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ORDINANCE NO. 4385

An ordinance of the County of San Bernardino, State of California, to repeal and add Division 6 to Title 4 of the San Bernardino County Code, relating to solid waste handling franchises.

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. Division 6 of Title 4 of the San Bernardino County Code is repealed.

SECTION 2. Division 6 is added to Title 4 of the San Bernardino County Code, to read:

DIVISION 6. SOLID WASTE HANDLING FRANCHISES.

Chapters:

- 1. Purposes and Required Authorizations**
- 2. Definitions**
- 3. Franchise**
- 4. Compensation**
- 5. Uniform Handling Service**
- 6. Commercial Solid Waste and Organic Waste Recycling Program**
- 7. Reserved**
- 8. Reporting Requirements, Financial Information and Audit Rights**
- 9. Indemnification, Insurance and Bonding**
- 10. Administration, Enforcement and Remedies**
- 11. Penalties For Violation**
- 12. Amendment**

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

2 **Sections:**

3 46.0101 Purposes.

4 46.0102 Required Authorizations.

5 **46.0101 Purposes.**

6 The purposes of Division 6 are set forth below (all terms are as defined in
7 Chapter 2):

8 (a) To allow for the establishment of Solid Waste Handling franchises within
9 the unincorporated portion of San Bernardino County, pursuant to authority cited in
10 Government Code section 25827, in Public Resources Code sections 40057 through
11 40059 or 49200 through 49205, in Code of Regulations, Title 14, sections 17332 and
12 17333, and any other applicable state or local law. The implementation of franchises
13 through entering into Franchise Agreements with Grantees will assist the County:

14 (1) In meeting its obligation to provide Solid Waste Handling services
15 as required in Public Resources Code section 40057; and

16 (2) In meeting the requirements of AB 939, as may be amended, and
17 all subsequent State laws and regulations which mandate that the County reduce the
18 amount of Solid Waste disposed in County landfills by certain numerical thresholds by
19 providing its citizens with source reduction, recycling and Composting programs and
20 opportunities;

21 (b) To help ensure that residents of the Unincorporated County receive the
22 similar quality of waste collection and recycling services as do those residents in the
23 incorporated cities and towns of San Bernardino County;

24 (c) To ensure that programs and service levels for Solid Waste Handling
25 within the unincorporated spheres of influence of incorporated cities and towns will
26 replicate, to the extent possible, programs and service levels of adjacent cities and
27 towns;

28 (d) To minimize, to the extent possible, disruption of programs and services

1 to unincorporated residents in the event of annexations;
2 (e) To help quantify the waste stream from the Unincorporated County in
3 order to comply with diversion requirements of AB 939, as may be amended; and
4 (f) To provide by agreement, an opportunity for predictable levels of waste at
5 County landfills to ensure adequate funding for closure/post-closure activities.

6 **46.0102 Required Authorizations.**

7 (a) Except as otherwise provided in subsections (b) and (c) of this section,
8 no Person shall engage in, solicit, contract for or provide, in the Unincorporated
9 County, Solid Waste Handling services without such Person having and maintaining:

10 (1) A Health And Safety Permit authorizing the collection, transfer or
11 removal of refuse (within the meaning of Article 2 of Chapter 8 of Division 3 of Title 3 of
12 this Code); and

13 (2) (A) With respect to a Franchise Area, a Franchise Agreement
14 authorizing the Person to provide the specified Solid Waste Handling service being
15 provided; or

16 (B) With respect to a Refuse Collection Area, or any portion
17 thereof which is not a Franchise Area subject to a Franchise Agreement, a Class A
18 permit or temporary permit as provided for in Article 2.1 of Chapter 8 of Division 3 of
19 Title 3 of this Code.

20 (b) (1) Notwithstanding subsection (a), above, any Person may engage in
21 or provide, in the Unincorporated County, those Solid Waste Handling services related
22 to performing as a Garbage Hauler (within the meaning of Chapter 8 of Division 3 of
23 Title 3 of this Code), without such Person being required to have or maintain a
24 Franchise Agreement or the Class A permit or temporary permit provided for in Article
25 2.1 of Chapter 8 of Division 3 of Title 3 of this Code.

26 (2) Notwithstanding Subdivision (a), above, any Person may engage
27 in or provide, in the Unincorporated County, those Solid Waste Handling services
28 which are related solely to one of the types of Solid Waste set forth below, without such

1 Person being required to have or maintain a Franchise Agreement or the Class A
2 permit or temporary permit provided for in Article 2.1 of Chapter 8 of Division 3 of Title
3 3 of this Code.

4 (A) Abandoned vehicles and parts thereof.

5 (B) Ashes.

6 (C) Dewatered, treated or chemically fixed sewage sludge.

7 (D) Self-generated waste or waste generated and hauled by the
8 property owner.

9 (E) Green Waste or yard trimmings generated as an incidental
10 part of providing gardening, landscaping or landscape maintenance as a professional
11 gardener or landscaper.

12 (F) Inert materials or demolition waste from remodeling jobs
13 which are generated as an incidental part of providing such remodeling services,
14 provided that the construction contractor is not a hauling service or Solid Waste
15 enterprise, does not separately or additionally charge for the incidental service of
16 removing, transporting or disposing (except for the tipping fee) of the inert materials or
17 demolition waste, and utilizes only his or her own employees and equipment to collect,
18 transport, and dispose of same.

19 (G) Recyclables that are sold or donated by the generator of
20 such materials to a party other than the Grantee of a franchise. A mere discount or
21 reduction in price of the hauler's charges for the handling of such materials is not a
22 sale or donation within the meaning of Division 6.

23 (3) Subsection (b)(1), above, shall have no application in any
24 Franchise Area to the extent that the County provides in the Franchise Agreement(s)
25 establishing such Franchise Area that any or all of the Solid Waste Handling services
26 related to either performing as a Garbage Hauler or to the types of Solid Waste
27 enumerated in subsection (b)(2) are to be provided pursuant to a Franchise Agreement
28 or agreements; so long as the Person and/or the Solid Waste Handling service being

1 provided do not otherwise fit within one or more of the exemptions provided in
2 subsection (c) of this section. The Division shall maintain a list of all areas of the
3 County within which a Franchise Agreement is required in order to provide any of the
4 Solid Waste Handling services which are related to performing as a Garbage Hauler or
5 solely to a type of Solid Waste enumerated in subsection (b)(2).

6 (c) The provisions of subsections (a) and (b)(3) of this section shall not apply
7 to those Persons and/or Solid Waste Handling services specified in section 33.0843 of
8 this Code.

9

10 **CHAPTER 2: DEFINITIONS**

11 **Section:**

12 46.0201 Definitions.

13 **46.0201 Definitions.**

14 For the purposes of Division 6, the following terms, when used with initial
15 capitalization, shall have the meanings set forth in this section:

16 (a) "AB 939" means the California Integrated Waste Management Act of
17 1989, beginning at Public Resources Code sections 40000, et seq., as it may be
18 amended from time to time.

19 (b) "AB 341" (Chapter 476, Statutes of 2011) means the Assembly Bill that
20 set forth the initial requirements of the statewide mandatory commercial recycling
21 program, as it may be amended from time to time.

22 (c) "AB 1826" means the Organic Waste Recycling Act of 2014 (Chapter
23 727, Statutes of 2014, modifying Division 30 of the California Public Resources Code),
24 as it may be amended from time to time.

25 (d) "Board" means the San Bernardino County Board of Supervisors.

26 (e) "Change in Law" means the imposition (or removal), after the
27 establishment of a Total Rate relative to a Franchise Agreement, of any duty or burden
28 imposed upon the Grantee in the performance of the Solid Waste Handling services

1 required of it under its Franchise Agreement which is or becomes additional to (or is
2 subtracted from) or different from those duties required or contemplated in its
3 Franchise Agreement, or which must be performed in a different manner from that in
4 which it is initially contemplated to be performed, and which results from any of the
5 following:

6 (1) The enactment, issuance, adoption, repeal, amendment or
7 modification of any federal, state or local law, statute, ordinance or regulation.

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

14 Change in Law does not include any of the items noted in subsections (1) or (2)
15 above, which relate to any tax, [other than a business license tax imposed by the
16 County on a Grantee's performance of Solid Waste Handling services under its
17 Franchise Agreement] including without limit, any tax based or measured on net or
18 gross income, any business, payroll or franchise tax or any employment tax.

19 (f) "Change in Law Adjustment" means the adjustment to Total Rate in the
20 event of a Change in Law.

21 (g) "Change in Ownership" occurs when either a single transaction or event
22 or the cumulative effect of more than one transaction or event, results in 50 percent or
23 more of the beneficial ownership of the Grantee being different than such ownership as
24 of the date of the approval by the County of the Franchise Agreement or, if applicable,
25 as of the date of the most recent consent of the County to a Change in Ownership.
26 The owners of the beneficial ownership of Grantee on the date of the approval of the
27 Franchise Agreement or, if applicable, on the date of the most recent consent of the
28 County to a Change In Ownership, shall be referred to in this subsection as an "Initial

- 1 Owner". A Change In Ownership will be determined by application of the following:
- 2 (1) Any beneficial interest owned by an individual related by blood or
3 marriage to an Initial Owner shall be considered as owned by an Initial Owner in
4 determining if a Change in Ownership has occurred.
- 5 (2) Any public offering of stock where the stock is offered for sale to
6 the general public and does not constitute a private placement shall be disregarded in
7 determining if a Change in Ownership has occurred.
- 8 (3) Sales, transfers, issuances or pledges of non-voting shares of
9 stock will not be considered in determining if a Change in Ownership has occurred,
10 until and unless and only to the extent that such stock is converted into voting shares
11 of stock.
- 12 (4) The pledge of, or any other action taken relative to, voting shares
13 of stock which results in any voting rights of such stock being exercised by other than
14 an Initial Owner shall be considered to be a transfer of such stock for the purposes of
15 determining if a Change in Ownership has occurred.
- 16 (h) "Change in Service Level Adjustment" means the adjustment to Total
17 Rate in the event of a change in service level and as described in the Franchise
18 Agreement.
- 19 (i) "Composting" means the separation of Organic Waste from the waste
20 stream for controlled decomposition.
- 21 (j) "Consumer Price Index" or "CPI" means the Consumer Price Index – All
22 Urban Consumers, Los Angeles-Long Beach-Anaheim, CA, all items less food and
23 energy, CUURS49A1SAOLE .
- 24 (k) "County" means the County of San Bernardino, State of California.
- 25 (l) "County Solid Waste Disposal System" means at any particular time, the
26 then-existing Landfill Disposal Facilities which the County owns, leases or has a
27 contractual right to use.
- 28 (m) "Department Of Public Health, Division Of Environmental Health

1 Services” means the County division of that name or such County department, division
2 or office which is the successor thereto.

3 (n) “Director” means the Director of the Department of Public Works or the
4 designee of such individual.

5 (o) “Division” means the County Department of Public Works Solid Waste
6 Management Division or such County department, division or office which is the
7 successor thereto.

8 (p) “Food Waste” means all kitchen and table food scraps; animal or
9 vegetable waste that is generated during or results from the storage, preparation,
10 cooking or handling of food stuffs; discarded food-soiled compostable paper waste that
11 is mixed in with Food Waste; fruit waste, grain waste, dairy waste, meat, and fish waste
12 which may or may not have been source separated from other Solid Waste. Food
13 Waste is a subset of Organic Waste.

14 (q) “Franchise Agreement” means the agreement entered into between the
15 County and the Grantee under the provisions of section 46.0301 which
16 authorizes/requires the Grantee to provide Solid Waste Handling services in a
17 specified Franchise Area.

18 (r) “Franchise Area” means the geographic territory in the Unincorporated
19 County for which the Grantee has been granted a franchise to provide Solid Waste
20 Handling services, as specified in each Franchise Agreement.

21 (s) “Franchise Fee” means the fee paid to the County by the Grantee in
22 consideration of the granting of a franchise pursuant to Division 6.

23 (t) “Garbage Hauler” means any Person or entity who collects garbage,
24 unmixed with rubbish, and transports it to a commercial garbage-feeding hog ranch or
25 to a commercial establishment for Processing for use in livestock feeding.

26 (u) “Grantee” means a Person granted a franchise pursuant to a Franchise
27 Agreement.

28 (v) “Green Waste” means discarded Solid Waste consisting of grass

- 1 clippings, leaves, branches, tree trunks and other vegetative matter.
- 2 (w) "Gross Receipts" means all monies received by Grantee for providing the
3 Solid Waste Handling services specified in its Franchise Agreement.
- 4 (x) "Gross Receipts Less Disposal Charges" means Gross Receipts less that
5 part of the monies received by the Grantee that are collected from Subscribers for
6 payment of the fee imposed for disposing of the Solid Waste at a Landfill Disposal
7 Facility and the fee imposed for Other Operations.
- 8 (y) "Gross Receipts For Commercial Food Waste Services" means all
9 monies received by Grantee for providing the Food Waste handling services specified
10 in its Franchise Agreement.
- 11 (z) "Gross Receipts For Commercial Food Waste Services Less Processing
12 Costs" means Gross Receipts For Commercial Food Waste Services less that part of
13 the monies received by the Grantee that are collected from Subscribers for payment of
14 the fee imposed for Processing of the Food Waste at an Organic Waste Processing
15 Facility.
- 16 (aa) "Hazardous Waste" means any waste or mixture of waste which is toxic,
17 corrosive, flammable, an irritant, a strong sensitizer, or which generates pressure
18 through decomposition, heat or other means, if such waste or mixture of waste may
19 cause substantial personal injury, serious illness or harm to humans, domestic animals
20 or wildlife during or as a proximate result of any disposal of such waste or mixture of
21 wastes as defined in California Health and Safety Code section 25117 and California
22 Code of Regulations, Title 22, section 66261.3. The terms "toxic," "corrosive,"
23 "flammable," "irritant," and "strong sensitizer" shall be given the same meaning as in
24 the California Hazardous Substances Act (Health and Safety Code sections 108100 et
25 seq.).
- 26 (bb) "Health And Safety Permit" means a current permit issued by the
27 Department of Public Health, Division of Environmental Health Services to a refuse
28 collection operator, Garbage Hauler or nondomestic waste hauler (all as defined in

1 section 33.0802 of this Code), in accordance with Title 14 of the California Code of
2 Regulations and Title 3 of the County Code. The Health And Safety Permit evidences,
3 for a specified period of time, the health and safety inspection and the approval of
4 vehicles, facilities and equipment utilized by a refuse collection operator, Garbage
5 Hauler or nondomestic waste hauler.

6 (cc) "Landfill Disposal Facility" means any County owned/operated facility that
7 is designed to manage any type of Solid Waste and includes, but is not limited to,
8 disposal, transfer, Processing, Composting and Transformation.

9 (dd) "Landfill Disposal Facility Fee" means the fee charged for use of a Landfill
10 Disposal Facility.

11 (ee) "Materials Recovery Facility" or "MRF" means a facility designed to
12 remove Recyclables and other valuable materials from the waste stream collected
13 through a residential, commercial or industrial Solid Waste Handling program that is
14 approved to operate by the appropriate state and local agencies.

15 (ff) "Multi-Jurisdiction Load Report" means a report which sets out the
16 amount, and place of collection, of Solid Waste delivered to the Landfill Disposal
17 System.

18 (gg) "Onsite Waste Assessment" means an in-person visit by the Grantee to a
19 customer to collect and evaluate information on the types and quantities of Solid Waste
20 generated by the customer, as well as identify opportunities for additional Processing
21 of Solid Waste. At a minimum, the Grantee will perform the tasks described in the
22 Franchise Agreement.

23 (hh) "Organic Waste" means Food Waste, Green Waste, landscape and
24 pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed
25 in with Food Waste, collectively or individually.

26 (ii) "Organic Waste Handling Service" means: (1) the collection of Organic
27 Waste from a commercial, residential, construction, or industrial source; and (2) the
28 transportation of such Organic Waste to an Organic Waste Processing Facility.

1 (jj) "Organic Waste Processing Facility" means a permitted facility where
2 Organic Waste is sorted, mulched or separated for the purposes of recycling, reuse or
3 Composting.

4 (kk) "Organic Waste Processing Facility Fee" means the fee charged for use
5 of an Organic Waste Processing Facility.

6 (ll) "Other Operations" means all operational cost categories that are not
7 included in fuel, service, and landfill disposal; "Other Operations" may include, but are
8 not limited to, non-County facilities for transfer, Processing, Composting and
9 Transformation.

10 (mm) "Person" means, without limitation, individuals, associations, clubs,
11 societies, firms, partnerships, joint ventures, sole proprietorships, corporations, limited
12 liability companies, schools, colleges and all governmental agencies and entities.

13 (nn) "Processing" means the reduction, separation, recovery, conversion or
14 recycling of Solid Waste.

15 (oo) "Recyclables" for purposes of Division 6 only, means discarded Solid
16 Waste which may be sorted, cleansed, treated, processed, and/or reconstituted, and
17 which is segregated for the purpose of reuse or recycling, including, but not limited to,
18 separated paper, glass, cardboard, plastic, ferrous materials or aluminum.

19 (pp) "Refuse Collection Area" means that area of the Unincorporated County
20 as provided for in Article 2.1 of Chapter 8 of Division 3 of Title 3 of this Code.

21 (qq) "Residual Solid Waste" means the Solid Waste destined for disposal,
22 Transformation, or further transfer/Processing as defined in California Code of
23 Regulations, Title 14, section 17402(a)(30) or (31), as it currently exists or may be
24 amended, which remains after Processing has taken place.

25 (rr) "Security" means a corporate surety bond, a letter of credit or other
26 Security device acceptable to the Division, as described in the Franchise Agreement
27 and County Code section 46.0904.

28 (ss) "Solid Waste" means, except as provided in subsections (1), (2), (3) and

1 (4), all putrescible and nonputrescible solid, semisolid, and liquid wastes, including
2 garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and
3 construction wastes, abandoned vehicles and parts thereof, discarded home and
4 industrial appliances (subject to salvage and other special handling requirements under
5 applicable law and regulation), dewatered, treated, or chemically fixed sewage sludge
6 which is not Hazardous Waste, manure, vegetable or animal solid and semisolid
7 wastes, and other discarded solid and semisolid wastes, including Recyclables and
8 Organic Waste.

9 (1) Solid Waste does not include Hazardous Waste and does not
10 include low-level radioactive waste regulated under Health and Safety Code sections
11 114960 et seq., as it currently exists or may be amended.

12 (2) Solid Waste does not include medical waste (except treated
13 medical waste) which is regulated pursuant to the Medical Waste Management Act
14 under Health and Safety Code sections 117600 et seq., as it currently exists or may be
15 amended

16 (3) Solid Waste does not include petroleum or a petroleum product or
17 fraction thereof at reasonably detectable levels, asbestos and, with respect to a
18 particular Solid Waste Facility, any waste or material which a regulatory agency, the
19 facility's solid waste facility permit or County policy, does not allow to be accepted for
20 transfer, Processing, composting, Transformation or disposal at that facility.

21 (4) Solid Waste does not include items which would be considered
22 Recyclables but for the fact that they are personally separated from other Solid Waste
23 by the generator thereof and are donated or sold to third parties. For purposes of
24 Division 6, no donation or sale shall be deemed to have occurred in any instance
25 where a generator directly or indirectly pays the third party any sum regardless of form
26 or amount (including without limit as a consulting fee, container rental, broker or other
27 fees or tangible consideration) either: (i) in lieu of being directly charged for collecting,
28 transporting, Processing or recycling such item; or (ii) to offset the payment to the

1 generator for the purported sale of such item to the third party. Nor shall the receipt of
2 a discount of, or reduction in, the disposal service rate on unsegregated Solid Waste
3 containing an item which would be Recyclables, if separated, be deemed to be the
4 donation or sale of such an item to a third party.

5 (tt) "Solid Waste Facility" means any facility that is designed to manage any
6 type of Solid Waste and includes transfer, Processing, Composting, Transformation
7 and disposal facilities.

8 (uu) "Solid Waste Facility Fee" means the fee charged for use of a Solid
9 Waste Facility.

10 (vv) "Solid Waste Handling" means the following: (1) the collection of Solid
11 Waste from a commercial, residential, construction or industrial source; (2) the
12 transportation of such Solid Waste to a Solid Waste facility; and (3) the Processing,
13 Composting, Transformation or disposal of such Solid Waste at the Solid Waste
14 Facility. The specific Solid Waste Handling required of Grantee shall be specified in its
15 Franchise Agreement.

16 (ww) "Subscriber" means any Person receiving Solid Waste Handling services
17 pursuant to a Franchise Agreement.

18 (xx) "Total Rate" means the inclusive rate schedule attached to each
19 Franchise Agreement which provides the rates to be paid to Grantee by Subscribers in
20 consideration of the Solid Waste Handling services provided by Grantee under its
21 Franchise Agreement.

22 (yy) "Transformation" shall have the same meaning as set forth in Public
23 Resources Code section 40201, as it may be amended from time to time.

24 (zz) "Uniform Handling Areas" means a Franchise Area, or a specified portion
25 of a Franchise Area, in which Uniform Handling Service has been imposed, as
26 specified in a Franchise Agreement.

27 (aaa) "Uniform Handling Service" means the mandatory subscription to Solid
28 Waste Handling service required of owners of specified residential, multi-residential,

1 and/or commercial units in a Uniform Handling Area.

2 (bbb) "Unincorporated County" means any community or other area within the
3 County which is outside the boundaries of all incorporated cities and towns.

4 (ccc) "Visual Waste Audit means an in-person visual inspection of Solid Waste
5 containers to estimate and document the composition of Solid Waste placed in each
6 container, and identify opportunities for Processing and contamination minimization.

7

8 **CHAPTER 3: FRANCHISE**

9 **Sections:**

10 46.0301 Franchise Formation and Terms.

11 46.0302 Franchise Fee.

12 46.0303 Assignment and Change of Ownership.

13 46.0304 Title to Solid Waste.

14 **46.0301 Franchise Formation and Terms.**

15 (a) The award by the Board of a franchise for Solid Waste Handling shall be
16 evidenced by approval and execution of a Franchise Agreement. The Board may
17 award exclusive or non-exclusive Solid Waste Handling franchises in the
18 Unincorporated County, with or without competitive bidding, through individual
19 Franchise Agreements. A Franchise Agreement shall be granted by the Board when it
20 determines that public convenience and necessity are served by the award of the
21 franchise, and where a partially or wholly exclusive franchise is awarded without
22 competitive bidding, that the granting of such a franchise is in the best interests of
23 County residents based on the health, safety and well-being of residents in the
24 Franchise Area where the partially or wholly exclusive franchise is awarded. Each
25 Franchise Agreement shall specify the specific Solid Waste Handling services to be
26 provided by Grantee; a different Grantee may be granted a franchise to provide the
27 same, or different, Solid Waste Handling services in the same Franchise Area.

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

1 (1) Have, or obtain prior to the approval of the Franchise Agreement
2 by the County, and maintain for the term of its Franchise Agreement, a current Health
3 And Safety Permit to the extent such a permit is required under the provisions of Article
4 2 of Chapter 8 of Division 3 of Title 3 of this Code in order to provide the Solid Waste
5 Handling services to be provided under the Franchise Agreement; and

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

9 (3) Provide to the Director the information which is required of an
10 applicant for a Health And Safety Permit pursuant to section 33.0825 of this Code.

11 (c) (1) The terms and conditions by which the Grantee shall be obligated
12 to provide Solid Waste Handling services shall be as set forth in Division 6 and, with
13 respect to the items set forth in this subsection (c), as set forth in the Franchise
14 Agreement.

15 (A) The Franchise Area, including any Uniform Handling Area.

16 (B) The specific Solid Waste Handling services to be provided
17 by Grantee, including appropriate operating requirements.

18 (C) The Total Rates related to the specified Solid Waste
19 Handling services to be provided by Grantee and the method of billing its Subscribers.

20 (2) (A) If the County and the Grantee so agree, the Franchise
21 Agreement may specify the Solid Waste Facility or facilities to which the Grantee will
22 transport the Solid Waste collected pursuant to Solid Waste Handling services
23 provided under the Franchise Agreement.

24 (B) If the County and the Grantee so agree, the Franchise
25 Agreement may allow the County to specify a different or additional Solid Waste
26 Facility to which the Grantee will transport the Solid Waste collected pursuant to the
27 Solid Waste Handling services provided under the Franchise Agreement. In such
28 event, the Franchise Agreement may contain a cost per ton mile figure which sets forth

1 the increase in the Grantee's demonstrable costs related to such a change.

2 (C) If the County and the Grantee so agree, the Franchise
3 Agreement may specify that upon the effective date of the Franchise Agreement the
4 Grantee waives and forgoes any other rights it might have to provide Solid Waste
5 Handling services in other specified portions of the Unincorporated County, including
6 any rights it might otherwise have under Public Resources Code section 49520 or
7 other law to receive advance notice of the cancellation of any permit or other
8 authorization to provide such services.

9 (d) (1) The Franchise Agreement shall establish the initial term and any
10 extensions. Notwithstanding the forgoing, the County reserves the right to increase the
11 term or any extension if it believes that such an increase is in the best interests of the
12 Subscribers being serviced by the Grantee under the Franchise Agreement.

13 (2) A Franchise Agreement may provide for automatic extensions;
14 however, the Board may determine in its sole discretion that a Franchise Agreement
15 shall not be extended. The action to not extend a Franchise Agreement must be taken
16 no later than 60 days prior to the automatic renewal date of the Franchise Agreement.
17 Such action shall terminate the automatic renewal and extension provision only and
18 such Franchise Agreement shall remain in effect for the balance of the term then
19 outstanding.

20 (e) The Franchise Agreement shall set forth the Total Rate (i.e., the inclusive
21 schedule of rates to be paid to Grantee for Solid Waste Handling services provided to
22 Subscribers under its Franchise Agreement). The Total Rate shall be subject to review
23 and adjustment pursuant to the provisions of Division 6. If and when adjustments to
24 the Total Rate are made pursuant to the provisions of Division 6, the Director shall
25 cause a certification of each such adjustment to be lodged with the County's official
26 copy of the Franchise Agreement. No Total Rate or adjustment to same shall be
27 implemented until approved by the Board or by the Director, as provided in Division 6.

28 (f) Non-performance by Grantee of the terms and conditions contained in

1 Division 6 or in its Franchise Agreement, or the occurrence of one or more of the
2 events set forth in section 33.0827 of this Code, shall provide grounds for the loss of or
3 limitation upon the Grantee's right to provide Solid Waste Handling services pursuant
4 to its Franchise Agreement and for the termination of its Franchise Agreement.
5 Grantee shall perform no Solid Waste Handling services under its Franchise
6 Agreement without possessing the required Health And Safety Permit.

7 (g) Except when otherwise required by applicable federal, state or local law,
8 the terms and conditions of Division 6 shall prevail over any inconsistent provisions of a
9 Franchise Agreement.

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

17 **46.0302 Franchise Fee.**

18 (a) Except as set forth in subsection (b), below, each Grantee under a
19 Franchise Agreement shall pay to the County a Franchise Fee equal to the then current
20 and effective Franchise Fee set forth in the County Schedule of Fees, currently found
21 at Chapter 2 of Division 6 of Title 1 of the San Bernardino County Code. The payment
22 of a Franchise Fee shall not limit the County's ability to establish and levy a business
23 license tax, fees, charges, assessments, penalties, fines, and other requirements for
24 monetary payment by the Grantee to the County. Payment of Franchise Fee shall be
25 made monthly. The Franchise Fee shall constitute a cost which Grantee may recover
26 as a part of the compensation due Grantee under the Franchise Agreement.

27 (b) In the event that a Grantee under a Franchise Agreement in a Uniform
28 Handling Area offers a fee waiver program as set forth in section 46.0505, then such

1 Grantee will not be required to pay a Franchise Fee to the County in an amount
2 proportionate to that waived pursuant to the Code.

3 **46.0303 Assignment and Change of Ownership.**

4 (a) Neither any Franchise Agreement nor any right or privilege granted in any
5 such agreement shall voluntarily or involuntarily be transferred, sold, hypothecated,
6 sublet, assigned or leased, in whole or in part, nor shall title thereto, either legal or
7 equitable, or any right, interest, or property therein (all collectively referred to herein as
8 "transfer"), pass to or vest in any Person, except the Grantee, either by act of the
9 Grantee or by operation of law, without the prior written consent of the Board. Any
10 attempt by Grantee, either by act of Grantee or by operation of law, to transfer any
11 Franchise Agreement without the prior written consent of the Board shall be void.

12 (b) If the Grantee requests that the County consider and consent to a
13 transfer or a Change In Ownership of Grantee, the Grantee or the proposed transferee,
14 as applicable, shall at a minimum meet each of the following requirements:

15 (1) The Grantee shall pay the County its reasonable expenses for
16 attorney's fees and investigation costs necessary to determine the suitability of any
17 proposed transferee or proposed new owners, and to review and finalize any
18 documentation required as a condition for approving any such transfer or Change In
19 Ownership.

20 (2) The Grantee shall furnish the County with independently audited
21 financial statements of the proposed transferee's operations for the immediately
22 preceding three operating years.

23 (3) The Grantee shall furnish the County with satisfactory proof:

24 (A) That the proposed transferee or the proposed management
25 of the Grantee under the proposed new owner has at least three years of Solid Waste
26 management experience of a scale equal to or exceeding the scale of operations
27 conducted by Grantee under its Franchise Agreement;

28 (B) That in the last five years, the proposed transferee or any

1 company managed by the proposed new owner (or by the proposed management of
2 the Grantee under the proposed new owner) has not received any citations, notice of
3 violations or other censure from any federal, state or local agency having jurisdiction
4 over its waste management operations due to any failure to comply with federal, state
5 or local waste management laws, where such failure either: (i) evidences a pattern of
6 disregard for such federal, state or local waste management laws; or (ii) involves
7 actions which endangered the lives or property of any Person. Grantee shall supply
8 the County with a complete list of such citations, notices of violations and censures, if
9 any;

10 (C) That the proposed transferee or any company managed by
11 the proposed new owner (or by the proposed management of the Grantee under the
12 proposed new owner) has at all times conducted its operations in an environmentally
13 safe and conscientious fashion;

14 (D) That the proposed transferee or any company managed by
15 the proposed new owner (or by the proposed management of the Grantee under the
16 proposed new owner) conducts its Solid Waste management operations in accordance
17 with sound waste management standards and practices and in full compliance with all
18 Federal, State and local laws regulating the collection and disposal of waste;

19 (E) Of the adequate financial strength of proposed transferee or
20 of the Grantee under the proposed new ownership; and

21 (F) Of the ability of the proposed transferee or of the Grantee
22 under the proposed new ownership to obtain and maintain required insurance and
23 bonds.

24 (c) The County may impose reasonable new conditions of approval on a
25 Franchise Agreement transfer, or consent to a Change In Ownership of Grantee,
26 including, but not limited to, conditions requiring acceptance of amendments to the
27 relevant Franchise Agreement.

28 **46.0304 Title to Solid Waste.**

1 Ownership of Solid Waste shall transfer to Grantee at such time as the Solid
2 Waste is abandoned and discarded by the Solid Waste Handling service Subscriber of
3 Grantee in the location provided in section 33.0808 of this Code.

4
5 **CHAPTER 4: COMPENSATION**

6 **Sections:**

7 46.0401 Compensation.

8 46.0402 Adjustment to Total Rate.

9 46.0403 Notice to Subscribers Regarding Certain Adjustments.

10 46.0404 Discontinuance of Service for Non-Uniform Handling Service.

11 **46.0401 Compensation.**

12 (a) Charges for Solid Waste Handling services (including, without limit, for
13 use of a Solid Waste Facility) provided to Grantee's Subscribers shall be paid by such
14 service Subscribers in accordance with the Total Rate approved by the Board in its
15 approval or extension of the Franchise Agreement with Grantee, as such Total Rate is
16 adjusted pursuant to section 46.0402.

17 (b) All charges for services rendered by a given Grantee shall be uniform
18 and non-discriminatory for the type of service provided and reasonably based upon the
19 type and/or number of containers, type of Solid Waste, whether compacted or loose,
20 number of separate pick-up points at any place of collection, placement of container(s)
21 or distance of carry-out, frequency of collection, remote location, terrain, disposal
22 costs, and whether residential, commercial, construction or industrial collection.

23 (c) (1) In cases where Grantee includes a Solid Waste Facility Fee
24 amount as a separate listing on a Subscriber's bill, the County shall prescribe the
25 amount consistent with waste generation factors established in the Franchise
26 Agreement and the applicable Solid Waste Facility Fee.

27 (2) Grantee shall refund to each Subscriber, on a pro rata basis, any
28 advance service payments made by such Subscriber for service not provided when

1 service is discontinued by timely written notification to Grantee by the Subscriber.
2 Grantee may not require written notice to be given more than 15 working (waste
3 collection) days prior to the date on which service is desired to be discontinued.

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

16 **46.0402 Adjustment to Total Rate.**

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

22 (a) Cost of Living Adjustment. A Cost of Living Adjustment set forth in a
23 Franchise Agreement should be based on appropriate consumer or product price
24 indices and the adjustment shall be a pass through of 100 percent of any increase or
25 decrease as a part of the Total Rate.

26 (b) Landfill Disposal Facility Fee. The Landfill Disposal Facility Fee
27 adjustment shall be the pass through of 100 percent of any increase or decrease in the
28 fee charged to the Grantee for use of a Landfill Disposal Facility approved for use by

1 the Division, calculated on a per Subscriber basis, and shall be effective as of the date
2 of the change to such fee.

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

7 (d) Extraordinary Adjustment. The Franchise Agreement may allow for
8 adjustments to the Total Rate to account for infrequent extraordinary events which,
9 although they do not prevent either party from performing and do not implicate Force
10 Majeure provisions, they nevertheless increase the cost of providing service such that
11 Grantee's compensation and the rate adjustment mechanism provided in the Franchise
12 Agreement result in Grantee's suffering losses which are substantially outside the
13 commercially reasonable expectations of the parties. In no event shall any
14 Extraordinary Adjustment be effective prior to the Board's approval of an amendment
15 to the applicable Franchise Agreement.

16 (e) Change In Service Level Adjustments.

17 (1) The Total Rate shall be increased (or decreased) by 100 percent
18 of the increase (or decrease) or incremental increase (or incremental decrease), as the
19 case may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether
20 fixed or variable) associated with the change in the level of the Solid Waste Handling
21 services which may be required of, or agreed to by, a Grantee. A Change In Service
22 Level Adjustment shall be effective on and after the actual date of the requirement to or
23 agreement to change operations which results from the change in service, but, absent
24 the consent of the Division, not sooner than the effective date of the change in service.
25 In no event shall any Change In Service Level Adjustment be effective prior to the
26 Board's approval of an amendment to the applicable Franchise Agreement.

27 (2) In the event that the Division and the Grantee claiming to be
28 affected by the change in service level cannot agree on either the existence, or the

1 effect on demonstrable costs, of a change in service level, the dispute resolution
2 provisions of the Franchise Agreement shall apply.

3 (f) Change In Law Adjustments.

4 (1) The Total Rate shall be increased (or decreased) by 100 percent
5 of the increase (or decrease) or incremental increase (or incremental decrease), as the
6 case may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether
7 fixed or variable) associated with the change in the manner or nature of conducting
8 Solid Waste Handling services necessitated by a Change In Law. A Change In Law
9 Adjustment shall be effective on and after the actual date of the change in operations
10 which resulted from the Change In Law, but, absent the consent of the Division, not
11 sooner than the effective date of the Change In Law. In no event shall any Change In
12 Law Adjustment be effective prior to the Board's approval of an amendment to the
13 applicable Franchise Agreement.

14 (2) In the event that the Division and the Grantee claiming to be
15 affected by the Change In Law cannot agree on either the existence, or the effect on
16 demonstrable costs, of a Change In Law, the dispute resolution provisions of the
17 Franchise Agreement shall apply.

18 **46.0403 Notice to Subscribers Regarding Certain Adjustments.**

19 No Change In Service Level Adjustment increase or Change In Law Adjustment
20 increase which applies to 500 or more Solid Waste Handling service Subscribers or to
21 Subscribers cumulatively generating 1,500 or more cubic yards of Solid Waste per
22 month may be implemented until at least 10 days after completion of publication of a
23 notice of the proposed increase as set forth in the Franchise Agreement.

24 **46.0404 Discontinuance of Service for Non-Uniform Handling Service.**

25 Except where Uniform Handling Service is implemented, Grantee may
26 discontinue service for non-payment of Subscriber's billing or Subscriber's failure to
27 substantially comply with the requirements of the applicable provisions of state or local
28 law which govern use, storage and collection of Solid Waste. After the Grantee has

1 given 15 days' written notice to Subscriber for non-payment, Grantee shall notify the
2 Director in writing of any service termination including a written copy of the notice to the
3 Subscriber. Upon payment of the delinquent fees, if applicable, Grantee shall resume
4 collection on the next regularly scheduled collection day. Any Grantee operating in a
5 Uniform Handling Area shall not discontinue service except as allowed in section
6 46.0507.

8 **CHAPTER 5: UNIFORM HANDLING SERVICE**

9 **Sections:**

- 10 46.0501 Uniform Handling Service.
- 11 46.0502 Owner Responsible for Payment for Uniform Handling Service.
- 12 46.0503 Failure to Provide Sufficient Solid Waste Containers.
- 13 46.0504 Exemption from Uniform Handling Service.
- 14 46.0505 Temporary Suspension of Service or Waiver of Fees.
- 15 46.0506 Handling of Delinquent Accounts.
- 16 46.0507 Discontinuance of Service.
- 17 46.0508 Penalties for Violations.
- 18 46.0509 Illegal Dumping Retrieval Services.

19 **46.0501 Uniform Handling Service.**

20 (a) Uniform Handling Service and Uniform Handling Areas shall be
21 established by the adoption, or amendment, of an individual Franchise Agreement
22 which contains provisions establishing same. Uniform Handling Service may but need
23 not be implemented in every Franchise Area, nor in all parts of a given Franchise Area,
24 nor imposed on the owners of all classes of dwellings or commercial or industrial units
25 within a given Uniform Handling Area. If Uniform Handling Service is implemented for
26 all or part of a particular Franchise Area, all owners of a dwelling or a commercial or
27 industrial unit within the Uniform Handling Area who are required to have Uniform
28 Handling Service shall, upon notice thereof, be required to accept Uniform Handling

1 Service from the Grantee (or one of the Grantees) holding a Franchise Agreement for
2 the Uniform Handling Area and pay the rate for such services currently in effect under
3 the Total Rate of the applicable Franchise Agreement. The Division shall maintain a
4 list of all areas of the County where a Franchise Agreement establishes a Uniform
5 Handling Area; the list shall specify the class of owners of dwellings and/or commercial
6 or industrial units within each Uniform Handling Area required to have Uniform
7 Handling Service.

8 (b) Uniform Handling Service shall not be imposed on the owner of any class
9 of dwelling or commercial or industrial unit located in an Agricultural Preserve Overlay
10 District within the sphere of influence of the City of Chino or of the City of Ontario, as
11 designated upon the land use district maps of the County General Plan.

12 **46.0502 Owner Responsible for Payment for Uniform Handling Service.**

13 (a) The owner of each dwelling or commercial or industrial unit subject to
14 Uniform Handling Service shall be required to accept, and pay the applicable rate set
15 out in the Total Rate for, the Uniform Handling Service rendered to such unit by a
16 Grantee and shall place at a location accessible to the Grantee, a container(s) of
17 adequate capacity and functional design in accordance with Division 6 of Title 4 and
18 with Division 3 of Title 3 of this Code for the storage of Solid Waste generated on the
19 premises. Such owner shall be responsible to provide such container(s) unless the
20 Franchise Agreement requires the Grantee to provide such container(s).

21 (b) Nothing in this section is intended to prevent the entering into of an
22 arrangement, or the continuance of an existing arrangement, approved in writing by the
23 Grantee, under which statements or invoices for Uniform Handling Service are billed to
24 and payments are made by a tenant or tenants, or any agent, on behalf of the owner.
25 However, unless otherwise provided therein, any such arrangement shall not lessen or
26 substitute for the owner's obligation to the Grantee or, unless separately approved in
27 writing by the Division, to the County under Division 6.

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

1 When in the judgment of the Director (whether or not at the request of the
2 Grantee or owner) additional Solid Waste container(s) compatible with the Solid Waste
3 Handling system are required, they must be provided by the owner, or by the Grantee if
4 the Franchise Agreement requires the Grantee to provide container(s), upon written
5 notification by the Director. All containers shall conform to the requirements of sections
6 33.0806 and 33.0807 of this Code.

7 **46.0504 Exemption from Uniform Handling Service.**

8 (a) Dwellings.

9 (1) The owner of any dwelling may apply to the Division for an
10 exemption from Uniform Handling Service by submitting a Uniform Handling Exemption
11 Request form to the Director or designee accompanied by required documentation
12 identified in the form and a non-refundable application fee requesting a permit to
13 provide self-haul Solid Waste Handling. The owner may be granted an exemption
14 provided he/she can adequately document that all Solid Waste generated at the
15 dwelling is transported in a safe and sanitary manner to a Landfill Disposal Facility
16 owned by the County of San Bernardino. Upon approval of the exemption request, the
17 Director will notify the owner and the Grantee of the exemption. Exemptions are issued
18 on an annual basis, July 1 through June 30. Exemptions that are not obtained or
19 renewed prior to July 1st of each year will not be effective until the next billing period in
20 accordance with the Franchise Agreement applicable to the owner's dwelling.

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

23 (3) The application fee shall include an administrative fee, if any, as
24 determined by the Board, in addition to the pre-payment of the average annual landfill
25 disposal cost for County residents as determined by the Director. Each application for
26 annual renewal of such an exemption shall be accompanied by the administrative fee
27 plus the applicant's required pre-payment of the average annual landfill disposal cost.
28 This pre-payment will be retained by the Division as a pre-payment for one year's

1 weekly Solid Waste disposal. The pre-payment requirement shall be waived with
2 respect to residences located within those land use areas for which parcel fees are
3 collected for the operation of County Solid Waste Disposal System.

4 (4) The Director shall provide the owner who pays the pre-payment of
5 the average annual landfill disposal cost with a card or other document which attests to
6 such pre-payment and which allows weekly disposal privileges at all facilities within the
7 County Solid Waste Disposal System in a manner consistent with the disposal rights of
8 a resident who has paid a parcel fee for the operation of County Solid Waste Disposal
9 System.

10 (5) Should the owner violate any provisions of Division 6 of Title 4 or
11 of any provision of Chapter 7 or Chapter 8 of Division 3 of Title 3 of the San Bernardino
12 County Code, the Director may, upon advance written notice to the owner, revoke the
13 exemption and require the owner to subscribe to and pay for Uniform Handling Service
14 as described in this Chapter.

15 (b) Commercial/Industrial Units.

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

23 (2) The exemption and renewal applications shall be on a form
24 approved by the Director.

25 (3) The owner may be granted an exemption provided he or she can
26 establish to the satisfaction of the Director that he or she can properly transport all
27 Solid Waste generated on the premises, to an approved Solid Waste Facility, in a safe
28 and sanitary manner in accordance with each of the following conditions:

1 (A) The vehicles and equipment to be used for transporting the
2 Solid Waste shall be identified in the application by the owner;

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

5 (C) A credit account with the Division must be maintained in
6 good standing.

7 (4) The Director may require the owner to furnish evidence of such
8 delivery of Solid Waste.

9 (5) The application fee shall include an administrative fee, if any, as
10 determined by the Board.

11 (6) Should the owner violate any provision of Division 6 of Title 4 or
12 any provision of Chapter 7 or Chapter 8 of Division 3 of Title 3 of the San Bernardino
13 County Code, the Director may, upon advance written notice to the owner, revoke the
14 exemption and require the owner to subscribe to and pay for Uniform Handling
15 Services as described in this Chapter.

16 **46.0505 Temporary Suspension of Service or Waiver of Fees.**

17 (a) Any residential owner may suspend Uniform Handling Service by a
18 Grantee up to 45 consecutive days during a given fiscal year (i.e., July 1 - June 30).

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

22 (c) Should an owner, after suspending service, request that service be re-
23 established, the Grantee may charge a resumption fee not to exceed 50 percent of the
24 cost of one month's regular Uniform Handling Service as specified in the applicable
25 Franchise Agreement. In no event shall a resumption fee exceed fifty dollars (\$50.00).

26 (d) Any suspension of service established pursuant to this Section shall be
27 canceled if the Director determines that the conditions cited in Subdivision (a) of this
28 Section no longer exist.

1 (e) In addition, each Grantee servicing a Franchise Area is authorized to
2 waive the Total Rate established in the applicable Franchise Agreement for an
3 individual owner under circumstances approved by the Director or designee, including
4 but not limited to infrequent use of the dwelling or when the property does not require
5 regular collection service.

6 **46.0506 Handling of Delinquent Accounts.**

7 (a) The Total Rate owed by the owner of a dwelling or commercial or
8 industrial unit for Uniform Handling Service rendered to such owner's property (or
9 which have been attempted to be rendered, if Uniform Handling Service is not allowed
10 to be provided by action of the owner or tenant) shall be a civil debt owed to the
11 Grantee providing the Uniform Handling Service. As used herein, Delinquent Fees
12 shall mean the fees under the Total Rate which are due for Uniform Handling Service
13 rendered to an owner's property (or which have been attempted to be rendered, if
14 Uniform Handling Service is not allowed to be provided by action of the owner or
15 tenant) but which have not been paid for 90 days or more after the mailing of the
16 invoice related to such service.

17 (b) Any delinquent fees, and the related penalties and interest and costs of
18 collection, shall be considered a debt owed to the County.

19 (c) Annually each Grantee shall provide a list to the Division of all accounts
20 which have delinquent fees. This list shall set out the amount of the delinquent fees,
21 the time period for which the services related to the delinquent fees were provided, the
22 identity of the property to which the service has been provided and the owner of such
23 property.

24 (d) Pursuant to Health and Safety Code sections 5473 through 5473a, the
25 County elects to have delinquent fees, and the related penalties and interest and costs
26 of collection, collected on the tax roll in the same manner, by the same Person, and at
27 the same time as, together with but not separately from, its general taxes. This election
28 shall remain in effect until June 30, 2025.

1 (1) Pursuant to Health and Safety Code section 5473.10 the County
2 hereby imposes:

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

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

9 (2) The County shall cause a written report to be prepared each year
10 and filed with the Clerk of the Board. The report shall contain a description of each
11 parcel of real property receiving Uniform Handling Service for which delinquent fees
12 exist, and the amount of the delinquent fees (and the associated basic penalty and
13 interest and costs of collection) related to that real property.

14 (3) After providing any statutorily required notice and holding any
15 statutorily required hearing, and following the final determination of the Board as to the
16 delinquent fees detailed in the report, pursuant to Health & Safety Code section
17 5473.4, the Clerk of the Board shall, on or before August 10 of each year, file with the
18 County Auditor/Controller-Recorder a copy of the report with a statement endorsed
19 thereon over his or her signature that the report has been finally adopted by the Board.
20 The Auditor/Controller-Recorder shall then enter the amounts of the delinquent fees
21 (and the associated basic penalty and interest and costs of collection) against the
22 respective lot or parcel of land as they appear on the current assessment roll. Pursuant
23 to Health & Safety Code section 5473.5 and section 5473.6, the amount of charges
24 shall constitute a lien against the lot or parcel of land against which the charge has
25 been imposed and the tax collector shall include the amount of charges on bills for
26 taxes levied against the respective lots and parcels of land.

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

1 (1) First, to the County up to the amount of the County's costs of
2 collection;

3 (2) Next, to the Grantee which provided the Uniform Handling Service
4 which gave rise to the delinquent fees, up to the amount of the delinquent fees and the
5 associated interest provided for in subsection (d)(1)(B); and

6 (3) The remainder, if any, to the County.

7 (f) As used herein, the County's costs of collection include, but are not
8 limited to, any staff time and related expenses or Division charges involved in
9 preparing the report, placing the delinquent fees on the tax roll, collecting or distributing
10 the delinquent fees and determining which monies received by the Division from the
11 tax collector relate to which delinquent fees account.

12 (g) The County has no liability to pay the Grantee any amount or sum for any
13 delinquent fees and/or the associated interest to the extent same are not collected by
14 the County.

15 **46.0507 Discontinuance of Service.**

16 Unless Grantee is otherwise directed by Director, Grantee shall not refuse to
17 provide, or discontinue the providing of, Solid Waste Handling service to any
18 Subscriber in a Uniform Handling Area required to subscribe for Uniform Handling
19 Service.

20 **46.0508 Penalties for Violations.**

21 Except as otherwise allowed in section 46.0504, it shall be unlawful for any
22 Person to fail or refuse to subscribe or pay for Uniform Handling Service implemented
23 under this Chapter. Such a failure or refusal to subscribe or pay for required Uniform
24 Handling Service shall subject such Person to the penalties provided in section
25 46.1101.

26 **46.0509 Illegal Dumping Retrieval Service Fee.**

27 Within Uniform Handling Areas, at the direction of the County, Grantee agrees
28 to bill Subscribers for and collect an illegal dumping retrieval service fee as established

1 from time to time by the Board as part of the County Code. Such fee may be changed
2 by the Board, by providing 60 days written notice of a change to Grantee. The
3 Grantee, as directed in writing by the County, shall either remit the fee collected to the
4 County or provide mutually agreed upon specified illegal dumping retrieval and
5 disposal services.

6

7 **CHAPTER 6: COMMERCIAL SOLID WASTE AND ORGANIC WASTE RECYCLING**
8 **PROGRAM**

9 **Sections:**

- 10 46.0601 Definitions.
- 11 46.0602 Commercial Solid Waste Recycling.
- 12 46.0603 Commercial Organics Recycling/Diversion.
- 13 46.0604 Donate or Sell of Recyclables.

14 **46.0601 Definitions.**

15 For purposes of this Chapter the following terms, when used with initial
16 capitalization, shall have the meanings set forth in this section:

17 (a) "Business" means a commercial or public entity, including, but not limited
18 to, a firm, partnership, proprietorship, joint stock company, corporation, or association
19 that is organized as a for-profit or nonprofit entity, or a multifamily residential dwelling
20 with five or more units, located within the Unincorporated County.

21 **46.0602 Commercial Solid Waste Recycling**

22 (a) The County's commercial Solid Waste recycling program consists of the
23 requirements contained in Division 6 and education, outreach and monitoring of
24 Businesses, including notification to Businesses if they are not in compliance.

25 (b) A Business that generates more than four cubic yards of commercial
26 Solid Waste per week or is a multifamily residential dwelling of five units or more shall
27 arrange for recycling services, consistent with state and local laws by taking at least
28 one of the following actions:

1 (1) Source separate Recyclables from the Solid Waste being
2 discarded and subscribe to the Grantee for the location of the Business, for the pickup
3 and diversion of the Recyclables separately from the discarded Solid Waste.

4 (2) Source separate Recyclables from the Solid Waste being
5 discarded and self-haul the Recyclables to a permitted Materials Recovery Facility,
6 recycling facility, or other mixed waste processing facility for diversion from disposal in
7 a landfill.

8 (3) Subscribe, with the Grantee for the location of the Business, to
9 recycling service that includes mixed waste processing that specifically includes the
10 diversion of the Recyclables from disposal in a landfill.

11 (4) Sell or donate Recyclables to the Grantee or a third party in
12 compliance with the Franchise Agreement.

13 (c) Each Business subject to this section that does not subscribe with the
14 Grantee for the location of the Business shall be responsible for ensuring and
15 demonstrating its compliance with the requirements of this section to the Division with
16 satisfactory proof of acceptable levels of waste diversion as determined by the Director
17 or designee, and requested by the Division.

18 (d) To comply with this Chapter, property owners of multifamily residential
19 dwellings of five units or more may require tenants to source separate their
20 Recyclables. Tenants must source separate their Recyclables as required by property
21 owners of multifamily residential dwellings of five units or more.

22 (e) Within 30 days, all Businesses are required to complete and return to
23 Grantee or Division all commercial Solid Waste recycling surveys sent to Business. If
24 Grantee or Division request additional information from Business, Business shall
25 respond within 15 days.

26 **46.0603 Commercial Organics Recycling/Diversion**

27 (a) The County's commercial Organic Waste recycling program consists of
28 the requirements contained in Division 6 and education, outreach and monitoring of

1 Businesses, including the notification to Businesses if they are not in compliance.

2 (b) A Business generating four cubic yards or more of commercial Solid
3 Waste per week (or a Business generating two cubic yards or more of commercial
4 Solid Waste per week if California implements this requirement pursuant to Public
5 Resources Code section 42649.81(a)(4) as currently drafted or as may be amended in
6 the future), shall arrange for recycling services specifically for Organic Waste,
7 consistent with state and local laws, by taking one, or any combination, of the following
8 actions:

9 (1) Source separate Organic Waste from other Solid Waste and
10 subscribe to the Grantee for the location of the Business, for the collection and
11 recycling of the Organic Waste.

12 (a) If the Grantee for the location of the Business does not offer
13 a program for the collection and recycling of the Organic Waste, a Business may
14 contract with another entity for the service. That a hauler that is not a Grantee may
15 provide the collection and recycling of Organic Waste at a lower cost to Business does
16 not authorize a Business to use the hauler that is not a Grantee, if the Grantee
17 provides a collection and recycling of Organic Waste program to Business.

18 (2) Recycle its Organic Waste onsite or self-haul its own Organic
19 Waste for recycling.

20 (3) Subscribe, with the Grantee for the location of the Business, to an
21 Organic Waste recycling service that may include mixed waste processing that
22 specifically recycles Organic Waste.

23 (4) Sell or donate recyclable Organic Waste to the Grantee or a third
24 party in compliance with the Franchise Agreement.

25 (c) Each Business subject to this section that does not subscribe with the
26 Grantee for the location of the Business shall be responsible for ensuring and
27 demonstrating its compliance with the requirements of this section to the Division with
28 satisfactory proof of acceptable levels of Organic Waste recycling as determined by the

1 Director and requested by the Division, or its designee.

2 (d) To comply with this Chapter, property owners of multifamily residential
3 dwellings of five units or more may require tenants to source separate their Organic
4 Waste. Tenants must source separate their Organic Waste as required by property
5 owners of multifamily residential dwellings of five units or more.

6 (e) The County may grant, on a case by case basis and subject to the
7 discretion of the Director or the Director's designee, an exemption (which exemption
8 may be revoked by the Director or the Director's designee upon 30 days written notice
9 to Business) to a Business from compliance with this section 46.0603 for any of the
10 following reasons:

11 (1) Lack of sufficient space in the Business to provide additional
12 Organic Waste recycling bins.

13 (2) The current implementation by a Business of actions that result in
14 the recycling of a significant portion of its Organic Waste.

15 (3) The Business does not generate at least one-half of a cubic yard
16 of Organic Waste per week.

17 (4) Limited-term exemptions for extraordinary or unforeseen events.

18 (5) Any other reason that is authorized by the State of California.

19 (f) Within 30 days, all Businesses are required to complete and return to
20 Grantee or Division all commercial Organic Waste recycling surveys sent to Business.
21 If Grantee or Division request additional information from Business, Business shall
22 respond within 15 days.

23 **46.0604 Donate or Sell of Recyclables**

24 Nothing in this Chapter is intended to limit the right of any Business to donate or
25 sell its Recyclables or Organic Waste as provided by sections 41952, 42649.84 and
26 42649.5 of the Public Resources Code.

27

28 **CHAPTER 7: RESERVED**

1 **CHAPTER 8: REPORTING REQUIREMENTS, FINANCIAL INFORMATION AND**
2 **AUDIT RIGHTS**

3 **Sections:**

- 4 46.0801 General.
5 46.0802 Types of Reports.
6 46.0803 County Right of Audit.

7 **46.0801 General.**

8 (a) Each Grantee shall keep, maintain, and furnish copies of such operating
9 records and reports as may be requested by the Division to ascertain compliance with
10 Division 6 and as set forth in the Franchise Agreement. The Division reserves the right
11 to request that additional information be provided to it, as necessary to meet its needs,
12 including but not limited to AB 939, AB 341 and AB 1826, as amended, and other
13 applicable reporting requirements.

14 (b) All information required to be kept, maintained or furnished to County
15 shall be maintained a minimum of 7 years after the entry of the most recent item
16 therein;

17 (c) The Grantee's financial and accounting records required to be maintained
18 under the provisions of Division 6 shall be maintained on an accrual basis in
19 accordance with the most current edition of Generally Accepted Accounting Principles
20 published by the American Institute of Certified Public Accountants. Unless
21 inconsistent with Generally Accepted Accounting Principles, Gross Receipts must be
22 recorded as revenues.

23 (d) Data and information pertaining to services performed under any
24 Franchise Agreement become the property of the County upon submittal to the
25 Division.

26 **46.0802 Types of Reports.**

27 Each Franchise Agreement shall require the Grantee to provide specific
28 information to the County related to the operation of the franchise, including but not

1 limited to the following types of reports:

2 (a) Each month the Grantee shall complete report forms provided by the
3 Division containing sufficient information to identify the source of generation, e.g.,
4 residential, commercial, and multi-jurisdictional reports that contain accurate source
5 information collected from the driver of the refuse truck at each landfill and split source
6 and tonnage information, for Solid Waste loads from more than one community.

7 (b) Each quarter, except as otherwise directed in writing by the Director,
8 each Grantee shall submit quarterly reports identified as the collection information
9 reports, service performance report, the program implementation, and a report
10 summarizing calculation of the Franchise Fee. To the extent permitted by applicable
11 law, financial information submitted to County by the Grantee pursuant to this
12 subsection will be kept confidential and will be available to County personnel only on a
13 need-to-know basis.

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

25 (d) Within 120 days following the close of Grantee's fiscal year, Grantee shall
26 furnish a summary of the reports required to be provided quarterly pursuant to
27 subsection (b), above. The summary must be reviewed by the Grantee's independent
28 certified public account, in accordance with the standards of the accounting industry,

1 and include the appropriate statement from said accountant relative to his or her
2 review.

3 (e) Within 120 days following the close of Grantee's fiscal year, Grantee shall
4 organize, summarize and make available for review full and complete financial
5 information, consistent with the preparation of the Grantee's financial statements, with
6 respect to the operations necessary to provide the services required under its
7 Franchise Agreement, including revenues, costs and expenses. Such information is
8 not required to be certified by an independent certified public accountant. The Grantee
9 shall make the financial information available for the review by the Division, or its
10 designee, at the local office of Grantee.

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

28 (g) Grantee shall be required to provide audited financial statements upon

1 120 days advance written notice by the Division, for its most recently completed fiscal
2 year, together with the related opinion of the independent certified public accountant
3 who certified such audited financial statement. The Grantee shall make the audited
4 financial statement and related opinion available for the review by the Division, or its
5 designee, at the local office of Grantee. If Grantee is a subsidiary of another
6 corporation, Grantee shall provide the audited financial statement of such parent
7 corporation and need only provide a copy of the financial statement of Grantee utilized
8 in the preparation of the audited financial statement of the parent corporation.
9 Notwithstanding, the forgoing, if Grantee and any company which is within a "controlled
10 group of corporations" with Grantee (within the meaning of 26 U.S.C. section 1563)
11 have, in the aggregate, 15 or fewer full time employees, and Grantee petitions the
12 Director that the cost of an audited financial statement would pose an undue hardship,
13 then Director may waive the requirement to provide an audited financial statement and
14 may, at Division expense, engage an auditor of his or her choice to conduct a financial
15 audit.

16 **46.0803 County Right of Audit.**

17 Grantee shall make its Subscriber base and business, operational and financial
18 records available to the Division, or its designee, for audit at reasonable times for
19 purposes relevant to review of performance and rate adjustment issues relevant to the
20 Grantee's Franchise Agreement. In the event an audit is undertaken and shows that
21 the Franchise Fee paid by Grantee to the County (relative to any period of time in
22 excess of three months) has been understated by at least fifty thousand dollars
23 (\$50,000.00) or two percent, whichever is less, then Grantee shall reimburse County
24 for the cost of such audit and shall, in addition, pay the County the amount of the
25 understated Franchise Fee, plus simple interest on such understated amount at the
26 rate of 10 percent per annum from the date originally due until paid.

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28 ///

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

2 **Sections:**

- 3 46.0901 Indemnification of County.
4 46.0902 Hazardous Waste Indemnification.
5 46.0903 Insurance Requirements.
6 46.0904 Performance Bonds or Other Security.
7 46.0905 Liquidated Damages Deposit.
8 46.0906 Modification.

9 **46.0901 Indemnification of County.**

10 Separate and distinct from the insurance provisions required by Division 6, each
11 Franchise Agreement shall require each Grantee to appear and defend (with counsel
12 approved by County) all actions against the Division and the County, and the Grantee
13 agrees to defend (with counsel approved by County), indemnify, and hold the County
14 and/or its officers, agents, volunteers and employees harmless from and against, any
15 and all claims and demands, causes of action of every kind and description, damages,
16 liabilities, costs or expenses for any damages or injuries to any Person or property,
17 including, but not limited to, injury to Grantee's officers, agents, or employees which
18 arise directly or indirectly from or are connected with or are caused or claimed to be
19 caused by acts, errors or omissions of Grantee, or its officers, agents, or employees, in
20 exercising its rights or in performing its duties under its Franchise Agreement or under
21 Division 6, and all costs and expenses of investigating and defending against same,
22 except to the extent such indemnification is prohibited by law.

23 **46.0902 Hazardous Waste Indemnification.**

24 Without limiting the generality of the foregoing, if Grantee has negligently or
25 willfully acted or failed to act with respect to the collection, handling or transportation of
26 Hazardous Waste, Grantee shall indemnify, defend (with counsel approved by County),
27 protect and hold harmless the County and its respective officers, employees, agents,
28 volunteers, assigns, and any successor or successors harmless from and against all

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

19 **46.0903 Insurance Requirements.**

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

28 (1) Workers Compensation.

1 (2) Comprehensive General and Automobile Liability Insurance.

2 (3) Environmental Liability.

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

12 (c) All insurance requirements are subject to annual review by the County,
13 with the results of such review to be provided to a Grantee on or before the anniversary
14 of the effective date of its Franchise Agreement. If the County's Risk Manager
15 determines at any annual review that heretofore unreasonably priced or unavailable
16 types of insurance coverage or coverage limits become reasonably priced or available,
17 the County's Risk Manager is authorized, but not required, to change the above
18 insurance requirements to require additional types of insurance coverage or higher
19 coverage limits, provided that any such change is reasonable in light of past claims
20 against the County, inflation, or any other item reasonably related to the County's risk.
21 Any such change shall be treated as a Change In Law Adjustment, under the
22 provisions of Division 6.

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

1 without limit, providing certificates of insurance to all specified departments of the
2 County and requiring notification of the cancellation or termination of any insurance
3 policy be given by the insurance company to all specified departments of the County.

4 **46.0904 Performance Bonds or Other Security.**

5 Grantee shall furnish to the County, without additional charge, a corporate
6 surety bond, a letter of credit or other Security device acceptable to the Division, as
7 Security for performance under its franchise agreement (collectively "Security"). The
8 amount of the Security shall be the average of one month's expected Gross Receipts
9 Less Disposal Charge. Adequate proof of the existence of the Security shall be
10 provided (e.g., a certificate from the surety showing that the bond premiums have been
11 paid in full shall accompany the bond and each renewal thereof). The surety on the
12 bond, the bank on which the letter of credit is drawn and the surety for any other
13 Security device shall be a company or financial institution acceptable to the County and
14 shall be authorized to do business in the State of California. A surety company shall
15 be as defined in California Code of Civil Procedure section 995.120 or any successor
16 section. The surety must be acceptable to the County and may be subject to objection
17 to sufficiency pursuant to California Code of Civil Procedure sections 995.660 et seq.,
18 or any successor sections.

19 **46.0905 Liquidated Damages Deposit.**

20 Each Grantee shall be required to maintain a bank account from which the
21 Division will have the ability to remove, on the sole signature of the Director, sums of
22 money equal to any liquidated damages assessed against Grantee under the
23 provisions of section 46.1002.

24 **46.0906 Modification.**

25 The requirements of this Chapter may be modified or waived in writing by the
26 Board upon the request of Grantee, provided the Board reasonably determines such
27 modification or waiver is in the best interest of County and of the public welfare,
28 considering all relevant factors, including acceptable financial guarantees provided by

1 Grantee or by a parent company of Grantee.

2

3 **CHAPTER 10: ADMINISTRATION, ENFORCEMENT AND REMEDIES**

4 **Sections:**

5 46.1001 Administration, Enforcement and Remedies.

6 46.1002 Liquidated Damages.

7 46.1003 Resolution of Subscriber Complaints.

8 46.1004 Notices.

9 **46.1001 Administration, Enforcement and Remedies.**

10 (a) If the Director determines at any time that the Grantee's performance of
11 the Solid Waste Handling services authorized or required in its Franchise Agreement,
12 or any of its other actions, are not in conformity with the provisions of the Franchise
13 Agreement, the provisions of this Code, the requirements of the California Department
14 of Resources Recycling and Recovery, or its successor agency, including but not
15 limited to, requirements for source reduction and recycling (as to the waste stream
16 subject to the Franchise Agreement) or any other applicable federal, state, or local law
17 or regulation, including but not limited to, the laws governing collection, transfer,
18 storage and/or disposal of Solid Waste, the Director will notify Grantee in writing of
19 such deficiencies ("Notice of Deficiency") as shall be defined in the Franchise
20 Agreement with the Grantee.

21 (b) The Notice of Deficiency may provide a reasonable time within which
22 correction of all noted deficiencies is to be made. Some deficiencies are by their
23 nature not curable, and no time period to correct or remedy such deficiency shall be
24 given in the Notice of Deficiency.

25 (c) The Director shall review the Grantee's response to the Notice of
26 Deficiency. If the Director determines that the Grantee has not cured the deficiency, or
27 if there is no cure period provided in the Notice of Deficiency given the nature of the
28 deficiency, the Director shall either:

- 1 (1) Refer the matter directly to the Board for decision pursuant to
2 subsection (d); or
- 3 (2) Decide the matter and notify the Grantee of that decision, in
4 writing.
- 5 (A) The decision of the Director may be to terminate the
6 Franchise Agreement or may be to impose some lesser sanction;
- 7 (B) The decision of the Director shall be final and binding on
8 Grantee unless the Grantee files a "Notice of Appeal" with the Director within 30 days
9 of receipt of the Director's decision. The Notice of Appeal shall be in writing, shall
10 contain a detailed and precise statement of the basis for the appeal, and shall be
11 accompanied by the fee, if any, which is applicable to the filing of such an appeal.
- 12 (C) Within 10 working days of receipt of a Notice of Appeal, the
13 Director shall either refer the appeal to the Board for proceedings in accordance with
14 subsection (d), or refer the matter to a hearing officer for proceedings pursuant to
15 Chapter 27 of Division 2 of Title 1 of this Code.
- 16 (d) (1) Should the Director refer the Notice of Deficiency to the Board in
17 the first instance, or if the matter reaches the Board pursuant to a Notice of Appeal, the
18 Board shall either:
- 19 (A) Refer the matter to a hearing officer for proceedings
20 pursuant to Chapter 27 of Division 2 of Title 1 of this Code; or
- 21 (B) Set the matter for hearing.
- 22 (2) If the Board sets the matter for hearing:
- 23 (A) The Board shall give Grantee, and any interested Person
24 requesting the same, 14 days written notice of the time and place of the public hearing.
25 At the hearing, the Board shall consider the report of the Director indicating the
26 deficiencies, and shall give the Grantee, or its representatives and any other interested
27 Person, a reasonable opportunity to be heard.
- 28 (B) Based on the evidence presented at the public hearing, the

1 Board shall decide the appropriate action to be taken. If, based upon the record, the
2 Board determines that as noted in the Notice of Deficiency, the Grantee's performance
3 of the Solid Waste Handling services authorized or required in its Franchise
4 Agreement, or any of its other actions, are not in conformity with the provisions of the
5 Franchise Agreement, the provisions of this Code, the requirements of the California
6 Department of Resources Recycling and Recovery, or its successor agency, including
7 but not limited to, requirements for source reduction and recycling (as to the waste
8 stream subject to the Franchise Agreement) or any other applicable federal, state, or
9 local law or regulation, including but not limited to the laws governing collection,
10 transfer, storage and/or disposal of Solid Waste, then the Board, in the exercise of its
11 sole discretion, may terminate the Franchise Agreement immediately or impose such
12 lesser sanction as it deems appropriate. The decision of the Board shall be final and
13 conclusive.

14 (e) Grantee's performance under its Franchise Agreement is not excused
15 during the period of time prior to the Director's or the Board's final determination, as the
16 case may be, regarding the validity of, and appropriate response to, the deficiencies
17 noted in the Notice of Deficiency.

18 (f) In the event Grantee: (i) has received a Notice of Deficiency and fails to
19 perform Solid Waste Handling services; or (ii) has had its Franchise Agreement
20 terminated; the County, acting through the Division, reserves the right, in addition to all
21 other rights available to the County, to take any one or combination of the following
22 actions:

23 (1) To rent or lease from Grantee, at its respective fair and reasonable
24 rental value, all or any part of the Grantee's equipment (including collection containers
25 utilized by Subscribers and office equipment and billing programs), equipment yard and
26 office utilized by Grantee in providing the Solid Waste Handling services required
27 under its Franchise Agreement. The County may rent or lease such equipment and
28 real property for a period not to exceed 6 months, for the purpose of performing the

1 Solid Waste Handling services, or any part thereof, which Grantee is (or was) obligated
2 to provide pursuant to its Franchise Agreement. The County may use said rented
3 equipment and real property to directly perform such Solid Waste Handling service or
4 to assign it to some other Grantee or Person to act on the County's behalf. Grantee
5 shall be held responsible for the costs to insure the County or its assignee from all
6 liability resulting from the operation of Grantee's equipment. In the case of equipment
7 or real property not owned by Grantee, Grantee shall assign to the County, to the
8 extent Grantee is permitted to do so under the instruments pursuant to which Grantee
9 possesses such equipment or real property, the right to possess the equipment or real
10 property.

11 (2) As used in this Subdivision, reasonable rental value means the
12 rate for such equipment as listed in the State Department of Transportation publication,
13 "Labor Surcharge and Equipment Rental Rates," in effect at the time the County leases
14 the equipment. If a particular piece of equipment is not listed in said publication or if
15 said publication is not current, the reasonable rental value may be established by the
16 Director by any equitable alternative method. For real property, the "reasonable rental
17 value" means its market rental rate as established by the Director using an equitable
18 method.

19 (3) If the County exercises its rights under this subsection, the County
20 shall pay or owe Grantee the reasonable rental value of the equipment and real
21 property so used for the period of the County's possession thereof. The County may
22 offset any amounts due to Grantee pursuant to this provision against any amounts due
23 to County from Grantee.

24 (4) All revenues owed by Subscribers which are attributable to
25 services performed by or at the direction of the County during County's assumption of
26 Grantee's Solid Waste Handling duties shall be billed by and paid to the County. To
27 the extent Grantee receives such revenue after County's assumption of Grantee's
28 Solid Waste Handling duties, Grantee shall pay such revenue to County promptly after

1 receipt thereof (or promptly after County has performed the services related to such
2 revenue, if the revenue was received by the Grantee prior to the County's assumption
3 of duties) and Grantee shall be deemed to have assigned to County all of Grantee's
4 right and interest to any such revenues.

5 (g) The County rights set forth in this section are in addition to, and not in
6 limitation of, any other powers or rights available to the County upon failure of Grantee
7 to perform its obligations under Division 6 or its Franchise Agreement. Further, by
8 entering into its Franchise Agreement issued pursuant to Division 6 each Grantee
9 acknowledges that its violation of the terms of Division 6 or its breach of the terms of its
10 Franchise Agreement shall cause the County to suffer irreparable injury and damages
11 sufficient to support injunctive relief to enforce the provisions of the Franchise
12 Agreement, and to enjoin the breach thereof.

13 (h) This Section shall not apply to violations or deficiencies which fall within
14 the sole jurisdiction of the County's Department of Public Health, Division of
15 Environmental Health Services under Grantee's required Health And Safety Permit and
16 which are not, and do not become, violations or deficiencies under Division 6.

17 **46.1002 Liquidated Damages.**

18 (a) Each Franchise Agreement shall provide for a process to establish that
19 Grantee has met its service obligations under the Franchise Agreement and shall
20 provide a schedule of liquidated damages for each violation or breach which has been
21 verified to the satisfaction of the Division.

22 (b) A high level of collection service quality and Subscriber satisfaction and
23 therefore consistent and reliable service, is of utmost importance to the County and the
24 Solid Waste Handling services Subscriber. County will have considered and relied on
25 Grantee's representations as to its quality of service commitment in approving any
26 Franchise Agreement, and any violation or breach by Grantee of its Solid Waste
27 Handling service obligations referenced in this section represents a loss of bargain to
28 the County. The Grantee further acknowledges that quantified standards of

1 performance are necessary and appropriate to ensure such consistent and reliable
2 collection service, and if Grantee fails to meet service obligations referenced in this
3 section, County will suffer damages (including but not limited to, its Subscribers
4 inconvenience; complaints by Subscribers; lost Board and staff time; and loss of
5 bargain) and that it is and will be impracticable and extremely difficult to ascertain and
6 determine the value thereof. Therefore, the County and Grantee acknowledge that the
7 liquidated damages established by schedules to each Franchise Agreement, represent
8 a reasonable estimate of the amount of such damages, considering all of the
9 circumstances, including the relationship of the amount of the liquidated damages to
10 the range of harm to County that reasonably could be anticipated and the anticipation
11 that proof of actual damages would be extremely costly and inconvenient for both the
12 Grantee and County. By entering into its Franchise Agreement, the Grantee will
13 specifically affirm the accuracy of the statements made relating to liquidated damages
14 and the fact that Grantee will have had ample opportunity to consult with legal counsel
15 and obtain an explanation of the liquidated damage provision contained therein.

16 (c) The rights of the County set forth in this section are in addition to, and not
17 a limitation on, any other rights which County may have against Grantee for the failure
18 to observe any condition or term of Division 6 or its Franchise Agreement, including the
19 violations or breaches of same set forth in this section for which liquidated damages
20 are provided.

21 **46.1003 Resolution of Subscriber Complaints.**

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

23 (a) A Subscriber dissatisfied with Grantee's decision regarding a complaint
24 may ask the Director to review the complaint. To obtain this review, the Subscriber
25 may request County review within 30 days of receipt of Grantee's response to the
26 complaint, or within 45 days of submitting the complaint to the Grantee, if the Grantee
27 has failed to respond to the complaint. The Director may extend the time to request
28 the County's review for good cause.

1 (b) Before reviewing the complaint, the Director shall refer it to the Grantee.
2 If the Grantee fails to cure the complaint within 10 days after such referral, the Director
3 shall review the complaint and determine if further action is warranted. The Director
4 may request written statements from the Grantee and Subscriber, or oral presentations
5 or both written and oral presentations.

6 (c) The Director shall determine if the Subscriber's complaint is justified, and
7 if so, what remedy, if any, shall be applied. The remedy provided to the Subscriber
8 under this section shall be limited to a refund of Subscriber charges related to the
9 period of violation of any of the terms of Division 6 or of the breach of any term of the
10 applicable Franchise Agreement. In addition to any other remedy of County contained
11 in this section, County may impose liquidated damages of up to one hundred dollars
12 (\$100.00) payable to the County for any single event or series of related events, or
13 actual damages as demonstrated during the resolution procedure.

14 (d) The Director may delegate the duties under this section to a designee.
15 The decision of the Director or a designee shall be final on any matter of five thousand
16 dollars (\$5,000.00) or less. In the event of a decision on a matter awarding more than
17 five thousand dollars (\$5,000.00), Grantee may seek review pursuant to the notice of
18 appeal procedure contained in Section 46.1001.

19 (e) This Section shall not apply to disputes involving the implementation of
20 the Total Rate approved by the Board or the adjustments thereto specifically
21 authorized by Division 6.

22 **46.1004 Notices.**

23 Except as otherwise required by governing law, any notice, information, request
24 or reply ("notice") required or permitted to be given under the provisions of Division 6
25 shall be in writing and shall be given or served either personally or by mail. If given or
26 served by mail, such notice shall be deemed sufficiently given if: (1) (i) deposited in the
27 United States mail, certified mail, return receipt requested, postage prepaid, or (ii) sent
28 by express mail, Federal Express, or other similar overnight service, provided proof of

1 service is available; and (2) addressed to (i) the Grantee at its most recent address of
2 record with the Division or (ii) to the Director at the then-current address of the Division,
3 as the case may be.

4
5 **CHAPTER 11: PENALTIES FOR VIOLATION**

6 **Section:**

7 46.1101 Penalties for Violation.

8 **46.1101 Penalties for Violation.**

9 A violation of Division 6 is an infraction punishable as provided in section
10 11.0201 of this Code. Each and every day constitutes a separate violation of this
11 provision.

12
13 **CHAPTER 12: AMENDMENT**

14 **Section:**

15 46.1201 Amendment.

16 **46.1201 Amendment.**

17 The County retains the right to amend Division 6 in any respect, notwithstanding
18 the existence of one or more Franchise Agreement. Until the commencement date of
19 any extended term of a Franchise Agreement, including its extension pursuant to the
20 terms of section 46.0301(d) of this Code, the Grantee shall be subject to and bound by
21 the terms of Division 6 as same exists on the date of the granting of its Franchise
22 Agreement by the County. Each Grantee shall be subject to and bound by the terms of
23 Division 6, as amended, upon the commencement date of any extension of the term of
24 the Franchise Agreement of the Grantee, including its extension pursuant to the terms
25 of section 46.0301(d) of this Code. The amendments to Division 6 to which a Grantee
26 shall be subject upon the commencement date of its Franchise Agreement or of the
27 extension of its Franchise Agreement shall be those amendments which have been
28 adopted by the Board (whether or not the amendment is effective) prior to the following

1 date, as applicable: (i) the date the Board acts to grant Grantee its Franchise
2 Agreement; (ii) the date by which the Board is required to determine that the Grantee's
3 Franchise Agreement shall not be extended, as provided in section 46.0301(d) of this
4 Code, in the event that the Franchise Agreement is extended pursuant to the terms of
5 section 46.0301(d) of this Code; or (iii) the date the Board acts to extend the term of
6 Grantee's Franchise Agreement, if the agreement is extended other than pursuant to
7 the provisions of section 46.0301(d) of this Code.

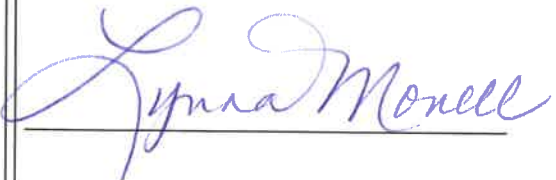
8
9 SECTION 3. The Board of Supervisors declares that it would have adopted this
10 ordinance and each section, sentence, clause, phrase, or portion of it irrespective of
11 the fact that any one or more sections, subsections, clauses, phrases or portions of it
12 be declared invalid or unconstitutional. If for any reason any portion of this ordinance is
13 declared invalid or unconstitutional, then all other provisions of it shall remain valid and
14 enforceable.

15
16 SECTION 4. This Ordinance shall take effect thirty (30) days from the date of
17 adoption.

18 
CURT HAGMAN, Chairman
Board of Supervisors

19
20 SIGNED AND CERTIFIED THAT A COPY
21 OF THIS DOCUMENT HAS BEEN DELIVERED
22 TO THE CHAIRMAN OF THE BOARD

23 LYNNA MONELL, Clerk of the
Board of Supervisors

24 
25
26

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

4 I, LYNNA MONELL, Clerk of the Board of Supervisors of the County of San
5 Bernardino, State of California, hereby certify that at a regular meeting of the Board of
6 Supervisors of said County and State, held on the 19th day of May, 2020, at which
7 meeting were present Supervisors: Robert A. Lovingood, Janice Rutherford, Dawn
8 Rowe, Curt Hagman, Josie Gonzales, and the Clerk, the foregoing ordinance was
9 passed and adopted by the following vote, to wit:

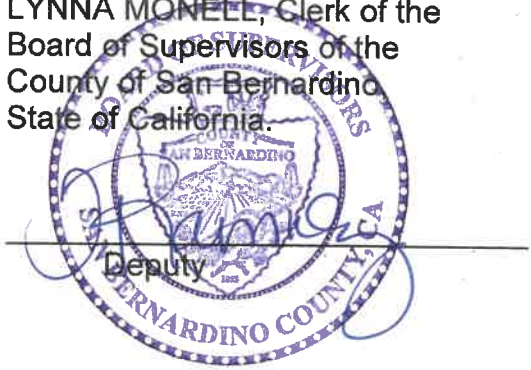
10 AYES: SUPERVISORS: Robert A. Lovingood, Janice Rutherford,
11 Dawn Rowe, Curt Hagman, Josie Gonzales

12 NOES: SUPERVISORS: None

13 ABSENT: SUPERVISORS: None

14 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official
15 seal of the Board of Supervisors this 19th day of May, 2020.

16 LYNNA MONELL, Clerk of the
17 Board of Supervisors of the
18 County of San Bernardino
19 State of California.



20 Approved as to Form:
21 MICHELLE D. BLAKEMORE, County Counsel

22 By: Julie J. Sander
23 VOLENA E. GRIDER
24 Deputy County Counsel

25 Date: 6-18-2020
26
27
28