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An ordinance of San Bernardino County, State of California, to amend Section 16.0222A of Title 1, Division 6, Chapter 2 of the San Bernardino County Code relating to the Refuse Franchise Fee and to amend Title 4, Division 6, Chapters 1, 2, 3, 4, 10 and 14 of the San Bernardino County Code, relating to Solid Waste Handling Franchise definitions, waiver requirements, Refuse Franchise Fee, and clean-up of previously amended language.

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

SECTION 1. Title 1, Division 6, Chapter 2, Section 16.0222A of the San Bernardino County Code is amended to read as follows:

Section 16.0222A Refuse Franchise Fee.

- (a) Each grantee providing solid waste handling services under a franchise agreement entered into pursuant to the provisions of Division 6 of Title 4 of this Code shall pay a franchise fee to the County. The franchise fee shall be as specified in the individual Franchise Agreement or by multiplying the gross receipts less disposal charges collected by each grantee under its franchise agreement by ten percent, whichever is greater.
- (b) The franchise fee as required under this section shall be paid to the County for each month within 30 days after the end of said month.
- (c) As used in this section, the following terms shall have the meanings set forth in Division 6 of Title 4 of the San Bernardino County Code, as same may be amended from time to time.
- (1) Franchise agreement;
 - (2) Franchise fee;
 - (3) Grantee; and
 - (4) Solid waste handling services.

SECTION 2. Title 4, Division 6, Chapter 1 of the San Bernardino County Code is amended to read as follows:

CHAPTER 1: PURPOSES AND REQUIRED AUTHORIZATIONS

Section

46.0101 Purposes.

46.0102 Required Authorizations.

Section 46.0101 Purposes.

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

(a) To allow for the establishment of solid waste handling franchises within the unincorporated portion of San Bernardino County, pursuant to authority cited in Government Code section 25827, in Public Resources Code sections 40057 through 40059 or 49200 through 49205, in Code of Regulations, Title 14, sections 17332 and 17333, and any other applicable State or local law. The implementation of franchises through entering into franchise agreements with grantees will assist the County:

(1) In meeting its obligation to provide solid waste handling services as required in Public Resources Code section 40057;

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

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

(c) To ensure that programs and service Levels for solid waste handling within the

- 1 unincorporated spheres of influence of incorporated cities and towns will replicate,
2 to the extent possible, programs and service levels of adjacent cities and towns;
- 3 (d) To minimize, to the extent possible, disruption of programs and services to
4 unincorporated residents in the event of annexations;
- 5 (e) To help quantify the waste stream from the unincorporated County in order to
6 comply with Diversion requirements of AB 939, as may be amended;
- 7 (f) To provide by agreement, an opportunity for predictable levels of waste at County
8 landfills to ensure adequate funding for closure/post-closure activities; and
- 9 (g) To ensure compliance with the mandatory organic waste disposal reduction
10 requirements of SB 1383.

11 **Section 46.0102 Required Authorizations.**

- 12 (a) Except as otherwise provided in subdivisions (b) and (c) of this section, no person
13 shall engage in, solicit, contract for or provide, in the unincorporated County, solid
14 waste handling services without such person having and maintaining:
- 15 (1) A health and safety permit authorizing the collection, transfer or removal of
16 refuse (within the meaning of Article 2 of Chapter 8 of Division 3 of Title 3
17 of this Code); and
- 18 (2) (A) With respect to a franchise area, a franchise agreement authorizing
19 the person to provide the specified solid waste handling service
20 being provided; or
- 21 (B) With respect to a refuse collection area, or any portion thereof which
22 is not a franchise area subject to a franchise agreement, a Class A
23 permit or temporary permit as provided for in Article 2.1 of Chapter 8
24 of Division 3 of Title 3 of this Code.
- 25 (b) (1) Notwithstanding Subdivision (a), above, any person may engage in or
26 provide, in the unincorporated County, those solid waste handling services
27 related to performing as a garbage hauler (within the meaning of Chapter 8
28 of Division 3 of Title 3 of this Code), without such person being required to

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

4 (2) Notwithstanding Subdivision (a), above, any person may engage in or
5 provide, in the unincorporated County, those solid waste handling services
6 which are related solely to one of the types of solid waste set forth below,
7 without such person being required to have or maintain a franchise
8 agreement or the Class A permit or temporary permit provided for in Article
9 2.1 of Chapter 8 of Division 3 of 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 property
14 owner.

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

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

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

1 of such materials is not a sale or donation within the meaning of
2 Division 6.

3 (H) Food waste used as animal feed. Food waste or other organic waste
4 diverted from disposal by delivery to hog farms or otherwise used as
5 animal feed, pursuant to the provisions of Public Resource Code
6 section 40059.4

7 (I) Edible food recovered for human consumption. Edible food that is
8 collected from a generator by other person(s), such as a person from
9 a food recovery organization or food recovery service, for the
10 purposes of food recovery; or that is transported by the generator to
11 another person(s), such as a person from a food recovery
12 organization, for the purposes of food recovery, regardless of
13 whether the generator donates, sells, or pays a fee to the other
14 person(s) to collect or receive the edible food from the generator.

15 (J) Exempt persons. A person or entity that has been given an
16 exemption by the County from the uniform handling collection
17 ordinance.

18 (3) Subdivision (b)(1), above, shall have no application in any franchise area to
19 the extent that the County provides in the franchise agreement(s)
20 establishing such franchise area that any or all of the solid waste handling
21 services related to either performing as a garbage hauler or to the types of
22 solid waste enumerated in Subdivision (b)(2) are to be provided pursuant to
23 a franchise agreement or agreements; so long as the person and/or the
24 solid waste handling service being provided do not otherwise fit within one
25 or more of the exemptions provided in Subdivision (c) of this Section. The
26 Division shall maintain a list of all areas of the County within which a
27 franchise agreement is required in order to provide any of the solid waste
28 handling services which are related to performing as a garbage hauler or

1 solely to a type of solid waste enumerated in Subdivision (b)(2).

2 (c) The provisions of Subdivisions (a) and (b)(3) of this Section shall not apply to those
3 persons and/or solid waste handling services specified in section 33.0843 of this
4 Code.

5
6 SECTION 3. Title 4, Division 6, Chapter 2 Sections 46.0201(q), (tt) through (rrr),
7 (lllll), and (mmmmm) of the San Bernardino County Code are amended to read:

8 (q) CHANGE IN LAW. The imposition (or removal), after the establishment of a total
9 rate relative to a franchise agreement, of any duty or burden imposed upon the
10 grantee in the performance of the solid waste handling services required of it under
11 its franchise agreement which is or becomes additional to (or is subtracted from)
12 or different from those duties required or contemplated in its franchise agreement,
13 or which must be performed in a different manner from that in which it is initially
14 contemplated to be performed, and which results from any of the following:

15 (1) The enactment, issuance, adoption, repeal, amendment or modification of
16 any Federal, State or local law, statute, ordinance or regulation.

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

24 (3) CHANGE IN LAW does not include any of the items noted in Subdivisions
25 (1) or (2) above, which relate to any tax, [other than a business license tax
26 imposed by the County on a grantee's performance of solid waste handling
27 services under its franchise agreement] including without limit, any tax
28 based or measured on net or gross income, any business, payroll or

franchise tax or any employment tax.

...

(tt) DWELLING or DWELLING UNIT. Any individual living unit in a Single-Family or Multi-Family structure or building, a mobile home, or a motor home located on a permanent site intended for, or capable of being utilized for, Residential living other than a hotel or motel.

(uu) EDIBLE FOOD. Food intended for human consumption, or as otherwise defined in 14 CCR section 18982(a)(18). Edible food is not solid waste if it is recovered and not discarded. Nothing in this Chapter or in 14 CCR Division 7, Chapter 12 requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code.

(vv) ELECTRONIC WASTE. Electronic waste materials generated by residential or commercial subscribers that render the items hazardous depending upon their condition and density, such as, but not limited to, televisions, computer monitors containing cathode ray tubes (CRTs), cell phones, scanners, fax machines and other items as determined by applicable laws and regulations.

(ww) ENFORCEMENT ACTION. An action of the County to address noncompliance with this Chapter including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

(xx) EXCLUDED WASTE. Hazardous substance, hazardous waste, infectious waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the County and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing or disposal, be a violation of local, State or Federal law, regulation or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in County's or its designee's reasonable opinion would present a significant risk to human health or the environment, cause a

- 1 nuisance or otherwise create or expose the County, or its designee, to potential
2 liability; but not including de minimis volumes or concentrations of waste of a type
3 and amount normally found in single-family or multifamily solid waste after
4 implementation of programs for the safe collection, processing, recycling,
5 treatment, and disposal of batteries and paint in compliance with California Public
6 Resources Code section 41500 and 41802. Excluded waste does not include used
7 motor oil filters, household batteries, universal wastes, and/or latex paint when
8 such materials are defined as allowable materials for Collection through the
9 County's collection programs and the generator or customer has properly placed
10 the materials for collection pursuant to instructions provided by the County for
11 collection services.
- 12 (yy) FOOD RECOVERY. Actions to collect and distribute food for human consumption
13 which otherwise would be Disposed, as defined in 14 CCR section 18982(a)(24).
- 14 (zz) FOOD RECOVERY ORGANIZATION. An entity that primarily engages in the
15 collection or receipt of edible food and distributes that edible food to the public for
16 food recovery either directly or through other entities, including, but not limited to:
- 17 (1) A food bank as defined in section 113783 of the Health and Safety Code;
18 (2) A nonprofit charitable organization as defined in section 113841 of the
19 Health and Safety Code; and
20 (3) A nonprofit charitable temporary food facility as defined in section 113842
21 of the Health and Safety Code.
- 22 (aaa) FOOD RECOVERY SERVICE. A person or entity that collects and transports
23 edible food to a food recovery organization or other entities for food recovery.
- 24 (bbb) FOOD SCRAPS. All food such as, but not limited to, fruits, vegetables, meat,
25 poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and
26 eggshells. Food scraps excludes fats, oils, and grease when such materials are
27 source separated from other solid waste food scraps.
- 28 (ccc) FOOD-SOILED PAPER. Compostable paper material that has come in contact

- 1 with food or liquid, such as, but not limited to, compostable paper plates, paper
2 coffee cups, napkins, pizza boxes, and milk cartons.
- 3 (ddd) FOOD WASTE. Source separated food scraps, food-soiled paper, and
4 compostable plastics. Food waste is a subset of organic waste.
- 5 (eee) FRANCHISE AGREEMENT. The agreement entered into between the County and
6 the grantee under the provisions of section 46.0301 which authorizes/requires the
7 grantee to provide solid waste handling services in a specified franchise area.
- 8 (fff) FRANCHISE AREA. The geographic territory in the unincorporated County for
9 which the Grantee has been granted a franchise to provide solid waste handling
10 services, as specified in each franchise agreement.
- 11 (ggg) FRANCHISE FEE. The fee paid to the County by the grantee in consideration of
12 the granting of a franchise pursuant to this Division.
- 13 (hhh) GARBAGE HAULER. Any person or entity who collects garbage, unmixed with
14 rubbish, and transports it to a commercial garbage-feeding hog ranch or to a
15 commercial establishment for processing for use in livestock feeding pursuant to
16 the requirements in Public Resources Code section 40059.4(b)(1-5).
- 17 (iii) GENERATOR. Any person who first discards materials, and by that act makes
18 discarded materials subject to regulation under federal, State, or local regulations.
- 19 (jjj) GRANTEE. A person granted a franchise pursuant to a franchise agreement.
- 20 (kkk) GRAY/BLACK CONTAINER. The same meaning as in 14 CCR section 18982.2(a)
21 and shall be used for the purpose of storage and collection of gray/black container
22 waste or mixed waste.
- 23 (III) GRAY/BLACK CONTAINER WASTE. Solid waste that is collected in a gray/black
24 container that is part of a three-container organic waste collection service that
25 prohibits the placement of organic waste in the gray/black container as specified
26 in 14 CCR sections 18984.1(a) and (b) or as defined in 14 CCR section
27 17402(a)(6.6). For the purposes of this franchise agreement, gray/black container
28 waste includes carpet and textiles.

(mmm) GREEN CONTAINER. The same meaning as in 14 CCR section 18982.2(a) and shall be used for the purpose of storage and collection of SSGCOW.

(nnn) GREEN WASTE. Discarded materials consisting of grass clippings, leaves, branches, tree trunks and other vegetative matter not more than six inches in diameter or four feet in length.

(ooo) GROSS RECEIPTS. All monies received by grantee for providing the solid waste handling services specified in its franchise agreement.

(ppp) GROSS RECEIPTS LESS DISPOSAL CHARGES. Gross receipts less that part of the monies received by the grantee that are collected from subscribers for payment of the fee imposed for disposing of the solid waste at a landfill disposal facility and the fee imposed for other operations.

(qqq) GROSS RECEIPTS FOR COMMERCIAL FOOD WASTE SERVICES. All monies received by grantee for providing the food waste handling services specified in its franchise agreement.

(rrr) GROSS RECEIPTS FOR COMMERCIAL FOOD WASTE SERVICES LESS PROCESSING COSTS. Gross receipts for commercial food waste services less that part of the monies received by the grantee that are collected from subscribers for payment of the fee imposed for processing of the food waste at an organic waste processing facility.

...

(IIII) SUBSCRIBER. Any person receiving solid waste handling services pursuant to a franchise agreement.

(mmmm) TOTAL RATE. The inclusive rate schedule attached to each franchise agreement which provides the rates to be paid to grantee by subscribers in consideration of the solid waste handling services provided by grantee under its franchise agreement.

SECTION 4. Title 4, Division 6, Chapter 3, Sections 46.0301 and 46.0302 of the

San Bernardino County Code are amended to read as follows:

46.0301 Franchise Formation and Terms.

(a) The award by the Board of a franchise for solid waste handling shall be evidenced by approval and execution of a franchise agreement. The Board may award exclusive or non-exclusive solid waste handling franchises in the unincorporated County, with or without competitive bidding, through individual franchise agreements. A franchise agreement shall be granted by the Board when it determines that public convenience and necessity are served by the award of the franchise, and where a partially or wholly exclusive franchise is awarded without competitive bidding, that the granting of such a franchise is in the best interests of County residents based on the health, safety and well-being of residents in the franchise area where the partially or wholly exclusive franchise is awarded. Each franchise agreement shall specify the specific solid waste handling services to be provided by grantee; a different grantee may be granted a franchise to provide the same, or different, solid waste handling services in the same franchise area.

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

- (1) Have, or obtain prior to the approval of the franchise agreement by the County, and maintain for the term of its franchise agreement, a current health and safety permit to the extent such a permit is required under the provisions of Article 2 of Chapter 8 of Division 3 of Title 3 of this Code in order to provide the solid waste handling services to be provided under the franchise agreement; and
- (2) Demonstrate a minimum of three years' experience in providing substantially the same type, class and extent of services as those for which the franchise is sought; and
- (3) Provide to the Director the information which is required of an applicant for a health and safety permit pursuant to § 33.0825 of this Code.

(c) (1) The terms and conditions by which the grantee shall be obligated to provide

- 1 solid waste handling services shall be as set forth in this Division 6 and, with
2 respect to the items set forth in this Subdivision (c), as set forth in the
3 franchise agreement.
- 4 (A) The franchise area, including any uniform handling area.
- 5 (B) The specific solid waste handling services to be provided by grantee,
6 including appropriate operating requirements.
- 7 (C) The total rates related to the specified solid waste handling services
8 to be provided by grantee and the method of billing its subscribers.
- 9 (2) (A) If the County and the grantee so agree, the franchise agreement may
10 specify the solid waste facility or facilities to which the grantee will
11 transport the solid waste collected pursuant to solid waste handling
12 services provided under the franchise agreement.
- 13 (B) If the County and the grantee so agree, the franchise agreement may
14 allow the County to specify a different or additional solid waste facility
15 to which the grantee will transport the solid waste collected pursuant
16 to the solid waste handling services provided under the franchise
17 agreement. In such event, the franchise agreement may contain a
18 cost per ton mile figure which sets forth the increase in the grantee's
19 demonstrable costs related to such a change.
- 20 (C) If the County and the grantee so agree, the franchise agreement may
21 specify that upon the effective date of the franchise agreement the
22 grantee waives and forgoes any other rights it might have to provide
23 solid waste handling services in other specified portions of the
24 unincorporated County, including any rights it might otherwise have
25 under Public Resources Code § 49520 or other law to receive
26 advance notice of the cancellation of any permit or other
27 authorization to provide such services.
- 28 (d) (1) The franchise agreement shall establish the initial term and any extensions.

1 Notwithstanding the forgoing, the County reserves the right to increase the
2 term or any extension if it believes that such an increase is in the best
3 interests of the subscribers being serviced by the grantee under the
4 franchise agreement.

5 (2) A franchise agreement may provide for automatic extensions; however, the
6 Board may determine in its sole discretion that a franchise agreement shall
7 not be extended. The action to not extend a franchise agreement must be
8 taken no later than 60 days prior to the automatic renewal date of the
9 franchise agreement. Such action shall terminate the automatic renewal
10 and extension provision only and such franchise agreement shall remain in
11 effect for the balance of the term then outstanding.

12 (e) The franchise agreement shall set forth the total rate (i.e., the inclusive schedule
13 of rates to be paid to grantee for solid waste handling services provided to
14 subscribers under its franchise agreement). The total rate shall be subject to
15 review and adjustment pursuant to the provisions of this Division 6. If and when
16 adjustments to the total rate are made pursuant to the provisions of this Division
17 6, the Director shall cause a certification of each such adjustment to be lodged with
18 the County's official copy of the franchise agreement. No total rate or adjustment
19 to same shall be implemented until approved by the Board or by the Director, as
20 provided in this Division 6.

21 (f) Non-performance by grantee of the terms and conditions contained in this Division
22 6 or in its franchise agreement, or the occurrence of one or more of the events set
23 forth in § 33.0827 of this Code, shall provide grounds for the loss of or limitation
24 upon the grantee's right to provide solid waste handling services pursuant to its
25 franchise agreement and for the termination of its franchise agreement. Grantee
26 shall perform no solid waste handling services under its franchise agreement
27 without possessing the required health and safety permit.

28 (g) Except when otherwise required by applicable Federal, State or local law, the

terms and conditions of this Division 6 shall prevail over any inconsistent provisions of a franchise agreement.

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

Section 46.0302 Franchise Fee

- (a) Pursuant to Section 16.0222A of the San Bernardino County Code, except as set forth in Subdivision (b), below, each grantee under a franchise agreement shall pay to the County a franchise fee set forth in the individual franchise agreement for the specified area or in the County Schedule of Fees, currently found at Chapter 2 of Division 6 of Title 1 of the San Bernardino County Code, whichever is greater. The payment of a franchise fee shall not limit the County's ability to establish and levy a business license tax, fees, charges, assessments, penalties, fines, and other requirements for monetary payment by the grantee to the County. Payment of franchise fee shall be made monthly. The franchise fee shall constitute a cost which grantee may recover as a part of the compensation due grantee under the franchise agreement.

- (b) In the event that a grantee under a franchise agreement in a uniform handling area offers a fee waiver program as set forth in section 46.0505 of this code, then such grantee will not be required to pay a franchise fee to the county in an amount proportionate to that waived pursuant to the Code.

SECTION 5. Title 4, Division 6, Chapter 4, Sections 46.0401 and 46.0402 are hereby amended to read:

46.0401 Compensation.

- (a) Charges for solid waste handling services (including, without limit, for use of a solid waste facility) provided to grantee's subscribers shall be paid by such service subscribers in accordance with the total rate approved by the Board in its approval or extension of the franchise agreement with grantee, as such total rate is adjusted pursuant to § 46.0402.
- (b) All charges for services rendered by a given grantee shall be uniform and non-discriminatory for the type of service provided and reasonably based upon the type and/or number of containers, type of solid waste, whether compacted or loose, number of separate pick-up points at any place of collection, placement of container(s) or distance of carry-out, frequency of collection, remote location, terrain, disposal costs, and whether residential, commercial, construction or industrial collection.
- (c) (1) In cases where grantee includes a solid waste handling services amount as a separate listing on a subscriber's bill, the County shall prescribe the amount consistent with waste generation factors established in the franchise agreement and the applicable solid waste handling services.
- (2) Grantee shall refund to each subscriber, on a pro rata basis, any advance service payments made by such subscriber for service not provided when service is discontinued by timely written notification to grantee by the subscriber. Grantee may not require written notice to be given more than 15 working (waste collection) days prior to the date on which service is desired to be discontinued.
- (3) On a quarterly basis, the County shall be allowed to furnish, for inclusion with grantee's billing, a message for the purpose of public education regarding waste disposal, recycling, or other environmental issues. If grantee mails its billing in an envelope, two of the four County messages may be in the form of a one page insert, provided the insert is: print ready

copy which conforms to grantee's billing, is delivered to grantee by the Division 15 working (waste collection) days in advance of grantee's billing date and does not cause an increase in the postal rates payable by grantee for mailing its billing. If the message is not in the form of an insert, it shall be printed by grantee on its bills. Such message shall not exceed 25 characters and shall be delivered to grantee by the Division 15 working (waste collection) days in advance of grantee's billing date. Grantee shall include such insert in, or print such message on, each subscriber's next billing.

46.0402 Adjustment to Total Rate.

The following annual and special rate adjustments shall be made to the total rate provided for in a franchise agreement. However, no rate adjustment shall be implemented for or during any period of time when the affected grantee is not in substantial compliance with all material provisions of the County Code or the franchise agreement.

- (a) Cost of Living Adjustment. A cost of living adjustment set forth in a franchise agreement should be based on appropriate consumer or product price indices and the adjustment shall be a pass through of 100 percent of any increase or decrease as a part of the total rate.
- (b) Landfill Disposal Facility Fee. The landfill disposal facility fee adjustment shall be the pass through of 100 percent of any increase or decrease in the fee charged to the grantee for use of a landfill disposal facility approved for use by the Division, calculated on a per subscriber basis, and shall be effective as of the date of the change to such fee.
- (c) Franchise Fee Adjustment. The franchise fee adjustment shall be the pass through of 100 percent of any increase or decrease in the franchise fee and shall be effective as of the date the franchise fee increase or decrease is payable by the grantee.
- (d) Extraordinary Adjustment. The franchise agreement may allow for adjustments to

1 the total rate to account for infrequent extraordinary events which, although they
2 do not prevent either party from performing and do not implicate force majeure
3 provisions, they nevertheless increase the cost of providing service such that
4 grantee's compensation and the rate adjustment mechanism provided in the
5 franchise agreement result in grantee's suffering losses which are substantially
6 outside the commercially reasonable expectations of the parties. In no event shall
7 any extraordinary adjustment be effective prior to the Board's approval of an
8 amendment to the applicable franchise agreement.

9 (e) Change in Service Level Adjustments.

10 (1) The total rate shall be increased (or decreased) by 100 percent of the
11 increase (or decrease) or incremental increase (or incremental decrease),
12 as the case may be, in the demonstrable costs (i.e., on any direct or indirect
13 cost, whether fixed or variable) associated with the change in the level of
14 the solid waste handling services which may be required of, or agreed to
15 by, a grantee. A change in service level adjustment shall be effective on
16 and after the actual date of the requirement to or agreement to change
17 operations which results from the change in service, but, absent the consent
18 of the division, not sooner than the effective date of the change in service.
19 In no event shall any change in service level adjustment be effective prior
20 to the Board's approval of an amendment to the applicable franchise
21 agreement.

22 (2) In the event that the Division and the grantee claiming to be affected by the
23 change in service level cannot agree on either the existence, or the effect
24 on demonstrable costs, of a change in service level, the dispute resolution
25 provisions of the franchise agreement shall apply.

26 (f) Change in Law Adjustments.

27 (1) The total rate shall be increased (or decreased) by 100 percent of the
28 increase (or decrease) or incremental increase (or incremental decrease),

1 as the case may be, in the demonstrable costs (i.e., on any direct or indirect
2 cost, whether fixed or variable) associated with the change in the manner
3 or nature of conducting solid waste handling services necessitated by a
4 change in law. A change in law adjustment shall be effective on and after
5 the actual date of the change in operations which resulted from the change
6 in law, but, absent the consent of the Division, not sooner than the effective
7 date of the change in law. In no event shall any change in law adjustment
8 be effective prior to the Board's approval of an amendment to the applicable
9 franchise agreement.

- 10 (2) In the event that the Division and the grantee claiming to be affected by the
11 change in law cannot agree on either the existence, or the effect on
12 demonstrable costs, of a change in law, the dispute resolution provisions of
13 the franchise agreement shall apply.

14
15 SECTION 5. Title 4, Division 6, Chapter 10, Sections 46.1001 and 46.1002 are
16 amended to read as follows:

17 **46.1001 Administration, Enforcement and Remedies.**

- 18 (a) If the Director determines at any time that the grantee's performance of the solid
19 waste handling services authorized or required in its franchise agreement, or any
20 of its other actions, are not in conformity with the provisions of the franchise
21 agreement, the provisions of this Code, the requirements of the CalRecycle, or its
22 successor agency, including but not limited to, requirements for source reduction
23 and recycling (as to the waste stream subject to the franchise agreement) or any
24 other applicable Federal, State, or local law or regulation, including but not limited
25 to, the laws governing collection, transfer, storage and/or disposal of solid waste,
26 the Director will notify grantee in writing of such deficiencies ("notice of deficiency")
27 as shall be defined in the franchise agreement with the grantee.
- 28 (b) The notice of deficiency may provide a reasonable time within which correction of

1 all noted deficiencies is to be made. Some deficiencies are by their nature not
2 curable, and no time period to correct or remedy such deficiency shall be given in
3 the notice of deficiency.

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

8 (1) Refer the matter directly to the Board for decision pursuant to Subdivision
9 (d); or

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

11 (A) The decision of the Director may be to terminate the franchise
12 agreement or may be to impose some lesser sanction;

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

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

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

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

- 1 (B) Set the matter for hearing.
- 2 (2) If the Board sets the matter for hearing:
- 3 (A) The Board shall give grantee, and any interested person requesting
- 4 the same, 14 days written notice of the time and place of the public
- 5 hearing. At the hearing, the Board shall consider the report of the
- 6 Director indicating the deficiencies, and shall give the grantee, or its
- 7 representatives and any other interested person, a reasonable
- 8 opportunity to be heard.
- 9 (B) Based on the evidence presented at the public hearing, the Board
- 10 shall decide the appropriate action to be taken. If, based upon the
- 11 record, the Board determines that as noted in the notice of
- 12 deficiency, the grantee's performance of the solid waste handling
- 13 services authorized or required in its franchise agreement, or any of
- 14 its other actions, are not in conformity with the provisions of the
- 15 franchise agreement, the provisions of this Code, the requirements
- 16 of the CalRecycle, or its successor agency, including but not limited
- 17 to, requirements for source reduction and recycling (as to the waste
- 18 stream subject to the franchise agreement) or any other applicable
- 19 Federal, State, or local law or regulation, including but not limited to
- 20 the laws governing collection, transfer, storage and/or disposal of
- 21 solid waste, then the board, in the exercise of its sole discretion, may
- 22 terminate the franchise agreement immediately or impose such
- 23 lesser sanction as it deems appropriate. The decision of the Board
- 24 shall be final and conclusive.
- 25 (e) Grantee's performance under its franchise agreement is not excused during the
- 26 period of time prior to the Director's or the Board's final determination, as the case
- 27 may be, regarding the validity of, and appropriate response to, the deficiencies
- 28 noted in the notice of deficiency.

1 (f) In the event grantee: (i) has received a notice of deficiency and fails to perform
2 solid waste handling services; or (ii) has had its franchise agreement terminated;
3 the County, acting through the Division, reserves the right, in addition to all other
4 rights available to the County, to take any one or combination of the following
5 actions:

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

24 (2) As used in this Subdivision, means the rate for such equipment as listed in
25 the State Department of Transportation publication, Labor Surcharge and
26 Equipment Rental Rates, in effect at the time the County leases the
27 equipment. If a particular piece of equipment is not listed in said publication
28 or if said publication is not current, the reasonable rental value may be

- 1 established by the Director by any equitable alternative method. For real
2 property, the REASONABLE RENTAL VALUE means its market rental rate
3 as established by the Director using an equitable method.
- 4 (3) If the County exercises its rights under this Subdivision, the County shall
5 pay or owe grantee the reasonable rental value of the equipment and real
6 property so used for the period of the County's possession thereof. The
7 County may offset any amounts due to grantee pursuant to this provision
8 against any amounts due to County from grantee.
- 9 (4) All revenues owed by Subscribers which are attributable to services
10 performed by or at the direction of the County during County's assumption
11 of grantee's solid waste handling duties shall be billed by and paid to the
12 County. To the extent grantee receives such revenue after County's
13 assumption of grantee's solid waste handling duties, Grantee shall pay such
14 revenue to County promptly after receipt thereof (or promptly after County
15 has performed the services related to such revenue, if the revenue was
16 received by the grantee prior to the County's assumption of duties) and
17 grantee shall be deemed to have assigned to County all of grantee's right
18 and interest to any such revenues.
- 19 (g) The County rights set forth in this Section are in addition to, and not in limitation
20 of, any other powers or rights available to the County upon failure of grantee to
21 perform its obligations under Division 6 or its franchise agreement. Further, by
22 entering into its franchise agreement issued pursuant to Division 6 each grantee
23 acknowledges that its violation of the terms of Division 6 or its breach of the terms
24 of its franchise agreement shall cause the County to suffer irreparable injury and
25 damages sufficient to support injunctive relief to enforce the provisions of the
26 franchise agreement, and to enjoin the breach thereof.
- 27 (h) This Section shall not apply to violations or deficiencies which fall within the sole
28 jurisdiction of the County's Department of Public Health, Division of Environmental

1 Health Services under Grantee's required Health and Safety Permit and which are
2 not, and do not become, violations or deficiencies under Division 6.

3 **46.1002 Liquidated Damages.**

4 (a) Each franchise agreement shall provide for a process to establish that grantee has
5 met its service obligations under the franchise agreement and shall provide a
6 schedule of liquidated damages for each violation or breach which has been
7 verified to the satisfaction of the Division.

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

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

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

8
9 SECTION 6. Title 4, Division 6, Chapter 14, Sections 46.1402, 46.1403, and
10 46.1405 of the San Bernardino County Code is amended to read as follows:

11 **Section 46.1402 De Minimis Waivers.**

12 The County may waive a commercial business' obligation (including multi-family
13 dwellings with five or more units) to comply with some or all of the SB 1383 organic waste
14 requirements of this Chapter if the commercial business provides documentation or the
15 County has evidence demonstrating that the commercial business generates below a
16 certain amount of organic waste material as described below in subsection (a).
17 Commercial businesses granted a de minimis waiver shall:

- 18 (a) Either provide documentation or confirm that the County has evidence
19 demonstrating that:

- 20 (1) The commercial business' total solid waste collection service is two cubic
21 yards or more per week and organic waste subject to collection in a blue
22 container, green container, or brown container comprises less than 20
23 gallons per week per applicable container of the business' total waste; or
24 (2) The commercial business' total solid waste collection service is less than
25 two cubic yards per week and organic waste subject to collection in a blue
26 container, green container, or brown container comprise less than ten
27 gallons per week per applicable container of the business' total waste.

- 28 (b) Notify the County if circumstances change such that the commercial business'

1 organic waste exceeds the threshold required for a de minimis waiver, in which
2 case the waiver will be rescinded.

3 **Section 46.1403 Physical Space Waivers.**

4 The County may waive a commercial business' or property owner's obligations (including
5 multi-family residential dwellings with five or more units) to comply with some or all of the
6 SB 1383 recyclables and/or organic waste collection service requirements if the County
7 has evidence from its own staff, a hauler, licensed architect, or licensed engineer
8 demonstrating that the premises lacks adequate space for the Collection containers
9 required for compliance with the SB 1383 organic waste collection requirements of this
10 Chapter.

11 **Section 46.1405 Review and Issuance of Waivers.**

12 The Director, or designee, shall have the authority to issue all waivers.
13

14 SECTION 7. The Board of Supervisors declares that it would have adopted this
15 ordinance and each section, sentence, clause, phrase, or portion of it irrespective of the
16 fact that any one or more sections, subsections, clauses, phrases or portions of it be
17 declared invalid or unconstitutional. If for any reason any portion of this ordinance is
18 declared invalid or unconstitutional, then all other provisions of it shall remain valid and
19 enforceable.
20

21 SECTION 8. This ordinance shall take effect thirty (30) days from the date of
22 adoption.
23
24

25 _____
DAWN ROWE, Chair
26 Board of Supervisors
27
28

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

4 LYNNA MONELL, Clerk of the
5 Board of Supervisors

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

4 I, LYNNA MONELL, Clerk of the Board of Supervisors of San Bernardino County,
5 State of California, hereby certify that at a regular meeting of the Board of Supervisors of
6 said County and State, held on the _____ day of _____, 20____, at which meeting
7 were present Supervisors: _____

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

10 AYES: SUPERVISORS:

11 NOES: SUPERVISORS:

12 ABSENT: SUPERVISORS:

13 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal
14 of the Board of Supervisors this ____ day of _____, 20____.

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

19 _____
20 Deputy

21 Approved as to Form:

22 TOM BUNTON
23 County Counsel

24 By: _____
25 Jolena E. Grider
26 Deputy County Counsel

27 Date: _____
28