

**FRANCHISE AGREEMENT**

**BETWEEN THE COUNTY OF INYO**

**AND**

**MADERA DISPOSAL SYSTEMS, INC.**  
**D/B/A BISHOP WASTE DISPOSAL**

**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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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 Madera Disposal Systems, Inc. d/b/a Bishop Waste Disposal (“**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 seamed, 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 Representatives are Roger Brown and Michelle Erwin, 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: Bishop Waste  
Mr. Roger Brown, General Manager  
100 Sunland Indian Reservation Rd,  
Bishop, CA 93514

With a copy to:

Waste Connections, Inc.  
3 Waterway Square Place, Suite 110  
The Woodlands, Texas 77380  
Attn: Legal Department

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: [Signature]  
Title: Board Chairperson  
Date: 6-17-19

FRANCHISEE:

By: [Signature]  
Title: Division Vice President  
Date: 5-10-19

Approved as to Form (County Counsel):

By: [Signature]  
Title: Assistant County Counsel  
Date: 06/11/2019

Approved by Risk Management:

By: [Signature]  
Title: Risk Manager  
Date: 7-9-2019

## **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 toters, 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 Bishop Waste, 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.

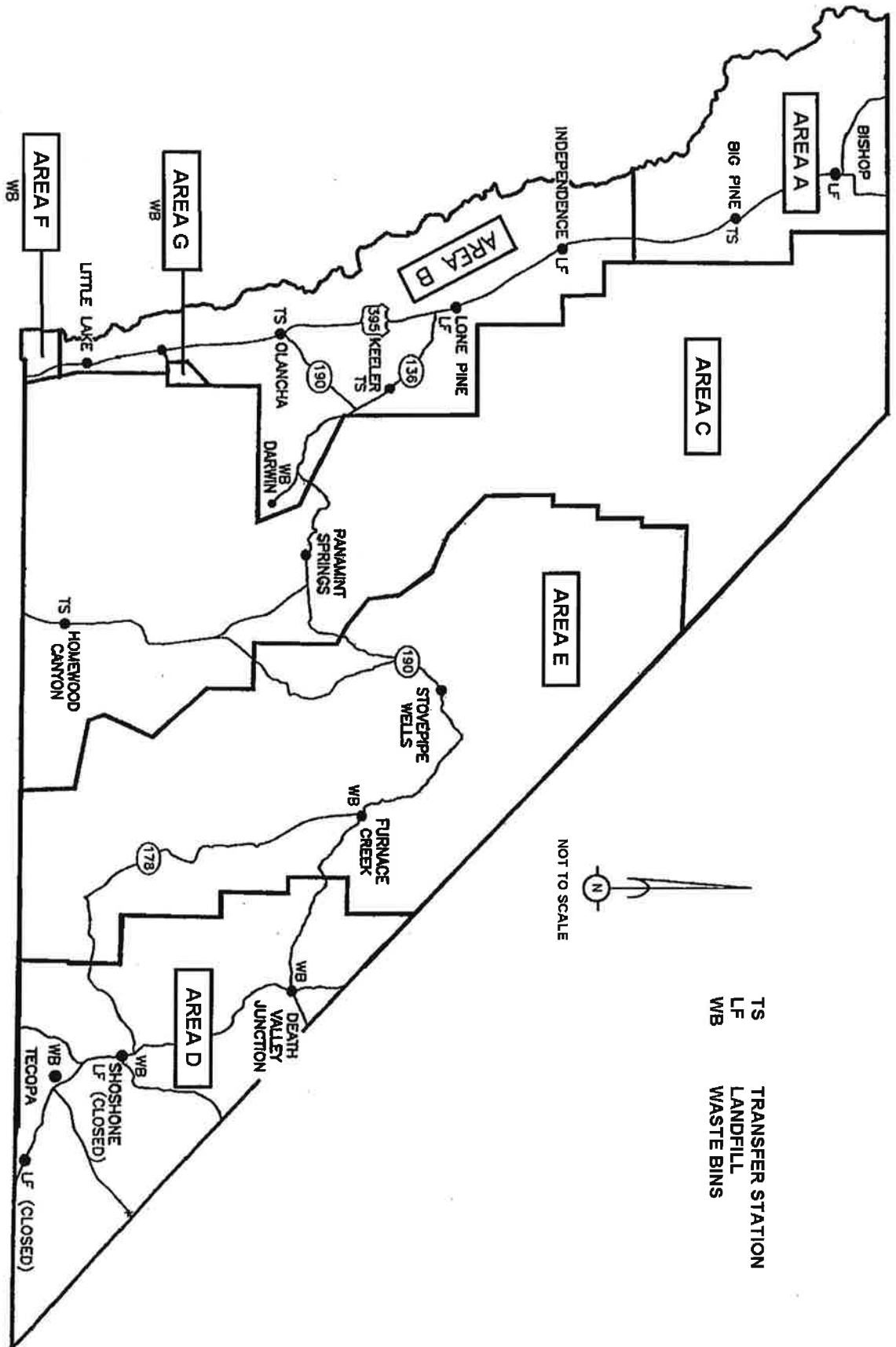


## **EXHIBIT 4.01a: WASTE COLLECTION AREAS**

[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.

INYO COUNTY  
 INTEGRATED WASTE MANAGEMENT  
 WASTE COLLECTION AREAS



TS  
 LF  
 WB

TRANSFER STATION  
 LANDFILL  
 WASTE BINS

NOT TO SCALE

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

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

## **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 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

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 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

(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 10.02a: 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.

**FORM 10.02a**

**INYO COUNTY FRANCHISEE QUARTERLY REPORT**

Submitted by: \_\_\_\_\_ (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)

<p><b>1. Summary of Records</b></p>	<p>a. Unpermitted Waste Spills:                  b. Vehicle Inspections:                  c. Criminal Activity:                  d. Other Events:                  e. Complaint Log:</p>	<p><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</p>
<p><b>2. Certifications</b></p>	<p>I represent and warrant, under penalty of perjury, that [FRANCHISEE] has met its Performance Obligations, including Delivery Obligations, for the Quarter noted above.        <b>OR,</b></p> <p>_____                  Name</p> <p>_____                  Title</p> <p>_____                  Signature</p>	<p>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.</p> <p>_____                  Name</p> <p>_____                  Title</p> <p>_____                  Signature</p>
<p><b>3. Summary of Education Efforts</b></p>	<p>Such as inserts, mailers, magnets, flyers, etc.</p>	<p><input type="checkbox"/> None    <input type="checkbox"/> See Attached</p>
<p><b>4. Diversion Information</b></p>	<p>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.</p>	<p><input type="checkbox"/> None    <input type="checkbox"/> See Attached</p>
<p><b>5. Collection Fee Summaries</b>  (fees invoiced and paid)</p>	<p>a. Service fees charged for each type of service                  b. Service fees collected from Customers                  c. Franchise fees paid to County</p>	<p><input type="checkbox"/> See Attached</p> <p>\$ _____</p> <p>\$ _____</p>

## **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 10.02b**

**INYO COUNTY FRANCHISEE ANNUAL REPORT FOR 20\_\_\_\_\_**

Submitted by: \_\_\_\_\_ (Franchisee)

(Due by February 15)

<p><b>1. Total information contained in Quarterly Reports for the year</b></p>		<input type="checkbox"/> See Attached
<p><b>2. Service Asset Inventory</b></p>		<input type="checkbox"/> See Attached
<p><b>3. Financial Status Statement</b></p>	<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>_____</p> <p>Name</p> <p>_____</p> <p>Title (CEO or Principal)</p> <p>_____</p> <p>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>_____</p> <p>Name</p> <p>_____</p> <p>Title (CEO or Principal)</p> <p>_____</p> <p>Signature</p>
<p><b>5. Subcontractors</b></p>	<p>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).</p>	<input type="checkbox"/> None <input type="checkbox"/> See Attached

**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 &amp;/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

**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 13.01**

**Existing Agreements Below The Floor Rate**

## 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.



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 [5.01a 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.