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ORDINANCE NO. \_\_\_\_

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 Division 6 of Title 4 of the San Bernardino County Code is repealed.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

1           **12. Amendment**

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

3           **Sections:**

4           46.0101       Purposes.

5           46.0102       Required Authorizations.

6           **46.0101 Purposes.**

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

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

16                   (1) In meeting its obligation to provide ~~solid waste handling~~Solid  
17 Waste Handling services as required in Public Resources Code section 40057; and

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

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

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

1 cities and towns;

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

4 (e) To help quantify the waste stream from the  
5 ~~unincorporated~~Unincorporated County in order to comply with diversion requirements  
6 of AB 939, as may be amended; and

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

9 **46.0102 Required Authorizations.**

10 (a) Except as otherwise provided in ~~Subdivisions~~subsections (b) and (c) of  
11 this ~~S~~section, no ~~person~~Person shall engage in, solicit, contract for or provide, in the  
12 ~~unincorporated county, solid waste handling~~Unincorporated County, Solid Waste  
13 Handling services without such ~~person~~Person having and maintaining:

14 (1) A ~~health and safety permit~~Health And Safety Permit authorizing  
15 the collection, transfer or removal of refuse (within the meaning of Article 2 of Chapter  
16 8 of Division 3 of Title 3 of this Code); and

17 (2) (A) With respect to a ~~franchise area~~Franchise Area, a ~~franchise~~  
18 agreementFranchise Agreement authorizing the ~~person~~Person to provide the specified  
19 ~~solid waste handling~~Solid Waste Handling service being provided; or

20 (B) With respect to a ~~refuse collection area~~Refuse Collection  
21 Area, or any portion thereof which is not a ~~franchise area~~Franchise Area subject to a  
22 ~~franchise agreement~~Franchise Agreement, a Class A permit or temporary permit as  
23 provided for in Article 2.1 of Chapter 8 of Division 3 of Title 3 of this Code.

24 (b) (1) Notwithstanding ~~Subdivision~~subsection (a), above, any  
25 ~~person~~Person may engage in or provide, in the ~~unincorporated county~~Unincorporated  
26 County, those ~~solid waste handling~~Solid Waste Handling services related to performing  
27 as a ~~garbage hauler~~Garbage Hauler (within the meaning of Chapter 8 of Division 3 of  
28 Title 3 of this Code), without such ~~person~~Person being required to have or maintain a

1 ~~franchise agreement~~Franchise Agreement or the Class A permit or temporary permit  
2 provided for in Article 2.1 of Chapter 8 of Division 3 of Title 3 of this Code.

3 (2) Notwithstanding Subdivision (a), above, any ~~person~~Person may  
4 engage in or provide, in the ~~unincorporated county~~Unincorporated County, those ~~solid~~  
5 ~~waste handling~~Solid Waste Handling services which are related solely to one of the  
6 types of ~~solid waste~~Solid Waste set forth below, without such ~~person~~Person being  
7 required to have or maintain a ~~franchise agreement~~Franchise Agreement or the Class  
8 A permit or temporary permit provided for in Article 2.1 of Chapter 8 of Division 3 of  
9 Title 3 of this Code:;

- 10 (A) Abandoned vehicles and parts thereof;
- 11 (B) Ashes;
- 12 (C) Dewatered, treated or chemically fixed sewage sludge;
- 13 (D) Self-generated waste or waste generated and hauled by the  
14 property owner;

15 (E) ~~Greenwaste~~ Green Waste or yard trimmings generated as  
16 an incidental part of providing gardening, landscaping or landscape maintenance as a  
17 professional gardener or landscaper;

18 (F) Inert materials or demolition waste from remodeling jobs  
19 which are generated as an incidental part of providing such remodeling services,  
20 provided that the construction contractor is not a hauling service or ~~solid waste~~Solid  
21 Waste enterprise, does not separately or additionally charge for the incidental service  
22 of removing, transporting or disposing (except for the tipping fee) ~~and transportation is~~  
23 ~~accomplished using the contractor's own equipment;~~of the inert materials or demolition  
24 waste, and utilizes only his or her own employees and equipment to collect, transport,  
25 and dispose of same.

26 (G) Recyclable ~~materials~~ that are sold or donated by the  
27 generator of such materials to a party other than the ~~grantee~~Grantee of a franchise. A  
28 mere discount or reduction in price of the hauler's charges for the handling of such

1 materials is not a sale or donation within the meaning of ~~this~~ Division 6.

2 (3) ~~Subdivision-Subsection~~ (b)(1), above, shall have no application in  
3 any ~~franchise-area~~ Franchise Area to the extent that the County provides in the  
4 ~~franchise—agreement~~ Franchise Agreement(s) establishing such ~~franchise~~  
5 ~~area~~ Franchise Area that any or all of the ~~solid-waste-handling~~ Solid Waste Handling  
6 services related to either performing as a ~~garbage-hauler~~ Garbage Hauler or to the  
7 types of ~~solid-waste~~ Solid Waste enumerated in ~~Subdivision-subsection~~ (b)(2) are to be  
8 provided pursuant to a ~~franchise-agreement~~ Franchise Agreement or agreements; so  
9 long as the ~~person~~ Person and/or the ~~solid-waste-handling~~ Solid Waste Handling service  
10 being provided do not otherwise fit within one or more of the exemptions provided in  
11 ~~Subdivision-subsection~~ (c) of this ~~S~~section. The ~~Department~~ Division shall maintain a  
12 list of all areas of the County within which a ~~franchise-agreement~~ Franchise Agreement  
13 is required in order to provide any of the ~~solid-waste-handling~~ Solid Waste Handling  
14 services which are related to performing as a ~~garbage-hauler~~ Garbage Hauler or solely  
15 to a type of ~~solid-waste~~ Solid Waste enumerated in ~~Subdivision-subsection~~ (b)(2).

16 (c) The provisions of ~~Subdivisions-subsections~~ (a) and (b)(3) of this ~~S~~section  
17 shall not apply to those ~~persons~~ Persons and/or ~~solid-waste-handling~~ Solid Waste  
18 Handling services specified in section 33.0843 of this Code.

19  
20 **CHAPTER 2: DEFINITIONS**

21 **Section:**

22 46.0201 Definitions.

23 **46.0201 Definitions.**

24 For the purposes of ~~this~~ Division 6, the following terms, when used with ~~all~~ initial  
25 capitalization, shall have the meanings set forth in this ~~S~~section:

26 (a) “AB 939-~~The~~ means the California Integrated Waste Management Act of  
27 1989, ~~being~~ beginning at Public Resources Code sections 40000, et seq., as it may be  
28 amended from time to time.

1 (b) ~~BOARD.~~ The "AB 341" (Chapter 476, Statutes of 2011) means the  
2 Assembly Bill that set forth the initial requirements of the statewide mandatory  
3 commercial recycling program, as it may be amended from time to time.

4 (c) "AB 1826" means the Organic Waste Recycling Act of 2014 (Chapter  
5 727, Statutes of 2014, modifying Division 30 of the California Public Resources Code),  
6 as it may be amended from time to time.

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

8 (b)(e) ~~(c) CHANGE IN LAW.~~ The "Change in Law" means the imposition (or  
9 removal), after the establishment of a ~~total rate~~ Total Rate relative to a ~~franchise~~  
10 ~~agreement~~ Franchise Agreement, of any duty or burden imposed upon the  
11 ~~grantee~~ Grantee in the performance of the ~~solid waste handling~~ Solid Waste Handling  
12 services required of it under its ~~franchise agreement~~ Franchise Agreement which is or  
13 becomes additional to (or is subtracted from) or different from those duties required or  
14 contemplated in its ~~franchise agreement~~ Franchise Agreement, or which must be  
15 performed in a different manner from that in which it is initially contemplated to be  
16 performed, and which results from any of the following:

17 (1) The enactment, issuance, adoption, repeal, amendment or  
18 modification of any ~~Federal, State~~ federal, state or local law, statute, ordinance or  
19 regulation.

20 (2) A regulatory agency or other administrative agency interpreting a  
21 regulation, a judicial decision of a ~~Federal~~ federal court interpreting ~~Federal~~ federal law  
22 or statute, or a judicial decision of a court having jurisdiction within California  
23 interpreting a ~~Federal, State~~ federal, state or local law, statute, ordinance or regulation,  
24 in a manner different from the interpretation which had previously been generally relied  
25 upon in California within the solid waste collection and hauling industry.

26 ~~CHANGE IN LAW~~ Change in Law does not include any of the items noted in  
27 ~~Subdivisions~~ subsections (1) or (2) above, which relate to any tax, [other than a  
28 business license tax imposed by the County on a ~~grantee's~~ Grantee's performance of

1 ~~solid waste handling~~Solid Waste Handling services under its ~~franchise~~  
2 ~~agreement~~Franchise Agreement] including without limit, any tax based or measured on  
3 net or gross income, any business, payroll or franchise tax or any employment tax.

4 ~~(f) — (d) CHANGE IN LAW ADJUSTMENT.~~ The ~~"Change in Law~~  
5 ~~Adjustment"~~ means the adjustment to ~~total rate~~Total Rate in the event of a  
6 ~~change~~Change in ~~law~~Law.

7 ~~(g) — (e) CHANGE IN OWNERSHIP.~~ Occurs ~~"Change in Ownership" occurs~~  
8 when either a single transaction or event or the cumulative effect of more than one  
9 transaction or event, results in 50 percent or more of the beneficial ownership of the  
10 ~~grantee~~Grantee being different than such ownership as of the date of the approval by  
11 the County of the ~~franchise agreement~~Franchise Agreement or, if applicable, as of the  
12 date of the most recent consent of the County to a ~~CHANGE OF~~  
13 ~~OWNERSHIP.~~Change in Ownership. The owners of the beneficial ownership of  
14 ~~grantee~~Grantee on the date of the approval of the ~~franchise agreement~~Franchise  
15 ~~Agreement~~ or, if applicable, on the date of the most recent consent of the County to a  
16 ~~CHANGE OF OWNERSHIP~~Change In Ownership, shall be referred to in this  
17 ~~Subdivisions~~subsection as an ~~initial owner.~~"Initial Owner". A ~~CHANGE IN~~  
18 ~~OWNERSHIP~~Change In Ownership will be determined by application of the following:

19 (1) Any beneficial interest owned by an individual related by blood or  
20 marriage to an ~~initial owner~~Initial Owner shall be considered as owned by an ~~initial~~  
21 ~~owner~~Initial Owner in determining if a ~~CHANGE IN OWNERSHIP~~Change in Ownership  
22 has occurred.

23 (2) Any public offering of stock where the stock is offered for sale to  
24 the general public and does not constitute a private placement shall be disregarded in  
25 determining if a ~~CHANGE IN OWNERSHIP~~Change in Ownership has occurred.

26 (3) Sales, transfers, issuances or pledges of non-voting shares of  
27 stock will not be considered in determining if a ~~CHANGE IN OWNERSHIP~~Change in  
28 Ownership has occurred, until and unless and only to the extent that such stock is

1 converted into voting shares of stock.

2 (4) The pledge of, or any other action taken relative to, voting shares  
3 of stock which results in any voting rights of such stock being exercised by other than  
4 an ~~initial owner~~Initial Owner shall be considered to be a transfer of such stock for the  
5 purposes of determining if a ~~CHANGE IN OWNERSHIP~~Change in Ownership has  
6 occurred.

7 ~~(h) — (f) CHANGE IN SERVICE LEVEL ADJUSTMENT.~~ The ~~"Change in~~  
8 ~~Service Level Adjustment"~~Service Level Adjustment means the adjustment to ~~total rate~~Total Rate in the event of  
9 a change in service level and as described in the Franchise Agreement.

10 ~~(i) — (g) COUNTY.~~ The ~~"Composting"~~Composting means the separation of Organic  
11 Waste from the waste stream for controlled decomposition.

12 ~~(j) — "Consumer Price Index" or "CPI"~~ means the Consumer Price Index – All  
13 Urban Consumers, Los Angeles-Long Beach-Anaheim, CA, all items less food and  
14 energy, CUURS49A1SAOLE .

15 ~~(k) — "County"~~ means the County of San Bernardino, State of California.

16 ~~(l) — (h) COUNTY SOLID WASTE DISPOSAL SYSTEM.~~ At ~~"County Solid~~  
17 ~~Waste Disposal System"~~County Solid Waste Disposal System means at any particular time, the then-existing ~~solid waste~~  
18 facilitiesLandfill Disposal Facilities which the County owns, leases or has a contractual  
19 right to use.

20 ~~(m) — (i) DEPARTMENT.~~ The ~~San Bernardino County~~Department Of Public  
21 Health, Division Of Environmental Health Services means the County division of that  
22 name or such County department, division or office which is the successor thereto.

23 ~~(n) — "Director"~~ means the Director of the Department of Public Works or the  
24 designee of such individual.

25 ~~(o) — "Division"~~ means the County Department of Public Works Solid Waste  
26 Management Division or such County department, division or office which is the  
27 successor thereto.

28 ~~(j) DEPARTMENT OF PUBLIC HEALTH, DIVISION OF ENVIRONMENTAL~~

1 ~~**HEALTH SERVICES.**~~ The County department of that name or such County department,  
2 division or office which is the successor thereto.

3 ~~—(k) **DIRECTOR.**~~ The Division Manager of the Department or the designee of such  
4 person.

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

11 (q) “Franchise Agreement” means the agreement entered into between the  
12 County and the ~~grantee~~Grantee under the provisions of section 46.0301 which  
13 authorizes/requires the ~~grantee~~Grantee to provide ~~solid waste handling~~Solid Waste  
14 Handling services in a specified ~~franchise area~~Franchise Area.

15 (r) ~~—(m) **FRANCHISE AREA.**~~ The “Franchise Area” means the geographic  
16 territory in the ~~unincorporated~~Unincorporated County for which the ~~grantee~~Grantee has  
17 been granted a franchise to provide ~~solid waste handling~~Solid Waste Handling  
18 services, as specified in each ~~franchise agreement~~Franchise Agreement.

19 (s) ~~—(n) **FRANCHISE FEE.**~~ The “Franchise Fee” means the fee paid to the  
20 County by the Grantee in consideration of the granting of a franchise pursuant to ~~this~~  
21 Division- 6.

22 (t) ~~—(o) **GARBAGE HAULER.**~~ Any person “Garbage Hauler” means any  
23 Person or entity who collects garbage, unmixed with rubbish, and transports it to a  
24 commercial garbage-feeding hog ranch or to a commercial establishment for  
25 ~~processing~~Processing for use in livestock feeding.

26 (u) ~~—(p) **GRANTEE.**~~ A person “Grantee” means a Person granted a  
27 franchise pursuant to a ~~franchise agreement~~Franchise Agreement.

28 (v) ~~—(q) **GREEN MATERIAL.**~~ Discarded solid waste “Green Waste” means

1 discarded Solid Waste consisting of grass clippings, leaves, branches, tree trunks and  
2 other vegetative matter.

3 ~~(w) —(r) **GROSS RECEIPTS.** All~~ “Gross Receipts” means all monies  
4 received by ~~grantee~~ Grantee for providing the ~~solid waste handling~~ Solid Waste  
5 Handling services specified in its ~~franchise agreement~~ Franchise Agreement.

6 ~~(x) —(s) **GROSS RECEIPTS LESS DISPOSAL CHARGES.** Gross~~  
7 ~~receipts~~ “Gross Receipts Less Disposal Charges” means Gross Receipts less that part  
8 of the monies received by the ~~grantee~~ Grantee that are collected from  
9 ~~subscribers~~ Subscribers for payment of the fee imposed for disposing of the ~~solid~~  
10 waste Solid Waste at a ~~landfill disposal facility~~ Landfill Disposal Facility and ~~such fees as~~  
11 ~~may be charged~~ the fee imposed for ~~other disposal costs as may be provided~~ Other  
12 Operations.

13 ~~(y) “Gross Receipts For Commercial Food Waste Services” means all~~  
14 ~~monies received by Grantee for in the franchise agreement.~~ providing the Food Waste  
15 handling services specified in its Franchise Agreement.

16 ~~(z) —(t) **HAZARDOUS WASTE.** Any~~ “Gross Receipts For Commercial Food  
17 Waste Services Less Processing Costs” means Gross Receipts For Commercial Food  
18 Waste Services less that part of the monies received by the Grantee that are collected  
19 from Subscribers for payment of the fee imposed for Processing of the Food Waste at  
20 an Organic Waste Processing Facility.

21 ~~(aa) “Hazardous Waste” means any~~ waste ~~material~~ or mixture of waste which  
22 is toxic, corrosive, flammable, an irritant, a strong sensitizer, or which generates  
23 pressure through decomposition, heat or other means, if such waste or mixture of  
24 waste may cause substantial personal injury, serious illness or harm to humans,  
25 domestic animals or wildlife during or as a proximate result of any disposal of such  
26 waste or mixture of wastes as defined in California Health and Safety Code section  
27 25117 and California Code of Regulations, Title 22, section 66261.3. The terms  
28 “toxic,” “corrosive,” “flammable,” “irritant,” and “strong sensitizer” shall be given the

1 same meaning as in the California Hazardous Substances Act (Health and Safety  
2 Code sections 108100 et seq.).

3 ~~(c)(bb)–(u) **HEALTH AND SAFETY PERMIT.** A “Health And Safety Permit”~~  
4 means a current permit issued by the Department of Public Health, Division of  
5 Environmental Health Services to a refuse collection operator, ~~garbage hauler~~Garbage  
6 Hauler or nondomestic waste hauler (all as defined in section ~~33.0804~~0802 of this  
7 Code), in accordance with Title 14 of the California Code of Regulations ~~Title 14~~ and  
8 Title 3 of the County Code. The ~~health and safety permit~~Health And Safety Permit  
9 evidences, for a specified period of time, the health and safety inspection and the  
10 approval of vehicles, facilities and equipment utilized by a refuse collection operator,  
11 ~~garbage hauler~~Garbage Hauler or nondomestic waste hauler.

12 ~~(cc) \_\_–(v) **LANDFILL DISPOSAL FACILITY.** Any “Landfill Disposal Facility”~~  
13 means any County-owned ~~and/or~~ operated facility that is designed ~~and permitted to~~  
14 manage any type of ~~solid waste~~Solid Waste and includes, but is not limited to,  
15 disposal, ~~processing, composting and/or transformation~~transfer, Processing,  
16 Composting and Transformation.

17 ~~(dd) \_\_–(w) **LANDFILL DISPOSAL FACILITY FEE.** The “Landfill Disposal~~  
18 Facility Fee” means the fee charged for use of a ~~landfill disposal~~Landfill Disposal  
19 Facility.

20 ~~(ee) “Materials Recovery Facility” or “MRF” means a facility designed to~~  
21 remove Recyclables and other valuable materials from the waste stream collected  
22 through a residential, commercial or industrial Solid Waste Handling program that is  
23 approved to operate by the appropriate state and local agencies.

24 ~~–(x) **PERMITTEE.** Any person who has been issued a health and safety permit to~~  
25 ~~collect, transfer, or remove solid waste under the provisions of this Code. A~~  
26 ~~**PERMITTEE** may include refuse collection operators, garbage haulers and/or a person.~~

27 ~~(ff) \_\_–(y) **PERSON.** Without~~“Multi-Jurisdiction Load Report” means a report  
28 which sets out the amount, and place of collection, of Solid Waste delivered to the

1 Landfill Disposal System.

2 (gg) “Onsite Waste Assessment” means an in-person visit by the Grantee to a  
3 customer to collect and evaluate information on the types and quantities of Solid Waste  
4 generated by the customer, as well as identify opportunities for additional Processing  
5 of Solid Waste. At a minimum, the Grantee will perform the tasks described in the  
6 Franchise Agreement.

7 (hh) “Organic Waste” means Food Waste, Green Waste, landscape and  
8 pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed  
9 in with Food Waste, collectively or individually.

10 (ii) “Organic Waste Handling Service” means: (1) the collection of Organic  
11 Waste from a commercial, residential, construction, or industrial source; and (2) the  
12 transportation of such Organic Waste to an Organic Waste Processing Facility.

13 (ij) “Organic Waste Processing Facility” means a permitted facility where  
14 Organic Waste is sorted, mulched or separated for the purposes of recycling, reuse or  
15 Composting.

16 (kk) “Organic Waste Processing Facility Fee” means the fee charged for use  
17 of an Organic Waste Processing Facility.

18 (ll) “Other Operations” means all operational cost categories that are not  
19 included in fuel, service, and landfill disposal; “Other Operations” may include, but are  
20 not limited to, non-County facilities for transfer, Processing, Composting and  
21 Transformation.

22 (d)(mm) “Person” means, without limitation, individuals, associations, clubs,  
23 societies, firms, partnerships, joint ventures, sole proprietorships, corporations, limited  
24 liability companies, schools, colleges and all governmental agencies and entities.

25 (nn) —(z) ~~PROCESSING.~~ The “Processing” means the reduction, separation,  
26 recovery, conversion or recycling of ~~solid waste~~ Solid Waste.

27 (oo) —(aa) ~~RECYCLABLE MATERIALS.~~ For “Recyclables” for purposes of  
28 Division 6 only, means discarded ~~solid waste~~ Solid Waste which may be sorted,

1 cleansed, treated, processed, and/or reconstituted, and which is segregated for the  
2 purpose of reuse or recycling, including, but not limited to, separated paper, glass,  
3 cardboard, plastic, ferrous materials or aluminum.

4 ~~(pp) —(bb) **REFUSE COLLECTION AREA.** That~~“Refuse Collection Area”  
5 means that area of the ~~unincorporated~~Unincorporated County as provided for in Article  
6 2.1 of Chapter 8 of Division 3 of Title 3 of this Code.

7 ~~(qq) —(cc) **SECURITY.** A~~“Residual Solid Waste” means the Solid Waste  
8 destined for disposal, Transformation, or further transfer/Processing as defined in  
9 California Code of Regulations, Title 14, section 17402(a)(30) or (31), as it currently  
10 exists or may be amended, which remains after Processing has taken place.

11 ~~(rr) “Security” means a~~ corporate surety bond, a letter of credit or other  
12 ~~security~~Security device acceptable to the ~~Department, as provided in~~ Division, as  
13 described in the Franchise Agreement and County Code section 46.09060904.

14 ~~(ss) —(dd) **SOLID WASTE.** Except~~“Solid Waste” means, except as provided  
15 in ~~Subdivisions~~ subsections (1), (2), (3) and (4), ~~**SOLID WASTE** means~~ all putrescible  
16 and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse,  
17 paper, rubbish, ashes, industrial wastes, demolition and construction wastes,  
18 abandoned vehicles and parts thereof, discarded home and industrial appliances  
19 (subject to salvage and other special handling requirements under applicable law and  
20 regulation), dewatered, treated, or chemically fixed sewage sludge which is not  
21 ~~hazardous waste~~Hazardous Waste, manure, vegetable or animal solid and semisolid  
22 wastes, and other discarded solid and semisolid wastes, including ~~recyclable~~  
23 materialsRecyclables and ~~greenwaste~~Organic Waste.

24 (1) ~~**SOLID WASTE**~~ Solid Waste does not include ~~hazardous~~  
25 wasteHazardous Waste and does not include low-level radioactive waste regulated  
26 under Health and Safety Code sections 114960 et seq., as it currently exists or may be  
27 amended.

28 (2) ~~**SOLID WASTE**~~ Solid Waste does not include medical waste (except

1 treated medical waste) which is regulated pursuant to the Medical Waste Management  
2 Act (~~under~~ Health and Safety Code ~~§§sections~~ 117600 et seq.)~~., as it currently exists~~  
3 ~~or may be amended~~

4 (3)~~SOLID WASTE~~ Solid Waste does not include petroleum or a  
5 petroleum product or fraction thereof at reasonably detectable levels, asbestos and,  
6 with respect to a particular ~~solid waste facility~~Solid Waste Facility, any waste or  
7 material which a regulatory agency, the facility's solid waste facility permit or County  
8 policy, does not allow to be accepted for transfer, ~~processing~~Processing, composting,  
9 ~~transformation~~Transformation or disposal at that facility.

10 (4)~~SOLID WASTE~~ Solid Waste does not include items which would be  
11 ~~recyclable materials~~considered Recyclables but for the fact that they are personally  
12 separated from other ~~solid waste~~Solid Waste by the generator thereof and are donated  
13 or sold to third parties. For purposes of ~~this~~ Division 6, no donation or sale shall be  
14 deemed to have occurred in any instance where a generator directly or indirectly pays  
15 ~~the third party~~ any sum regardless of form or amount, (including without limit as a  
16 consulting fee, container rental, broker or other fees or tangible consideration) either:  
17 (i) in lieu of being directly charged for collecting, transporting, ~~processing~~Processing or  
18 recycling such item; or (ii) to offset the payment to the generator for the purported sale  
19 of such item to the third party. Nor shall the receipt of a discount of, or reduction in, the  
20 disposal service rate on unsegregated ~~SOLID WASTE~~Solid Waste containing an item  
21 which would be ~~Recyclables materials~~, if separated, be deemed to be the donation or  
22 sale of such an item to a third party.

23 ~~(tt) —(ee) —SOLID WASTE FACILITY. Any “Solid Waste Facility” means any~~  
24 facility that is designed to manage any type of ~~solid waste~~Solid Waste and includes  
25 transfer, ~~processing, —composting, —transformation~~Processing, Composting,  
26 Transformation and disposal facilities.

27 ~~(uu) —(ff) —SOLID WASTE FACILITY FEE. The “Solid Waste Facility Fee”~~  
28 ~~means the~~ fee charged for use of a ~~solid waste facility.~~Solid Waste Facility.

1 ~~(vv) —(gg) **SOLID WASTE HANDLING.** One or more of~~“Solid Waste  
2 ~~Handling”~~ means the following: ~~(1)~~ the collection of ~~solid waste~~Solid Waste from a  
3 commercial, residential, construction or industrial source; ~~(2)~~ the transportation of such  
4 ~~solid waste~~Solid Waste to a ~~solid waste~~Solid Waste facility; and ~~the transfer,~~  
5 ~~processing, composting, transformation~~~~(3)~~ the Processing, Composting,  
6 Transformation or disposal of such ~~solid waste~~Solid Waste at the ~~solid waste~~  
7 ~~facility.~~Solid Waste Facility. The specific ~~**SOLID WASTE HANDLING**~~Solid Waste  
8 Handling required of ~~grantee~~Grantee shall be specified in its ~~franchise~~  
9 ~~agreement~~Franchise Agreement.

10 ~~(ww) —(hh) **SUBSCRIBER.** Any person~~“Subscriber” means any Person  
11 receiving ~~solid waste handling~~Solid Waste Handling services pursuant to ~~this~~  
12 ~~agreement~~a Franchise Agreement.

13 ~~(xx) —(ii) **TOTAL RATE.** The~~“Total Rate” means the inclusive rate schedule  
14 attached to each ~~franchise agreement~~Franchise Agreement which provides the rates to  
15 be paid to ~~grantee~~Grantee by ~~subscribers~~Subscribers in consideration of the ~~solid~~  
16 ~~waste handling~~Solid Waste Handling services provided by ~~grantee~~Grantee under its  
17 ~~franchise agreement~~Franchise Agreement.

18 ~~(e)(yy) —(jj) **TRANSFORMATION.** Shall~~“Transformation” shall have the same  
19 meaning as set forth in Public Resources Code ~~section~~ 40201, as it may be amended  
20 from time to time.

21 ~~(zz) —(kk) **UNIFORM HANDLING AREAS.** A franchise area~~“Uniform  
22 Handling Areas” means a Franchise Area, or a specified portion of a ~~franchise~~  
23 ~~area~~Franchise Area, in which ~~uniform handling service~~Uniform Handling Service has  
24 been imposed, as specified in a ~~franchise agreement~~Franchise Agreement.

25 ~~(aaa) —(ll) **UNIFORM HANDLING SERVICE.** The~~“Uniform Handling Service”  
26 ~~means the~~ mandatory subscription to ~~solid waste handling~~Solid Waste Handling  
27 service required of owners of specified residential, multi-residential, and/or commercial  
28 units in a ~~uniform handling area~~Uniform Handling Area.

1            ~~(bbb) —(mm) UNINCORPORATED COUNTY.~~ Any “Unincorporated County”  
2 means any community or other area within the County which is outside the boundaries  
3 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.

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

1 may be granted a franchise to provide the same, or different, ~~solid waste handling~~Solid  
2 Waste Handling services in the same ~~franchise-area~~Franchise Area.

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

4 (1) Have, or obtain prior to the approval of the ~~franchise~~  
5 agreementFranchise Agreement by the County, and maintain for the term of its  
6 ~~franchise agreement~~Franchise Agreement, a current ~~health and safety permit~~Health  
7 And Safety Permit to the extent such a permit is required under the provisions of Article  
8 2 of Chapter 8 of Division 3 of Title 3 of this Code in order to provide the ~~solid waste~~  
9 handlingSolid Waste Handling services to be provided under the ~~franchise~~  
10 agreementFranchise Agreement; and

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

14 (3) Provide to the Director the information which is required of an  
15 applicant for a ~~health and safety permit~~Health And Safety Permit pursuant to section  
16 33.0825 of this Code.

17 (c) (1) The terms and conditions by which the ~~grantee~~Grantee shall be  
18 obligated to provide ~~solid waste handling~~Solid Waste Handling services shall be as set  
19 forth in Division 6 and, with respect to the items set forth in this ~~Subdivision-subsection~~  
20 (c), as set forth in the ~~franchise agreement~~Franchise Agreement.

21 (A) The ~~franchise-area~~Franchise Area, including any ~~uniform~~  
22 handling-areaUniform Handling Area.

23 (B) The specific ~~solid waste handling~~Solid Waste Handling  
24 services to be provided by ~~grantee~~Grantee, including appropriate operating  
25 requirements.

26 (C) The ~~total-rates~~Total Rates related to the specified ~~solid~~  
27 waste handlingSolid Waste Handling services to be provided by ~~grantee~~Grantee and  
28 the method of billing its ~~subscribers~~Subscribers.

1 (2) (A) If the County and the ~~grantee~~Grantee so agree, the  
2 ~~franchise agreement~~Franchise Agreement may specify the ~~solid waste facility~~Solid  
3 Waste Facility or facilities to which the ~~grantee~~Grantee will transport the ~~solid~~  
4 wasteSolid Waste collected pursuant to ~~solid waste handling~~Solid Waste Handling  
5 services provided under the ~~franchise agreement~~Franchise Agreement.

6 (B) If the County and the ~~grantee~~Grantee so agree, the  
7 ~~franchise agreement~~Franchise Agreement may allow the County to specify a different  
8 or additional ~~solid waste facility~~Solid Waste Facility to which the ~~grantee~~Grantee will  
9 transport the ~~solid waste~~Solid Waste collected pursuant to the ~~solid waste~~  
10 handlingSolid Waste Handling services provided under the ~~franchise~~  
11 agreementFranchise Agreement. In such event, the ~~franchise agreement~~Franchise  
12 Agreement may contain a cost per ton mile figure which sets forth the increase in the  
13 ~~grantee's~~Grantee's demonstrable costs related to such a change.

14 (C) If the County and the ~~grantee~~Grantee so agree, the  
15 ~~franchise agreement~~Franchise Agreement may specify that upon the effective date of  
16 the ~~franchise agreement~~Franchise Agreement the ~~grantee~~Grantee waives and forgoes  
17 any other rights it might have to provide ~~solid waste handling~~Solid Waste Handling  
18 services in other specified portions of the ~~unincorporated~~Unincorporated County,  
19 including any rights it might otherwise have under Public Resources Code section  
20 49520 or other law to receive advance notice of the cancellation of any permit or other  
21 authorization to provide such services.

22 (d) (1) The ~~franchise agreement~~Franchise Agreement shall establish the  
23 initial term and any extensions. Notwithstanding the forgoing, the County reserves the  
24 right to increase the term or any extension if it believes that such an increase is in the  
25 best interests of the ~~subscribers~~Subscribers being serviced by the ~~grantee~~Grantee  
26 under the ~~franchise agreement~~Franchise Agreement.

27 (2) A ~~franchise agreement~~Franchise Agreement may provide for  
28 automatic extensions; however, the Board may determine in its sole discretion that a

1 ~~franchise agreement~~Franchise Agreement shall not be extended. The action to not  
2 extend a ~~franchise agreement~~Franchise Agreement must be taken ~~between~~ no later  
3 than 60 days prior to the automatic renewal date of the ~~franchise agreement.~~Franchise  
4 Agreement. Such action shall terminate the automatic renewal and extension provision  
5 only and such ~~franchise agreement~~Franchise Agreement shall remain in effect for the  
6 balance of the term then outstanding.

7 (e) The ~~franchise agreement~~Franchise Agreement shall set forth the ~~total~~  
8 ~~rate~~Total Rate (i.e., the inclusive schedule of rates to be paid to ~~grantee~~Grantee for  
9 ~~solid waste handling~~Solid Waste Handling services provided to ~~subscribers~~Subscribers  
10 under its ~~franchise agreement).~~Franchise Agreement). The ~~total rate~~Total Rate shall  
11 be subject to review and adjustment pursuant to the provisions of ~~this~~ Division 6. If and  
12 when adjustments to the ~~total rate~~Total Rate are made pursuant to the provisions of  
13 Division 6, the Director shall cause a certification of each such adjustment to be lodged  
14 with the ~~County's~~County's official copy of the ~~franchise agreement.~~Franchise  
15 Agreement. No ~~total rate~~Total Rate or adjustment to same shall be implemented until  
16 approved by the Board or by the Director, as provided in ~~this~~ Division 6.

17 (f) Non-performance by ~~grantee~~Grantee of the terms and conditions  
18 contained in ~~this~~ Division 6 or in its ~~franchise agreement~~Franchise Agreement, or the  
19 occurrence of one or more of the events set forth in ~~section~~ 33.0827 of this Code, shall  
20 provide grounds for the loss of or limitation upon the ~~grantee's~~Grantee's right to provide  
21 ~~solid waste handling~~Solid Waste Handling services pursuant to its ~~franchise~~  
22 ~~agreement~~Franchise Agreement and for the termination of its ~~franchise~~  
23 ~~agreement.~~Franchise Agreement. Grantee shall perform no ~~solid waste handling~~Solid  
24 Waste Handling services under its ~~franchise agreement~~Franchise Agreement without  
25 possessing the required ~~health and safety permit~~Health And Safety Permit.

26 (g) Except when otherwise required by applicable ~~federal, Sstate,~~Federal or  
27 local law, the terms and conditions of ~~this~~ Division 6 shall prevail over any inconsistent  
28 provisions of a ~~franchise agreement~~Franchise Agreement.

1 (h) The ~~grantee~~Grantee under any ~~franchise—agreement~~Franchise  
2 Agreement is an independent contractor and not an officer, agent, servant, or  
3 employee of ~~the~~County. Grantee is solely responsible for the acts and omissions of its  
4 officers, agents, and employees, if any. Nothing in any ~~franchise—agreement~~Franchise  
5 Agreement shall be construed as creating a partnership or joint venture between  
6 County and ~~grantee.~~Grantee. Neither ~~grantee~~Grantee nor its officers, agents, or  
7 employees, shall obtain any rights to retirement or other benefits which accrue to  
8 County employees.

9 **46.0302 Franchise Fee.**

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

21 (b) In the event that a ~~grantee~~Grantee under a ~~franchise~~  
22 ~~agreement~~Franchise Agreement in a ~~uniform—handling—area~~Uniform Handling Area  
23 offers a fee waiver program as set forth in section 46.0505, then such ~~grantee~~Grantee  
24 will not be required to pay a ~~franchise—fee~~Franchise Fee to the County in an amount  
25 proportionate to that waived pursuant to the Code.

26 **46.0303 Assignment and Change of Ownership.**

27 (a) Neither any ~~franchise—agreement~~Franchise Agreement nor any right or  
28 privilege granted in any such agreement shall voluntarily or involuntarily be transferred,

1 sold, hypothecated, sublet, assigned or leased, in whole or in part, nor shall title  
2 thereto, either legal or equitable, or any right, interest, or property therein (all  
3 collectively referred to herein as “transfer”), pass to or vest in any ~~person~~Person,  
4 except the ~~grantee~~Grantee, either by act of the ~~grantee~~Grantee or by operation of law,  
5 without the prior written consent of the Board. Any attempt by ~~grantee~~Grantee, either  
6 by act of ~~grantee~~Grantee or by operation of law, to transfer any ~~franchise~~  
7 ~~agreement~~Franchise Agreement without the prior written consent of the Board shall be  
8 void.

9 (b) If the ~~grantee~~Grantee requests that the County consider and consent to a  
10 transfer or a ~~change in ownership~~Change In Ownership of ~~grantee~~Grantee, the  
11 ~~grantee~~Grantee or the proposed transferee, as applicable, shall at a minimum meet  
12 each of the following requirements:

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

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

21 (3) The ~~grantee~~Grantee shall furnish the County with satisfactory  
22 proof:

23 (A) That the proposed transferee or the proposed management  
24 of the ~~grantee~~Grantee under the proposed new owner has at least three years of ~~solid~~  
25 ~~waste~~Solid Waste management experience of a scale equal to or exceeding the scale  
26 of operations conducted by ~~grantee~~Grantee under its ~~franchise agreement~~Franchise  
27 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~~Grantee under the proposed new owner) has not received any citations,  
3 notice of violations or other censure from any ~~F~~federal, ~~S~~state or local agency having  
4 jurisdiction over its waste management operations due to any failure to comply with  
5 ~~federal, Sstate, Federal~~ or local waste management laws, where such failure either: (i)  
6 evidences a pattern of disregard for such ~~federal, Sstate, Federal~~ or local waste  
7 management laws; or (ii) involves actions which endangered the lives or property of  
8 any ~~person~~Person. Grantee shall supply the County with a complete list of such  
9 citations, notices of violations and censures, if 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~~Grantee  
12 under the proposed new owner) has at all times conducted its operations in an  
13 environmentally 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~~Grantee  
16 under the proposed new owner) conducts its ~~solid-waste~~Solid Waste management  
17 operations in accordance with sound waste management standards and practices and  
18 in full compliance with all Federal, State and local laws regulating the collection and  
19 disposal of waste;

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

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

25 (c) The County may impose reasonable new conditions of approval on a  
26 ~~franchise agreement~~Franchise Agreement transfer, or consent to a ~~change in~~  
27 ~~ownership~~Change In Ownership of ~~grantee~~Grantee, including, but not limited to,  
28 conditions requiring acceptance of amendments to the relevant ~~franchise~~

1 ~~agreement~~Franchise Agreement.

2 **46.0304 Title to Solid Waste.**

3 Ownership of ~~solid waste~~Solid Waste shall transfer to ~~grantee~~Grantee at such  
4 time as the ~~solid waste~~Solid Waste is abandoned and discarded by the ~~solid waste~~  
5 ~~handling~~Solid Waste Handling service ~~subscriber~~Subscriber of ~~grantee~~Grantee in the  
6 location provided in section 33.0808 of this Code.

7  
8 **CHAPTER 4: COMPENSATION**

9 **Sections:**

10 46.0401 Compensation.

11 46.0402 Adjustment to Total Rate.

12 46.0403 Notice to Subscribers ~~Regarding~~ Certain Adjustments.

13 46.0404 Discontinuance of Service for Non-Uniform Handling Service.

14 **46.0401 Compensation.**

15 (a) Charges for ~~solid waste handling~~Solid Waste Handling services  
16 (including, without limit, for use of a ~~solid waste facility~~Solid Waste Facility) provided to  
17 ~~grantee's subscribers~~Grantee's Subscribers shall be paid by such service  
18 ~~subscribers~~Subscribers in accordance with the ~~total rate~~Total Rate approved by the  
19 Board in its approval or extension of the ~~franchise agreement~~Franchise Agreement  
20 with ~~grantee~~Grantee, as such ~~total rate~~Total Rate is adjusted pursuant to section  
21 46.0402.

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

1 (c) (1) In cases where ~~grantee~~Grantee includes a ~~solid waste facility~~  
2 ~~fee~~Solid Waste Facility Fee amount as a separate listing on a ~~subscriber's~~Subscriber's  
3 bill, the County shall prescribe the amount consistent with waste generation factors  
4 established in the ~~franchise agreement~~Franchise Agreement and the applicable ~~solid~~  
5 ~~waste facility fee~~Solid Waste Facility Fee.

6 (2) Grantee shall refund to each ~~subscriber~~Subscriber, on a pro rata  
7 basis, any advance service payments made by such ~~subscriber~~Subscriber for service  
8 not provided when service is discontinued by timely written notification to  
9 ~~grantee~~Grantee by the ~~subscriber~~Subscriber. Grantee may not require written notice  
10 to be given more than 15 working (waste collection) days prior to the date on which  
11 service is desired to be discontinued.

12 (3) On a quarterly basis, the County shall be allowed to furnish, for  
13 inclusion with ~~grantee's~~Grantee's billing, a message for the purpose of public education  
14 regarding waste disposal, recycling, or other environmental issues. If ~~grantee~~Grantee  
15 mails its billing in an envelope, two of the four County messages may be in the form of  
16 a one page insert, provided the insert is: print ready copy which conforms to  
17 ~~grantee's~~Grantee's billing, is delivered to ~~grantee~~Grantee by the ~~Department~~Division  
18 15 working (waste collection) days in advance of ~~grantee's~~Grantee's billing date and  
19 does not cause an increase in the postal rates payable by ~~grantee~~Grantee for mailing  
20 its billing. If the message is not in the form of an insert, it shall be printed by  
21 ~~grantee~~Grantee on its bills. Such message shall not exceed 25 characters and shall  
22 be delivered to ~~grantee~~Grantee by the ~~Department~~Division 15 working (waste  
23 collection) days in advance of ~~grantee's~~Grantee's billing date. Grantee shall include  
24 such insert in, or print such message on, each ~~subscriber's~~Subscriber's next billing.

25 **46.0402 Adjustment to Total Rate.**

26 The following annual and special rate adjustments shall be made to the ~~total~~  
27 ~~rate~~Total Rate provided for in a ~~franchise agreement~~Franchise Agreement. However,  
28 no rate adjustment shall be implemented for or during any period of time when the

1 affected ~~grantee~~Grantee is not in substantial compliance with all material provisions of  
2 the County Code or the ~~franchise agreement~~Franchise Agreement.

3 (a) Cost of Living Adjustment. A ~~cost~~Cost of ~~living adjustment~~Living  
4 Adjustment set forth in a ~~franchise agreement~~Franchise Agreement should be based  
5 on appropriate consumer or product price indices and the adjustment shall be a pass  
6 through of 100 percent of any increase or decrease as a part of the ~~total rate~~Total  
7 Rate.

8 (b) Landfill Disposal Facility Fee. The ~~landfill disposal facility fee~~Landfill  
9 Disposal Facility Fee adjustment shall be the pass through of 100 percent of any  
10 increase or decrease in the fee charged to the ~~grantee~~Grantee for use of a ~~landfill~~  
11 ~~disposal facility~~Landfill Disposal Facility approved for use by the ~~Department~~Division,  
12 calculated on a per ~~subscriber~~Subscriber basis, and shall be effective as of the date of  
13 the change to such fee.

14 (c) Franchise Fee Adjustment. The ~~franchise fee~~Franchise Fee adjustment  
15 shall be the pass through of 100 percent of any increase or decrease in the ~~franchise~~  
16 ~~fee~~Franchise Fee, and shall be effective as of the date the ~~franchise fee~~Franchise Fee  
17 increase or decrease is payable by the ~~grantee~~Grantee.

18 (d) Extraordinary Adjustment. The ~~franchise agreement~~Franchise  
19 Agreement may allow for adjustments to the ~~total rate~~Total Rate to account for  
20 infrequent extraordinary events which, although they do not prevent either party from  
21 performing and do not implicate ~~force majeure~~Force Majeure provisions, they  
22 nevertheless increase the cost of providing service such that ~~grantee's~~Grantee's  
23 compensation and the rate adjustment mechanism provided in the ~~franchise~~  
24 ~~agreement~~Franchise Agreement result in ~~grantee's~~Grantee's suffering losses which  
25 are substantially outside the commercially reasonable expectations of the parties. In  
26 no event shall any ~~extraordinary adjustment~~Extraordinary Adjustment be effective prior  
27 to the Board's approval of an amendment to the applicable ~~franchise~~  
28 ~~agreement~~Franchise Agreement.

1 (e) Change In Service Level Adjustments.

2 (1) The ~~total-rate~~Total Rate shall be increased (or decreased) by 100  
3 percent of the increase (or decrease) or incremental increase (or incremental  
4 decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect  
5 cost, whether fixed or variable) associated with the change in the level of the ~~solid~~  
6 ~~waste-handling~~Solid Waste Handling services which may be required of, or agreed to  
7 by, a ~~grantee~~Grantee. A ~~change-in-service-level-adjustment~~Change In Service Level  
8 Adjustment shall be effective on and after the actual date of the requirement to or  
9 agreement to change operations which results from the change in service, but, absent  
10 the consent of the ~~Department~~Division, not sooner than the effective date of the  
11 change in service. In no event shall any ~~change-in-service-level-adjustment~~Change In  
12 Service Level Adjustment be effective prior to the Board's approval of an amendment  
13 to the applicable ~~franchise-agreement~~Franchise Agreement.

14 (2) In the event that the ~~Department~~Division and the ~~grantee~~Grantee  
15 claiming to be affected by the change in service level cannot agree on either the  
16 existence, or the effect on demonstrable costs, of a change in service level, the dispute  
17 resolution provisions of the Franchise ~~agreement~~Agreement shall apply.

18 (f) Change In Law Adjustments.

19 (1) The ~~total-rate~~Total Rate shall be increased (or decreased) by 100  
20 percent of the increase (or decrease) or incremental increase (or incremental  
21 decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect  
22 cost, whether fixed or variable) associated with the change in the manner or nature of  
23 conducting ~~solid-waste-handling~~Solid Waste Handling services necessitated by a  
24 ~~change-in-law~~Change In Law. A ~~change-in-law-adjustment~~Change In Law Adjustment  
25 shall be effective on and after the actual date of the change in operations which  
26 resulted from the ~~change-in-law~~Change In Law, but, absent the consent of the  
27 ~~Department~~Division, not sooner than the effective date of the ~~change-in-law~~Change In  
28 Law. In no event shall any ~~change-in-law-adjustment~~Change In Law Adjustment be

1 effective prior to the Board's approval of an amendment to the applicable ~~franchise~~  
2 ~~agreement~~Franchise Agreement.

3 (2) In the event that the ~~Department~~Division and the ~~grantee~~Grantee  
4 claiming to be affected by the ~~change-in-law~~Change In Law cannot agree on either the  
5 existence, or the effect on demonstrable costs, of a ~~change-in-law~~Change In Law, the  
6 dispute resolution provisions of the ~~franchise agreement~~Franchise Agreement shall  
7 apply.

8 **46.0403 Notice to Subscribers ~~r~~Regarding Certain Adjustments.**

9 No ~~change-in-service-level-adjustment~~Change In Service Level Adjustment  
10 increase or ~~change-in-law-adjustment~~Change In Law Adjustment increase which  
11 applies to 500 or more ~~solid-waste-handling~~Solid Waste Handling service  
12 ~~subscribers~~Subscribers or to ~~subscribers~~Subscribers cumulatively generating 1,500 or  
13 more cubic yards of ~~solid-waste~~Solid Waste per month may be implemented until at  
14 least ~~ten~~10 days after completion of publication of a notice of the proposed increase  
15 as set forth in the ~~franchise agreement~~Franchise Agreement.

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

17 Except where ~~uniform-handling-service~~Uniform Handling Service is  
18 implemented, ~~grantee~~Grantee may discontinue service for non-payment of  
19 ~~subscriber's~~Subscriber's billing or ~~subscriber's~~Subscriber's failure to substantially  
20 comply with the requirements of the applicable provisions of ~~S~~state or local law which  
21 govern use, storage and collection of ~~solid-waste~~Solid Waste. After the  
22 ~~grantee~~Grantee has given 15 days' written notice to ~~subscriber~~Subscriber for non-  
23 payment, ~~grantee~~Grantee shall notify the Director in writing of any service termination  
24 including a written copy of the notice to the ~~subscriber~~Subscriber. Upon payment of  
25 the delinquent fees, if applicable, ~~grantee~~Grantee shall resume collection on the next  
26 regularly scheduled collection day. Any ~~grantee~~Grantee operating in a ~~uniform~~  
27 ~~handling-area~~Uniform Handling Area shall not discontinue service except as allowed in  
28 section 46.0507.

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**CHAPTER 5: UNIFORM HANDLING SERVICE**

**Section 5:**

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

**46.0501 Uniform Handling Service.**

(a) Uniform ~~handling service~~Handling Service and ~~uniform handling areas~~Uniform Handling Areas shall be established by the adoption, or amendment, of an individual ~~franchise agreement~~Franchise Agreement which contains provisions establishing same. Uniform ~~handling service~~Handling Service may but need not be implemented in every ~~franchise area~~Franchise Area, nor in all parts of a given ~~franchise area~~Franchise Area, nor imposed on the owners of all classes of dwellings or commercial or industrial units within a given ~~uniform handling area~~Uniform Handling Area. If ~~uniform handling service~~Uniform Handling Service is implemented for all or part of a particular ~~franchise area~~Franchise Area, all owners of a dwelling or a commercial or industrial unit within the ~~uniform handling area~~Uniform Handling Area who are required to have ~~uniform handling service~~Uniform Handling Service shall, upon notice thereof, be required to accept ~~uniform handling service~~Uniform Handling Service from the ~~grantee~~Grantee (or one of the ~~grantees~~Grantees) holding a ~~franchise agreement~~Franchise Agreement for the ~~uniform handling area~~Uniform Handling Area and pay the rate for such services currently in effect under the ~~total rate~~Total Rate of

1 the applicable ~~franchise agreement~~ Franchise Agreement. The ~~Department~~ Division  
2 shall maintain a list of all areas of the County where a ~~franchise agreement~~ Franchise  
3 Agreement establishes a ~~uniform handling area~~ Uniform Handling Area; the list shall  
4 specify the class of owners of dwellings and/or commercial or industrial units within  
5 each ~~uniform handling area~~ Uniform Handling Area required to have ~~uniform handling~~  
6 ~~service~~ Uniform Handling Service.

7 (b) Uniform ~~handling service~~ Handling Service shall not be imposed on the  
8 owner of any class of dwelling or commercial or industrial unit located in an Agricultural  
9 Preserve Overlay District within the sphere of influence of the City of Chino or of the  
10 City of Ontario, as designated upon the land use district maps of the County General  
11 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~~ Uniform Handling Service shall be required to accept, and pay  
15 the applicable rate set out in the ~~total rate~~ Total Rate for, the ~~uniform handling~~  
16 ~~service~~ Uniform Handling Service rendered to such unit by a ~~grantee~~ Grantee and shall  
17 place at a location accessible to the ~~grantee~~ Grantee, a container(s) of adequate  
18 capacity and functional design in accordance with ~~this~~ Division 6 of Title 4 and with  
19 Division 3 of Title 3 of this Code for the storage of ~~solid waste~~ Solid Waste generated  
20 on the premises. Such owner shall be responsible to provide such container(s) unless  
21 the ~~franchise agreement~~ Franchise Agreement requires the ~~grantee~~ Grantee to provide  
22 such container(s).

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

1 to the ~~grantee~~Grantee or, unless separately approved in writing by the  
2 ~~Department~~Division, to the County under ~~this~~-Division 6.

3 **46.0503 Failure to Provide Sufficient Solid Waste Containers.**

4 When in the judgment of the Director (whether or not at the request of the  
5 ~~grantee~~Grantee or owner) additional ~~solid waste~~Solid Waste container(s) compatible  
6 with the ~~solid waste handling~~Solid Waste Handling system are required, they must be  
7 provided by the owner, or by the ~~grantee~~Grantee if the ~~franchise agreement~~Franchise  
8 Agreement requires the ~~grantee~~Grantee to provide container(s), upon written  
9 notification by the Director. All containers shall conform to the requirements of sections  
10 33.0806 and 33.0807 of this Code.

11 **46.0504 Exemption from Uniform Handling Service.**

12 (a) Dwellings.

13 (1) The owner of any dwelling may apply to the ~~Department~~Division  
14 for an exemption from ~~uniform handling service~~Uniform Handling Service by submitting  
15 a Uniform Handling Exemption Request form to the Director or designee accompanied  
16 by required documentation identified in the form and a non-refundable application fee  
17 requesting a permit to provide self-haul ~~solid waste handling~~Solid Waste Handling.  
18 The owner may be granted an exemption provided he ~~or~~ /she can adequately  
19 document that all ~~solid waste~~Solid Waste generated at the dwelling is transported in a  
20 safe and sanitary manner to ~~an approved solid waste facility~~a Landfill Disposal Facility  
21 owned by the County of San Bernardino. Upon approval of the exemption request, the  
22 Director will notify the owner and the ~~grantee~~Grantee of the exemption. Exemptions are  
23 issued on an annual basis, July 1 through June 30. Exemptions that are not obtained  
24 or renewed prior to July 41st of each year will not be effective until the next billing  
25 period in accordance with the ~~franchise agreement~~Franchise Agreement applicable to  
26 the ~~owner's~~owner's dwelling.

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

1 (3) The application fee shall include an administrative fee, if any, as  
2 determined by the Board, in addition to the pre-payment of the average annual landfill  
3 disposal cost for County residents as determined by the Director. Each application for  
4 annual renewal of such an exemption shall be accompanied by the administrative fee  
5 plus the applicant's required pre-payment of the average annual landfill disposal cost.  
6 This pre-payment will be retained by the ~~Department~~Division as a pre-payment for one  
7 year's weekly ~~solid waste~~Solid Waste disposal. The pre-payment requirement shall be  
8 waived with respect to residences located within those land use areas for which parcel  
9 fees are collected for the operation of County Solid Waste Disposal System.

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

16 (5) Should the owner violate any provisions of ~~this~~Division 6 of Title 4  
17 or of any provision of Chapter 7 or Chapter 8 of Division 3 of Title 3 of the San  
18 Bernardino County Code, the Director may, upon advance written notice to the owner,  
19 revoke the exemption and require the owner to subscribe to and pay for ~~uniform~~  
20 ~~handling service~~Uniform Handling Service as described in this Chapter.

21 (b) Commercial/Industrial Units.

22 (1) The owner of any commercial or industrial unit may apply for  
23 exemption from ~~uniform handling service~~Uniform Handling Service by submitting a  
24 written application to the Director on a form issued by the Director, accompanied by a  
25 non-refundable application fee, requesting a permit to provide self-haul ~~solid waste~~  
26 ~~handling~~Solid Waste Handling and transportation. This permit, if approved, shall be  
27 valid for one year, and must be renewed annually thereafter at the discretion of the  
28 Director upon submittal of application therefore and deposit of application fees to the

1 Director.

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

4 (3) The owner may be granted an exemption provided he or she can  
5 establish to the satisfaction of the Director that he or she can properly transport all ~~solid~~  
6 ~~waste~~Solid Waste generated on the premises, to an approved ~~solid waste facility~~Solid  
7 Waste Facility, in a safe and sanitary manner in accordance with each of the following  
8 conditions:

9 (A) The vehicles and equipment to be used for transporting the  
10 ~~solid waste~~Solid Waste shall be identified in the application by the owner;

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

13 (C) A credit account with the ~~Department~~Division must be  
14 maintained in good standing.

15 (4) The Director may require the owner to furnish evidence of such  
16 delivery of ~~solid waste~~Solid Waste.

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

19 (6) Should the owner violate any provision of ~~this Division~~ 6 of Title 4  
20 or any provision of Chapter 7 or Chapter 8 of Division 3 of Title 3 of the San Bernardino  
21 County Code, the Director may, upon advance written notice to the owner, revoke the  
22 exemption and require the owner to subscribe to and pay for ~~uniform handling~~  
23 ~~services~~Uniform Handling Services as described in this Chapter.

24 **46.0505 Temporary Suspension of Service or Waiver of Fees.**

25 (a) Any residential owner may suspend ~~uniform handling service~~Uniform  
26 Handling Service by a ~~grantee~~Grantee up to 45 consecutive days during a given fiscal  
27 year (i.e., July 1 - June 30).

28 (b) The owner shall give written notification to the ~~grantee~~Grantee at least 15

1 working (waste collection) days prior to the first day of the period for which suspension  
2 of service is requested pursuant to this Section.

3 (c) Should an owner, after suspending service, request that service be re-  
4 established, the ~~grantee~~Grantee may charge a resumption fee not to exceed 50  
5 percent of the cost of one month's regular ~~uniform handling service~~Uniform Handling  
6 Service as specified in the applicable ~~franchise agreement~~Franchise Agreement. In  
7 no event shall a resumption fee exceed fifty dollars (\$50.00).

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

11 (e) In addition, each ~~grantee~~Grantee servicing a ~~franchise area~~Franchise  
12 Area is authorized to waive the ~~total rate~~Total Rate established in the applicable  
13 ~~franchise agreement~~Franchise Agreement for an individual owner under circumstances  
14 approved by the Director or designee, including but not limited to infrequent use of the  
15 dwelling or when the property does not require regular collection service.

#### 16 **46.0506 Handling of Delinquent Accounts.**

17 (a) The ~~total rate~~Total Rate owed by the owner of a dwelling or commercial  
18 or industrial unit for ~~uniform handling service~~Uniform Handling Service rendered to  
19 such owner's property (or which have been attempted to be rendered, if ~~uniform~~  
20 ~~handling service~~Uniform Handling Service is not allowed to be provided by action of the  
21 owner or tenant) shall be a civil debt owed to the ~~grantee~~Grantee providing the ~~uniform~~  
22 ~~handling service~~Uniform Handling Service. As used herein, ***DELINQUENT***  
23 ***FEES***Delinquent Fees shall mean the fees under the ~~total rate~~Total Rate which are  
24 due for ~~uniform handling service~~Uniform Handling Service rendered to an owner's  
25 property (or which have been attempted to be rendered, if ~~uniform handling~~  
26 ~~service~~Uniform Handling Service is not allowed to be provided by action of the owner  
27 or tenant) but which have not been paid for 90 days or more after the mailing of the  
28 invoice related to such service.

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

3 (c) Annually each ~~grantee~~Grantee shall provide a list to the  
4 ~~Department~~Division of all accounts which have delinquent fees. This list shall set out  
5 the amount of the delinquent fees, the time period for which the services related to the  
6 delinquent fees were provided, the identity of the property to which the service has  
7 been provided and the owner of such property.

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

13 (1) Pursuant to Health and Safety Code ~~§section~~ 5473.10 the County  
14 hereby imposes:

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

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

21 (2) The County shall cause a written report to be prepared each year  
22 and filed with the Clerk of the Board. The report shall contain a description of each  
23 parcel of real property receiving ~~uniform handling service~~Uniform Handling Service for  
24 which delinquent fees exist, and the amount of the delinquent fees (and the associated  
25 basic penalty and interest and costs of collection) related to that real property.

26 (3) After providing any statutorily required notice and holding any  
27 statutorily required hearing, and following the final determination of the Board as to the  
28 delinquent fees detailed in the report, pursuant to Health & Safety Code section

1 5473.4, the Clerk of the Board shall, on or before August 10 of each year, file with the  
2 County Auditor/Controller-Recorder a copy of the report with a statement endorsed  
3 thereon over his or her signature that the report has been finally adopted by the Board.  
4 The Auditor/Controller-Recorder shall then enter the amounts of the delinquent fees  
5 (and the associated basic penalty and interest and costs of collection) against the  
6 respective lot or parcel of land as they appear on the current assessment roll. Pursuant  
7 to Health & Safety Code section 5473.5 and section 5473.6, the amount of charges  
8 shall constitute a lien against the lot or parcel of land against which the charge has  
9 been imposed and the tax collector shall include the amount of charges on bills for  
10 taxes levied against the respective lots and parcels of land.

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

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

15 (2) Next, to the granteeGrantee which provided the uniform handling  
16 serviceUniform Handling Service which gave rise to the delinquent fees, up to the  
17 amount of the delinquent fees and the associated interest provided for in Subdivision  
18 subsection (d)(1)(B); and

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

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

25 (g) The County has no liability to pay the granteeGrantee any amount or sum  
26 for any delinquent fees and/or the associated interest to the extent same are not  
27 collected by the County.

28 **46.0507 Discontinuance of Service.**

1 Unless ~~grantee~~Grantee is otherwise directed by Director, ~~grantee~~Grantee shall  
2 not refuse to provide, or discontinue the providing of, ~~solid waste handling~~Solid Waste  
3 Handling service to any ~~subscriber~~Subscriber in a ~~uniform handling area~~Uniform  
4 Handling Area required to subscribe for ~~uniform handling service~~Uniform Handling  
5 Service.

6 **46.0508 Penalties for Violations.**

7 Except as otherwise allowed in section 46.0504, it shall be unlawful for any  
8 ~~person~~Person to fail or refuse to subscribe or pay for ~~uniform handling service~~Uniform  
9 Handling Service implemented under this Chapter. Such a failure or refusal to  
10 subscribe or pay for required ~~uniform handling service~~Uniform Handling Service shall  
11 subject such ~~person~~Person to the penalties provided in section 46.1101.

12 **46.0509 Illegal Dumping Retrieval Service Fee.**

13 Within ~~uniform handling areas~~Uniform Handling Areas, at the direction of the  
14 County, ~~grantee~~Grantee agrees to bill ~~subscribers~~Subscribers for and collect an illegal  
15 dumping retrieval service fee as established from time to time by the Board as part of  
16 the County Code. Such fee may be changed by the Board, by providing 60 days  
17 written notice of a change to ~~grantee~~Grantee. The ~~grantee~~Grantee, as directed in  
18 writing by the County, shall either remit the fee collected to the County or provide  
19 mutually agreed upon specified illegal dumping retrieval and disposal services.

20  
21 **CHAPTER 6: ~~RESERVED~~ COMMERCIAL SOLID WASTE AND ORGANIC WASTE**  
22 **RECYCLING PROGRAM**

23 **Sections:**

24 46.0601 Definitions.

25 46.0602 Commercial Solid Waste Recycling.

26 46.0603 Commercial Organics Recycling/Diversion.

27 46.0604 Donate or Sell of Recyclables.

28 **46.0601 Definitions.**

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

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

7 **46.0602 Commercial Solid Waste Recycling**

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

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

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

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

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

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

27 (c) Each Business subject to this section that does not subscribe with the  
28 Grantee for the location of the Business shall be responsible for ensuring and

1 demonstrating its compliance with the requirements of this section to the Division with  
2 satisfactory proof of acceptable levels of waste diversion as determined by the Director  
3 or designee, and requested by the Division.

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

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

12 **46.0603 Commercial Organics Recycling/Diversion**

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

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

23 (1) Source separate Organic Waste from other Solid Waste and  
24 subscribe to the Grantee for the location of the Business, for the collection and  
25 recycling of the Organic Waste.

26 (a) If the Grantee for the location of the Business does not offer  
27 a program for the collection and recycling of the Organic Waste, a Business may  
28 contract with another entity for the service. That a hauler that is not a Grantee may

1 provide the collection and recycling of Organic Waste at a lower cost to Business does  
2 not authorize a Business to use the hauler that is not a Grantee, if the Grantee  
3 provides a collection and recycling of Organic Waste program to Business.

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

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

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

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

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

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

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

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

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

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

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

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

9 **46.0604 Donate or Sell of Recyclables**

10                   Nothing in this Chapter is intended to limit the right of any Business to donate or  
11 sell its Recyclables or Organic Waste as provided by sections 41952, 42649.84 and  
12 42649.5 of the Public Resources Code.

13  
14 **CHAPTER 7: RESERVED**

15  
16 **CHAPTER 8: REPORTING REQUIREMENTS, FINANCIAL INFORMATION AND**  
17 **AUDIT RIGHTS**

18 **Sections:**

19                   46.0801       General.

20                   46.0802       Types of Reports.

21                   46.0803       County Right of Audit.

22 **46.0801 General.**

23                   (a) Each ~~grantee~~Grantee shall keep, maintain, and furnish copies of such  
24 operating records and reports as may be requested by the ~~Department~~Division to  
25 ascertain compliance with ~~this~~—Division 6 and as set forth in the ~~franchise~~  
26 ~~agreement.~~Franchise Agreement. The ~~Department~~Division reserves the right to  
27 request that additional information be provided to it, as necessary to meet its needs,  
28 including but not limited to AB 939, AB 341 and AB 1826, as amended, and other

1 applicable reporting requirements.

2 (b) All information required to be kept, maintained or furnished to ~~the~~ County  
3 shall be maintained a minimum of ~~seven-7~~ years after the entry of the most recent item  
4 therein;

5 (c) The ~~grantee's~~Grantee's financial and accounting records required to be  
6 maintained under the provisions of ~~this~~ Division 6 shall be maintained on an accrual  
7 basis in accordance with the most current edition of Generally Accepted Accounting  
8 Principles published by the American Institute of Certified Public Accountants. Unless  
9 inconsistent with Generally Accepted Accounting Principles, ~~gross receipts~~Gross  
10 Receipts must be recorded as revenues.

11 (d) Data and information pertaining to services performed under any  
12 ~~franchise agreement~~Franchise Agreement become the property of the County upon  
13 submittal to the ~~Department~~Division.

14 **46.0802 Types of Reports.**

15 Each ~~franchise agreement~~Franchise Agreement shall require the  
16 ~~grantee~~Grantee to provide specific information to the County related to the operation of  
17 the franchise, including but not limited to the following types of reports:

18 (a) Each month the ~~grantee~~Grantee shall complete report forms provided by  
19 the ~~Department~~Division containing sufficient information to identify the source of  
20 generation, e.g., residential, commercial, and multi-jurisdictional reports that contain  
21 accurate source information collected from the driver of the refuse truck at each landfill  
22 and split source and tonnage information, for ~~solid waste~~Solid Waste loads from more  
23 than one community.

24 (b) Each quarter, except as otherwise directed in writing by the Director,  
25 each ~~grantee~~Grantee shall submit quarterly reports identified as the collection  
26 information reports, service performance report, the program implementation, and a  
27 report summarizing calculation of the information relating to gross receipts, gross  
28 receipts less disposal charges and service charge collections. Franchise Fee. To the

1 extent permitted by applicable law, financial information submitted to ~~the~~ County by the  
2 ~~grantee~~Grantee pursuant to this ~~Subdivision-subsection~~ will be kept confidential and  
3 will be available to County personnel only on a need-to-know basis.

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

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

22 (e) Within 120 days following the close of ~~grantee's~~Grantee's fiscal year,  
23 ~~grantee~~Grantee shall organize, summarize and make available for review full and  
24 complete financial information, consistent with the preparation of the  
25 ~~grantee's~~Grantee's financial statements, with respect to the operations necessary to  
26 provide the services required under its ~~franchise agreement~~Franchise Agreement,  
27 including revenues, costs and expenses. Such information is not required to be  
28 certified by an independent certified public accountant. The ~~grantee~~Grantee shall

1 make the financial information available for the review by the DepartmentDivision, or its  
2 designee, at the local office of granteeGrantee.

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

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

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

11 **46.0803 County Right of Audit.**

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

23  
24 **CHAPTER 9: INDEMNIFICATION, INSURANCE AND BONDING**

25 **Sections:**

- 26 46.0901 Indemnification of County.  
27 46.0902 Hazardous Waste Indemnification.  
28 46.0903 Insurance Requirements.

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

4   **46.0901       Indemnification of County.**

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

19   **46.0902       Hazardous Waste Indemnification.**

20           Without limiting the generality of the foregoing, if ~~grantee~~ Grantee has negligently  
21 or willfully acted or failed to act with respect to the collection, handling or transportation  
22 of ~~hazardous waste,~~ Hazardous Waste, Grantee shall indemnify, defend (with  
23 counsel approved by County), protect and hold harmless the County and its respective  
24 officers, employees, agents, volunteers, assigns, and any successor or successors  
25 harmless from and against all claims, actual damages (including, but not limited to,  
26 special and consequential damages), natural resources damage, punitive damages,  
27 injuries, costs, response remediation and removal costs, losses, demands, debts, liens,  
28 liabilities, causes of action, suits, legal or administrative proceedings, interest, fines,

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

17 **46.0903 Insurance Requirements.**

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

- 27 (1) Workers ~~compensation~~Compensation.
- 28 (2) Comprehensive ~~g~~General and ~~a~~Automobile ~~l~~Liability ~~i~~Inurance.

1                   (3) Environmental ~~liability~~Liability.

2                   (b) Prior to commencing operations under a ~~franchise—agreement,~~  
3 granteeFranchise Agreement, Grantee shall furnish to the ~~Department~~Division  
4 certificates of insurance evidencing the required insurance coverage. Each such  
5 certificate shall provide that the insurance coverage evidenced thereby shall not be  
6 expired, canceled, terminated or reduced in amount without at least 30 days advance  
7 written notice to the ~~Department.~~Division. Within 60 days after the effective date of a  
8 ~~franchise—agreement~~Franchise Agreement, the ~~grantee~~Grantee shall furnish to the  
9 ~~Department~~Division certified copies of all of the policies and endorsements required by  
10 this ~~S~~section. Proofs of renewal or of substitution of carriers shall be provided to the  
11 ~~Department~~Division promptly as such 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~~Grantee on or before the  
14 anniversary of the effective date of its ~~franchise—agreement.~~Franchise Agreement. If  
15 the County’s Risk Manager determines at any annual review that heretofore  
16 unreasonably priced or unavailable types of insurance coverage or coverage limits  
17 become reasonably priced or available, the County’s Risk Manager is authorized, but  
18 not required, to change the above insurance requirements to require additional types of  
19 insurance coverage or higher coverage limits, provided that any such change is  
20 reasonable in light of past claims against the County, inflation, or any other item  
21 reasonably related to the County’s risk. Any such change shall be treated as a ~~change~~  
22 in-law-adjustmentChange In Law Adjustment, under the provisions of ~~this~~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 ~~S~~section and Chapter 8 of Division 3  
25 of Title 3 of this Code. However, ~~grantee~~Grantee must maintain the level of insurance  
26 which is the higher of that required in this ~~S~~section and Chapter 8 of Division 3 of Title  
27 3 of this Code, and must obtain and maintain insurance coverage which satisfies all of  
28 the provisions of this ~~S~~section and Chapter 8 of Division 3 of Title 3 of this Code,

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

20 **46.0905 Liquidated Damages Deposit.**

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

25 **46.0906 Modification.**

26 The requirements of this Chapter may be modified or waived in writing by the  
27 Board upon the request of ~~grantee~~Grantee, provided the Board reasonably determines  
28 such modification or waiver is in the best interest of County and of the public welfare,

1 considering all relevant factors, including acceptable financial guarantees provided by  
2 ~~grantee~~Grantee or by a parent company of ~~grantee~~Grantee.

## 4 CHAPTER 10: ADMINISTRATION, ENFORCEMENT AND REMEDIES

### 5 Sections:

6 46.1001 Administration, Enforcement and Remedies.

7 46.1002 Liquidated Damages.

8 46.1003 Resolution of Subscriber Complaints.

9 46.1004 Notices.

### 10 46.1001 Administration, Enforcement and Remedies.

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

24 (b) The ~~n~~nNotice of ~~d~~deficiency may provide a reasonable time within which  
25 correction of all noted deficiencies is to be made. Some deficiencies are by their  
26 nature not curable, and no time period to correct or remedy such deficiency shall be  
27 given in the ~~n~~nNotice of ~~d~~deficiency.

28 (c) The Director shall review the ~~grantee's~~Grantee's response to the ~~n~~nNotice

1 of ~~e~~Deficiency. If the Director determines that the grantee~~Grantee~~ has not cured the  
2 deficiency, or if there is no cure period provided in the ~~a~~Notice of ~~e~~Deficiency given the  
3 nature of the deficiency, the Director shall either:

4 (1) Refer the matter directly to the Board for decision pursuant to  
5 ~~Subdivision-subsection~~ (d) ~~of this Section~~; or

6 (2) Decide the matter and notify the grantee~~Grantee~~ of that decision,  
7 in writing.

8 (A) The decision of the Director may be to terminate the  
9 ~~franchise-agreement~~Franchise Agreement or may be to impose some lesser sanction;

10 (B) The decision of the Director shall be final and binding on  
11 grantee~~Grantee~~ unless the grantee~~Grantee~~ files a "~~a~~Notice of ~~a~~Appeal" with the  
12 Director within 30 days of receipt of the Director's decision. The ~~a~~Notice of ~~a~~Appeal  
13 shall be in writing, shall contain a detailed and precise statement of the basis for the  
14 appeal, and shall be accompanied by the fee, if any, which is applicable to the filing of  
15 such an appeal.

16 (C) Within ~~ten~~10 working days of receipt of a ~~a~~Notice of  
17 ~~a~~Appeal, the Director shall either refer the appeal to the Board for proceedings in  
18 accordance with ~~Subdivision-subsection~~ (d) ~~of this Section~~, or refer the matter to a  
19 hearing officer for proceedings pursuant to Chapter 27 of Division 2 of Title 1 of this  
20 Code.

21 (d) (1) Should the Director refer the ~~a~~Notice of ~~e~~Deficiency to the Board in  
22 the first instance, or if the matter reaches the Board pursuant to a ~~a~~Notice of ~~a~~Appeal,  
23 the Board shall either:

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

26 (B) Set the matter for hearing.

27 (2) If the Board sets the matter for hearing:

28 (A) The Board shall give grantee~~Grantee~~, and any interested

1 ~~person~~Person requesting the same, 14 days written notice of the time and place of the  
2 public hearing. At the hearing, the Board shall consider the report of the Director  
3 indicating the deficiencies, and shall give the ~~grantee~~Grantee, or its representatives  
4 and any other interested ~~person~~Person, a reasonable opportunity to be heard.

5 (B) Based on the evidence presented at the public hearing, the  
6 Board shall decide the appropriate action to be taken. If, based upon the record, the  
7 Board determines that as noted in the ~~n~~Notice of ~~d~~Deficiency, the ~~grantee's~~Grantee's  
8 performance of the ~~solid-waste-handling~~Solid Waste Handling services authorized or  
9 required in its ~~franchise-agreement~~Franchise Agreement, or any of its other actions,  
10 are not in conformity with the provisions of the Franchise ~~agreement~~Agreement, the  
11 provisions of this Code, the requirements of the California Department of Resources  
12 Recycling and Recovery, or its successor agency, including but not limited to,  
13 requirements for source reduction and recycling (as to the waste stream subject to the  
14 ~~franchise-agreement~~Franchise Agreement) or any other applicable ~~F~~Federal, ~~S~~State, or  
15 local law or regulation, including but not limited to the laws governing collection,  
16 transfer, storage and/or disposal of ~~solid-waste~~Solid Waste, then the Board, in the  
17 exercise of its sole discretion, may terminate the ~~franchise-agreement~~Franchise  
18 Agreement immediately or impose such lesser sanction as it deems appropriate. The  
19 decision of the Board shall be final and conclusive.

20 (e) Grantee's performance under its ~~franchise—agreement~~Franchise  
21 Agreement is not excused during the period of time prior to the Director's or the  
22 Board's final determination, as the case may be, regarding the validity of, and  
23 appropriate response to, the deficiencies noted in the ~~n~~Notice of ~~d~~Deficiency.

24 (f) In the event ~~grantee:~~Grantee: (i) has received a ~~n~~Notice of ~~d~~Deficiency  
25 and fails to perform ~~solid-waste-handling~~Solid Waste Handling services; or (ii) has had  
26 its ~~franchise-agreement~~Franchise Agreement terminated; the County, acting through  
27 the ~~Department~~Division, reserves the right, in addition to all other rights available to the  
28 County, to take any one or combination of the following actions:

1           (1) To rent or lease from ~~grantee~~Grantee, at its respective fair and  
2 reasonable rental value, all or any part of the ~~grantee's~~Grantee's equipment (including  
3 collection containers utilized by ~~subscribers~~Subscribers and office equipment and  
4 billing programs), equipment yard and office utilized by ~~grantee~~Grantee in providing the  
5 ~~solid waste handling~~Solid Waste Handling services required under its ~~franchise~~  
6 ~~agreement.~~Franchise Agreement. The County may rent or lease such equipment and  
7 real property for a period not to exceed ~~six~~6 months, for the purpose of performing the  
8 ~~solid waste handling~~Solid Waste Handling services, or any part thereof, which  
9 ~~grantee~~Grantee is (or was) obligated to provide pursuant to its ~~franchise~~  
10 ~~agreement.~~Franchise Agreement. The County may use said rented equipment and  
11 real property to directly perform such ~~solid waste handling~~Solid Waste Handling service  
12 or to assign it to some other ~~grantee~~Grantee or ~~person~~Person to act on the County's  
13 behalf. Grantee shall be held responsible for the costs to insure the County or its  
14 assignee from all liability resulting from the operation of ~~grantee's~~Grantee's equipment.  
15 In the case of equipment or real property not owned by ~~grantee,~~granteeGrantee,  
16 Grantee shall assign to the County, to the extent ~~grantee~~Grantee is permitted to do so  
17 under the instruments pursuant to which ~~grantee~~Grantee possesses such equipment or  
18 real property, the right to possess the equipment or real property.

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

27           (3) If the County exercises its rights under this ~~Subdivisions~~subsection,  
28 the County shall pay or owe ~~grantee~~Grantee the reasonable rental value of the

1 equipment and real property so used for the period of the County's possession thereof.  
2 The County may offset any amounts due to ~~grantee~~Grantee pursuant to this provision  
3 against any amounts due to County from ~~grantee~~Grantee.

4 (4) All revenues owed by ~~subscribers~~Subscribers which are  
5 attributable to services performed by or at the direction of the County during County's  
6 assumption of ~~grantee's solid waste handling~~Grantee's Solid Waste Handling duties  
7 shall be billed by and paid to the County. To the extent ~~grantee~~Grantee receives such  
8 revenue after County's assumption of ~~grantee's solid waste handling~~Grantee's Solid  
9 Waste Handling duties, ~~grantee~~Grantee shall pay such revenue to County promptly  
10 after receipt thereof (or promptly after County has performed the services related to  
11 such revenue, if the revenue was received by the Grantee prior to the County's  
12 assumption of duties) and ~~grantee~~Grantee shall be deemed to have assigned to  
13 County all of ~~grantee's~~Grantee's right and interest to any such revenues.

14 (g) The County rights set forth in this ~~§~~section are in addition to, and not in  
15 limitation of, any other powers or rights available to the County upon failure of  
16 ~~grantee~~Grantee to perform its obligations under ~~this~~-Division 6 or its Franchise  
17 ~~agreement~~Agreement. Further, by entering into its ~~franchise agreement~~Franchise  
18 Agreement issued pursuant to ~~this~~-Division 6 each ~~grantee~~Grantee acknowledges that  
19 its violation of the terms of ~~this~~-Division 6 or its breach of the terms of its ~~franchise~~  
20 ~~agreement~~Franchise Agreement shall cause the County to suffer irreparable injury and  
21 damages sufficient to support injunctive relief to enforce the provisions of the ~~franchise~~  
22 ~~agreement~~Franchise Agreement, and to enjoin the breach thereof.

23 (h) This Section shall not apply to violations or deficiencies which fall within  
24 the sole jurisdiction of the County's Department of Public Health, Division of  
25 Environmental Health Services under ~~grantee's~~Grantee's required ~~health and safety~~  
26 ~~permit~~Health And Safety Permit and which are not, and do not become, violations or  
27 deficiencies under ~~this~~-Division 6.

28 **46.1002 Liquidated Damages.**

1 (a) Each ~~franchise agreement~~Franchise Agreement shall provide for a  
2 process to establish that ~~grantee~~Grantee has met its service obligations under the  
3 ~~franchise agreement~~Franchise Agreement and shall provide a schedule of liquidated  
4 damages for each violations or breach which has been verified to the satisfaction of the  
5 ~~Department~~Division.

6 (b) A high level of collection service quality and ~~subscriber~~Subscriber  
7 satisfaction and therefore consistent and reliable service, is of utmost importance to the  
8 County and the ~~solid waste handling~~Solid Waste Handling services  
9 ~~subscriber~~Subscriber. County will have considered and relied on ~~grantee's~~Grantee's  
10 representations as to its quality of service commitment in approving any ~~franchise~~  
11 ~~agreement~~Franchise Agreement, and any violation or breach by ~~grantee~~Grantee of its  
12 ~~solid waste handling~~Solid Waste Handling service obligations referenced in this  
13 ~~S~~section represents a loss of bargain to the County. The ~~grantee~~Grantee further  
14 acknowledges that quantified standards of performance are necessary and appropriate  
15 to ensure such consistent and reliable collection service, and if ~~grantee~~Grantee fails to  
16 meet service obligations referenced in this ~~S~~section, County will suffer damages  
17 (including but not limited to, its ~~subscribers~~Subscribers inconvenience; complaints by  
18 ~~subscribers~~Subscribers; lost Board and staff time; and loss of bargain) and that it is  
19 and will be impracticable and extremely difficult to ascertain and determine the value  
20 thereof. Therefore, the County and ~~grantee~~Grantee acknowledge that the liquidated  
21 damages established by schedules to each ~~franchise agreement~~Franchise Agreement,  
22 represent a reasonable estimate of the amount of such damages, considering all of the  
23 circumstances, including the relationship of the amount of the liquidated damages to  
24 the range of harm to County that reasonably could be anticipated and the anticipation  
25 that proof of actual damages would be extremely costly and inconvenient for both the  
26 ~~grantee~~Grantee and County. By entering into its ~~franchise agreement~~Franchise  
27 Agreement, the ~~grantee~~Grantee will specifically affirm the accuracy of the statements  
28 made relating to liquidated damages and the fact that ~~grantee~~Grantee will have had

1 ample opportunity to consult with legal counsel and obtain an explanation of the  
2 liquidated damage provision contained therein.

3 (c) The rights of the County set forth in this ~~S~~section are in addition to, and  
4 not a limitation on, any other rights which County may have against ~~grantee~~Grantee for  
5 the failure to observe any condition or term of ~~this~~—Division 6 or its ~~franchise~~  
6 ~~agreement~~Franchise Agreement, including the violations or breaches of same set forth  
7 in this ~~S~~section for which liquidated damages are provided.

8 **46.1003 Resolution of Subscriber Complaints.**

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

10 (a) A ~~subscriber~~Subscriber dissatisfied with ~~grantee's~~Grantee's decision  
11 regarding a complaint may ask the Director to review the complaint. To obtain this  
12 review, the ~~subscriber~~Subscriber may request County review within 30 days of receipt  
13 of ~~grantee's~~Grantee's response to the complaint, or within 45 days of submitting the  
14 complaint to the ~~grantee~~Grantee, if the ~~grantee~~Grantee has failed to respond to the  
15 complaint. The Director may extend the time to request the County's review for good  
16 cause.

17 (b) Before reviewing the complaint, the Director shall refer it to the  
18 ~~grantee~~Grantee. If the ~~grantee~~Grantee fails to cure the complaint within ~~ten~~10 days  
19 after such referral, the Director shall review the complaint and determine if further  
20 action is warranted. The Director may request written statements from the  
21 ~~grantee~~Grantee and ~~subscriber~~Subscriber, or oral presentations or both written and  
22 oral presentations.

23 (c) The Director shall determine if the ~~subscriber's~~Subscriber's complaint is  
24 justified, and if so, what remedy, if any, shall be applied. The remedy provided to the  
25 ~~subscriber~~Subscriber under this ~~S~~section shall be limited to a refund of  
26 ~~subscriber~~Subscriber charges related to the period of violation of any of the terms of  
27 ~~this~~—Division 6 or of the breach of any term of the applicable ~~franchise~~  
28 ~~agreement~~Franchise Agreement. In addition to any other remedy of County

1 contained in this ~~S~~section, County may impose liquidated damages of up to one  
2 hundred dollars (\$100.00) payable to the County for any single event or series of  
3 related events, or actual damages as demonstrated during the resolution procedure.

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

9 (e) This Section shall not apply to disputes involving the implementation of  
10 the ~~total rate~~Total Rate approved by the Board or the adjustments thereto specifically  
11 authorized by ~~this~~-Division 6.

12 **46.1004 Notices.**

13 Except as otherwise required by governing law, any notice, information, request  
14 or reply (“notice”) required or permitted to be given under the provisions of ~~this~~-Division  
15 6 shall be in writing and shall be given or served either personally or by mail. If given  
16 or served by mail, such notice shall be deemed sufficiently given if: (1) (i) deposited in  
17 the United States mail, certified mail, return receipt requested, postage prepaid, or (ii)  
18 sent by express mail, Federal Express, or other similar overnight service, provided  
19 proof of service is available; and (2) addressed to (i) the ~~grantee~~Grantee at its most  
20 recent address of record with the ~~Department~~Division or (ii) to the Director at the then-  
21 current address of the ~~Department~~Division, as the case may be.

22  
23 **CHAPTER 11: PENALTIES FOR VIOLATION**

24 **Section:**

25 46.1101 Penalties for Violation.

26 **46.1101 Penalties for Violation.**

27 A violation of ~~this~~-Division 6 is an infraction punishable as provided in section  
28 11.0201 of this Code. Each and every day constitutes a separate violation of this

1 provision.

2  
3 **CHAPTER 12: AMENDMENT**

4 **Section:**

5 46.1201 Amendment.

6 **46.1201 Amendment.**

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

1 provisions of section 46.0301(d) of this Code.

2  
3 SECTION 3. The Board of Supervisors declares that it would have adopted this  
4 ordinance and each section, sentence, clause, phrase, or portion of it irrespective of  
5 the fact that any one or more sections, subsections, clauses, phrases or portions of it  
6 be declared invalid or unconstitutional. If for any reason any portion of this ordinance is  
7 declared invalid or unconstitutional, then all other provisions of it shall remain valid and  
8 enforceable.

9  
10 SECTION 4. This Ordinance shall take effect thirty (30) days from the date of  
11 adoption.

12 \_\_\_\_\_  
CURT HAGMAN, Chairman  
13 Board of Supervisors

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

16 LYNNA MONELL, Clerk of the  
17 Board of Supervisors

18  
19  
20 \_\_\_\_\_

21  
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28

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

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 \_\_\_\_\_ day of \_\_\_\_\_, 2020,  
7 at which meeting were present Supervisors: \_\_\_\_\_

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

10 AYES: SUPERVISORS:

11 NOES: SUPERVISORS:

12 ABSENT: SUPERVISORS:

13 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official  
14 seal of the Board of Supervisors this \_\_\_\_ day of \_\_\_\_\_, 2020.

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

19 \_\_\_\_\_  
20 Deputy

21 Approved as to Form:

22 MICHELLE D. BLAKEMORE, County Counsel

23 By: \_\_\_\_\_  
24 JOLENA E. GRIDER  
25 Deputy County Counsel

26 Date: \_\_\_\_\_  
27  
28