in compliance with Inyo County Code Chapter 7.08 and any applicable State regulations. Franchisee will return Residential Containers to the Set-out Site after Collection upright, with can lids properly secured, at the same point it was collected, without obstructing alleys, roadways, driveways, sidewalk, or mailboxes. Franchisee will ensure that any Bins that it provides to Residential Customers will comply with all of the requirements applicable to Commercial Containers under Subsection c(2)(iii). Notwithstanding the above requirement for Franchisee-provided cans or Carts, Franchisee may allow customers to utilize 30-45 gallon cans in limited areas not readily accessible to Franchisee Cart collection equipment.

(iv) *Frequency.* Franchisee will Collect all Solid Waste set out at the Residential Set-out Site at least once each week, on the same day ("**Regularly-Scheduled Residential Collection Day**"), or more frequently, as Franchisee and its customers may agree. Franchisee shall collect all Solid Waste for Multi-Family Unit Residential Customers at the Residential Set-out Site at least once per week, and more frequently if needed to handle the Multi-Family Unit waste stream, as required to maintain public health and safety. If Franchisee is unable, for any reason, to Collect all Solid Waste from a Customer on the Regularly-Scheduled Residential Collection Day (e.g. the regularly scheduled Collection Day falls on a holiday), then it will Collect that Solid Waste within one Service Day, and all subsequent Collection Days during that

holiday week may be moved back one day at the discretion of Franchisee and upon advance notice to all affected Residential Customers pursuant to 4.01.e.2 below.

2. Commercial Solid Waste.

(i) *Collection.* Franchisee will continue to collect all Solid Waste placed in Bins and compactors, (“**Commercial Containers**”) or other Containers by existing Commercial Customers of Franchisee at the location on the Commercial Premises agreed to between Franchisee and the Customer (“**Commercial Set-out Site**”). Franchisee will commence collecting all Solid Waste placed in Commercial Containers at the Commercial Set-out Site by Persons located within the Franchise Area within 7 days of that Person’s request for Collection Service at that premise. Franchisee will continue to include weekly cardboard and mixed paper collection from Commercial Customers and transport same to a recycling facility.

(ii) *Cancellation of Franchise Services.* Upon oral or written direction of any existing or new Commercial Customer, Franchisee will cease providing Franchise Service immediately or at any other time specified by that Customer, without penalty, and refund any pre-paid Service Fees under Section 4.09b. Franchisee will notify Customers of cancellation rights, pursuant to Section 4.10.

(iii) *Containers.* Franchisee will provide all Commercial Customers with 2, 3, 4, or 6 yard Containers as ordered by the Commercial Customer. Franchisee will provide Commercial Containers that:

- (1) are durable,
- (2) are constructed from structural steel plate with all welded seams,
- (3) are leak-proof,
- (4) are equipped with a lid, uniformly colored, satisfactory to the County as providing adequate protection against fire hazard, rodents, and bears, and
- (5) display Franchisee’s name and telephone number in legible lettering no less than 2 inches in height as well as language warning against illegal dumping and Unpermitted Waste (including Hazardous Waste) or special waste disposal, as satisfactory to County; and
- (6) otherwise comply with Inyo County Code Chapter 7.08 and State regulations.

At the time of a Customer request for Franchise Service, Franchisee will provide written notice to each Commercial Customer utilizing Bin service of the types of wastes which require special handling and may not be discarded in the debris box and informing the Customer of the proper methods for disposing of such wastes. Franchisee will submit this notice to the County for approval as to form prior to distribution.

(iv) *Frequency*. Franchisee will Collect Solid Waste set out at the Commercial Set-out Site at least once each week, or more frequently as directed by the Commercial Customer, on the day or days written in the Customer's Subscription Order ("**Regularly-Scheduled Commercial Collection Day**") or on such other day as mutually agreed to by Commercial Customer and Franchisee. If Franchisee is unable, for any reason, to Collect Solid Waste from a Customer on the Regularly-Scheduled Commercial Collection Day or other day agreed to by Customer, then it will Collect that Solid Waste on the next Service Day following the date of the missed pick up, or other day arranged with the Customer, but in no event later than 72 hours after the time of the missed pick-up, and will provide the Customer with a verbal or written Non-Collection Notice.

e. Collection Schedules.

1. Hours. Franchisee will Collect all Solid Waste from Commercial Customers only between 5:00 a.m. and 7:00 p.m., on any given day of the week. Franchisee will Collect all Solid Waste from Residential Customers only between 7:00 a.m. and 6:00 p.m., Monday through Saturday with no service on Sunday. Except that Franchisee may Collect Solid Waste from Residential customers between 7:00 a.m. and 7:00 p.m. on Sunday:

- (i) if road closures have prevented collection during the previous 7 days; or
- (ii) with prior written approval from the Director.

Notwithstanding the above, Franchisee shall comply with any applicable Inyo County Noise ordinance. Franchisee further agrees to reasonably adjust the hours of commencement of collection operations in selected areas at the request of County where early collection activities generate material and numerous complaints from nearby residents. The above collection schedules may be temporarily adjusted due to extraordinary circumstances or conditions upon consent of the Director.

2. Changes to Collection Schedule. Prior to changing the Regularly-Scheduled Collection Day for any Customer, Franchisee will provide 15 days' oral or written Notice to that Customer.

f. Changes in Service Levels; Container Exchanges.

1. Delivery. Franchisee will give Customers Containers in accordance with Subsections c.1.(iii) and c.2.(iii). Within 7 days after receiving a request for Franchise Service or changes in Franchise Service, Franchisee will respond to and fulfill that request.

2. Pick Up. No later than the next Regularly-Scheduled Collection Day for such Customer occurring after direction of a Customer to discontinue Franchise Service, Franchisee will pick up and remove that Customer's Container(s).

3. Repair and Replacement. Franchisee will repair or replace Containers or provide locks for Bins within 72 hours of a request therefor from a Customer or the County. If

Franchisee cannot complete a repair within 72 hours, Franchisee will give the Customer a replacement Container without surcharge within those 72 hours.

g. C&D Waste. At anyone's request and agreement (including a Residential or Commercial Customer) with respect to price and frequency of Collection, Franchisee will Collect C&D or other Inert Waste (including dirt) that is discarded in debris boxes, roll-offs, or other similar containers. In providing C&D or other Inert Waste Collection, Franchisee shall use its best efforts to educate Customers on the proper segregation of recyclable or reusable materials so as to ensure that said materials are segregated by the customer or Franchisee and not disposed of in landfills.

4.02 Pickup of Excess and Bulky Waste.

Upon request of a Residential or Commercial Customer, Franchisee will Collect excess Solid Waste or Bulky Waste at the Residential or Commercial Set-out Site on that Customer's next Regularly-Scheduled Collection Day or other date agreed to between the Customer and Franchisee for a price that is mutually agreed to by Franchisee and Customer. Upon request of a Person who does not receive regular Commercial or Residential Collection from Franchisee, Franchisee will collect Bulky Waste or excess Solid Waste at a location and time and for a price that are mutually agreed to by that Person and Franchisee which is not less than that charged for similar services to customers receiving regular collection services..

4.03 Service Standards.

a. General. Franchisee will provide all Franchise Services in a prompt, thorough, comprehensive, reliable, courteous and professional manner so that Customers receive high-quality service at all times. Franchisee must provide Franchise Services regardless of difficulty of collection, subject to the exceptions under Section 4.04. or extreme, unsafe weather conditions. More detailed specifications for particular aspects of Franchise Services enumerated elsewhere in this Agreement do not relieve Franchisee of its duty and obligation to accomplish all other aspects of Franchise Services under this Subsection.

b. Litter. Franchisee will clean up litter caused by Franchisee's employees. Franchisee will ensure that each Collection Vehicle at all times carries appropriate tools for this purpose.

c. Spills and Leaks.

1. Solid Waste Spills. Franchisee will transport Solid Waste only in covered vehicles. Franchisee will prevent Solid Waste from escaping, dropping, spilling, blowing or scattering from Vehicles during Collection and transportation. Franchisee will immediately clean up any Solid Waste that is dropped, blown, spilled, scattered or leaked from any Vehicle and/or tracked by any Vehicle onto any alley, street or public place.

2. Liquid Leaks. During Collection and transportation, Franchisee will also take reasonable measures to prevent oil, hydraulic fluid, paint or other liquid from leaking out of Vehicles. Franchisee shall immediately clean any liquid leaks caused by Franchisee's Vehicles

at its sole expense, and shall report any leaks in excess of five (5) gallons to the Inyo County Road Department and the Inyo County Environmental Health Services Department.

3. Reimbursement, Damages & Penalties.

i. Spillage. If Franchisee fails to clean up Solid Waste or leaked liquids as required above, the County may clean up or cause to be cleaned up the Solid Waste or leaked liquids and Franchisee will reimburse the County for the County's Reimbursement Costs thereof. Franchisee is also responsible for paying compensatory and/or liquidated damages as set forth in Exhibit 14.01, civil penalties and/or other charges that may be lawfully assessed for improperly covering loads or leaking liquids, per incident, per location.

4.04 Service Exceptions.

a. Excess Weight. Franchisee is not required to collect a Cart weighing in excess of the manufacturer's recommended weight, as evidenced by warranties or other documentation acceptable to the County. Franchisee will provide Customers with weight limitations on the Customer Subscription Order, marked on the Cart, or through some other written means.

b. Unsafe Condition at Set-out Site. If Franchisee determines that any condition at or near any Set-out Site presents a health or safety threat to Franchisee's employees or equipment, Franchisee may attempt to personally provide the Customer whose Set-out Site presents the threat notice of the danger thereof. If Franchisee does not personally provide Customer with notice, prior to leaving Customer's premises Franchisee will provide the Customer with a Non-Collection Notice, describing the threat and danger. Franchisee may discontinue collection for that Set-out Site until the safety hazard is eliminated.

c. Hazardous Waste or Unsafe Materials. If Franchisee determines that Containers contain Hazardous Waste (other than Household Hazardous Waste not discovered and identified by Franchisee acting in accordance with its Unpermitted Waste Screening Protocol) or other materials that may present a health or safety threat to Franchisee's employees, the public, or to Franchisee's equipment, Franchisee may refuse to Collect that Container. Franchisee may attempt to personally provide the Customer whose Container contains Hazardous Waste or unsafe material with written information about their proper disposal. If Franchisee cannot personally provide Customer with information, prior to leaving Customer's premises it will provide the Customer with a Non-Collection Notice. Franchisee will follow the procedures outlined in the Unpermitted Waste Screening Protocol, as it applies to Hazardous Waste, including providing notice to the County Health Department and to the Director. Title to and liability for Hazardous Waste and Unsafe Materials shall at all times remain with the Customer.

d. Customer Delinquency or Nonpayment. Franchisee is not obligated to provide Franchise Services to any Customer whose bill becomes delinquent fifteen (15) days after such bill was due and owing.

e. Non-Collection Tags. When Solid Waste is not collected from any customer other than due to withholding of service pursuant to subsection d immediately above, Franchisee shall

notify its customer(s) as to why that Collection was not made by attaching tags approved by the County to the applicable container(s) that clearly identify the reason(s) for non-Collection.

4.05 Customer Service.

Franchisee acknowledges that the County determined to procure and enter into this Agreement with Franchisee, among other reasons, in order to provide improved Customer service, relations and satisfaction. Franchisee will post its Contact Information on all of its written communications with Customers.

a. Office. Unless otherwise approved by the Director in writing, Franchisee shall establish and maintain an office within the County through which the Franchisee's representatives may be contacted. Franchisee's office hours shall be, at a minimum, from 8:00 a.m. to 12:00 p.m., and from 1:00 p.m. to 4:00 p.m. on all Collection Days. A representative of Franchisee shall be available in the established office during said office hours for communication with the public.

b. Phone Number. Franchisee will maintain a telephone number at least during Office Hours and, if Franchisee provides Residential Collection on Saturday, from 8:00 a.m. to noon on Saturdays ("**Phone Hours**"). Franchisee will list the telephone number under Franchisee's name in the County telephone directories (e.g. white pages and yellow pages), and on all billing statements. Franchisee will provide an answering machine or answering service to take reports of missed pick-ups and other complaints that are received outside of Phone Hours.

c. Email. Franchisee will maintain an email address for the purpose of corresponding with customers and County. Franchisee will record customers' email addresses.

d. Emergency Number. Franchisee will also maintain an emergency telephone number disclosed to the County for use outside Phone Hours. Franchisee will make a representative in a position of authority available at the emergency number outside Phone Hours who will return any emergency call as soon as possible and in any event within one hour.

e. Complaints. (1) All customer complaints shall be directed to Contractor. Contractor shall record all complaints received by mail, email, by telephone, or in person (including date, name, address of complainant, and nature of complaint). Contractor agrees to use its best efforts to resolve all complaints by the close of business of the second regularly scheduled waste Collection day following the date on which such complaint is received. Service complaints may be investigated by the County or his/her designee. Unless a settlement satisfactory to the complainant and Contractor is reached, the complainant may refer the matter to the County for review.

(2) Contractor will maintain records listing the date of customer complaints, the customer, the nature of the complaint or request, and when and what action was taken by Contractor to resolve the complaint. All such records shall be transmitted to the County quarterly and maintained for a period of thirty-six (36) months and shall be available for inspection by the County.

f. Complaint Resolution. Contractor will use its best efforts to resolve all complaints by close of business of the second business day following the date on which the complaint is received. Contractor shall notify customers that service complaints may be reviewed by the County if a satisfactory solution is not reached.

A customer dissatisfied with Contractor's decision regarding a complaint may ask the County to review the complaint. To obtain this review, the customer must request the County's review within thirty (30) days of receipt of Contractor's response to the complaint, or within forty-five (45) days of submitting the complaint to Contractor if Contractor has failed to respond to the complaint. The County may extend the time to request its review for good cause.

The County shall determine if the customer's complaint is justified, and if so, what remedy, if any, shall be imposed. The remedy under this section shall be limited to a rebate of customer charges related to the period of breach of any of the terms of this Agreement.

A reference to that portion of the Franchisee's website containing the complaint resolution procedure shall be made on all billing statements.

4.06 Public Education and Community Relations.

1. **Community Relations Materials.** Any community relations material, other than billing information, from the Franchisee to its customers regarding the services provided under this Agreement, including rates changes, shall be approved in advance, in writing, by the County.

The County may, once each contract year, produce and give Franchisee printed inserts, specified as a sheet no larger than 8½ by 11 inches, which Franchisee will include in Customers' bills or otherwise give to Customers upon County request at no cost to the County. In lieu of mailing the materials, Franchisee may e-mail such materials to Customers that receive bills on-line or have requested electronic communication (if any).

In addition, Franchisee will print public information directed by the County on Customers' bills.

2. **Recycling Materials.** Franchisee will develop and distribute all materials pursuant to Section 6.02.

4.07 Customers' Privacy.

Franchisee will strictly observe and protect Customers' rights of privacy. Franchisee will not reveal information identifying individual Customers or the composition or contents of a Customer's waste stream to anyone other than the County unless upon lawful demand of a regulatory authority (including law enforcement and courts of law), by Applicable Law or by Customer's authorization. This provision will not be construed to preclude Franchisee from preparing, participating in or assisting in the preparation of waste characterization studies or waste stream analyses that may be required by the County or Applicable Law. The foregoing

notwithstanding, the parties hereby acknowledge that franchisee's obligation to comply with applicable law include certain information reporting obligations to CalRecycle as a result of the enactment of AB 901 (Gordon, Chapter 746, Statutes of 2015) and they agree that franchisee's compliance with those requirements or with any other disclosure laws to which franchisee is subject, may require the release, reporting or disclosure of certain customer information and data and franchisee's compliance there with does not violate this agreement or a customer's privacy rights.

In addition, Franchisee will not market, sell, convey, or donate to anyone any list with the name or address of Customers *except* that Franchisee will give that list to the County or someone else as directed by the County. The rights accorded Customers pursuant to this Section are in addition to any other privacy right accorded Customers pursuant to Applicable Law.

Other than as set forth above, Franchisee shall not market or distribute mailing lists with the names and contact information of its customers.

4.08 No Discrimination.

Franchisee will not discriminate against Customers entitled to Franchise Service on account of Suspect Categories.

4.09 Franchisee Billing.

a. Billing. Franchisee will bill and collect Service Fees in accordance with Franchisee's standard billing and collection practices. Franchisee acknowledges that the County is not obligated to bill or collect Service Fees. Franchisee will not hold the County liable for any under-billings to Customers of Service Fees or delinquent Service Fee payments. Franchisee shall provide itemized bills, distinctly showing charges for all classifications of services, including the charges for late payment and, when applicable, tipping fees. Bills shall be made no less frequently than each quarter, unless otherwise agreed to by Franchisee and its customers. Billings may be mailed at the beginning of the billing period for all services.

b. Refunds. Franchisee will refund to Customers any overcharges for Franchise Services the earlier of 2 weeks from the time that Franchisee discovered the overcharge or Customer notified Franchisee of the overcharge. "**Overcharges**" includes: (1) Franchisee's billing errors; and (2) refunds for Franchise Services paid in advance by Customers who terminated Franchise Services prior to the end of the billing period.

c. Customer Disputes. Franchisee will take Customers' calls and respond to Customers' correspondence with respect to disputes regarding billing. Franchisee acknowledges that the County is not responsible for handling Customer disputes, but the County may intervene to assist in resolving disputes.

d. Records. Franchisee will maintain billing records under Section 10.01.

4.10 Description of Customers' Rights.

Within 30 days of the Commencement Date for existing Customers and prior to the provision of Franchise Services to new Customers, Franchisee will give Customers a written Subscription Order. In each Subscription Order and in Customer's first bill of each Contract Year, Franchisee will include a description of the following Customers' Franchise Services and rights under this Agreement, the form and content of which shall be subject to the review and approval of the Director:

- the scope of Franchise Services provided, including day of collection and arrangements for the collection of Bulky Waste or excess Solid Waste;
- the Service Fee (or, rate);
- Holiday schedules;
- the ability of Customers to terminate their Subscription Order upon oral or written notice to Franchisee without penalty under Section 4.01c1(ii) and c2(ii), and describing their refund rights for pre-paid but unused Franchise Service under Section 4.09b;
- the complaint resolution process or a clear reference to the complaint resolution process on the franchisee's website;
- other information concerning the conditions of service, including, but not limited to, rates, fees, charges, service options, payment options, discounts (if any), service level the Dispute Resolution Protocol, including the name, address and local telephone number of Franchisee; and,
- any other provisions of this Agreement or Applicable Law as directed by County.

The Subscription Order may include a waiver of damage liability and/or indemnification in connection with subscriptions for Franchise Services on private driveways, roads, easements or pavement.

4.11 Customer Satisfaction Survey.

The County may conduct a Customer satisfaction survey for implementation of Franchise Services, including a survey mailed to Customers together with Customers' bills, in the form of a post card or letter returnable to the County. The survey shall include, without limitation, a section rating Franchisee's response to customer complaints. The survey methodology, format and content shall be subject to the prior review and approval of the Director. Nothing in this paragraph shall limit the right of the County to conduct additional surveys. The Franchisee shall reasonably cooperate with the County in such cases. Franchisee may obtain a copy of the results of the survey upon request to the County.

4.12 Performance Review.

a. County Review. From time to time, at its sole discretion, the County may examine Franchisee's operation in order to evaluate whether or not the Franchisee is operating at a satisfactory level of efficiency and customer satisfaction. Franchisee agrees to cooperate in any such examination, and upon not less than thirty six hours notice shall permit County's

representatives to inspect, at Franchisee's principal place of business, or as otherwise may be agreed upon, records and information pertaining to Franchisee's obligations hereunder as the County may reasonably require. Notwithstanding anything to the contrary contained herein, the County's right to review hereunder shall be limited to Franchisee's operations directly undertaken pursuant to this Agreement, and the County shall have no right to review any proprietary or privileged information of the Franchisee nor shall the County retain the records reviewed for this purpose..

b. Public Review. Upon providing sixty (60) days advance Notice to Franchisee, the County Board may conduct a public hearing within ninety (90) days of the first anniversary of the effective date of this Franchise Agreement, and not more frequently than every other year thereafter throughout the term of the Franchise Agreement. Said public hearing may review Franchisee's performance and the quality of Franchise Service, provide for technological, economic and regulatory changes in solid waste collection, facilitate recycling programs, promote competition in the solid waste industry, and/or aim to achieve a continuing, advanced solid waste collection system. Franchisee and County may further agree to additional topics for discussion at any such hearing. Franchisee shall attend and participate in the hearing. The County Board may use Records and reports required under Article 10, and other relevant information it may request or obtain, as a basis of its review.

1. Franchisee's Report. In addition to the Records and reports Franchisee is otherwise required to maintain and/or produce, the County may request in the Notice of the public hearing, and Franchisee shall provide at least thirty (30) days prior to the public hearing, a report to County indicating the following:

(i) All solid waste collection and recycling services reported in solid waste collection and recycling industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in the United States with comparable populations, that are provided by Franchisee to County;

(ii) Changes recommended to improve the County's ability to meet the goals of AB 939 and/or other applicable laws; and

(iii) Any specific plans for provision of such new services by the Franchisee along with the estimated expenses and adjustments to rates necessary to compensate Franchisee for providing such services, or a justification indicating why Franchisee believes that such services are not feasible for the Waste Collection Areas.

c. County Report. Within 30 days after the conclusion of the public hearing, the County may issue a report with respect to any material matters raised at the hearings. Among other things, the report may summarize the systems and services review hearing and address services not being provided that the County considers technically and economically feasible. Concurrent with the issuance of any such report, the County and Franchisee shall meet to discuss the potential and feasibility of providing such services and the compensation required to perform such services.

4.13 Enforcement of Franchise.

The County may, in its sole discretion, enforce the franchise requirement against third party violators, taking into account the cost of doing so and other factors. In addition to the foregoing, Franchisee may independently enforce the rights granted by this Agreement to Franchisee against third party violators (excluding the other franchisee operating pursuant to a Franchise Agreement with County), including seeking injunctive relief, and the County will use good faith efforts to cooperate in such enforcement actions brought by Franchisee. The County will not be liable to Franchisee in any manner, including for any costs or damages such as lost revenues or lost profits, should anyone refuse to subscribe to Franchise Services from Franchisee and/or perform Franchise Services under a Franchise Agreement with the County in competition with Franchisee, and in doing so violate the semi-exclusive grant of franchise given to Franchisee in this Agreement. In that event, Franchisee's sole and exclusive remedy will be to seek an injunction, damages or other available judicial relief against any such third person or entity that engages in any conduct or activity that violates Franchisee's semi-exclusive rights under this Agreement. If Franchisee becomes aware of any activity by a third party that violates or may violate the provisions of this Agreement, Franchisee will give County notice of that activity.

ARTICLE 5. OPERATIONS

5.01 Routing.

a. Route Maps and Account Information. Within 30 days of the Commencement Date, Franchisee will give the County route maps or narratives containing the following information:

- (1) a general description of each individual route;
- (2) Collection day of the week for each individual route; and
- (3) approximate Collection times (a.m. or p.m.) for route or portion of route

b. Route Changes. Franchisee will inform the County of any proposed change in Routing Specifications not less than 15 days prior to the proposed date of implementation or as otherwise agreed to by Franchisee and the Director.

c. Route Changes Directed by County. Franchisee acknowledges that in order to provide detailed reporting it may be necessary for waste to be segregated by source location (i.e. City of Bishop, tribal lands, federal land, etc.) Therefore, County may direct Franchisee to establish routes exclusively within said locations. In the event such direction is given, Franchisee agrees to revise routing. If said changes required by County increase operation cost for Franchisee, floor rates will be adjusted per the terms outlined in Section 13.01 (2 iii) of this agreement.

5.02 Vehicles, Service Assets, and Drivers.

a. Vehicle Appearance. Bodies of Vehicles used in Collection or transportation of Solid Waste must have watertight beds of metal or impervious material that can be cleaned. Franchisee will utilize packer-type, completely enclosed Vehicles unless another type of Vehicle is required by terrain or type of Solid Waste to be hauled. Franchisee will paint and label all Vehicles in a consistent, uniform, and professional manner. All Vehicles will be maintained and operated in compliance with State Minimum Standards.

b. Compliance with Applicable Law. Franchisee will ensure that all Vehicles it uses to provide the Franchise Services comply with all Applicable Law. Franchisee will document, through its maintenance log or otherwise, compliance under Applicable Law applying to each Vehicle and will provide the County with copies of inspection reports within 10 days of the County's request, or within a longer time as otherwise requested. The County may conduct inspections of Vehicles in connection with any Permits issued by the County or otherwise. Franchisee will maintain copies of registration certificates and reports and make them available for inspection at its Office during Office Hours upon request by the County.

c. Vehicle Identification. Franchisee will paint its name, toll-free telephone number and a unique Vehicle number on all Vehicles in letters and figures not less than 12 inches high for packer trucks and not less than 6 inches high on other Vehicles, unless otherwise prescribed by State Minimum Standards.

d. Cleaning, Maintenance, and Availability. Franchisee will at all times maintain Vehicles in good, clean condition and repair so that they operate properly and safely. Franchisee shall provide an adequate number of vehicles and equipment to continuously provide Franchise Services. Franchisee may not leave Vehicles loaded with Solid Waste for over 24 consecutive hours.

e. Equipment. Franchisee will equip each Collection Vehicle with a fire extinguisher which must be maintained and checked under manufacturer's warranty and maintenance recommendations.

f. Re-Refined Oil. To the extent permitted by equipment warranties and/or available services, Franchisee will give serious consideration to recycling used oil from its Vehicle maintenance operations and to use re-refined oil in its Vehicles. Should Franchise elect to adopt such a policy, Franchisee will submit copies of re-refined oil invoices to the County upon County request.

g. Service Assets. Franchisee will prepare a Service Asset Inventory under Exhibit 5.02g.

5.03 Personnel.

a. Nondiscrimination. Franchisee will not discriminate against any of its personnel on the basis of Suspect Categories. Franchisee will comply with all Applicable Law, including but not limited to those prohibiting discrimination in employment.

b. Compliance with Law. Franchisee will comply with all applicable labor laws, including keeping records of compliance with the Federal Immigration and Control Act of 1986. Failure to comply with Applicable Law (such as a citation or failure-to-abate notice from the California Division of Occupational Safety and Health) is a material breach of this Agreement.

c. Conduct. Franchisee will employ only competent, qualified, conscientious, and sober personnel to ensure Franchise Services satisfactory to the County. Franchisee will ensure that its employees serve the public in a courteous, professional and reliable manner.

d. Drivers. Franchisee will ensure that all drivers of Vehicles have in full force and effect a valid license of the appropriate class issued by the California Department of Motor Vehicles. Franchisee will provide suitable operational and safety training for all of its personnel, including those who drive Vehicles or operate other equipment for Collection, which training will include on-the-job-training by supervisors. Franchisee will train sufficient numbers of drivers to drive all Collection routes so as to ensure no lapse of Franchise Services and will use Reasonable Business Efforts to assign the same driver(s) to identified routes in order to encourage accountability and enhance Customer relations. Franchisee will train its drivers to implement the Unpermitted Waste Screening Protocol so as to identify and to not collect Unpermitted Waste. Franchisee will implement drug and alcohol testing in accordance with Applicable Law. Franchisee will maintain copies of licenses for all Vehicle operators and full and complete records of training and testing, which Franchisee will make available to the County at Franchisee's Office during Office Hours.

5.04 Unpermitted Waste.

Except as explicitly set forth herein, Franchisee shall not knowingly collect, handle, process, transport, arrange for the transport of, or dispose of Unpermitted Waste. Franchisee shall keep current with, and maintain compliance with, the laws and regulations applicable to Unpermitted Waste. As part of that effort, Franchisee will comply with the Unpermitted Waste screening, identification and prevention protocol ("**Unpermitted Waste Screening Protocol**") as reflected in Exhibit 5.06. If Franchisee delivers Unpermitted Waste to the Designated Disposal Facility or a Diversion Facility, Franchisee will arrange for proper disposal under Applicable Law and/or cooperate with the facility owner or operator with respect thereto. Except for arranging for the proper disposal of Unpermitted Waste delivered to the Designated Disposal Facility or Diversion Facility by Franchisee and/or cooperating with the facility owner/operator related thereto, if Franchisee complies with its obligations pursuant to the Unpermitted Waste Screening Protocol, and Unpermitted Waste is delivered to the Designated Disposal Facility or

Diversion Facility, Franchisee shall have no responsibility or liability associated with such Unpermitted Waste. The facility owner or operator shall look solely to the Customer/generator of such Unpermitted Waste.

The County reserves the right to contract with other Persons to collect, dispose of, divert, and otherwise handle Unpermitted Waste.

ARTICLE 6. DIVERSION

6.01 Diversion Reporting.

a. Reporting and Substantiation of Diverted Materials. Franchisee will report the amount of Diverted Recyclables to the County in its Quarterly Report or as otherwise more frequently required by the Act or Applicable Law. Franchisee will include:

- (1) the date of diversion,
- (2) the quantity (by each type) of those materials expressed in cubic yards, pounds, or tons,
- (3) the community or project where the materials originated, and
- (4) the name and telephone number of the material recovery facilities or composting sites to which Franchisee delivered the materials and a receipt or invoice from that Diversion Facility.

“Diversion Facility” means any materials recovery facility, salvager, processing facility or materials end user. **“Diverted Recyclables”** means the net quantity of Recyclables that Franchisee has Collected at Residential and Commercial premises and at construction or demolition projects and Diverted, including Recyclables in Bulky Waste. The net quantity will be the gross amount of material Collected and delivered to the Diversion Facility, less any quantity of Solid Waste that was contained therein and deducted from payment and/or Diversion and disposed by said Facility. **“Divert,” “Diverted,” “Diversion”** or other form thereof means to divert from disposal so that the disposal tonnage is not reported as disposed under the State’s disposal reporting system and qualifies as diversion under the Act.

Franchisee will additionally report to the County on a quarterly basis the amount of Solid Waste contained within Diverted Recyclables that was separated from the Recyclables. Franchisee’s report will include the date of Collection, the quantity of Solid Waste expressed in cubic yards, pounds or tons, and the community or project where the Solid Waste originated.

b. Additional Information. If the County questions reports, Records or other documentation that serves as the basis of measuring the quantity or types of Diverted Recyclables (and associated Solid Waste), Franchisee will respond to the County’s questions and provide additional clarifying documentation as soon as possible, but in all events within 30 days from the date the County submits written questions to Franchisee.

6.02 Additional Programs

a. Recycling Services. This Agreement contemplates that, as part of the franchise, Franchisee shall be required to offer Waste Recycling Handling Services to its customers in the near future at a date to be determined by the County, and that its right and obligation to do so will form a part of this Agreement.

The parties acknowledge that the awarding of a Waste recycling Handling Services agreement is non-exclusive and that in the event that the current providers are incapable of providing the service at a reasonable cost as determined by the County or have not demonstrated to the County's satisfaction the ability and/or willingness to provide said service at a reasonable cost to subscribers, as determined by the County this will be deemed an unmet need and in accordance with Section 3.04, the County may enter in additional Agreements of a nature similar to this Agreement with other Persons to provide Waste Recycling Handling Services.

Selection of the specific Waste Recycling Handling Services that shall be offered to residential, commercial and industrial customers, the method of providing those Waste Recycling Handling Services, and the corresponding revision of the floor rate shall be determined in cooperation with the County and are subject to County approval. At a minimum, such Waste Recycling Handling Services shall include the collection and transportation of recyclable waste materials from the premises of such residential, commercial and industrial customers to the processing location or point of sale.

The County may specify the processing location or point-of-sale for any recyclable material it directs to be collected. County acknowledges that any decision to exercise its right to control the Solid Waste Stream, may increase Franchisee's Direct Costs which may justify an increase to Franchisee's Service Fees. In any such event, Franchisee shall request a Pass-Through Cost Adjustment in the same manner by which a request is made for a Change in Law as set forth in Article 12,01.c,2 of this Agreement.

At such time as the Board of Supervisors determines the recycling services that are to be provided, and has selected a date or dates for the implementation of such services, the Waste Recycling Handling Services and implementation dates shall be set forth in Exhibit 4.06. At such time as the County provides Notice to Franchisee of its decision to incorporate Waste Recycling Handling Services in this franchise, Franchisee shall thereafter perform all education, outreach, monitoring, and reporting for all commercial solid waste and multi-family properties as required by AB 939 and AB 341, which shall include online and print materials. All materials and proposed educational activities shall be submitted to the County for approval prior to distribution. These activities shall include educating commercial solid waste and multi-family customers regarding the mandatory recycling requirements of AB 341, and notifying non-compliant commercial solid waste and multi-family customers at least semi-annually.

Upon the beginning of Waste Recycling Handling Services, Franchisee shall be an Authorized Recycling Agent of the County within the meaning of Public Resources Code Section 41950. All recyclable materials placed for collection at curbside (for a residential curbside collection

program), or placed at the designated collection location (in the case of a commercial or industrial entity), are the property of the Franchisee in accordance with Public Resources Code Sections 41950(c) and 41951(c).

b. Expansion of Services. The County may direct Franchisee to submit proposals for additional programs, including diversion programs, necessary in the County's opinion to meet any required diversion goal or other goal. If necessary, prior to implementation of said necessary programs, the Parties will enter into good faith negotiations for at least 30 days following the date the County directs Franchisee to submit a program proposal. If the Parties cannot reach agreement regarding implementation terms within thirty (30) days, the County may, at any time and in its sole discretion, independently implement programs itself or through a third Person.

ARTICLE 7. SOLID WASTE DISPOSAL

7.01 Transportation to Designated Disposal Facility.

a. County May Control Waste Stream. County has the right, in its sole discretion, to control the disposal and diversion of all Solid Waste, including recyclables, generated within the Waste Collection Areas (the "Solid Waste Stream"). Accordingly, the County has the right, upon 30 days' Notice to Franchisee to:

- (1) direct the Solid Waste Stream to be disposed of at, or diverted to, any Disposal or Diversion Facility;
- (2) market and process Recyclables generated within the Waste Collection Areas.

County acknowledges that any decision to exercise its right to control the Solid Waste Stream, may increase Franchisee's Direct Costs which may justify an increase to Franchisee's Service Fees. In any such event, Franchisee shall request a Pass-Through Cost Adjustment in the same manner by which a request is made for a Change in Law as set forth in Article 12.01,c,2 of this Agreement.

b. Designated Disposal Facility. Except as otherwise directed by County pursuant to Section 7.01a above, Franchisee will transport and deliver all Solid Waste, except for Recyclables that it diverts, to a Designated Disposal Facility, including:

- (1) Solid Waste that Franchisee Collects from Residential and Commercial premises under Section 4.01c,
- (2) Solid Waste that Franchisee Collects in performing emergency services under Section 8.01,
- (3) excess or Bulky Waste that Franchisee Collects under Section 4.02, and
- (4) C&D Waste that Franchisee Collects under Section 4.01f.

Franchisee will at all times operate according to safe industry practices.

7.02 Defense and Indemnification; Release

a. Requirement. Franchisee will defend, release, indemnify and hold harmless at its sole cost and expense with counsel approved by the County, the County (including Persons described in the definition of "County" in Exhibit 1.01) in any actions that assert or allege Liabilities paid, incurred or suffered by, imposed upon or asserted against, the County that result or are claimed to have resulted directly or indirectly from the presence, disposal, escape, migration, leakage, spillage, discharge, release or emission of Unpermitted Waste or petroleum products to, in, on, at, or under any place, site or facility where Franchisee delivers, stores, processes, recycles, composts or disposes of Solid Waste to the extent that the Liabilities are caused or alleged to be caused by the following:

1. Franchisee Negligence or Misconduct: the wrongful, negligent act, error or omission, or the willful misconduct of the Franchisee; or
2. Non-Customer Materials: the collection, delivery, handling, recycling, processing, composting or disposal by the Franchisee of any materials or waste, including Unpermitted Waste, which are generated by Persons other than Customers collected from premises other than Customers' premises; or
3. Failure to Comply with Unpermitted Waste Protocol: the failure of Franchisee to undertake Hazardous Waste training procedures required by Applicable Law or the Unpermitted Waste Screening Protocol, whichever is more stringent; or
4. Franchisee-Identified Unpermitted Waste: the improper or negligent collection, handling, delivery, processing, recycling, composting or disposal by Franchisee of Unpermitted Waste that Franchisee inadvertently collects from customers and that Franchisee identifies as Unpermitted Waste prior to its delivery, processing, recycling, composting or disposal.

b. Exclusion. Notwithstanding anything contained herein to the contrary, Franchisee will not be required to defend, release, indemnify and hold harmless the County (or any other party) to the extent any Liabilities are due to the: (i) negligence or willful misconduct of the County and the Persons described in the definition of "County" in Exhibit 1.01 or any other third-party not under the control of Franchisee, (ii) violation of any law, rule, regulation, order, permit, or license by County, any of the Persons described in the definition of "County" in Exhibit 1.01, or any other third-party not under the control of Franchisee, or (iii) to the extent prohibited by law.

c. Cooperation with County's Counsel. The County may retain counsel at its own cost and expense or utilize in-house counsel as co-counsel. Franchisee will direct Franchisee's counsel to assist and cooperate with co-counsel with respect to the County's defense.

d. Liability Transfer. The indemnity in subsection a is intended to operate as an agreement pursuant to Section 107(E) of the Comprehensive Environmental Response and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify the County from liability in accordance with this Section.

e. Unpermitted Waste. For waste other than that collected from County facilities, Franchisee hereby releases and will not seek contribution or compensation of any nature from County for Liabilities relating to Unpermitted Waste arising from franchisee's performance under this agreement, including relating to RCRA, CERCLA, or the California Health and Safety Code. Franchisee will not make any claims against or assert an interest in any account, fund or reserve that the County may establish or set aside, from the proceeds of the Franchise Fee or otherwise, or maintains to cover Liabilities arising from franchisee's performance under this agreement relating to Unpermitted Waste, which established fund or reserve the County is under no obligation to establish or maintain.

7.03 Disposal Fees. Franchisee will timely pay gate and any other fees charged by the Designated Disposal Facility under the County's existing gate fee schedule and Gate Fee Administration Policy, as the County may amend those fees or policy from time to time. If the County directs waste to a Disposal Facility not owned by the County, it reserves the right to pay those disposal costs directly and adjust the Franchisee's rates accordingly.

ARTICLE 8. MISCELLANEOUS SERVICE PROVISIONS

8.01 Emergency Services.

a. Franchisee Performance During Emergency. During emergency situations, as determined by the Director, other than those set forth in Section 14.08 below, within 24 hours of Notice from the County, Franchisee will provide emergency services beyond the scope of Franchise Services at the times and to the extent directed by the County, including unscheduled gathering, pick up, collection and disposal of C&D Debris, Bulky Waste and other debris resulting from natural disasters such as earthquakes and floods. The County will compensate Franchisee for those services at rates reasonably set by Franchisee, which shall include, without limitation, reimbursement for all costs and expenses incurred by Franchisee in providing such emergency services and profit thereon. Notwithstanding anything contained herein to the contrary, Franchisee shall have the right to determine (in its reasonable discretion) the timing and nature of such emergency services, based on any and all relevant factors, including, without limitation, the safety of Franchisee's employees and equipment, and the safety of the Customers, and the feasibility of performing such services. Notwithstanding anything contained herein to the contrary, nothing herein shall limit the County's emergency services authorities as specified in County code or State or Federal law.

b. County Performance During Emergency. County may perform Franchise Services during an emergency as set forth in Section 14.08 below.

8.02 Compliance with Applicable Law.

a. Compliance. Franchisee will perform all Franchise Services, and will cause its Subcontractors to provide goods or services, in accordance and compliance with Applicable Law and with this Agreement, whether or not referenced specifically in the text of this Agreement and regardless of whether Performance Obligations are stated less stringently than Applicable Law. If any Performance Obligation is more stringent than Applicable Law, Franchisee and its Subcontractors must satisfy that Performance Obligation. Nothing in this Agreement is construed to relieve the Franchisee of any obligations imposed by Applicable Law.

Franchisee acknowledges that the County is authorized to make all necessary and reasonable rules and regulations regarding all aspects of Solid Waste Handling Services, including Franchise Services. Notwithstanding the foregoing, the County agrees that it shall not make any rules or regulations which materially change the County's or Franchisee's rights hereunder. Franchisee agrees to comply with any and all such rules and regulations.

County acknowledges that any decision to exercise its right to change rules or regulations may increase Franchisee's Direct Costs which may justify an increase to Franchisee's Service Fees. In any such event, Franchisee shall request a Service Fee adjustment in the same manner by which a request is made for a Change in Law as set forth in Section 12.01.c.2 of this Agreement.

Provisions of Applicable Law are incorporated in this Agreement by reference as if set forth fully in this Agreement as contractual obligations of Franchisee to County. However, the County has no obligation to enforce any Applicable Law.

b. Referenced Provisions. Reference in this Agreement to particular provisions or requirements of Applicable Law may not be construed to limit Franchisee's obligation to comply with all provisions of Applicable Law. Reference to statutory provisions of Applicable Law are deemed to include reference to implementing rules and regulations. These references are intended to facilitate Franchisee's satisfaction of its Performance Obligations and the County's administration and specific enforcement of this Agreement, and may not be construed to imply lack of obligation to comply with other provisions or requirements of Applicable Law not referred to or cited in this Agreement. If any Applicable Law specifically referenced or cited in this Agreement is amended, supplemented, restated, re-codified, modified or repealed, that reference or citation will be deemed to refer to that amendment, supplement, restatement, re-codification or modification.

c. Permits. Franchisee will obtain and maintain throughout the Term all necessary approvals, authorizations, and Permits. Franchisee will show proof of approvals, authorizations, and Permits and will demonstrate compliance with the terms and conditions of said approvals, authorizations, and Permits promptly upon the request of the County.

d. Fines and Penalties. Franchisee shall be responsible for payment of any and all fines and penalties imposed on Franchisee, except to the extent resulting from the acts or omissions of the County (including, the acts and omissions of County's employees, representatives, officials, and agents), Customers, or any other third party not under the control of Franchisee.

8.03 Cooperation with Waste Studies.

Franchisee will cooperate with the County on any and all waste composition studies, including modification of routes, separate collection of individual Customer's Solid Waste, and/or delivering targeted loads of Solid Waste to a County-designated location or locations. Franchisee will also cooperate with the County on any and all Customer waste assessments, including providing information in its Records on volume and characterization of wastes generated by Customers.

8.04 Waste Audits.

Franchisee shall conduct waste audits at the request of County where such waste audits are necessary to enable County to comply with the requirements of federal or state law. The results of such audits will be memorialized on forms either designed or approved by the County. The purpose of the audit will be to identify volume and characteristics of solid waste being generated by the customer. A copy of the audit shall be provided by the Franchisee to the customer, the County, and to Franchisee's own files.

8.05 Service Materials Belong to County.

Reports prepared by Franchisee in accordance with Article 10, public education and community relations materials prepared in accordance with Section 4.06 whether developed directly or indirectly by the County or Franchisee, are owned and may be used by the County without limitation or restriction. Other work products (whether computerized, written, printed or photographic) developed by the County or Franchisee in connection with Franchise Services, whether developed directly or indirectly by the County or Franchisee, may be used by the County. Franchisee may also continue to use public education and community relations materials and other work product in connection with any project not connected with this Agreement without the prior written consent of the County.

8.06 Recycled Materials.

Franchisee will use Reasonable Business Efforts to procure supplies with post-consumer recycled content.

8.07 Responsiveness to County.

- a. Contact Person.** Franchisee shall designate a "government liaison" person who shall be primarily responsible for working with the Director or his/her designee to address routine / day-to-day issues related to this Franchise Agreement.
- b. Return of Communications.** Except as otherwise required herein, Franchisee will return telephone calls from the County to the person who made that call during County Office Hours no later than the next County Working Day. Franchisee will

respond to all e-mails from the County within 2 County Working Days of receipt and will respond to other written correspondence from the County within 7 days of receipt thereof.

- c. In Person Meetings.** Franchisee will meet with the County during County Office Hours within one week of the County's oral or written direction at County offices or other location directed by the County. The purpose of the meetings may include addressing operational issues and contract compliance, reviewing quarterly reports and resolving any issues or problems related to the Franchise Services. The person attending these meetings on behalf of Franchisee shall be vested with sufficient authority to make decisions binding on Franchisee.

8.08 Changes in Scope or Specifications of Franchise Services.

a. Directions and Proposals. The County may direct Franchisee to submit proposals for changes in the scope of specifications of Franchise Services or Franchise Obligations, such as mandatory commercial recycling programs. If necessary, the Parties will enter into good faith negotiations for at least 30 days following the date the County directs Franchisee to submit a proposal. If the Parties cannot reach agreement regarding the cost and corresponding rates associated with the proposal within 30 days, the County may independently implement programs itself, with another franchised hauler or through a third Person.

8.09 Failure to Report. The refusal, failure or neglect of the Franchisee to file any of the reports required, or to provide material information to County, or the intentional inclusion of any materially false or misleading statement or representation made knowingly by the Franchisee shall be deemed a material breach of the Franchise Agreement, and shall subject the Franchisee to all remedies, legal or equitable, which are available to the County under this Agreement.

ARTICLE 9. INTENTIONALLY OMITTED

ARTICLE 10. RECORDS AND REPORTING

10.01 Intent and Review.

Franchisee acknowledges that the County entered into this Agreement, among other reasons, to provide Customers and the County with improved Collection Services while maintaining the benefits of open competition. Franchisee further acknowledges that, in order that the County may better evaluate Franchisee's performance under this Agreement, Franchisee has obligated itself to maintain Records and timely submit reports under this Article. Franchisee's failure to adhere to any requirement of this Article shall be considered a material breach of this Agreement.

10.02 Records

a. Maintenance. Franchisee shall maintain in its principal office in the County, a proper set of books and records on an accrual basis, and an annual financial statement in accordance with generally accepted accounting principles, accurately reflecting the business done by it under this Agreement including items listed in Exhibit 10.01a.

Franchisee shall maintain all records relating to the services provided hereunder, including, but not limited to, customer lists, billing records, route maps, AB 939 records, and customer complaints for a period of three (3) years from the date of the generation of each such record.

b. County Inspection and Audit. Upon ten (10) business days' advance Notice by the County, Franchisee will make Records which reasonably relate to the Franchisee's compliance with the provisions of the Franchise Agreement available to the County or County's designee(s) for inspection or audit at Franchisee's Office during Office Hours. To the extent the County inspects and/or otherwise obtains Customer information from Franchisee, the parties agree that Franchisee's customer lists, route maps/route listings, service records and other operating statistics are a valuable trade secret of Franchisee and are exempt from disclosure under the Public Records Act.

The County agrees to hold financial statements delivered pursuant to this section as confidential and shall not disclose the same unless and to the extent disclosure is required pursuant to applicable law. Nothing in this section will prevent County from allowing public access to County's records as required by law, and in the event any dispute arises as to the public access to information provided by Franchisee under the terms of this Agreement, the County shall, in its discretion, provide public access to said information according to law or tender the defense of any claims made against the County concerning said information to Franchisee. Prior to releasing any information pursuant to this paragraph, County shall make a good faith effort to notify Franchisee of the intended release.

County shall not make or retain copies or photocopies containing Franchisee's confidential financial and business records pertaining to the establishment of rates and payment of franchise fees without executing a confidentiality agreement providing that County shall hold and keep such copies and photocopies confidential. The confidentiality agreement shall be negotiated in good faith between the County and Franchisee, and commemorated in a separate legally binding document.

Notwithstanding anything contained herein to the contrary, the County shall have no right to review, audit, inspect, or copy any of Contractor's: (i) confidential, proprietary, or privileged information (as determined in Contractor's reasonable discretion), or (ii) information or records concerning operations outside of the services provided pursuant to this Agreement as agreed to by both parties.

Where the County has reason to believe that Records may be lost or discarded due to dissolution, disbandment or termination of Franchisee's business or other reason, the County may require that Franchisee give the County custody of any or all Records and that those Records and documents be maintained in the County Office of the Recycling and Waste Management Department. In that event, access to said Records will be granted to any Person duly authorized by Franchisee.

c. Requested Floor Rate Increase. In the event that Franchisee requests an increase in the floor rates in order to maintain a reasonable rate of return, the County or County's agents shall be entitled to examine the books, records and financial statements of Franchisee and its affiliates pertaining to operations not regulated by the County for the sole purpose of gathering information necessary to allow the agents to ascertain whether income, expenses, assets and liabilities are reasonably and consistently allocated among operations regulated by County and those not regulated by the County. For review of books and other financial records necessary to verify Franchisee's income, expenses, assets and liabilities, "Agent" shall mean an independent certified public accountant or public accountancy firm designated by County.

Franchisee may request that rather than using County staff that the County appoint an Agent. The County will honor said request, however, all additional costs of employing an Agent will be borne by Franchisee.

Information gained from examination of records pertaining to operations not regulated by the County shall be treated by the County and its agents as proprietary and confidential trade secret information exempt from disclosure under the Public Records Act. County or County's agents shall prepare a confidential report regarding the results of their examination of Franchisee's non-regulated operations and transactions with affiliates. County or County's agent shall issue its report on Franchisee's non-regulated operations and Franchisee's transactions with affiliates to County's counsel, and said report shall remain confidential, except that the dollar amount and general description of any costs that County or County's agent recommends be disallowed shall be disclosed to County's governing body. If Franchisee appeals the conclusions of said report to County's governing body, Franchisee shall decide what portions, if any, of said report shall be disclosed to County's governing body. County's governing body shall then consider Franchisee's request for increase in the rate, but may, in its discretion, limit its consideration to that information the Franchisee has made public, or deny said request if in the County's reasonable discretion inadequate information has been disclosed to County's governing body to make an informed decision on the request.

d. County Review of Financial Statements. County and/or its agents and consultants may review any audit plan and work papers of any of the accountants whose opinions on the financial statements Franchisee is obligated to deliver to County in accordance with subsections a, b, and c. If that review gives rise to any questions or differences of opinion regarding Franchisee's compliance with this Agreement, Franchisee and its accountant(s) will meet with the County and its consultant, if any, to discuss the issues involved within 14 days of County's direction.

10.02 Reporting.

a. Quarterly. Franchisee will submit Quarterly Reports to the County no later than the first day of the second month immediately following the end of each quarter described in Exhibit 10.02a (for example, for the Quarter ending on March 31, the Quarterly Report is due no later than May 1). Quarterly Reports must be in the form directed or approved by the County and contain, at a minimum, the information listed in Exhibit 10.02a, including information needed for the County to prepare Quarterly Reports required under Applicable Law with respect to recycling and Diversion of Solid Waste in the County, the County's compliance with its solid waste facility permits, and quarterly taxes due and payable to the California Board of Equalization.

b. Annual. Franchisee will submit Annual Reports to the County on or before February 15 of each Contract Year in the form directed or approved by the County, totaling the information contained in the Quarterly Reports for the previous Contract Year and containing, at a minimum, the information listed in Exhibit 10.02b.

c. Additional Information. Franchisee will use Reasonable Business Efforts to incorporate into reports additional information from Records promptly upon Notice from the County.

ARTICLE 11. INSURANCE, INDEMNIFICATION AND PERFORMANCE ASSURANCES

11.01 Insurance. Franchisee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Franchisee, his agents, representatives, employees or subcontractors.

a. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Franchisee has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$5,000,000** per accident for bodily injury and property damage.

3. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the Franchisee maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Franchisee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

b. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Additional Insured Status

The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Franchisee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Franchisee's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

2. Primary Coverage

For any claims related to this Agreement, the Franchisee's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Franchisee's insurance and shall not contribute with it.

3. Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the County.

4. Waiver of Subrogation

Franchisee hereby grants to County a waiver of any right to subrogation which any insurer of said Franchisee may acquire against the County by virtue of the payment of any loss under such insurance. Franchisee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

5. Self-Insured Retentions

Self-insured retentions must be declared to and approved by the County. The County may require the Franchisee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to

provide, that the self-insured retention may be satisfied by either the named insured or County.

6. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.

7. Claims Made Policies

If any of the required policies provide claims-made coverage:

- i. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Franchisee must purchase "extended reporting" coverage for a minimum of *five (5)* years after completion of work.

8. Verification of Coverage

Franchisee shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause.. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Franchisee's obligation to provide them.

9. Special Risks or Circumstances

At the beginning of any extension of the Term as provided for under Section 3.01 (b), County reserves the right to require reasonable modifications to the insurance requirements of this Section 11.01, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

11.02 Franchisee Indemnification, Release/Hold Harmless and Defense.

a. Defense and Indemnification. Franchisee will indemnify, defend with counsel approved by the County, protect and hold harmless the County from and against all Liabilities paid, incurred or suffered by, or asserted against, the County that result or are claimed to have resulted directly or indirectly by Franchisee's actions or inactions related to this Agreement, including the following:

1. Franchisee Negligence or Misconduct: the wrongful, willful or negligent act, error or omission, or the misconduct of the Franchisee and the Persons described in the definition of "Franchisee" in Exhibit 1.01;
2. Intellectual Property.: any allegation of infringement, violation or conversion of any patent, licenses, proprietary right, trade secret or other similar interest, in connection with any Service Assets, including technology, processes, Vehicles, software, machinery or equipment;

Franchisee will not, however, be required to reimburse or indemnify the County or any other person pursuant hereto, to the extent any Liabilities are due to: the negligence or willful misconduct of, or violation of any law, rule, regulation, order, permit, license, or ordinance by the County or any of the Persons described in the definition of "County" in Exhibit 1.01.

b. AB 939 Indemnification. Subject to the provisions of Public Resources Code Section 40059.1, Franchisee will further indemnify, defend with counsel approved by the County, protect and hold harmless the County from and against any and all fines, penalties and assessments levied against or threatened to be levied against the County for the County's failure to meet the requirements of AB 939, its amendments or any successor legislation and/or all rules and regulations promulgated thereunder, but only to the extent, said failure results from Franchisee's failure to comply with the express provisions of this Franchise Agreement and/or Franchisee's failure to comply with said laws, rules or regulations binding on Franchisee, including but not limited to failing to timely supply the County with documentation needed in order to comply with AB 939. However, Franchisee shall not be obligated to indemnify County for fines or penalties caused by County's modifications of Franchisee's information, by a change by the County in the scope of work hereunder which materially and negatively affects the ability of Franchisee to perform diversion activities, or by County's own acts or omissions which result in County's failure to provide timely reports to the state. In addition, the Franchisee's duty to indemnify under this Section is subject to the following restrictions:

1. The Franchisee's obligation to indemnify the County shall not be enforceable to the extent the penalty imposed on the County is based upon the failure of the County to establish and maintain a source reduction and Recycling element pursuant to Sections 41000 et seq. of the Public Resources Code.

2. No payment required under the Franchisee's obligation to indemnify the County may exceed that portion of any penalty assessed by CalRecycle against the County that was caused by Franchisee's failure to comply with an express obligation or requirement of this Agreement. Further, the Franchisee shall not be liable under the indemnity obligation to the extent that the Company's failure to comply resulted from County's action or failure to act, determined as a result of judicial review, hearing or appeal to CalRecycle.

11.03 Letter of Credit/Performance Bond.

a. Conditions of Letter of Credit or Performance Bond - In the event Franchisee fails to make timely payment of any Franchise Fees owed to County, County may require Franchisee, in

addition to paying any payment and/or penalty required, to provide for the issuance of an irrevocable direct pay letter of credit or a performance bond as described below (Franchisee shall be entitled to select whether it provides a letter of credit or performance bond).

1. Letter of Credit - A letter of credit shall be issued by a bank approved by the County for the benefit of the County, under which the County is authorized to draw, in one or more drawings, an aggregate amount of fifty thousand dollars (\$50,000) upon the occurrence of an Event of Default or Franchisee's failure to timely pay any County Payment Obligation. All interest from said letter of credit shall be payable to Franchisee. The expiration date of the Letter of Credit must be no less than the Term or if subject to renewal, provide the County with 30 days advance notice of non-renewal. The Letter of Credit will expire on the date on which the Bank receives a certificate from the County saying that the Term has expired or this Agreement has been terminated and Franchisee owes County no money hereunder, or that Franchisee has substituted an alternative letter of credit or other security document acceptable to County in County's sole discretion. The form of the Letter of Credit is subject to approval of County in its sole discretion. The Letter of Credit must be transferable to any successor or assign of the County.

2. Performance Bond - An irrevocable, annually renewable performance bond for the faithful performance of Franchisee's payment obligations hereunder (the "Performance Bond"). The Performance Bond shall be in the amount of fifty thousand dollars (\$50,000). The County shall be authorized to draw, in one or more drawings, on the Performance Bond upon the occurrence of Franchisee's failure to timely pay any County Payment Obligation in accordance with the terms hereof.

b. County Withdrawals - After thirty (30) days following Franchisee's failure to pay the County an amount owing under this Franchise Agreement plus interest at the rate of fifteen percent (15%) per annum, the letter of credit or performance bond may be assessed by the County upon five (5) days' prior written notice to the Franchisee for purposes including, but not limited to:

1. Failure of Franchisee to pay the County sums due under the terms of the Franchise Agreement;
2. Reimbursement of costs borne by the County to correct Franchise Agreement violations not corrected by Franchisee, after due notice; and
3. Monetary remedies or damages assessed against Franchisee due to breach of Franchise Agreement.

The Franchisee shall deposit a sum of money sufficient to restore the letter or bond to the original amount within thirty (30) days after notice from the County that any amount has been withdrawn.

ARTICLE 12. SERVICE FEES

12.01 Service Fees.

a. Setting Rates, Charges, and/or Floors.

Franchisee understands and acknowledges that in establishing this, and other permissible Franchise Agreements, the County intends to retain and preserve its ability to allow for competition in the market place to obtain the best services at the lowest costs for residents and businesses and choose not to set Service Fees, other than Service Fee floors, for the provision of Franchise Services pursuant to this Agreement.

Franchisee further understands and acknowledges that at present, the County has chosen to establish Service Fee floors for the provision of Franchise Services pursuant to this Agreement, but that makes no warranty that it will continue to use the floor rate fee methodology for the term of this Agreement. The decision of whether to regulate fees, not regulate fees, or continue setting floor rates rests solely and exclusively with the County. Current Service Fee floors are identified in Exhibit ??, and may be adjusted as set forth below.

Notwithstanding the above, the Board of Supervisors may also choose to fully set and regulate all rates and charges assessed by Franchisee for any and all services and activities it performs or engages in the Waste Collection Areas pursuant to this Franchise Agreement without the benefit of Service Fee floors. Furthermore, if the Board of Supervisors determines to regulate the rates of only some of Franchisee's services and activities, that decision shall not be construed as a waiver of the County's rights to regulate the rates or charges assessed by Franchisee for services not so regulated. The process for setting rates, charges, and/or Service Fee floors, is described in 12.01 (d).

b. Service Fee Floors.

The County currently chooses to employ Service Fee floors. As long as the County chooses to maintain Service Fee floors, Franchisee will not charge Service Fees for the Franchise Services under this Agreement that are less than those Service Fees listed in Exhibit 13.01a, except for existing Agreements as set forth below.

Existing Agreements. Franchisee may charge Service Fees below those set forth in Exhibit 13.01a to Commercial Customers having Existing Agreements containing Service Fees which are currently less than those set forth in Exhibit 13.01a, provided that Franchisee furnishes a copy of the Existing Agreement to the County, the County verifies the Existing Agreement, and the Existing Agreement is listed in Exhibit 13.01. This exception applies only for the current term of the Existing Agreement, excluding any extensions, renewals, or roll-overs.

c. Annual Service Fee Floor Adjustments.

The Board of Supervisors will adjust Service Fee Floors upward or downward, in the manner described below:

1. *(CPI Adjustment.* Commencing on January 1, 2020 and on the same date annually thereafter (the “Adjustment Date”), the portion of the Service Fee Floor rates not associated with tipping fees will be adjusted to account for annual inflationary increases in an amount equal to the annual percentage change in the Consumer Price Index (CPI) All Urban Consumers, Garbage and Trash Collection Component. This annual cost of living adjustment (the “COLA” adjustment) shall be equal to one hundred percent (100%) multiplied by the average of the month to month change in the CPI for the 12 month period ending nearest, but at least 60 days prior to, the date the COLA adjustment is to take effect.
2. *Pass-Through Costs Adjustment.* At the same time as the CPI Adjustment is considered the Service Fee Floor rates shall also be adjusted to account for Franchisee’s increased or decreased pass through costs as defined in Section 13.01 d 2 during the Term of this Agreement (including, without limitation, increases to the Franchise Fee) such that cost changes shall be “passed-through” to Franchisee’s customers in the form of floor rate adjustments.

d. Alternative Service Fee Floor Adjustment

Prior to December 1 of each year any Franchisee who believes the CPI Adjustments either understates or overstates actual local cost of doing business may request the Board of Supervisors consider adjustments to the Service Fee floor using the rate-setting model described in Section 12.01 e below in lieu of the CPI Adjustment and Pass-Through Cost Adjustment specified herein. The decision to implement the rate-setting model described Section 12.01 e below shall be made exclusively and solely by the Board of Supervisors at a public meeting. As such, the Franchisee requesting application of the alternative rate-setting model Section 12.01 e should fully substantiate its reasons for making the request at the time the request is filed. The Board of Supervisors may also decide, on its own volition to employ the rate setting methodology described below. If the Board of Supervisors decides to employ the rate-setting methodology described in Section 12.01 e on its own volition or at the request of a Franchisee, no rate increases or decreases will be granted until the County completes its analysis of the cost components described in Section 12.01 e and the Board of Supervisors acts on the increase or decrease in rates.

e. Rate Setting. Beginning on January 1, 2020 at any time thereafter, the Board of Supervisors may fix Service Fees, or make Annual Service Fee Floor Adjustments, based on its review and approval of the following cost components. If the County intends to recommend that this rate-setting methodology be employed absent a written request described in Section 12.01 d

above, the County shall provide notice to all Franchisees at least 45 days prior to the end of the calendar year.

1. Operating Costs. Operating costs used to determine rates include solid waste collection, processing, transfer and disposal costs. Operating costs shall include reasonable salaries and bonus compensation for all officers of Franchisee that are actively involved in the management of Franchisee's business activities. Operating costs shall exclude the following:

- i. Income taxes;
- ii. Payments to affiliates of Franchisee other than reasonable compensation for goods or services rendered;
- iii. Entertainment expenses;
- iv. Fines and penalties;
- v. Cost of repairs due to operator negligence;
- vi. Charitable and political donations;
- vii. Expenses not associated with solid waste operations franchised under this Agreement;
- viii. Unreasonable expenses in kind or amount;
- ix. The principal portion of any loan repayments; and
- x. Any other costs disallowed under the terms of this Agreement.

2. Pass-Through Costs. Pass-through costs shall be allowed as an expense for purposes of setting Franchisee's collection rates, but shall not be included as an eligible cost for purposes of calculating Franchisee's profit margin. The following adjustment shall also be considered at any time upon a request by Franchisee. The Board of Supervisors may also (but is not obligated to) act on its own initiative in the event Franchisee declines to request an adjustment to its Service Fees, and adjust Franchisee's Service Fees in the manner described in this Section. Pass-through costs include the following:

- i. The Franchise Fee set pursuant to this Agreement;
- ii. The cost of any other cost or fee, except for fines and penalties, imposed on Franchisee by the County;
- iii. Cost increases associated with a change and/or increase in the level of service required of Franchisee through this Agreement or change of terms in this agreement;
- iv. Any changes in law, regulations, taxes or designated disposal sites which change the contractor's expenses; and
- v. Fees, surcharges, and other amounts collected by Franchisee as agent of the County or other federal, state, or local agency.

3. Allowed Profit. The Franchisee shall be entitled to a reasonable profit on its operating costs established in the sole discretion of the Board of Supervisors.

4. If, after negotiating the rate setting mechanism in Section 12.01(d), Franchisee is not satisfied that the rate provides for an adequate profit, Franchisee may terminate the Agreement upon providing the County 45 days notice.

5. **Special Circumstances Floor Fee Adjustments.** The following adjustment shall also be considered upon a request by Franchisee. The Board of Supervisors may also (but is not obligated to) act on its own initiative in the event Franchisee declines to request an adjustment to its Service Fees, and adjust Franchisee's Service Fees in the manner described below:

The parties acknowledge 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 Franchisee's compensation and the rate adjustment mechanism provided in this Agreement result in Franchisee'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, and at its option, the Franchisee may request a special circumstance rate review should an event or circumstance arise which negatively impacts the economics of operating pursuant to this agreement and which is in excess of the rate adjustment resulting from the application of the annual adjustment formula set forth hereinabove. It is understood that the Franchisee shall have the burden of demonstrating to the reasonable satisfaction of the County the basis for the request. The County may also initiate a special circumstance rate review at its option.

The rate adjustment after a special circumstances rate review may result in a rate increase, a rate reduction or no change in rates. All pertinent information must be submitted to Director for review and subsequent approval by the Board of Supervisors. The costs of a special circumstance rate review shall be borne by the party requesting such review.

If an increase in cost results from the Alternative Service Fee Adjustment Method whether initiated by Franchisee or by the Board of Supervisors, at least 6 weeks prior to the implementation, Franchisee will give written notice of increases to each Customer in a form satisfactory to the County.

e. Notice of Rate Setting Hearing.

If the Board of Supervisors determines to fix Service Fees, other than adjusting floor rates, Franchisee shall provide written notice to each rate payer in a form approved by the County, of the time, date and place of each hearing set by the Board of Supervisors to set rates. Franchisee shall provide said notice at least ten (10) but no more than sixty (60) days prior to such date and the expense therefor shall be included in the rate base.

At least four (4) months before the effective date of any rate increase (other than one based solely on a landfill disposal cost increase) proposed by Franchisee, Franchisee shall submit to the Board of Supervisors a rate application in a form to be determined by the Board of Supervisors, which shall include proposed collection rates and revenues and operating cost and pass-through cost projections for the upcoming two-year period, which projections shall have a reasonable factual basis. Rates shall be set with the intent to reimburse Franchisee for its allowed operating and pass-through costs and allowed profit. The parties recognize that the Board of Supervisors shall use its best judgment and discretion in evaluating Franchisee's projections and may make adjustments, with a reasonable factual basis, in Franchisee's projections of its operating costs and

pass-through costs and in setting rates. By this Agreement, neither the County nor its governing body or staff agree, guarantee or warrant that such projections or adjustments will be accurate, or that Franchisee will, in fact, achieve reimbursement of all of its operating costs or pass-through costs, or that Franchisee will achieve its projected profit margin. Franchisee expressly assumes the risk that its costs may be higher than projected in the rate setting process and that its revenues may be lower than projected.

12.02 Franchise Fee Payable by Franchisee.

1. Amount. In consideration for County's granting Franchisee the franchise described in Section 4.01, Franchisee will pay the County the Franchise Fee equal to 10% of the Gross Revenues received from providing the Franchise Services, commencing with revenues billed for and received after April 1, 2019, but excluding Gross Revenues received from providing the Franchise Services pursuant to an Existing Agreement listed in Exhibit 13.01a. Said Franchise Fee shall satisfy any obligation Franchisee has to pay pursuant to Inyo County Code Chapter 7.08. The County may change the applicable Franchise Fee upon at least sixty (60) days' Notice to Franchisee.

2. Payment. Franchisee will pay the Franchise Fee quarterly, no later than the fifteenth day of the second month immediately following the Quarter in which Franchisee rendered Franchise Services, (for example, for the quarter ending on March 31, payment is due no later than May 15). With payment, Franchisee will additionally provide:

- (1) documentation in form and detail satisfactory to the Director showing the basis for calculating the franchise fee, together with additional information to calculate or verify the franchise fee that the Director may determine to be necessary; and
- (2) a representation and warranty as follows: "I represent and warrant by and on behalf of Franchisee, under penalty of perjury in the State of California, that, to the best of my knowledge and belief, the Franchise Fee and accompanying documentation supporting such Franchise Fee are true, correct and complete."

Documentation and representations and warranties filed by Franchisee are not deemed conclusive as to the information presented or statements made therein. Franchisee's submission of documentation and representations and warranties does not preclude the County from taking additional measures and actions to collect franchise fees actually due and payable.

3. Late Payment Charges. If payment is not received in accordance with subsection a2, then Franchisee shall pay interest equal to fifteen percent (15%) per annum, or at the maximum interest rate permitted under California law, whichever is lower, of the total of the unpaid monthly charges. Said late payment charges shall not be recoverable through rate setting. Late payments received shall first apply to the late payment charge(s) and then to the outstanding

principal balance of the unpaid monthly charges, with payments made toward the oldest balance(s) first.

Failure to submit payment in full of the franchise fee within ninety (90) days after the due date shall be an event of Default, unless the director agrees in writing to extend the time for payment.

4. **County Audit.** The County may, at its own expense and using a consultant of its choosing, audit the records of Franchisee and Franchisee must provide the County with copies of records within 2 weeks of the County's request. If the County's audit demonstrates to the satisfaction of the County that the Franchise Fee paid by Franchisee to the County was understated, then Franchisee will pay the County:

- (1) the amount of the understated Franchise Fee plus the late payment charges provided in subsection a3 within 30 days following the County's submission of the results of the audit to Franchisee, and
- (2) if the County's audit demonstrates that the Franchise Fee paid by Franchisee was understated by greater than 2%, the County's Reimbursement Cost to conduct the audit.

Said costs shall not be recoverable through rate setting.

12.03 Franchise Fee Disputes.

a. County's Notice of Dispute. If the County disputes any amount calculated by Franchisee under Section 12.02, the County will give Franchisee Notice of its dispute together with any request for additional information, identified with reasonable specificity, with respect thereto.

b. Franchisee's Response. Within 7 days of receiving the County's Notice, Franchisee will respond to the County's dispute and supply any requested information. If Franchisee does not respond within said time, it will be deemed to concur with the County. If Franchisee concurs or is deemed to concur, it will promptly amend the disputed invoice.

c. Dispute Resolution. If the County disagrees with Franchisee's response and the County and Franchisee cannot reach agreement during an ensuing 15-day period following the Franchisee's response, the Parties agree to attend mediation where, each Party agree to negotiate in good faith a resolution to the dispute. The mediator shall be mutually agreed, and such mediator's fee shall be shared equally by the Parties. If, after such mediation, the Parties are still unable to resolve their dispute, each Party may avail itself of any remedies available to such Party under this Agreement, at law, in equity, or otherwise.

12.04 No Other Fees or Gratuities. Franchisee shall not, nor shall it permit any agent, employee, affiliate, sub-contractor employed by it, to request, solicit, or demand, directly or

indirectly, any compensation or gratuity for the collection of solid waste otherwise required to be collected under this Franchise Agreement.

ARTICLE 13. BREACHES, DEFAULTS, DAMAGES AND OTHER REMEDIES

13.01 Certain Breaches and Damages.

a. Notice and opportunity to correct. The County entered into this Agreement with Franchisee in part based on Franchisee's demonstrated abilities, service quality, and responsiveness to Customers' and the County's needs. It is the County's hope to avoid exercising remedies set forth in this Agreement whenever possible by working with Franchisee informally to resolve Events of Default or other failures to satisfy the obligations set forth in this Agreement. Thus, the County may, in its sole discretion, provide written notice to Franchisee of any Event of Default or failure by Franchisee to satisfy the obligations set forth in this Agreement of which the County becomes aware prior to pursuing other remedies set forth in this Agreement. If Franchisee corrects said Event of Default or failure to the satisfaction of the Director within the number of days provided, then the County shall not pursue additional remedies for that occurrence.

b. Franchisee Reports. In each Quarterly Report, Franchisee will certify to the County that it has fully and timely met its Performance Obligations during the preceding Quarter. If Franchisee cannot so certify, then Franchisee will note those failures in its Quarterly Report and within 30 days of submitting its Quarterly Report, pay damages listed in Exhibit 14.01 for each failure occurring after the first 6 weeks following the Commencement Date.

c. County Notice. If the County becomes aware at any time that Franchisee has not fully and timely met its Performance Obligations then the County may provide Franchisee with a Notice, in writing, thereof specifying any damages that Franchisee must pay the County in accordance with Exhibit 14.01 within 10 days of Notice, *unless* Franchisee contests payment of damages as provided in subsection d.

d. Procedure for Review of Damage Obligations. Within ten (10) days of the date of the Notice by County described in subsection c, Franchisee may contest imposition of damages by submitting documentary evidence to the County demonstrating why Franchisee does not owe damages. The County will review Franchisee's evidence and render a written decision to Franchisee confirming or reversing the imposition of damages within thirty (30) days of receipt of the evidence. The County's assessment and/or Collection of assessed damages shall not prevent the County from exercising any other right or remedy, including the right to terminate this Agreement, for Franchisee's failure to perform the work and services in the manner set forth in this Agreement.

Notwithstanding anything contained herein to the contrary, Franchisee shall be entitled to all avenues of redress provided hereunder, at law, or in equity. The imposition of such assessed damages shall be stayed if Franchisee seeks such review.

e. Damages Reasonable. The Parties acknowledge that the County has incurred considerable time and expense procuring this Agreement in order to secure an improved level of Collection service quality, accountability, and increased Customer satisfaction. Therefore consistent and reliable Franchise Service and accountability is of utmost importance to the County. The County has considered and relied on Franchisee's representations as to its quality of service commitment in entering into this Agreement, and Franchisee's breach of its Performance Obligations represents a loss of bargain to the County and Customers.

The Parties further recognize that quantified standards of performance and regular reporting to the County regarding that performance are necessary and appropriate to ensure consistent and reliable Service, and if Franchisee fails to meet its Performance Obligations then the County will suffer damages (including its Customers' inconvenience; anxiety, and frustration, criticism and complaint by Customers; potential political pressure; lost County Board and staff time; and loss of bargain secured through time-consuming and expensive procurement) and that it is and will be impracticable and extremely difficult to ascertain and determine the value thereof. In addition, if Franchisee fails to fully and timely satisfy its Performance Obligations or in the Event of Default, the urgency of protecting public health and safety may necessitate, as determined in the sole discretion of the Director, that the County enter into emergency or short term arrangements for services without competitive procurement at prices substantially greater than hereunder, and the monetary loss resulting therefrom is impossible to precisely quantify. Lastly, termination of this Agreement for Franchisee Default and other remedies provided hereunder are, at best, a means of future correction and not remedies that make the County whole for past Breaches and Franchisee Defaults. Therefore, the Parties agree that the liquidated damages listed in Exhibit 14.01 represent a reasonable estimate of the amount of said damages, considering all of the circumstances existing on the Commencement Date, including the relationship of the sums to the range of harm to the County that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

13.02 Remedies Upon Default.

a. Remedy. Upon the occurrence of an Event of Default, the County has the following remedies:

1. Termination. The County may terminate this Agreement or any portion of Franchisee's Performance Obligations only via formal action of the Board of Supervisors at a properly noticed meeting during open session. Franchisee shall be given the opportunity to be heard and to present evidence to support its position regarding the allegations of the Notice required immediately below.

Prior to that public meeting, the County shall serve Franchisee a Notice specifying that a particular Event of Default exists, which the Franchisee must cure or the County may terminate the Agreement, and offer to meet with the Franchisee within seven days of said Notice at the County offices to meet and confer in good faith in an effort to agree on a resolution and cure of

the Event of Default. If the parties are unable to informally resolve the matters set forth in the Notice, the County may then terminate the Agreement at the public meeting described above:

- i. at least 30 days following the date of the Notice, if:
 - a. The Event of Default does not constitute an imminent threat to public health and safety;
 - b. Franchisee has not cured the Event of Default, or has not taken, or diligently continued to take, reasonable steps necessary to commence to cure the Event of Default which cannot reasonably be cured within 30 days.
- ii. immediately following the date of the Notice if:
 - a. County determines that protection of public health and safety requires immediate termination; or
 - b. Franchisee fails to maintain insurance, bonds, or other assurances of performance required under this Agreement.

3. Damages. The County may exercise its remedies of damages (including damages in accordance with Section 14.01).

4. Equitable Relief. The County may exercise any other available remedies at law or in equity (including specific performance and injunctive relief). Franchisee acknowledges that the County's remedy of damages for a breach of this Agreement by Franchisee may be inadequate for reasons including: the urgency of timely, continuous and high-quality Solid Waste management service under this Agreement, including collection, transportation and/or transfer for disposal of putrescible wastes which constitute a threat to public health; and for all of the reasons set forth in Section 14.01e. Therefore, the County is entitled to all available equitable remedies, including specific performance or injunctive relief.

b. Delivery Obligations. Franchisee further acknowledges that the County's remedy of damages for a breach of Section 7.01 by Franchisee (Failure to Deliver Materials to Designated Disposal Facility) may be inadequate and, consequently, that the County is entitled to all available equitable remedies, including specific performance and injunctive relief.

13.03 Remedies Not Exclusive. The County's rights and remedies in the Event of Default are not exclusive. Exercise of one remedy, including seeking damages, is not an election of remedies but is cumulative with any other remedies under this Agreement; provided, however, if the County shall impose damages pursuant to Exhibit 14.01, such damages shall be the maximum amount of damages owed by Franchisee for such breach.

13.04 Waivers.

a. County Waiver of Breach. The County's waiver of any breach or Event of Default will not be deemed to be a waiver of any other breach or Event of Default including those with respect to the same obligations under this Agreement. The County's decision not to demand payment of damages will not be deemed a waiver of any Franchisee failure to satisfy any

Performance Obligations. The County's subsequent acceptance of any damages or other money paid by Franchisee, including damages, will not be deemed to be a waiver by the County of any pre-existing or concurrent breach or Event of Default.

13.05 Governing Law, Jurisdiction, Venue.

a. Governing Law. The laws of the State of California shall govern the interpretation of this Agreement.

b. Jurisdiction. The Parties will bring any lawsuits arising out of this Agreement in California State Court, which will have exclusive jurisdiction over said lawsuits.

c. Venue. Venue will be made and performed in courts sitting in the County. Should any lawsuit be filed in Federal Court, exclusive venue shall lie in the Eastern District of California.

d. Other. The site of any other hearing or action, whether arbitration or non-judicial, of whatever nature or kind regarding this Agreement, shall be conducted in the County.

13.06 Costs. Franchisee agrees to pay to the County the County's Reimbursement Costs reasonably incurred by or on behalf of the County enforcing timely payment or performance of Franchisee's obligations under this Agreement.

13.07 Assurance of Performance.

If Franchisee:

- (1) is the subject of any labor unrest (including work stoppage or slowdown, sick-out, picketing or other concerted job action);
- (2) appears in the judgment of the County to be unable to regularly pay its bills as they become due based on, among other things, being or becoming insolvent or bankrupt, or ceasing to pay its debts as they mature, or making an arrangement with or for the benefit of its creditors, or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property; or (ii) being or becoming a party to a voluntary or involuntary bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Franchisee under the laws of any jurisdiction, which proceeding, if involuntary in nature, has not been dismissed within sixty (60) days; or (iii) taking any action approving of, consenting to, or acquiescing in any such proceeding; or (iv) being a party to the levy of any distress, execution or attachment upon the property of the Franchisee which may substantially interfere with the Franchisee's performance hereunder; or

- (3) is the subject of a civil or criminal judgment or order entered by a federal, state, regional or local agency for violation of an environmental or tax law;

and the County believes in good faith that Franchisee's ability to timely and fully perform Franchise Services has been placed in substantial jeopardy, the County may, at its option and in addition to all other remedies it may have, demand from Franchisee reasonable assurances, including, but not limited to, those provided for under 111 USC Section 365(b)(1)(c), or any successor provision of the Federal Bankruptcy Code, of timely and full performance under this Agreement.

If Franchisee fails or refuses to provide reasonable assurances by the date required by the County, said failure or refusal will constitute an Event of Default.

13.08 County Right to Perform Franchise Services.

a. Events. The County may perform, or contract for the performance of, any or all of Franchisee's Performance Obligations, including the collection of Solid Waste or any portion thereof and transportation and delivery to a Solid Waste facility, upon the occurrence of the following events, determined by County in its sole discretion:

- (1) Franchisee, except for the occurrence or existence of an Uncontrollable Circumstance, fails, refuses or is unable for a period of seventy-two (72) hours to Collect and/or to transport, Solid Waste to a Solid Waste facility and the Director, in the exercise of his/her sole discretion, determines there is danger to the public health, safety or welfare.
 - i. Franchisee to Cooperate.* Franchisee agrees that in such event it will reasonably cooperate with County and its third-party contractor to affect such a transfer of operations in as smooth and efficient a fashion as is practicable.
 - ii. Franchisee to Pay Increased Costs.* All costs, fees, rates and other expenses incurred by the County and/or its third-party contractor that exceed those which would have been incurred by County had no such emergency arisen shall be the responsibility of the Franchisee, and shall be paid to the County within thirty (30) days of Franchisee receipt of Notice to so pay.

The County has no obligation to continue providing Franchise Services and may at any time, in its sole discretion, cease to provide Franchise Services. However, the County's right to provide Franchise Services including contracting with another Person, will continue until Franchisee can demonstrate to the County's satisfaction that Franchisee is ready, willing and able to resume timely and full Franchise Services.

b. Notice. The County may give Franchisee oral notice that the County is exercising its right to perform Franchise Services, which notice is effective immediately, but must confirm oral notice with Notice within 24 hours thereafter to extend County performance.

c. Records and Reports. Upon County request, Franchisee will promptly provide the County with immediate access and/or possession of Records, including those related to routing and billing.

ARTICLE 14. FRANCHISEE'S OBLIGATIONS UPON EXPIRATION OR TERMINATION

14.01 Pay Outstanding Amounts.

Franchisee will pay the County any County Payment Obligations or other amounts then accrued and payable.

14.02 Cooperation During Transition.

If Franchisee is not awarded an agreement to continue to provide Franchise Services following the expiration or termination of this Agreement, Franchisee will reasonably cooperate with the County and the succeeding Franchisee(s), contractor(s), licensee(s), permittee(s), or other Person(s) providing Solid Waste Handling Services to assure a smooth, efficient, orderly, timely and effective transition from Franchise Services to those Solid Waste Handling Services, including transfer of Records; complete routing information, route maps, and Customer billing lists, upon request of the County; providing other Records and reports required by this Agreement; and provide reasonable coordination with the County and any subsequent Franchisee(s), contractor(s), licensee(s), permittee(s), or other Person(s) with respect to exchanging Containers. Franchisee will not remove a Container from any Customer's premises until the earlier of: (1) the date replacement containers are provided to the Customer, or (2) 3 weeks after the expiration or termination of this Agreement. THIS OBLIGATION OF FRANCHISEE WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE 15. THE PARTIES

15.01 Franchisee is Independent Contractor.

Franchisee will perform Franchise Services as an independent contractor engaged by the County and not as officer, agent, servant, employee or partner of the County nor as a joint venture with the County. No employee or agent of Franchisee is deemed to be an employee or agent of the County. Franchisee will have the exclusive control over the manner and means of performing Franchise Services and meeting its Performance Obligations and over all Persons performing Franchise Services. Use of the word "direct" in this Agreement signifies County's right to require Franchisee's compliance with County directions, but will not be construed to signify County control over the manner and means of performing Franchise Services. Franchisee is solely responsible for the acts and omissions of its officers, employees, contractors, subcontractors and agents, none of which is deemed to be an officer, agent, servant or employee of the County. Neither Franchisee nor its officers, employees, contractors, subcontractors and

agents will obtain any rights to retirement benefits, workers compensation benefits, or any other benefits which accrue to County employees and Franchisee expressly waives any claim it may have or acquire to said benefits.

15.02 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties and their representatives, successors and permitted assigns.

15.03 Binding on Successors. The provisions of this Agreement will inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

15.04 Further Acts. Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

15.05 Actions of the County in Its Governmental Capacity. Nothing in this Agreement is interpreted as limiting the rights and obligations of the County in its governmental or regulatory capacity.

15.06 Franchisee's Obligations Performed at Its Sole Expense. Franchisee will perform Franchise Services solely for the compensation expressly provided for in this Agreement. Franchisee acknowledges that it will not receive any form of payment or other consideration from the County for its performance under this Agreement except for the grant of the franchise under this Agreement. Franchisee will instead look solely to its Customers to compensate Franchisee for providing all Franchise Services and satisfying its Performance Obligations.

15.07 Parties' Representatives.

a. County Representative. The County Representative is the Director unless otherwise named by the Board from time to time upon Notice of County Representative to Franchisee. The County Representative is authorized to act on behalf of the County in the administration of this Agreement and, unless otherwise specified, may take all actions set forth in this Agreement except termination, extension, amendment, and assignment consent, without Board action.

b. Franchisee Representative. The Franchisee Representative is Dale Comontofski, as may be changed from time to time upon Notice of Franchisee Representative to the County. The Franchisee Representative is authorized to act on behalf of Franchisee in the performance under this Agreement.

15.08 Due Diligence. Franchisee acknowledges that the County may be subject to statutory fines or penalties for failure to achieve mandated waste diversion levels and that waste management is a public health and safety concern. It agrees that it will exercise due diligence in performing Franchise Services.

15.09 Subcontracting.

Franchisee may not Subcontract any portion of the Franchise Services, including the provision of Bins and Containers, set forth in this Agreement. Franchisee may engage any number of Subcontractors providing goods or services that do not comprise Franchise Services or the provision of Bins and Containers (e.g., billing services, equipment maintenance). Franchisee will not subcontract in a manner that effectuates an assignment of this Agreement, unless the provisions of this Agreement (including Section 17.01) related to assignment are met.

Franchisee must direct the work of Franchisee's Subcontractors. Franchisee is solely responsible for paying any compensation due or payable to Franchisee's Subcontractors. The County may require Franchisee to remove any Subcontractor for good cause. Subcontractors' failure to satisfy its subcontracted obligations (including violation of Applicable Law) is a failure by Franchisee and the County may exercise any or all of the rights and remedies available to the County under this Agreement with respect to Franchisee.

"**Subcontractor**" includes any Person, including Affiliates, that provides goods or services that do not comprise Franchise Services or the provision of Bins and Containers but are related to the provision of Franchise Services, whether pursuant to formal, written agreement or merely in fact. "**Subcontract**" means any arrangement, formal or informal, written or otherwise, between Franchisee and a Subcontractor for providing goods or services related to the provision of Franchise Services.

In its Annual Report, Franchisee will disclose to the County the name of all Subcontractors, the amount goods or services related to the provision of Franchise Services that each Subcontractor provides to Franchisee, and a description of Franchisee's relationships to each Subcontractor (including ownership interests).

15.10 No Use of County Name. Franchisee will not do business as or use a corporate, partnership, venture or other formal name, containing the words "Inyo" or "County" or implying County ownership *although* upon County direction, Franchisee will use the County's name in its public relations signage.

ARTICLE 16. ASSIGNMENT AND AMENDMENTS

16.01 Assignment.

a. County Assignment. The County may assign this Agreement to a joint powers authority, a sanitation district or other public entity succeeding to the major portion of the County's solid waste management rights and obligations. The County may also assign this Agreement to any other Person, with Franchisee's consent, upon the County's determination that the assignee is financially capable of meeting the County's obligations under this Agreement.

b. Franchisee Assignment. Franchisee acknowledges that the experience and expertise of Franchisee are material considerations of the County in entering into this Agreement with

Franchisee. Franchisee may not Assign this Agreement except upon prior written consent of the County expressed by resolution. Franchisee may not circumvent the County's Assignment consent rights in practical effect by securing goods or services from a Subcontractor that would be itself subject to "assignment," where "Subcontractor" is substituted for "Franchisee" in the definition of "Assign" in subsection c. Any attempt to assign, or assignment of, this franchise without the prior written consent of County shall constitute a material breach of this Agreement.

c. Assign. "Assign" includes:

- (1) selling, exchanging or otherwise transferring effective control of management of the Franchisee (through sale, exchange or other transfer of outstanding stock or otherwise);
- (2) issuing new stock or selling, exchanging or otherwise transferring 20% or more of the then outstanding common stock of the Franchisee;
- (3) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of Ownership or control of Franchisee;
- (4) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, being levied against Franchisee, appointment of a receiver taking possession of any of Franchisee's tangible or intangible property;
- (5) substitution by a surety company providing any performance bond in accordance with Section 11.03 of another Person for Franchisee to perform Franchise Services;
- (6) sale or transfer of 50% or more of the value of assets of Franchisee except for sales or transfers to parents, grandparents, siblings, children, and grandchildren of persons having a shareholder or other equity interest in Franchisee as of the date of this Agreement ("Immediate Family") or trust created primarily to benefit members of the Immediate Family; and
- (7) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership or control of Franchisee.

d. Transfers to ESOP. Notwithstanding the above, Franchisee or its shareholders may, without consent of the County, transfer ownership of Franchisee's capital stock to an Employee Stock Option Plan (ESOP), or to current management employees of Franchisee.

e. Obtaining County Consent. County's consent shall not be unreasonably withheld, but the County may impose reasonable conditions of approval on any proposed Assignment.

The following conditions must be satisfied prior to County's obligation to consider a proposed Assignment:

- (1) Franchisee shall give County at least ninety (90) days advance written notice of Franchisee's intent to Assign this Agreement. Such notice shall include at least:
 - a. The name, address, telephone number and contact information of the proposed Assignee.
 - b. The nature of the legal entity owning or controlling the proposed Assignee, including the names, addresses and telephone numbers of all principals, partners and/or shareholders thereof, as the case may be; and
- (2) The proposed Assignee must be shown, by credible and sufficient evidence, to be qualified by financial condition, background, and experience, to be able to fully assume and satisfactorily perform all of Franchisee's obligations hereunder including, but not limited to, the ability comply with AB 939.
- (3) Franchisee must not be in default under any of the material terms and conditions of this Agreement.
- (4) The proposed Assignee must be willing to assume, in writing, all of the Franchise Obligations.

f. Franchise Transfer Application and Fee. Any application for a franchise transfer shall be made in a manner required by the Director. The application shall include a transfer fee deposit in an amount to be set by County, to cover the cost of all direct and indirect expenses, including administrative expenses incurred by the County, including any consultants and attorneys, necessary to adequately analyze the application. Such transfer fee shall not exceed ten thousand dollars (\$10,000). County's finally set transfer fee shall be billed to the proposed Assignee, and supported with evidence of the expenses and/or costs incurred. Assignee shall pay any such bill within thirty (30) days of receipt. The transfer fee is separate and distinct from Franchise Fees, and shall not be recoverable costs for any Fee setting purposes.

16.02 Amendments. The Parties may change, modify, supplement or amend this Agreement only upon written agreement duly authorized and executed by both Parties. However, wherever reports, forms, protocols, or other documents are attached to this Agreement as attachments to an Exhibit, the County Representative and Franchisee Representative may edit and revise them upon their agreement or otherwise provided in the related Sections of this Agreement, evidenced in writing *unless* this Agreement specifically requires approval by the County Board pursuant to resolution or otherwise.

ARTICLE 17. NOTICES, WRITING

17.01 Notices.

a. Manner. The Parties must give Notices at the address under Subsection c, in any of the following manners:

- (1) by e-mail or facsimile promptly followed by delivery described in following items (2), (3) or (4),
- (2) personal delivery to a representative of the Parties, with signed receipt,
- (3) deposit in the United States mail, first class postage prepaid (certified mail, return receipt requested), or
- (4) deposit with a commercial delivery service that provides delivery verification.

b. Address.

If to County: Solid Waste Superintendent
 Inyo County Department of Public Works
 P.O. Drawer N
 Independence, California 93526

Telephone: (760) 873-7191
Facsimile: (760) 873-5599
e-mail: rbenson@inyocounty.us

If to Franchisee: Mr. Dale Comontofski, President
 Preferred Septic and Disposal
 1280 North Main Street, Suite I
 Bishop, CA 93514

The Parties may change their contact information above upon written Notice to the other Party.

17.02 Writing. Each Party must communicate with each other under this Agreement in writing (including electronic media), such as the following:

- (1) reports;
- (2) requests, proposals;
- (3) reviews, comments;
- (4) directions, demands, orders;
- (5) selections, option exercises, approvals, waivers;
- (6) acknowledgments, and certifications.

ARTICLE 18. EXECUTION OF AGREEMENT

18.01 Authority to Execute.

a. County. The County warrants that the officers listed below have been duly authorized by the County to execute this Agreement on behalf of the County.

b. Franchisee. Franchisee warrants that the individuals listed below have been duly authorized by the Franchisee to execute this Agreement on behalf of the Franchisee.

COUNTY OF INYO:

By:

Title:

Date:

FRANCHISEE:

By:

Title:

Date:

Approved as to Form (County Counsel):

By:

Title:

Date:

Approved by Risk Management:

By:

Title:

Date:

EXHIBIT 1.01: DEFINITIONS

Whenever any term used in this Agreement is defined by the Inyo County Code Chapter 7.08 (the "Code") or Public Resources Code at Sections 40000 *et seq.* (the "Act"), said definitions shall apply unless the term is otherwise defined in this Agreement. To the extent that definitions in the Code conflict with definitions in the Act, the Code shall govern the rights and the obligations of the parties hereunder, to the extent permissible by law.

AB 341 means the Mandatory Commercial Recycling Regulation approved by the Office of Administrative Law in May 2012, Title 14, California Code of Regulations, Chapter 9.1, commencing with section 18835; as well as California SB 1018 signed by the Governor in June of 2012.

AB 939 or the **Act** means the California Integrated Waste Management Act under California Public Resources Code at Sections 40000 *et seq.*

Affiliate or Affiliates means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Franchisee by virtue of direct or indirect Ownership interests or common management, including a business in which Franchisee has a direct or indirect Ownership interest, a business which has a direct or indirect Ownership interest in Franchisee and/or a business which is also Owned, controlled or managed by any business or individual which has a direct or indirect Ownership interest in Franchisee.

Agreement means this Agreement, including all exhibits and attachments which are incorporated herein by reference, as this Agreement may be amended and supplemented pursuant to Section 17.02.

Annual Report means the report described in Section 10.02b.

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

1. Vehicles:

- (i) Section 43000 *et seq.* the California Health and Safety Code with respect to air emissions (smog checks);
- (ii) Section 27456b of the California Vehicle Code with respect to tires;

- (iii) Section 34500 *et seq.* of the California Vehicle Code with respect to documentation through its maintenance log or otherwise of a safety compliance report issued pursuant to Division 14.8 of the California Vehicle Code as applicable to each Vehicle, including bi-annual "BIT" inspections conducted by the California Highway Patrol;
- (iv) rules and regulations promulgated under the California Vehicle Code with respect to Vehicle highway lighting, flashing and warning lights, clearance lights, and warning flags;
- (v) rules and regulations of the California Department of Motor Vehicles with respect to Vehicle registration;
- (vi) Vehicle weight limits;
- (vii) the appropriate class of drivers' licenses issued by the California Department of Motor Vehicles;
- (viii) Control Measure for Diesel Particulate Matter from On-Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicles, 13 CCR 2020 *et seq.*;
- (ix) 14 CCR 17341, 17342, 17343 and 17344, with respect to equipment construction, safety and parking and identification of operating equipment.

2. Containers:

- (i) 14 CCR 17314 with respect to maintenance and placement of containers;
- (ii) 14 CCR 17317 with respect to placing identifying name and telephone number on containers.

3. Labor:

- (i) drug and alcohol testing;
- (ii) the Occupational Safety and Health Act (29 U.S.C. Section 651 *et seq.*), including the Solid Waste Disposal Facility Criteria promulgated by the U.S. EPA on October 9, 1991 (40 CFR, Parts 257 and 258); and the California Occupational Safety and Health Act (California Labor Code, Division 5, Parts 1-10, Section 6300 *et seq.*), and rules and regulations of California Division of Occupational Safety and Health;
- (iii) the Immigration Reform and Control Act of 1986 (PL.99-603);

4. Environmental protection:

- (i) CERCLA;
- (ii) RCRA;
- (iii) Clean Air Act (42 U.S.C. Section 1351 *et seq.*, 42 U.S.C. Section 7401-7642); and the California Clean Air Act (Health & Safety Code Sections 1251 *et seq.* and Health and Safety Code Sections 39000 *et seq.*);
- (iv) California Hazardous Waste Control Act (California Health & Safety Code, Section 25100 *et seq.*);
- (v) California Hazardous Materials Release Response Plan and Inventory Act (California Health & Safety Code, Division 20, Chapter 6.95, Section 25500 *et seq.*);

- (vi) Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*);
- (vii) Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 *et seq.*); and

5. Miscellaneous:

- (i) County Lobbyist Ordinance;
- (ii) Civil Rights Act of 1964 (Subchapter VI or Chapter 21 of Title 42);
- (iii) California Integrated Waste Management Act; and
- (iv) Inyo County Code.

Authorized Recycling Agent means a Franchisee the County designates as a provider of Waste Recycling Handling Services as set forth in Public Resources Code Section 41950.

Bins means metal containers for Collection of Solid Waste with front-end loading vehicles, such as 3 yard dumpsters.

Board or County Board means the County Board of Supervisors.

Bulky Waste means Solid Waste that cannot be contained within a Residential Customer's Cart, such as

- (1) furniture (including chairs, sofas, mattresses and rugs);
- (2) appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, small household appliances and other similar items commonly known as "**white goods**");
- (3) large Yard Wastes (including wood waste, tree branches, scrap wood); and
- (4) tires.

Carts means wheeled containers having a capacity of up to 96 gallons supplied by Franchisee for Collection of Customers' Solid Waste.

C&D Waste means used or discarded construction materials, packaging, and rubble removed from a premises during the construction or renovation of a structure resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

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

Collect, Collection or other form thereof refers to Solid Waste pickups made by Franchisee under this Agreement.

Commencement Date means the date on the cover of this Agreement.

Commercial or Commercial Premises means a premise that is not Residential, including premises where business activity is conducted, including offices, retail sales, services,

institutions, wholesale operations, food service, manufacturing and industrial operations, public property and facilities but excluding businesses conducted upon residential premises that are permitted under applicable zoning regulations and are not the primary use of the property. Commercial Collection Services are described in Section 4.01c(2).

Commercial Set-out Site is defined in Section 4.01c(2)(i).

Containers means the totes, carts, cans, bins, vessels, receptacles or other containers from which Franchisee must Collect Solid Waste, including Bins and Roll-Offs approved by County.

Contract Year means the calendar year, commencing January 1 and ending December 31.

County means the County of Inyo, a political subdivision of the State of California, or any governmental entity which may hereinafter assume waste management obligations of the County, including any joint exercise of powers authority or other similar public entity with which the County participates or contracts with, established to provide solid waste management services or meet Solid Waste diversion requirements under Applicable Law. For the purposes of Indemnities, "County" also means its officers, employees, agents, franchisees, attorneys, administrators, affiliates, representatives, servants, insurers, heirs, assigns and any successor or successors to the County's interest.

County Code or **Code** means the Inyo County Code, including Title 7.

County Office Hours means 8 a.m. to 5 p.m. on County Working Days.

County Payment Obligations means monetary amounts due and payable to County, or claims by County for those amounts, including those listed under Sections 13.02 and 14.01, any County Reimbursement Costs, and any amounts accrued and payable upon termination of the Agreement in accordance with Section 15.01.

County Reimbursement Costs means Direct Costs incurred by the County plus 10.

County Working Days means days on which the County administrative offices are open to the public.

Customer(s) means the generators (including owners, tenants, occupants and/or persons having the care or control of any premises within the County) of Solid Waste to which Franchisee is required to provide Franchise Services.

Day means calendar day.

Delivery Obligations means Franchisee's obligation to deliver Solid Waste to the Designated Disposal Facility under Section 7.01.

Designated Disposal Facility means, unless otherwise identified by the County, the Bishop, Independence and Lone Pine Landfills, located in Inyo County.

Direct Costs are actual costs incurred, including staff, equipment, materials, overhead, and other costs reasonably expended in the performance of an activity, certified by an authorized financial officer of the Party submitting a payment demand therefor.

Director means the Director of County Department of Recycling & Waste Management or his/her designee.

Diversion Facility is defined in Section 6.01a.

Divert, Diverted, Diversion or other form thereof is defined in Section 6.01a.

Diverted Recyclables is defined in Section 6.01a.

Event of Default means as follows:

1. Service Defaults.
 - a. Missed Collections. Franchisee fails to provide collection services for a period of more than seven consecutive days, unless the failure is due to Uncontrollable Circumstances. For example, if franchisee fails to provide collection services on a Wednesday, an event of default will occur if franchisee fails to provide collection services by the Thursday of the following week (eight days thereafter);
 - b. Breach of Franchise Agreement.
 - i. Franchisee does not cure its failure to fully and timely perform any of its obligations under the Franchise Agreement (other than those obligations specifically listed in subsections (E)(1)(a), (E)(1)(b)(ii) and (iii), (E)(1)(c), (E)(1)(d), (E)(2) and (E)(3) of this section); within (1) thirty days following receipt of notice from the county identifying the failure, (2) a shorter period determined by the county if required to protect public health and safety, or (3) a longer period requested by franchisee and accepted by the county in the county's sole discretion.
 - ii. Franchisee fails to fully and timely satisfy ten or more of its obligations under the Franchise Agreement in any twelve-month period or repeatedly and habitually fails, in the judgment of the county, to satisfy them after notice from the county identifying the failures, regardless of whether franchisee subsequently cures a specific instance of failure.
 - c. Violation of Law. (1) Franchisee materially violates any law (including the County Code) and does not cure that violation to the satisfaction of county or applicable regulatory agency within thirty days of the notice, assessment or determination of that violation; or (2) franchisee repeatedly violates the same or different laws. Violation of the County Code will be evidenced by notices of noncompliance with the County Code issued by the local enforcement agency, Department of Public Works, or code compliance officer. If franchisee is entitled to and contests any violation by proceedings conducted in good faith, this event of

default will not be deemed to have occurred until a final decision adverse to franchisee is entered. "Violates" means any failure to comply with law as evidenced by notice, assessment or determination of any regulatory agency to franchisee, whether or not a fine or penalty is included, assessed, levied or attached.

2. Performance Assurance Defaults.

- a. Failure to Provide Insurance, Bond, or Letter of Credit. Franchisee fails to provide insurance, performance bond, or letter of credit as required by the Franchise Agreement.
- b. Failure to Provide Assurances of Performance. Franchisee fails to timely provide assurances of performance as required by the Franchise Agreement.
- c. Failure to Pay County. Franchisee fails to fully and timely pay county (1) more than twice within and calendar year, or (2) within twenty calendar days of demand by county for payment of moneys owing, or (3) as otherwise as provided by the Franchise Agreement.
- d. Transfer, Assignment. Franchisee transfers or assigns the Franchise Agreement without county approval.
- e. Seizure, Attachment. Any vehicle, equipment, or other service asset of franchisee is seized, attached or levied upon (other than a pre-judgment attachment) so as to substantially impair franchisee's ability to timely and fully perform solid waste collection services and which cannot be released, bonded or otherwise lifted within forty-eight hours, excepting weekends and holidays (as may be defined in the Franchise Agreement).
- f. Insolvency, Bankruptcy, Liquidation. Franchisee files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or will consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of vehicles, equipment, or other services assets no longer used to provide solid waste collection services), trustee (other than as security of an obligation under a deed of trust), custodian, sequestration, administrator (or similar official) of franchisee for any part of franchisee's operating assets or any substantial part of franchisee's property, or makes any general assignment for the benefit of franchisee's creditors, or fails generally to pay franchisee's debts as they become due or takes any action in furtherance of any of the foregoing.

A court having jurisdiction enters a decree or order for relief in respect of the Franchise Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or franchisee consents to or fails to oppose any such proceeding, or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, administrator (or similar official) of the franchisee or for any part of the franchisee's operating equipment or assets, or orders the winding up or liquidation of the affairs of the franchisee.

3. Miscellaneous.

a. **Fraud, Misrepresentations; Breach of Warranties.** Franchisee (1) committed any fraud or deceit in the procurement of a Franchise Agreement; (2) commits, or attempts to commit, any fraud or deceit upon the county following execution of the Franchise Agreement; (3) breaches a warranty in the Franchise Agreement; or (4) makes a material misrepresentation or false certification in the procurement of a Franchise Agreement or following execution of the Franchise Agreement or in the Franchise Agreement. Failure by the Franchisee to deliver solid waste to the Designated Disposal Facility, under Section 7.01 of this Agreement.

Existing Agreements means those Agreements entered into between Franchisee and a Commercial Customer prior to the Commencement Date of this Agreement which do not contain a provision or provisions allowing for amendment in the event of a change in law.

Franchise Fee means the fee described in Section 13.02a.

Franchise Services means all Performance Obligations of Franchisee to Customer under Article 4.

Franchise Area means the geographical area within the Service Areas A and B on the map attached to Exhibit 4.01a.

Franchisee means Preferred Septic and Disposal, Inc., and any assignee thereof consented to by the County in accordance with Section 17.01.

Franchisee's Reimbursement Costs means the rate listed on Franchisee's current fee schedule or, if not listed on the fee schedule, then Franchisee's Direct Costs plus 10%.

Gross Revenues means revenue or compensation in any form derived directly or indirectly by Franchisee, its Affiliates, subsidiaries, parents or any other entity in which Franchisee has a financial interest in collecting, transporting, arranging, handling and/or disposing of franchised Solid Waste generated in the Franchise Area. Gross Revenues does not include revenue from the sale of Recyclable Materials.

Hazardous Waste means "hazardous waste" as defined in below under Unpermitted Waste.

Holidays means those days of each year when the Designated Disposal Site is closed, plus any additional days designated by Franchisee as Holidays, with the approval of the County.

Household Hazardous Waste means any Unpermitted Waste generated in small quantities at Residential premises, excluding any Unpermitted Waste generated in the course of operation of a business concern at a residence, under Section 25218.1 of the California Health and Safety Code.

Indemnities mean all defenses and indemnities under this Agreement.

Industrial Solid Waste means all Solid Waste and semisolid waste which results from industrial processes and manufacturing operations, except for Unpermitted Waste or Special Waste.

Liabilities includes: liabilities, lawsuits, claims, complaints, causes of action, citations, investigations, judgments, demands, clean-up orders, damages (whether in contract or tort, including

- (1) personal injury to or death of, at any time, Franchisee's employees, Subcontractors, the County or the public; and
- (2) property damage of Franchisee, Subcontractors, the County or the public),
- (3) costs and expenses, (including all costs and expenses of litigation, mediation or arbitration, attorney fees, whether County's or Franchisee's staff attorneys or outside attorneys, and court costs),
- (4) losses,
- (5) fines,
- (6) penalties, and
- (7) other detriments of every nature and description whatsoever,

whether under State of California or federal Applicable Law; and **Liabilities** arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure or other plan, regardless of whether undertaken due to government directive or action, such as remediation of surface or ground water contamination and replacement or restoration of natural resources.

Non-Collection Notice means either:

- (2) a 3-part (no carbon required) tag left by Franchisee for Customers at the times, in the events and in the manner described in Section 4.04 which contains, at a minimum:
 - a. the date and time it is given,
 - b. the complete address of the premises,
 - c. the reason for the non-collection,
 - d. the name of Franchisee's employee who prepared the notice, and
 - e. the manner in which materials should be prepared for collection,
 - f. printed in English and Spanish. Franchisee will leave a hard (cardstock) copy with the Customer, will retain one copy, and will transmit one copy to the Director on the next weekday which is not a Holiday.

Notice (or **Notify** or other variation thereof) means notice given under Section 18.01.

Office or Franchisee's Office means the administrative office of Franchisee and identified by Franchisee to County.

Office Hours or Franchisee's Office Hours means 8 a.m. to 5 p.m., Monday through Friday.

Own or Ownership or other forms thereof means constructive ownership under the provisions of Section 318(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 318), as in effect on the date here, except that (1) 10% is substituted for 50% in Section 318(a)(2)(C) and in Section

318(a)(3)(C) thereof; and (2) Section 318(a)(5)(C) is disregarded. Where the Ownership interest is less than 10%, that interest is disregarded and percentage interests is determined on the basis of the percentage of voting interest or value which the Ownership interest represents, whichever is greater.

Party and Parties refers to the County and the Franchisee, individually and together.

Performance Obligations means Franchisee's liabilities and obligations under this Agreement.

Permits means all federal, State, County, other local and any other governmental unit permits, orders, licenses, approvals, authorizations, consents and entitlements that are required under Applicable Law to be obtained or maintained by any Person with respect to Franchise Services.

Person includes any individual, firm, limited liability company, association, organization, partnership, industry, public or private corporation, trust, joint venture, the United States, the State, a County (excluding Inyo County), a municipality or special purpose district or any other entity whatsoever.

Procurement Proceedings means any memorandums, meetings, correspondence, telephone calls, field trips, draft documents, and County Board sessions with respect to the planning, development, drafting negotiation and execution of this Agreement.

Prompt, promptly and variations thereof (not capitalized) mean as soon as possible, but not less than 2 days.

Quarter means any of the 3-month periods identified in Exhibit 10.02a.

Quarterly Reports means reports described in Section 10.02a.

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

Recyclables means materials that have been separated by the generator from the solid waste stream prior to disposal or which have been separated from the solid waste stream after disposal for the purpose of creating raw materials from which new products will be made or for the purpose of reusing them as a used or reconstituted product. Recyclables includes Yard Waste.

Recycling Handling Services means those same Solid Waste Handling Services as it pertains to Recyclables.

Refuse means Solid Waste comprised of rubbish, trash and garbage.

Regularly-Scheduled Collection Day means Regularly-Scheduled Residential Collection Day and Regularly-Scheduled Commercial Collection Day.

Regularly-Scheduled Commercial Collection Day is defined in Section 4.01c2(iv).

Regularly-Scheduled Residential Collection Day is defined in Section 4.01c1(iv).

Residential means a premise where individuals dwell or reside, regardless of whether they rent or own and occupy their dwelling or residence. "Residential premises" does not include transient occupancies. No place used primarily for business purposes shall be considered residential.

Residential Set-out Site means the edge of the driveway in front of a Residential premise or, if there is no accessible driveway, such other location as agreed to between the Residential Customer and Franchisee and specified in the Subscription Order.

Roll-offs means Containers designed for disposal of Solid Waste loaded onto and discharged from tilt-frame trucks or trailers at the Solid Waste generation site by winch or similar means. Such Containers are also commonly referred to as "debris boxes."

Service Assets means all property of Franchisee used directly or indirectly in performing Franchise Services, including Vehicles, Containers, maintenance equipment and facilities, administrative equipment and offices and related supplies.

Service Day means weekdays and Saturday, other than Holidays.

Service Fee(s) means those fees charged to Customers by Franchisee for Franchise Services.

Set-out Site means Set-out Site and Commercial Set-out Site.

Solid Waste means "solid waste" as defined in Public Resources Code Section 40191, except that "solid waste" does not include abandoned vehicles and parts thereof or dewatered, treated, or chemically fixed sewage sludge.

Solid Waste Handling Services means "solid waste handling" or "handling" as defined in Public Resources Code Section 40195 (i.e., the collection, transportation, storage, transfer, or processing of solid wastes) and solid waste disposal by a solid waste enterprise defined in Section 40193 of the Public Resources Code, such as residential or commercial refuse collection in packer-type vehicles by haulers whose core business is refuse collection or the small-scale collection and disposal of residential or commercial solid waste in any type of truck, trailer or vehicle; and the development and operation of solid waste facilities.

Subscription Orders are described in Section 4.10.

Suspect Categories means race, color, religion, national origin, ancestry, age, physical handicap, medical condition, marital status, sex, sexual identity, or sexual orientation, political affiliation, or any other class protected by laws of the State of California or the United States of America.

Term is the period beginning on the Commencement Date and ending on the earlier of the expiration of the Agreement under Section 3.01 or termination of the Agreement under Article 14.

Transfer Station means "transfer or processing station" as defined in Public Resources Code Section 30200.

Uncontrollable Circumstance(s) means any of the following events (1) riots, war or emergency affecting the county declared by the President of the United States or Congress of the United States, the Governor of California, or the board of supervisors; (2) sabotage, civil disturbance, insurrection, explosion; (3) natural disasters such as floods, earthquakes, landslides, avalanches, and fires; (4) significant storms, including excessive snow storms; (5) strikes, lockouts, and other labor disturbances; (6) any change in law, which materially impacts the rights and/or obligations of either party; or (7) other catastrophic events which are beyond the reasonable control of franchisee despite franchisee's exercise of reasonable due diligence.

Uncontrollable Circumstances exclude: (1) the financial inability of a Franchisee to satisfy its obligations under a Franchise Agreement; (2) the failure of a Franchisee to obtain any necessary permits or the right to use the facilities of any public entity; (3) a franchisee's or county's breach of obligations under a Franchise Agreement; (4) a Franchisee's inability to hire adequate numbers of personnel who are competent and skilled in the work to which they are assigned; (5) the failure of a franchisee to secure patents, licenses, trademarks, and the like necessary to provide the services; and (6) as to a Franchisee, the failure of any vehicles, equipment, or other service assets to perform in accordance with any warranties, unless caused by Uncontrollable Circumstances.

Unpermitted Waste is means materials that are not solid waste such as:

- a. "Hazardous waste" (as defined in Public Resources Code Section 40141), including:
 - i. Hazardous wastes that are "universal waste" (as defined and listed, respectively, in 22 CCR § 66723.9 and § 66261.9, such as batteries, thermostats, lamps, cathode ray tubes, computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders, compact disc players/recorders, calculators, some appliances, aerosol cans and certain mercury-containing devices) exempt from the hazardous waste management requirements of Chapter 6.5 of Division 20 of the California Health and Safety Code and subject to the universal waste management requirements of Chapter 23 of Division 20 of the California Health and Safety Code, and
 - ii. Household hazardous wastes that result from products purchased by the general public for household use which, because of their quantity, concentration, physical, chemical, or infectious characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed of or otherwise managed;

- b. "Medical waste" regulated pursuant to the Medical Waste Management Act (Part 14 (commencing with Section 117600) of Part 9 of Division 104 of the Health and Safety Code), including, but not limited to, equipment, instruments, utensils, fomites, laboratory waste (including pathological specimens and fomites attendant thereto), surgical facilities, equipment, bedding and utensils (including pathological specimens and disposal fomites attendant thereto), sharps (hypodermic needles, syringes, etc.) dialysis unit waste, chemotherapeutic waste, animal carcasses, offal and body parts, biological materials, and other similar materials not rendered non-infectious, non-pathological and non-biohazardous.
- c. Radioactive waste;
- d. Waste tires in excess of the limitations prescribed in 14 CCR 17355(b) or reduced in volume as required in 14 CCR 17355(A); and
- e. Ammunition, explosives, or other ordnance.
- f. Any other materials that cannot be disposed of in class III sanitary landfills described in 27 CCR 20260.

Unpermitted Waste Screening Protocol is prescribed in Section 5.06 and contained in Exhibit 5.06.

Vehicles means all trucks (including trucks providing Residential and Commercial Collection of Solid Waste, Bulky Waste, and litter pickup; and field supervisors' and administrators' vehicles), rolling stock and other vehicles used to provide Franchise Services (including Collection as well as repair and maintenance), whether owned or leased by Franchisee.

Violates or Violation means any failure to comply with law as evidenced by notice, assessment or determination of any regulatory agency to Franchisee, whether or not a fine or penalty is included, assessed, levied or attached.

Yard Waste means any wastes generated from the maintenance or alteration of public, commercial, or residential landscape including, but not limited to, yard clippings, leaves, tree trimmings, prunings, brush and weeds.

EXHIBIT 2.01: REPRESENTATIONS AND WARRANTIES

FRANCHISEE:

a. Status. Franchisee is a corporation duly organized, validly existing and in good standing under the laws of the State of California and is qualified to do business in the State of California.

b. Authority and Authorization. Franchisee has full legal right, power and authority to execute and deliver this Agreement and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by Franchisee and constitutes a legal, valid and binding obligation of the Franchisee.

c. No conflicts. Neither the execution nor delivery by the Franchisee of this Agreement, the performance by the Franchisee of its Franchise Obligations, nor the fulfillment by the Franchisee of the terms and conditions of this Agreement: (1) conflicts with, violates or results in a breach of any Applicable Law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the Franchisee or any of its Affiliates is a party or by which the Franchisee or any of its Affiliates' properties or assets are bound, or constitutes a default thereunder.

d. No approvals required. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by the Franchisee, except as has been duly obtained from its Board of Directors or other governing body or Person.

e. No litigation. As of the Commencement Date, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of the Franchisee's knowledge, threatened, against the Franchisee wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Franchisee of its Performance Obligations or in connection with the transactions contemplated by this Agreement, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Franchisee in connection with the transactions contemplated by this Agreement.

f. Due Diligence. Franchisee has made an independent investigation, examination and research satisfactory to it of the conditions and circumstances surrounding the Agreement and best and proper method of providing Franchise Services (including Franchise Service types) and labor, equipment and materials for the volume of Franchise Services to be provided. Franchisee agrees that it will make no claim against the County based on any estimates, statements or interpretations made by any officer, employee, agent or consultant of the County in connection with the procurement of this Agreement that proves to be in any respect erroneous.

g. Compliance with Applicable Law. Franchisee has fully complied with all Applicable Law, including without limitation law relating to conflicts of interest, in the course of procuring this Agreement.

COUNTY:

a. Existence and Powers: The County is duly organized and validly exists as a political subdivision of the State of California, with full legal right, power and authority to enter into and perform the obligations under this agreement.

b. Due Authorization and Binding Obligation: The County has duly authorized the execution and delivery of this agreement. This agreement has been duly executed and delivered by the County and constitutes the legal, valid and binding obligation of the contractor, enforceable against the County in accordance with its terms, except in so far as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditor's rights generally.

c. No Legal Prohibition: The County has no knowledge of any applicable law in effect on the agreement date which would prohibit the performance by the County of this agreement and the transactions contemplated hereby.

d. Information Supplied by the County: The information supplied by the County and all submittals made in connection with negotiation and award of this agreement is correct and complete in all material respects.

EXHIBIT 4.01a: WASTE COLLECTION AREAS

[SEE MAP OR LEGAL DESCRIPTION OF THE WASTE COLLECTION AREAS ATTACHED TO THIS EXHIBIT.]

The boundaries of any Waste Collection Areas depicted herein may be changed by action of the County Board of Supervisors. Such boundary change may include the removal of areas within the City of Bishop, or otherwise. The County acknowledges that any such action taken by the County may have the effect of changing Franchisee's Direct Costs which may entitle Franchisee to a Service Fee adjustment to compensate for the change in such costs. In any such event, Franchisee shall request a Service Fee adjustment in the same manner by which a request is made for a Change in Law as set forth in Section 13.01.d.1.iv of this Agreement.

FORM 10.02b

INYO COUNTY FRANCHISEE ANNUAL REPORT FOR 20_____

Submitted by: Preferred Disposal (Franchisee)
Dale Comontofski
 (Due by February 15)

1. Total information contained in Quarterly Reports for the year		<input type="checkbox"/> See Attached
2. Service Asset Inventory		<input type="checkbox"/> See Attached
3. Financial Status Statement	<p>I represent and warrant, under penalty of perjury, that in the prior Contract Year there have been no material changes in [FRANCHISEE]'s financial status or condition.</p> <p><u>Dale Comontofski</u> Name</p> <p><u>President - owner</u> Title (CEO or Principal)</p> <p><u>Dale Comontofski</u> Signature</p>	<p>I represent and warrant, under penalty of perjury, that in the prior Contract Year, those changes to [FRANCHISEE]'s financial status or condition listed on the attached sheet which is labeled "Material Changes to [FRANCHISEE]'s Financial Status or Condition" have occurred.</p> <p>_____ Name</p> <p>_____ Title (CEO or Principal)</p> <p>_____ Signature</p>
5. Subcontractors	Names of all Subcontractors, the scope and amount of Franchise Services, other services, or goods Subcontractors provide to franchisee, and a description of Franchisee's relationships to each Subcontractor (including Ownership interests) (16.09).	<input type="checkbox"/> None <input type="checkbox"/> See Attached

EXHIBIT 10.02b: ANNUAL REPORTS

In the Annual Report, Franchisee will include, at a minimum, a collated summary of the information contained in Quarterly Reports, including reconciliation of any adjustments from prior Quarterly Reports, and the following information and statements:

- (1) Service Asset Inventory.** A complete inventory of Service Assets under Section 5.02g.
- (2) Financial Status Statement.** A statement by Franchisee's Chief Executive Officer either: (i) that in the prior Contract Year there have been no material changes in Franchisee's financial status or condition, or (ii) describing any material changes in Franchisee's financial status or condition during that Contract Year.
- (4) Subcontractors.** The names of all Subcontractors, the scope and amount of services or goods Subcontractors provide to Franchisee, and a description of Franchisee's relationships to each Subcontractor (including Ownership interests) (16.09).

Annual Reports may be made on Form 10.02b which is attached to this Exhibit.

FORM 10.02a

INYO COUNTY FRANCHISEE QUARTERLY REPORT

Submitted by: Preferred Disposal (Franchisee)

FOR THE YEAR OF 20__

- 1st Quarter (January, February, March) (due by May 1)
- 2nd Quarter (April, May, June) (due by August 1)
- 3rd Quarter (July, August, September) (due by November 1)
- 4th Quarter (October, November, December) (due by February 1)

1. Summary of Records	a. Unpermitted Waste Spills: b. Vehicle Inspections: c. Criminal Activity: d. Other Events: e. Complaint Log:	<input type="checkbox"/> None <input type="checkbox"/> See Attached <input type="checkbox"/> None <input type="checkbox"/> See Attached <input type="checkbox"/> None <input type="checkbox"/> See Attached <input type="checkbox"/> None <input type="checkbox"/> See Attached <input type="checkbox"/> None <input type="checkbox"/> See Attached
2. Certifications	I represent and warrant, under penalty of perjury, that [FRANCHISEE] has met its Performance Obligations, including Delivery Obligations, for the Quarter noted above. OR, <u>Dale Comentalster</u> Name <u>President - owner</u> Title <u>Dale Comentalster</u> Signature	During the Quarter noted above, [FRANCHISEE] did <u>not</u> meet all of its Performance Obligations (including Delivery Obligations) and will pay to County liquidated damages for each failure as noted on the attached sheet. _____ Name _____ Title _____ Signature
3. Summary of Education Efforts	Such as inserts, mailers, magnets, flyers, etc.	<input type="checkbox"/> None <input type="checkbox"/> See Attached
4. Diversion Information	Information required by the Act, including Solid Waste Collection and disposal tonnages, Recyclables collection and processing tonnages, and origin, in accordance with Section 6.01.	<input type="checkbox"/> None <input type="checkbox"/> See Attached
5. Collection Fee Summaries (fees invoiced and paid)	a. Service fees charged for each type of service b. Service fees collected from Customers c. Franchise fees paid to County	<input type="checkbox"/> See Attached \$ _____ \$ _____

EXHIBIT 10.02a: QUARTERLY REPORTS

For the purposes of the Quarterly Reports, “quarters” is defined as: First Quarter consisting of January, February and March; Second Quarter consisting of April, May and June; Third Quarter consisting of July, August and September; Fourth Quarter consisting of October, November and December. In the Quarterly Report, Franchisee will include, at a minimum, the following information:

- (1) **Summary of Records.** A summary of the Records for events (including Unpermitted Waste spills or other incidents, Customer complaints, Vehicle inspections, Criminal Activity, or other events) during the previous quarter and a copy of Franchisee’s complaint log, including missed pickups, Non-Collection Notices and a description of how each complaint was resolved.
- (2) **Certifications.** A certification that Franchisee has met its Performance Obligations including Delivery Obligations (Section 7.01) for the quarter or, alternatively, a description of those Performance Obligations and Delivery Obligations not met during the quarter.
- (3) **Summary of Education Efforts.** A summary of education efforts undertaken in that quarter and copies of all materials distributed to Customers during the Quarter, including community relations materials (4.06a1) and promotional materials (4.06a3).
- (4) **Diversion Information:** any information necessary to meet the reporting requirements of the Act, including Solid Waste Collection and disposal tonnages, Recyclables collection and processing tonnages, and the origin thereof.
- (5) **Operational Report:** A discussion of Service or operational problems and resolution thereof or planned therefore, if requested by County.
- (6) **Collection Fee Summaries:** Fees invoiced and paid, including:
 - ◆ Service fees charged for each type of service,
 - ◆ Service fees collected from Customers; and
 - ◆ Franchise Fees paid to County.

Quarterly Reports may be made on Form 10.02a which is attached to this Exhibit.

(4e); change size or number of Containers; or supply locks (4.01e); and any failure to timely commence or provide any of those Services.

Copies of Notices to Customers, including notice of Holiday or changed schedules enclosed in Customers' bills (4.01d2 and 4.06) and public education and community relations materials (4.06).

(4) OPERATIONS

Routing Specifications

Service Asset Inventory, (5.02g) and Service Asset Documentations

Compliance with Applicable Law, including copies of all violations, tire invoices and specifications; Vehicle registration, certifications, reports and maintenance logs; drivers' licenses, training records (including Unpermitted Waste identification and handling), and drug and alcohol testing; records showing compliance with Federal Immigration and Control Act of 1986; and approvals, authorizations, and Permits.

Records of Vehicle inspections, including Vehicles' fire extinguisher service records, and warranty and maintenance recommendations.

Any documentation with respect to insolvency, bankruptcy or liquidation including records with respect to Service Assets, such as any seizures, attachments or levies.

Container maintenance

(5) INSURANCE AND OTHER PERFORMANCE ASSURANCES: Insurance, performance bonds, letter of credit etc. (Article 11).

EXHIBIT 10.01a: RECORDS

Franchisee will collect, record, and maintain, at a minimum, the following information, indicating the date and the day of the week of the event reported. Franchisee will give the County the following information promptly upon County's written request.

(1) TONNAGE: Tons of:

Residential and Commercial Solid Waste,
Recyclables,
Bulky Waste, and
C&D Waste.

collected and delivered to the Designated Disposal Facility including:

- ◆ truck numbers,
- ◆ weight of each load (gross, tare, and net), and
- ◆ source-jurisdiction allocation or ratio

(2) MONETARY AMOUNTS

Service Fees. Service fees charged to and collected from Customers.

Subscription Orders. Each Customer's Subscription Order and account service information (4.10).

Customer Billing. Billing records required by Section 4.09, including Customers' special Service requests for on-call pickup of excess and Bulky Waste.

Franchisee's Reimbursement Costs for emergency clean up.

Fees payable to County. Including:

- (1) financial records, books, accounts, and warranties corroborating the Franchise Fee owed to County under Section 13.02, including the all documentation required by Section 13.02; and
- (2) financial records, books, and accounts corroborating any other County Payment Obligations.

(3) CUSTOMER SERVICE

Complaint Records including logged complaints for alleged missed collections; failure to properly replace Containers (401.c1(iii) and c2(iii)), failure to clean up litter (4.03b), discourtesy (4.03a), damaged property, collecting outside permitted hours (4.01d1), all including time, date, and manner of resolving complaint.

Requests for Franchise Services, including record of Customers' telephonic, mailed, faxed or e-mailed requests to commence Franchise Services (4.01c1(i) and c2(i)); discontinue Franchise Services (4.01c1(ii) and c2(ii)); deliver, repair or replace, or pick up Containers

actions taken by Driver and/or Field Supervisor, the status and/or ultimate disposition of the material, and any additional relevant comments.

At least once per Contract Year, Franchisee will inform its Customers of the locations where they may deliver Unpermitted Waste for proper management and processing.

Franchisee will make available to the County promptly upon request all Records, including plans and/or other documents maintained by Franchisee with respect to Unpermitted Waste under Applicable Law.

Instead of complying with Unpermitted Waste Screening Protocol described in this Section, Franchisee may give County a copy of an Unpermitted Waste Screening Protocol it has developed containing procedures under applicable law for handling Unpermitted Waste that is hazardous waste that is no less stringent than the Protocol under this Exhibit. Upon approval by the Director, Franchisee's Unpermitted Waste Screening Protocol will replace the Protocol described in this Section.

EXHIBIT 5.06: UNPERMITTED WASTE SCREENING PROTOCOL

Franchisee will screen all loads of Solid Waste for Unpermitted Waste by causing its drivers to observe, directly or through mirrors or other mechanism(s), the tipping of Containers into Vehicles at the point of Collection. Franchisee will employ direct visual inspection where necessary and appropriate. Franchisee will conduct on-going training of its drivers, mechanics, dispatchers and other support personnel in Unpermitted Waste recognition and safety procedures, including notification of County as described below. Franchisee will carry in its Vehicles literature developed by the County pertaining to the proper handling of Unpermitted Wastes. Such literature will be left by Franchisee with its Customers upon Customer request, upon identification of Unpermitted Waste, or upon request by the County.

Franchisee will additionally comply with the following requirements in handling Unpermitted Waste that is Hazardous Waste:

- (1) Driver will immediately notify its dispatch center (“Dispatch”) and take immediate and appropriate action to contain and isolate said load.
- (2) Dispatch will immediately notify the Franchisee’s field supervisor.
- (3) Dispatch will immediately contact the Environmental Health Division of the County Health Department, or if those offices are closed, the County Emergency Communications Center.
- (4) Depending on the amount and identity of the Hazardous Waste involved, Franchisee will at its option either segregate and containerize the Hazardous Waste in preparation for manifesting and transport, or contact a permitted Hazardous Waste transport company to assist therein. Franchisee will ensure that an authorized official of Franchisee is available in person or by telephone at all times to authorize the expenditure of funds, if necessary, for Hazardous Waste cleanup. Franchisee will transport any Hazardous Waste it chooses to transport under Applicable Law, including:
 - (i) the regulations of the Department of California Highway Patrol (Title 13, Code of California Regulations or “CCR”),
 - (ii) regulations of the federal Department of Transportation (DOT) (Title 49, Code of Federal Regulations),
 - (iii) regulations of the U.S. Environmental Protection Agency (Title 40, Code of Federal Regulations),
 - (iv) the regulations of the California Occupational Health and Safety Administration (Title 8, CCR),
 - (v) the regulations of the California Department of Toxic Substances Control (Title 22, CCR).
- (5) No later than the next County Working Day following its occurrence, Franchisee will orally notify the Director of the incident and its status and/or ultimate disposition. Franchisee will give the Director a written incident report within 14 days, including the following: the date and time of the occurrence, name of driver, description of hazardous materials, origin of the hazardous material (if identifiable), observations made and

EXHIBIT 5.02g: SERVICE ASSET INVENTORY

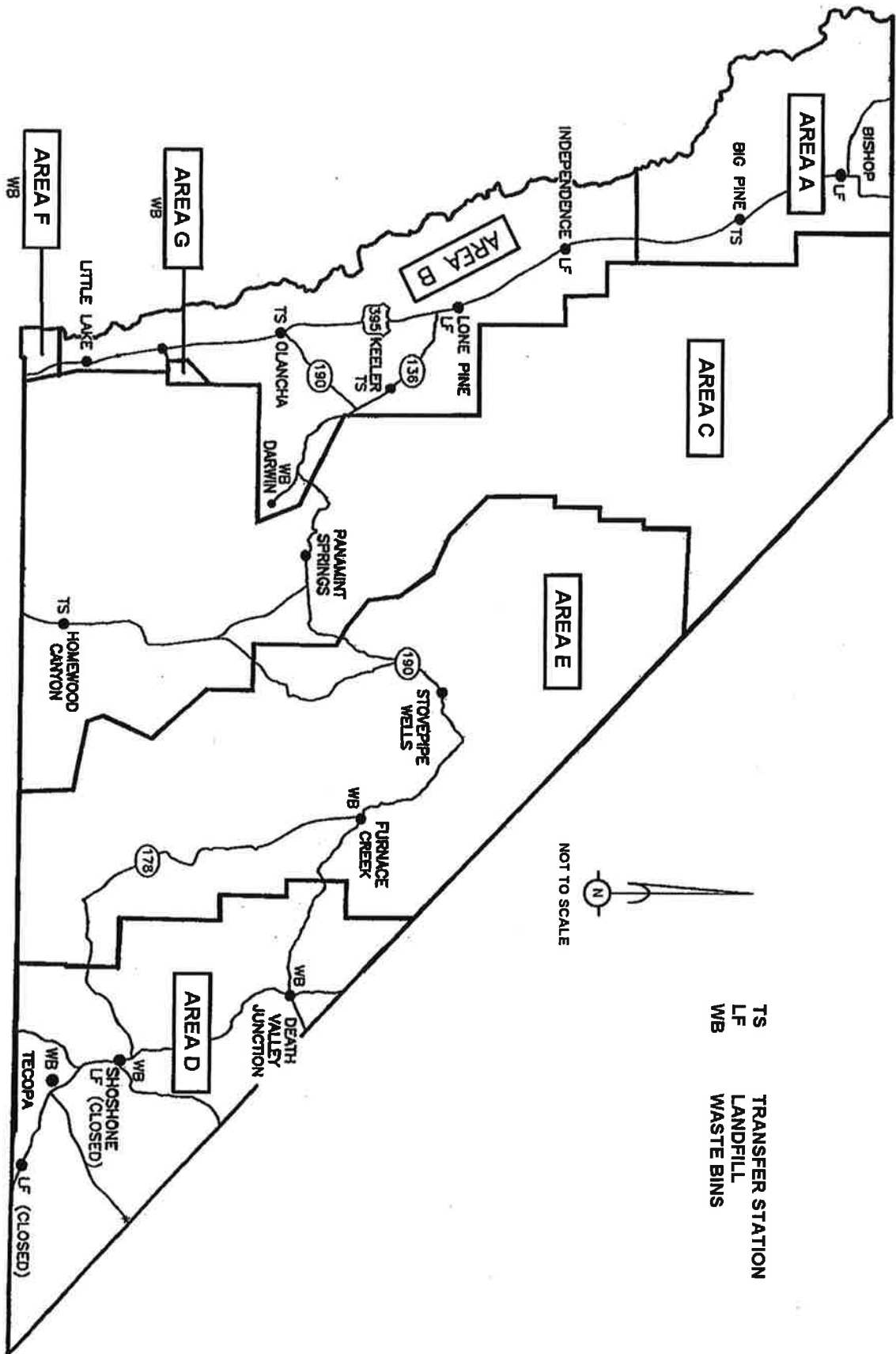
Attached to this Exhibit is an inventory of Service Assets, whether new or used, owned or leased by Franchisee, including:

- (1) maintenance yards and facilities; the Office and any other administrative and customer service offices,
- (2) Vehicles and equipment described by type (i.e., manufacture and model number for cab, chassis and body; and descriptive notation said as front end loader, compactor etc.), number, DMV license number.

**EXHIBIT 4.05e: CUSTOMER COMPLAINT AND BILLING DISPUTE RESOLUTION
PROTOCOL**

Franchisee's Customer complaint and billing dispute resolution protocol is attached to this Agreement.

INYO COUNTY
 INTEGRATED WASTE MANAGEMENT
 WASTE COLLECTION AREAS



TS TRANSFER STATION
 LF LANDFILL
 WB WASTE BINS

Failure to maintain or timely submit complete Reports and/or documents to the County (such as Quarterly and Annual Reports [10.02], Financial Reports [10.03], Route Maps and Route Changes [5.01 a and b], Service Asset Inventory [5.02g], Hazardous Waste Screening Protocol [5.06], or Insurance certificates or policies [Article 11].)	Up to \$300 per failure
Failure to perform any other Performance Obligation under this Agreement.	Up to \$100 per failure.

EXHIBIT 14.01: COMPENSATORY AND LIQUIDATED DAMAGES

Compensatory Damages. If the County in its sole discretion chooses not to exercise its right to terminate this Agreement when Franchisee does not deliver Solid Waste to the Designated Disposal Facility under Section 7.01, then the Franchisee will pay the County within 10 days of request the following amounts:

- (i) The County Reimbursement Costs to provide necessary persons for monitoring of Franchisee's compliance with said delivery requirements, including following Franchisee's vehicles on Service routes; and
- (ii) The County's Reimbursement Cost of enforcing or securing specific performance of Franchisee's delivery obligation; and
- (iii) For each ton of Solid Waste collected by Franchisee that Franchisee delivers to a facility or site other than the Designated Disposal Facility ("Undelivered Tons"), as demonstrated by weigh bills at said other facility or site, reports by any monitoring party, or such other evidence as may be deemed satisfactory by the County, the current tipping fee. The County may estimate the number of Undelivered Tons based on prior disposal records, Customer lists, or other means.

Liquidated Damages.

Within 10 days of County assessment, Franchisee will pay the following liquidated (or compensatory) damages for each of the corresponding breaches determined by County. County may assess damages for each instance of breach, even if Franchisee subsequently remedies that breach. (Franchisee nevertheless might have the opportunity to cure the breach before it becomes an Event of Default.)

References in the chart below to "per incident per day" refer to the first occurrence and then continued occurrence on successive days. *For example, failure to clean up spillage would result in liquidated damages on the day of the spillage and each following day until corrected.* Franchisee must pay damages regardless of whether or not it subsequently cures its breach.

The following is a schedule of liquidated damages for breaches of this Agreement.

DESCRIPTION OF BREACH	DAMAGES
Failure to properly cover materials in Collection vehicles to prevent littering of highways or streets.	Up to \$500 per failure over six (6) during any calendar year
Failure to clean up spillage or litter caused by Franchisee (4.03b, c)	Up to \$300 per failure per location.

Exhibit 13.01

Existing Agreements Below The Floor Rate

13.01a (continued)

*For first 14-day use period. Service includes: delivery, rental & service (landfill fees additional).

Full Rate applies after first 14-day period.

Hauler may offer a discount of up to 5% to all commercial customers paying in advance or within 30 days of invoice.

All commercial contract proposals must clearly delineate rates both before and after any discount is applied.

3/29/2019

EXHIBIT 13.01a: SERVICE FEE FLOORS

Franchisee will not charge Customers Service Fees that are less than those identified below:

COMMERCIAL BIN SERVICE – AREA A & B

<u>Size</u>	<u>1/xWeek</u>	<u>2/xWeek</u>	<u>3/xWeek</u>	<u>4/xWeek</u>	<u>5/xWeek</u>	<u>6/xWeek</u>	<u>Ex P/U</u>	<u>Delivery</u>
2-yard	\$97.15	\$169.63	\$244.73	\$323.38	\$400.41	\$479.07	\$49.71	\$36.30
3-yard	\$145.38	\$254.30	\$367.26	\$485.24	\$600.62	\$718.60	\$74.39	\$36.30
4-yard	\$185.37	\$324.02	\$460.25	\$599.72	\$739.20	\$875.91	\$94.40	\$36.30
6-yard	\$278.13	\$486.04	\$690.55	\$899.59	\$1,108.79	\$1,313.78	\$141.64	\$36.30

RESIDENTIAL CURBSIDE CART SERVICE – AREAS A & B

<u>96 Gallon</u>	<u>Monthly Rate</u>	<u>Each Extra Cart</u>
1 Cart	\$31.37	\$21.61
<u>64 Gallon</u>	<u>Monthly Rate only 1 cart per household</u>	
1 Cart	\$	28.24

RESIDENTIAL CURBSIDE SERVICE (CUSTOMER OWNED CONTAINER) – AREA B – Cartago, Alabama Hills, Olancha, Darwin, Keeler

30-40 Gallon Container (Per month)

<u>1 &/or 2 cans</u>	<u>3-cans</u>	<u>4-cans</u>	<u>5-cans</u>	<u>6-cans</u>
\$46.73	\$63.94	\$84.66	\$103.63	\$122.59

ROLL OFF BIN SERVICE

<u>Size</u>	<u>Area</u>	<u>Full Rate Per Bin*</u>	<u>Compactor Roll-Off</u>
20 yard	Bishop	\$275.37	\$323.20
	Big Pine	\$323.20	\$387.85
	Independence	\$400.77	\$465.41
	Lone Pine	\$465.41	\$530.06
	Olancha	\$568.84	\$633.48
	Round Valley	\$323.20	\$387.85
	Starlite	\$323.20	\$387.85
30 yard	Bishop	\$413.70	\$478.34
	Big Pine	\$478.34	\$542.98
	Independence	\$555.91	\$620.55
	Lone Pine	\$620.55	\$685.19
	Olancha	\$723.98	\$788.62
	Round Valley	\$413.70	\$478.34
	Starlite	\$413.70	\$478.34

Preferred Septic and Disposal, Inc.

1280 N. Main St. Suite I

Bishop, Ca. 93514

(760) 873-5699

December 18, 2020

To:

Solid Waste Superintendent

Inyo County Department of Public Works

P.O. Drawer N

Independence, Ca 93526

It has been my privilege to provide solid waste services to the County of Inyo for more than 19 years. I have made a lot of friends in that time, and I hope that I was able to contribute something to the betterment of our community.

The solid waste collection business has always been capital-intensive, and rather challenging in other ways, but recent changes in state law have made it even more so. The sheer number of new regulations affecting this business is overwhelming, and the cost of compliance has increased dramatically, especially for small operators like myself. These changes, and other factors, have brought me to the realization that it is time I step aside.

For years, others have expressed an interest in acquiring my company, and I always turned them away. However, I have now reached the point where I desire to sell. I have selected a buyer that is well known in the County, that has decades of operating experience here, and that has the resources to easily implement everything that is required to ensure a smooth transition.

Therefore, I am writing to notify the County of Inyo of my intent to Assign my Franchise agreement for solid waste (commencement date May 1, 2019), to Madera disposal (dba Bishop Waste Disposal).

As part of my request that the County consent to the transfer, I am also asking that the 90 Day Notice requirement (contained in the Franchise Agreement) be waived and that you decide the matter as soon as possible. That amount of time would be necessary if the buyer were new to the area, but Bishop Waste was vetted and approved long ago, and has a record of successful performance here that will not require the type of extensive review or investigation you might reserve for a new buyer.

Their parent corporation, Waste Connections, is one of the nation's largest companies in this field, and certainly has the financial strength necessary to instill confidence in their ability to perform going forward.

Please let me know when this can be put on the Board of Supervisors' Agenda. I am happy to provide any additional information if it is needed. Also attached is a deposit of \$5000.00 towards the transfer as required by the Agreement. Any other fees (if any) will be paid accordingly.

Proposed Assignee:

Madera Disposal Systems Inc./b/a Bishop Waste Disposal
c/o Waste Connections US Inc.
3 Waterway Square Place, Suite 110
The Woodlands, TX 77380
Attention: Vice President, Deputy General Counsel
832 442-2200

Sincerely,



Dale Comontofski
President

D & S Waste Removal, Inc.

95A East #3

Yerington, NV. 89447

775-277-0143

January 21, 2021

Honorable Inyo County Board of Supervisors,
Clint Quilter, County Administrator
Leslie Chapman, Assistant County Administrator
Fred Aubrey, Recycling and Waste Management

Dear Inyo County Representatives,

My name is Kevin Brown. I am the co-owner of D&S Waste Removal Inc. operating in Yerington Nevada and Mono County California. Our company has been successfully operating in the residential and commercial refuse market for over 42 years in Nevada, and 18 years in Mono County. As an upfront matter, my brother and I are interested in expanding our refuse business into Inyo County if the proposed sale of Preferred Septic and Disposal to Waste Connections goes through. As an operator of a relatively small refuse company, I am familiar with the way large publicly traded national refuse businesses come into a smaller market and acquire small companies with the goal of becoming the sole operator in the region or county. After achieving that goal, they can dictate pricing and keep out competition by price manipulation.

As a case in point, the current proposed situation in Inyo County of two franchised operators (one large and one locally owned) whereby one purchases the other with common national ownership; the opportunity for price manipulation to eliminate competition and control pricing abounds.

Removing the floor rate and setting only a ceiling rate will let either Franchisee temporarily discount services, or even give free service, which in turn is money out of the County budget. That is a strategic way of keeping competition out. Local small businesses do not have the funds to deeply discount services where large corporations do. No small business will survive against solely a ceiling rate. Eventually when Waste Connections combines the two business into one it will keep any other business from coming into the County as the second Franchisee. Without a price floor, there will be no opportunity for a new startup to enter the market and provide healthy competition.

I believe that it is in the best interest of the County and its residents to keep the floor rate in place and to maintain two or more independent Franchisees instead of one corporation passing as two. Also, to set a ceiling rate so that if the large corporation does come in as one without competition, it will protect the residents and business from excessive rates. As previously stated, D & S Waste has been and is still interested in servicing Inyo County and will be pursuing this if available.

I am available to discuss this further if needed anytime at 775-277-0143 and I will also be attending the zoom meeting when it is scheduled. Thank you for supporting small businesses and thank you for your time.

Kevin Brown, Owner-Manager



County of Inyo



Public Works

DEPARTMENTAL - ACTION REQUIRED

MEETING: February 2, 2021

FROM: Ashley Helms

SUBJECT: Approval of Budget Amendment to the Bishop Air Rehab Runway 12.30 Budget, Contract Change Orders and Notice of Completion for the Runway 12-30 Rehabilitation Project

RECOMMENDED ACTION:

Request Board: A) Amend the Fiscal Year 2020-2021 Bishop Air Rehab Runway 12-30 Budget (631100) as follows:

1. Increase estimated revenue in Federal Grants Revenue Code 4555 by \$492,066;
 2. Increase appropriations in Construction in Progress Object Code 5700 by \$492,066;
 3. Decrease appropriations in Professional Services Object Code 5265 by \$40,265;
 4. Increase appropriations in External Charges Object Code 5124 by \$40,265 (*4/5ths vote required*);
- B) Approve the proposed Resolution No. 2021-14, titled, "A Resolution of the Board of Supervisors, County of Inyo, State of California, Ratifying Change Orders to the Contract with Granite Construction Inc. for the Runway 12-30 Rehabilitation Project at the Bishop Airport," and authorize the Chairperson to sign; and
- C) Approve the proposed Resolution No. 2021-15, titled, "A Resolution of the Board of Supervisors of the County of Inyo, State of California Authorizing the Recording of a Notice of Completion for the Bishop Airport - Runway 12-30 Rehabilitation Project," and authorize the Chairperson to sign.

SUMMARY/JUSTIFICATION:

At the July 14, 2020 meeting of the Board of Supervisors, your Board awarded the construction contract for the Runway 12-30 Rehabilitation Project at the Bishop Airport (Project) to Granite Construction Inc, of Watsonville, CA in the amount of \$6,487,274. The final construction contract amount (not including construction engineering/inspection) is \$6,979,339.43.

On December 7, 2020 the final inspection was performed, and the project has been determined to be complete to the satisfaction of the Public Works Director and the project engineer. Accordingly, the Director is requesting that the Board adopt the Resolution ratifying contract change orders and the Resolution authorizing the recording of the Notice of Completion, which accepts the completed improvements.

In addition to formally accepting the work, the Notice of Completion begins the period during which stop notices may be placed against the work. In the event that no stop notices are filed, the retention shall be returned to the contractor.

BACKGROUND/HISTORY OF BOARD ACTIONS:

7/14/2020 Board awards contract to Granite Construction Inc.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The Board could choose not to approve the resolutions. Consequently, the project and contract change orders would not be formally accepted and the Notice of Completion could not be filed. Choosing not to approve the Resolution is not recommended because it will extend the period during which stop notices can be submitted and will delay the release of retention to the Contractor.

The Board could choose not to approve the budget amendment, which would also prevent payment of the retention to the Contractor.

OTHER AGENCY INVOLVEMENT:

FAA

FINANCING:

The construction contract is funded by the FAA's Airport Improvement Program, which is reimbursing the County for one hundred percent (100%) of the project costs. The contract change order work is eligible for reimbursement. Public Works will request an additional 7% in federal grant funding during the grant closeout.

The reimbursable costs were paid through budget unit 631100, Bishop Air Rehab, object code 5700, Construction in Progress.

ATTACHMENTS:

1. 2021-1-05 BIH Runway 12-30 Rehab Change Order Resolution
2. Notice of Completion Resolution
3. Notice of Completion Bishop Airport Runway 12-30 Rehabilitation Project

APPROVALS:

Ashley Helms	Created/Initiated - 1/20/2021
Darcy Ellis	Approved - 1/21/2021
Ashley Helms	Approved - 1/25/2021
Breanne Nelums	Approved - 1/26/2021
Michael Errante	Approved - 1/26/2021
Denelle Carrington	Approved - 1/27/2021
Marshall Rudolph	Approved - 1/26/2021
Amy Shepherd	Approved - 1/27/2021
Michael Errante	Approved - 1/27/2021
Clint Quilter	Final Approval - 1/28/2021

RESOLUTION NO. 2021 - _____

**A RESOLUTION OF THE BOARD OF SUPERVISORS,
COUNTY OF INYO, STATE OF CALIFORNIA,
RATIFYING CHANGE ORDERS TO THE CONTRACT WITH QUALCON
CONTRACTORS INC FOR THE RUNWAY 12-30 REHABILITATION PROJECT AT
THE BISHOP AIRPORT**

WHEREAS, on July 14, 2020, the Inyo County Board of Supervisors awarded the contract for the Runway 12-30 Rehabilitation Project at the Bishop Airport (“the Contract”) to Granite Construction Inc, of Watsonville, CA (“the Contractor”) in the amount of \$6,487,274;

WHEREAS, in the course of completing the work on this Contract, several contract change orders were necessary to account for abandoned light bases that were not identified during the design phase, type A-1 crack repair (less than 1 inch) that was not quantifiable prior to runway milling, and to settle disputed work relating to concrete trenches and light bases in the runway shoulder.

WHEREAS, the changes were agreed to by the Contractor and the Federal Aviation Administration;

WHEREAS, these modifications necessitated three change orders to the Contract as summarized below:

Contract Change Order No.	Description of Work	Amount
1	Remove old light cans and delete temporary striping bid items	-\$29,233.50
2	A-1 crack repairs	\$152,380.00
3	Lower concrete trenches, lower light cans and remove delamination at Taxiway F	\$18,066.84

WHEREAS, three balancing change orders were required to account for contract quantities that differed from the bid quantities:

Contract Change Order No.	Description of Work	Amount
4	A-2 and A-3 crack repair and runway asphalt quantities	\$209,067.07
5	Runway milling, runway shoulder Full Depth Reclamation, cement and asphalt quantities	\$117,170.66
6	Striping and Bid Additive 1 asphalt quantities	\$24,614.35

WHEREAS, these change orders were authorized by the Inyo County Director of Public Works pursuant to the authority granted to him by Inyo County Board of Supervisors on July 14, 2020 and California Public Contract Code section 20142;

NOW THEREFORE BE IT RESOLVED:

1. That the Board of Supervisors ratifies and approves the payment of the change orders listed above pursuant to California Public Contract Code section 20142.
2. That the Board of Supervisors ratifies and approves the payment of the four change orders listed above notwithstanding any contrary provisions of the Inyo County Code, including but not limited to sections 11.05.210 and 11.05.220.

PASSED AND ADOPTED this _____ day of _____, 2021, by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

Jeff Griffith, Chairperson
Inyo County Board of Supervisors

ATTEST: Clint Quilter
Clerk of the Board

By: _____
Darcy Ellis, Assistant
Assistant Clerk of the Board

RESOLUTION #2021 - __

**A RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE
COUNTY OF INYO, STATE OF CALIFORNIA
AUTHORIZING THE RECORDING OF A NOTICE OF COMPLETION
FOR THE
Bishop Airport – Runway 12-30 Rehabilitation Project**

WHEREAS, Michael Errante, Director of the Public Works Department of the County of Inyo, has determined that the Bishop Airport – Runway 12-30 Rehabilitation Project has been completed by Granite Construction Inc, of Watsonville, CA in accordance with the Project Plans and Specifications.

NOW, THEREFORE, BE IT RESOLVED, that the Director of Public Works is hereby authorized and directed to sign and file with the County Recorder a separate Notice of Completion pertaining to the Bishop Airport – Runway 12-30 Rehabilitation Project.

Passed, approved and adopted this _____ day of _____, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairperson, Board of Supervisors

ATTEST:

Clint Quilter, Clerk

by _____
Assistant Clerk of the Board

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

County of Inyo
c/o Director of Public Works
Public Works Department
168 N. Edwards Street
PO Drawer Q
Independence, CA 93526

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

1. A work of improvement known as the Bishop Airport – Runway 12-30 Rehabilitation Project on the property hereinafter described, was completed on December 7, 2020 and was accepted by the Inyo County Board of Supervisors on, _____.
2. The property on which the Bishop Airport – Runway 12-30 Rehabilitation Project has been completed is located on the grounds of Bishop Airport, Bishop, California.
3. The County of Inyo, a political subdivision of the State of California, the address of which is 224 North Edwards Street, P.O. Drawer N, Independence, CA 93526, operates and maintains the Bishop Airport.
4. The undersigned, Michael Errante, is the Director of Public Works of the County of Inyo and has been duly authorized pursuant to Resolution adopted _____, by the Board of Supervisors of the County of Inyo to execute and file this Notice of Completion.
5. The name of the original contractor that constructed the Bishop Airport – Runway 12-30 Rehabilitation Project, pursuant to contract with the County, is Granite Construction Inc, of Watsonville, CA.

Pursuant to the contract, the contractor was required to furnish all labor, materials, methods or processes, implements, tools, machinery, equipment, transportation services, and all other items and related functions which are necessary or appurtenant to construct the project designated in the contract.

COUNTY OF INYO

Dated: _____

By: _____
Michael Errante, Director of Public Works

VERIFICATION

STATE OF CALIFORNIA)
) SS.
COUNTY OF INYO)

I, Michael Errante, hereby declare: That I am the Director of Public Works for the County of Inyo, a political subdivision of the State of California, the public entity on behalf of which I executed the foregoing NOTICE OF COMPLETION for the Bishop Airport – Runway 12-30 Rehabilitation Project, and which entity is the owner of the aforesaid interest or estate in the property therein described; that I am authorized by the public entity to execute this NOTICE on the entity’s behalf; that I am authorized to and hereby make this verification on behalf of the public entity; and that I have read said NOTICE and know the contents thereof. I declare under penalty of perjury under the laws of the State of California that the NOTICE and the information set forth therein are true and correct.

Dated: _____

Michael Errante, PE, Public Works Director



County of Inyo



County Administrator - Risk Management

DEPARTMENTAL - ACTION REQUIRED

MEETING: February 2, 2021

FROM: Aaron Holmberg

SUBJECT: Approval of contract in an amount not to exceed \$100,000 for the provision of legal services.

RECOMMENDED ACTION:

Request Board ratify and approve the agreement between the County of Inyo and Rivera Hewitt Paul LLC of Sacramento, CA for the provision of legal services in an amount not to exceed \$100,000 for the period of January 22, 2021 until the subject litigation is completed, contingent upon the Board's approval of the Fiscal Year 2021-2022 Budget, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.

SUMMARY/JUSTIFICATION:

Porter Scott usually handles litigation arising from claims against the County; however, Porter Scott is unable to handle anticipated litigation related to a recent claim for damages. Rivera Hewitt Paul LLC is recommended for defense of such litigation.

BACKGROUND/HISTORY OF BOARD ACTIONS:

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Your Board could deny this contract with Rivera Hewitt Paul LLC. This is not recommended as the defense team for the subject litigation is needed promptly and we believe this firm is well qualified to handle the matter.

OTHER AGENCY INVOLVEMENT:

County Counsel and PRISM have been consulted in the selection process for this firm for the subject litigation.

FINANCING:

Agreement will be budgeted in the Public Liability Budget (500903) in Professional Services (5265). Adjustments have been made during the Mid-Year Budget Review Process to accommodate this agreement.

ATTACHMENTS:

1. Rivera 2021 Agreement Executed by Shanan Hewitt

APPROVALS:

Aaron Holmberg
Darcy Ellis

Created/Initiated - 1/26/2021
Approved - 1/26/2021

Denelle Carrington
Aaron Holmberg
Marshall Rudolph
Amy Shepherd
Sue Dishion
Aaron Holmberg

Approved - 1/26/2021
Approved - 1/26/2021
Approved - 1/26/2021
Approved - 1/26/2021
Approved - 1/28/2021
Final Approval - 1/28/2021

**AGREEMENT BETWEEN COUNTY OF INYO
AND RIVERA HEWITT PAUL LLP
FOR THE PROVISION OF LEGAL SERVICES**

INTRODUCTION

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the legal services of Rivera Hewitt Paul LLP, of Sacramento, California, (hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. SCOPE OF WORK.

The Contractor shall furnish to the County, upon its request, those services and work set forth in Attachment **A**, attached hereto and by reference incorporated herein. Requests by the County to the Contractor to perform under this Agreement will be made by County Counsel, County Administrator, or their respective designees. Requests to the Contractor for work or services to be performed under this Agreement will be based upon the County's need for such services. The County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if County should have some need for such services or work during the term of this Agreement.

Services and work provided by the Contractor at the County's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those which are referred to in this Agreement.

2. TERM.

The term of this Agreement shall be from January 22, 2021 until the subject litigation is complete, unless sooner terminated as provided below.

3. CONSIDERATION.

A. Compensation. County shall pay to Contractor in accordance with the Schedule of Fees (set forth as Attachment **B**) for the services and work described in Attachment **A** which are performed by Contractor at the County's request.

B. Travel and per diem. County shall reimburse Contractor for travel expenses and per diem which Contractor incurs in providing services and work requested by County under this Agreement. Contractor shall request approval by the County prior to incurring any travel or per diem expenses. Requests by Contractor for approval to incur travel and per diem expenses shall be submitted to the office of County Administrator, Risk Management. Travel and per diem expenses will be reimbursed in accordance with the rates set forth in the Schedule of Travel and Per Diem Payment (Attachment **C**). County reserves the right to deny reimbursement to Contractor for travel or per diem expenses which are either in excess of the amounts that may be paid to under the rates set forth in Attachment **C**, or which are incurred by the Contractor without the prior approval of the County.

C. Incidental Expenses. County shall reimburse Contractor in accordance with the Schedule of Fees (Attachment **B**) for those Incidental Expenses which are specifically identified in the Schedule of

Fees and which are necessarily incurred by the Contractor in providing the services and work requested by County under this Agreement. Reimbursement by County for such Incidental Expenses will be limited to Contractor's actual cost without regard to any administrative or overhead expenses incurred by Contractor in obtaining or utilizing such incidental services or supplies. Reimbursement for actual costs will not exceed the amounts set forth in the Schedule of Fees.

D. No additional consideration. Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive, from County, any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

E. Limit upon amount payable under Agreement. The total sum of all payments made by the County to Contractor for services and work performed under this Agreement, including travel and per diem expenses, if any, shall not exceed \$100,000 Dollars (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed, including travel or per diem, which is in excess of the contract limit.

F. Billing and payment. Contractor shall submit to the County, once a month, an itemized statement of all hours spent by Contractor in performing services and work described in Attachment **A**, which were done at the County's request. This statement will be submitted to the County not later than the fifth (5th) day of the month. The statement to be submitted will cover the period from the first (1st) day of the preceding month through and including the last day of the preceding month. This statement will identify the date on which the hours were worked and describe the nature of the work which was performed on each day. Contractor's statement to the County will also include an itemization of any incidental expenses, or travel or per diem expenses which have been approved in advance by County, incurred by Contractor during that period. The itemized statement for incidental expenses, travel expenses and per diem will include receipts for lodging, meals, and other incidental expenses in accordance with the County's accounting procedures and rules. Upon timely receipt of the statement by the fifth (5th) day of the month, County shall make payment to Contractor on the last day of the month.

G. Federal and State taxes.

- (1) Except as provided in subparagraph (2) below, County will not withhold any federal or state income taxes or social security from any payments made by County to Contractor under the terms and conditions of this Agreement.
- (2) County will withhold California State income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor under this Agreement will exceed one thousand four hundred ninety nine dollars (\$1,499.00).
- (3) Except as set forth above, County has no obligation to withhold any taxes or payments from sums paid by County to Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.
- (4) The total amounts paid by County to Contractor, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the California State Franchise Tax Board. To facilitate this reporting, Contractor shall complete and submit to the County an Internal Revenue Service (IRS) Form upon executing this Agreement.

4. WORK SCHEDULE.

Contractor's obligation is to perform, in a timely manner, those services and work identified in Attachment A which are requested by the County. It is understood by Contractor that the performance of these services and work will require a varied schedule. Contractor will arrange his/her own schedule, but will coordinate with County to insure that all services and work requested by County under this Agreement will be performed within the time frame set forth by County.

5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.

A. Any licenses, certificates, or permits required by the federal, state, county, municipal governments, for contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County. Contractor will provide County, upon execution of this Agreement, with evidence of current and valid licenses, certificates and permits which are required to perform the services identified in Attachment A. Where there is a dispute between Contractor and County as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, County reserves the right to make such determinations for purposes of this Agreement.

B. Contractor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Contractor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration available at: <http://www.sam.gov>.

6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.

Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Contractor to provide the services identified in Attachment A to this Agreement. Except for those incidental expenses specifically identified in the Schedule of Fees (Attachment B), County is not obligated to reimburse or pay Contractor, for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining items not specifically set forth in the Schedule of Fees (Attachment B), is the sole responsibility and obligation of Contractor.

7. COUNTY PROPERTY.

A. Personal Property of County. Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, etc. provided to Contractor by County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of County. Contractor will use reasonable care to protect, safeguard and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, which is the result of Contractor's negligence.

B. Products of Contractor's Work and Services. Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Contractor's services or work under this Agreement are, and at

the termination of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Contractor will convey possession and title to all such properties to County.

8. WORKERS' COMPENSATION.

Contractor shall provide statutory California Worker's Compensation coverage and Employer's Liability coverage for not less than \$1,000,000 per occurrence for all employees engaged in services or operations under this Agreement. The County of Inyo, its agents, officers and employees shall be named as additional insured or a waiver of subrogation shall be provided.

9. INSURANCE.

For the duration of this Agreement Contractor shall procure and maintain insurance of the scope and amount specified in Attachment **D** and with the provisions specified in that attachment.

10. STATUS OF CONTRACTOR.

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Attachment **A**, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of the Contractor is to be considered an employee of County. It is understood by both Contractor and County that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. As an independent contractor:

A. Contractor shall determine the method, details, and means of performing the work and services to be provided by Contractor under this Agreement.

B. Contractor shall be responsible to County only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

C. Contractor, its agents, officers, and employees are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent contractors, and not as employees of County.

11. DEFENSE AND INDEMNIFICATION.

Contractor shall defend, indemnify, and hold harmless County, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the performance of this Agreement by Contractor, or Contractor's agents, officers, or employees. Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Contractor's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs which is caused in whole or in part by any act or omission of the Contractor, its agents, employees, supplier, or any one directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

To the extent permitted by law, County shall defend, indemnify, and hold harmless Contractor, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, or resulting from, the active negligence, or wrongful acts of County, its officers, or employees.

12. RECORDS AND AUDIT.

A. Records. Contractor shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, county, municipal, ordinances, regulations, and directions. Contractor shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. Contractor may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, microphotographs, or other authentic reproduction of such records.

B. Inspections and Audits. Any authorized representative of County shall have access to any books, documents, papers, records, including, but not limited to, financial records of Contractor, which County determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

13. NONDISCRIMINATION.

During the performance of this Agreement, Contractor, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. Contractor and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said act.

14. CANCELLATION.

This Agreement may be canceled by County without cause, and at will, for any reason by giving to Contractor thirty (30) days written notice of such intent to cancel. Contractor may cancel this Agreement without cause, and at will, for any reason whatsoever by giving thirty (30) days written notice of such intent to cancel to County.

15. ASSIGNMENT.

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience, and training of Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, or any part of it, without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

16. DEFAULT.

If the Contractor abandons the work, or fails to proceed with the work and services requested by County in a timely manner, or fails in any way as required to conduct the work and services as required by County, County may declare the Contractor in default and terminate this Agreement upon five (5) days written notice to Contractor. Upon such termination by default, County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed to the date of termination.

17. WAIVER OF DEFAULT.

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph twenty-four (24) below.

18. CONFIDENTIALITY.

Contractor further agrees to comply with the various provisions of the federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Contractor in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Contractor agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Contractor only with the express written consent of the County. Any disclosure of confidential information by Contractor without the County's written consent is solely and exclusively the legal responsibility of Contractor in all respects.

Notwithstanding anything in the Agreement to the contrary, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 45, Code of Federal Regulations Section 205.50, the Health Insurance Portability and Accountability Act of 1996, and Sections 10850 and 14100.2 of the Welfare and Institutions Code, and regulations adopted pursuant thereto. For the purpose of this Agreement, all information, records, and data elements pertaining to beneficiaries shall be protected by the provider from unauthorized disclosure.

19. CONFLICTS.

Contractor agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

20. POST AGREEMENT COVENANT.

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the County in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Contractor agrees for a period of two years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with the County, or who has been an adverse party in litigation with the County, and concerning such, Contractor by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

21. SEVERABILITY.

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

22. FUNDING LIMITATION.

The ability of County to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, County has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying

Contractor of the cancellation, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements of paragraph twenty-four (24) (Amendment).

23. ATTORNEY'S FEES.

If either of the parties hereto brings an action or proceeding against the other, including, but not limited to, an action to enforce or declare the cancellation, termination, or revision of the Agreement, the prevailing party in such action or proceeding shall be entitled to receive from the other party all reasonable attorney's fees and costs incurred in connection therewith.

24. AMENDMENT.

This Agreement may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

25. NOTICE.

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the terms of this Agreement, which Contractor or County shall be required, or may desire, to make, shall be in writing and may be personally served, or sent by prepaid first class mail to, the respective parties as follows:

COUNTY OF INYO:
County Administrator, Risk Management
163 May Street
Bishop, CA 93514

CONTRACTOR:
Rivera Hewitt Paul LLP
11341 Gold Express Dr Ste 160
Sacramento, CA 95670

26. ENTIRE AGREEMENT.

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

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**AGREEMENT BETWEEN COUNTY OF INYO
AND RIVERA HEWITT PAUL LLP
FOR THE PROVISION OF LEGAL SERVICES**

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS
_____ DAY OF _____, _____.

COUNTY OF INYO

CONTRACTOR

By: _____

By: 
Signature

Dated: _____
Type or Print Name

Shanan L. Hewitt, Partner

Dated: January 25, 2021

APPROVED AS TO FORM AND
LEGALITY:

County Counsel

APPROVED AS TO ACCOUNTING FORM:

County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

Personnel Services

APPROVED AS TO INSURANCE REQUIREMENTS:

County Risk Manager

ATTACHMENT A

**AGREEMENT BETWEEN COUNTY OF INYO
AND RIVERA HEWITT PAUL LLP
FOR THE PROVISION OF LEGAL SERVICES**

TERM:

FROM: January 22, 2021 until the subject litigation is complete

SCOPE OF WORK:

1. Contractor shall represent and advise the County and such of its agents, officers and employees as the County may designate, in pending and potential litigation before state and federal courts, and county, state and federal administrative agencies. Contractor shall receive direction from the Inyo County Board of Supervisors, County Counsel and/or County Administrator or designees. Contractor shall also provide all secretarial and clerical support reasonably and customarily necessary to perform such services under this Agreement.
2. Contractor shall maintain and retain files and materials on cases and other matters upon which he is working. Electronic copies of documents received and created by Contractor shall be delivered to County Risk Management Office to be stored.
3. Contractor shall file and serve required pleadings, notices, discovery documents and materials on behalf of the County its officers or employees. The Office of County Counsel will cooperate with Contractor with regard to filing and service in Inyo County.
4. Contractor may email to the Offices of County Counsel and Risk Management copies of those pleadings, notices, discovery, documents and materials to be appropriately delivered to County officers and employees. The Office of County Counsel and/or Risk Management will then make necessary copies and deliver the pleadings, notices, discovery, documents and materials to the County officers and employees.
5. Contractor shall take the actions necessary to have all pleadings, notices, discovery, documents and materials, which are to be served upon the County or its officers and employees after their first general appearance, served upon both Contractor at his office and the County Counsel at the Independence office. Contractor shall also provide to the County Counsel and Risk Manager one copy of all pleadings, notices, discovery and other documents served and or filed by Contractor on behalf of the County, its officers or employees in electronic format.
6. Contractor, shall not bill for attorney's time in performing work or services which would ordinarily and customarily be performed by a legal secretary or clerical support.
7. Contractor shall not accept other employment which will interfere or cause a conflict of interest with representation of the County of Inyo and its agents, officers and employees

ATTACHMENT B

**AGREEMENT BETWEEN COUNTY OF INYO
AND RIVERA HEWITT PAUL LLP
FOR THE PROVISION OF LEGAL SERVICES**

TERM:

FROM: January 22, 2021 until the subject litigation is complete

SCHEDULE OF FEES:

1. COMPENSATION:

Attorney: \$210/hour
Paralegal \$135/hour
Travel: \$150/hour

2. INCIDENTAL EXPENSES:

The Firm shall not be obligated to advance costs on behalf of Client; however, for the purposes of convenience and in order to expedite matters, the Firm reserves the right to advance costs on behalf of the Client, with Client's prior approval, in the event a particular cost item exceeds \$7,500.00 in amount; and without the prior approval of Client in the event a particular cost item totals \$7,500.00 or less. Typical cost items include, by way of example and not limitation, document preparation and word processing, long distance telephone charges, fax/teletype charges (at \$0.10 per page), appearance fees, messenger fees, travel costs, bonds, witness fees, deposition and court reporter fees, transcript costs, expert witness fees, investigative fees, etc.

ATTACHMENT C

**AGREEMENT BETWEEN COUNTY OF INYO
AND RIVERA HEWITT PAUL LLP
FOR THE PROVISION OF LEGAL SERVICES**

TERM:

FROM: January 22, 2021 until the subject litigation is complete

SCHEDULE OF TRAVEL AND PER DIEM PAYMENT

Travel shall be at the County's request and will be billed at cost.
Per diem travel from portal to portal will be at the current IRS rate.

ATTACHMENT D

AGREEMENT BETWEEN COUNTY OF INYO
AND RIVERA HEWITT PAUL LLP
FOR THE PROVISION OF LEGAL SERVICES

TERM:

FROM: January 22, 2021 until the subject litigation is complete

Insurance Requirements for Professional Services

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than **\$1,000,000 per occurrence**. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with statutory limits, and Employer's Liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. *(Not required if consultant provides written verification it has no employees.)*
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the Consultant's profession, with limit no less than **\$1,000,000** per occurrence.

If the Consultant maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status: County of Inyo, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage: For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation: Consultant hereby grants to Entity a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Entity by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date,

the Consultant must purchase "extended reporting" coverage for a minimum of **five (5)** years after completion of contract work.

Verification of Coverage: Consultant shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors: Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Special Risks or Circumstances: Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.



County of Inyo



Clerk of the Board

DEPARTMENTAL - ACTION REQUIRED

MEETING: February 2, 2021

FROM: Assistant Clerk of the Board

SUBJECT: Approval of Board of Supervisors Meeting Minutes

RECOMMENDED ACTION:

Request Board approve the minutes of the regular Board of Supervisors meeting of January 5, 2021, January 12, 2021, and January 19, 2021.

SUMMARY/JUSTIFICATION:

The Board is required to keep minutes of its proceedings. Once the Board has approved the minutes as requested, the minutes will be made available to the public via the County's webpage, www.inyocounty.us.

BACKGROUND/HISTORY OF BOARD ACTIONS:

N/A

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

N/A

OTHER AGENCY INVOLVEMENT:

N/A

FINANCING:

N/A

ATTACHMENTS:

APPROVALS:

Darcy Ellis
Darcy Ellis

Created/Initiated - 1/28/2021
Final Approval - 1/28/2021