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ORDINANCE NO. 4434

An ordinance of San Bernardino County, State of California, amending Title 4, Division 6 of the San Bernardino County Code relating to reducing short-lived climate pollutants and to add Title 3, Division 3, Chapter 15 to the San Bernardino County Code relating to organic waste disposal reduction and food recovery and to add section 14.0117 to the San Bernardino County Code relating to mulch procurement to comply with Senate Bill 1383 requirements.

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

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

DIVISION 6: SOLID WASTE HANDLING FRANCHISES AND REQUIREMENTS

CHAPTER 1: PURPOSES AND REQUIRED AUTHORIZATIONS

Section

- 46.0101 Purposes.**
- 46.0102 Required Authorizations.**

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 Facility Fee as

1 required in Public Resources Code section 40057;

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

7 (b) To help ensure that residents of the Unincorporated County receive the
8 similar quality of waste Collection and Recycling services as do those residents in the
9 incorporated cities and towns of San Bernardino County;

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

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

15 (e) To help quantify the waste stream from the Unincorporated County in order
16 to comply with Diversion requirements of AB 939, as may be amended;

17 (f) To provide by agreement, an opportunity for predictable levels of waste at
18 County landfills to ensure adequate funding for closure/post-closure activities; and

19 (g) To ensure compliance with the mandatory Organic Waste Disposal
20 reduction requirements of SB 1383.

21 **46.0102 Required Authorizations.**

22 (a) Except as otherwise provided in subdivisions (b) and (c) of this section, no
23 Person shall engage in, solicit, contract for or provide, in the Unincorporated County, Solid
24 Waste Facility Fee without such Person having and maintaining:

25 (1) A Health and Safety Permit authorizing the Collection, Transfer or
26 removal of refuse (within the meaning of Article 2 of Chapter 8 of Division 3 of Title 3 of
27 this Code); and

28 (2) (A) With respect to a Franchise Area, a Franchise Agreement

1 authorizing the Person to provide the specified Solid Waste handling service being
2 provided; or

3 (B) With respect to a refuse Collection area, or any portion thereof
4 which is not a Franchise Area subject to a Franchise Agreement, a Class A permit or
5 temporary permit as provided for in Article 2.1 of Chapter 8 of Division 3 of Title 3 of this
6 Code.

7 (b) (1) Notwithstanding Subdivision (a), above, any Person may engage in
8 or provide, in the Unincorporated County, those Solid Waste Facility Fee related to
9 performing as a Garbage Hauler (within the meaning of Chapter 8 of Division 3 of Title 3
10 of this Code), without such Person being required to have or maintain a Franchise
11 Agreement or the Class A permit or temporary permit provided for in Article 2.1 of Chapter
12 8 of Division 3 of Title 3 of this Code.

13 (2) Notwithstanding Subdivision (a), above, any Person may engage in
14 or provide, in the Unincorporated County, those Solid Waste Facility Fee which are
15 related solely to one of the types of Solid Waste set forth below, without such Person
16 being required to have or maintain a Franchise Agreement or the Class A permit or
17 temporary permit provided for in Article 2.1 of Chapter 8 of Division 3 of Title 3 of this
18 Code.

19 (A) Abandoned vehicles and parts thereof.

20 (B) Ashes.

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

22 (D) Self-generated waste or waste generated and hauled by the
23 property owner.

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

27 (F) Inert materials or demolition waste from remodeling jobs
28 which are generated as an incidental part of providing such remodeling services, provided

1 that the construction contractor is not a hauling service or Solid Waste enterprise, does
2 not separately or additionally charge for the incidental service of removing, transporting
3 or disposing (except for the tipping fee) of the inert materials or demolition waste, and
4 utilizes only his or her own employees and equipment to Collect, transport, and Dispose
5 of same.

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

10 (H) Food Waste Used as Animal Feed. Food Waste or other
11 Organic Waste Diverted from Disposal by delivery to hog farms or otherwise used as
12 animal feed, pursuant to the provisions of Public Resource Code section 40059.4

13 (I) Edible Food Recovered for Human Consumption. Edible Food
14 that is collected from a Generator by other Person(s), such as a Person from a Food
15 Recovery Organization or Food Recovery Service, for the purposes of Food Recovery; or
16 that is Transported by the Generator to another Person(s), such as a Person from a Food
17 Recovery Organization, for the purposes of Food Recovery, regardless of whether the
18 Generator donates, sells, or pays a fee to the other Person(s) to Collect or receive the
19 Edible Food from the Generator.

20 (J) Exempt Persons. A Person or entity that has been given an
21 exemption by the County from the uniform handling Collection ordinance.

22 (3) Subdivision (b)(1), above, shall have no application in any Franchise
23 Area to the extent that the County provides in the Franchise Agreement(s) establishing
24 such Franchise Area that any or all of the Solid Waste Facility Fee related to either
25 performing as a Garbage Hauler or to the types of Solid Waste enumerated in Subdivision
26 (b)(2) are to be provided pursuant to a Franchise Agreement or agreements; so long as
27 the Person and/or the Solid Waste Handling service being provided do not otherwise fit
28 within one or more of the exemptions provided in Subdivision (c) of this Section. The

1 Division shall maintain a list of all areas of the County within which a Franchise Agreement
2 is required in order to provide any of the Solid Waste Facility Fee which are related to
3 performing as a Garbage Hauler or solely to a type of Solid Waste enumerated in
4 Subdivision (b)(2).

5 (c) The provisions of Subdivisions (a) and (b)(3) of this Section shall not apply
6 to those Persons and/or Solid Waste Facility Fee specified in section 33.0843 of this
7 Code.

8
9 **CHAPTER 2: DEFINITIONS**

10 **Section**

11 **46.0201 Definitions.**

12
13 **46.0201 Definitions.**

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

16 (a) AB 341. The Assembly Bill approved by the Governor of the State of
17 California on October 5, 2011, which amended sections 41730, 41731, 41734, 41735,
18 41736, 41800, 42926, 44004, and 50001 of, and added sections 40004, 41734.5, and
19 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of,
20 and added and repealed section 41780.02 of, the Public Resources Code, relating to
21 Solid Waste.

22 (b) AB 827. The Assembly Bill approved by the Governor of the State of
23 California on October 2, 2019, which amended sections 42649.1, 42649.2, 42649.8, and
24 42649.81 of the Public Resources Code, relating to Solid Waste.

25 (c) AB 939. The California Integrated Waste Management Act of 1989,
26 beginning at California Public Resources Code section 40000, et seq., as it may be
27 amended from time to time.

28 (d) AB 1594. The Assembly Bill approved by the Governor of the State of

1 California on September 28, 2014, which amended sections 40507 and 41781.3 of the
2 Public Resources Code, relating to Solid Waste.

3 (e) AB 1826. The Organic Waste Recycling Act of 2014 (Chapter 727, Statutes
4 of 2014 modifying Division 30 of the California Public Resources Code), also commonly
5 referred to as "AB 1826."

6 (f) ALTERNATIVE FACILITY. A facility other than Designated Facilities
7 approved by County for temporary use.

8 (g) APPLICABLE LAW. All Federal, State, County, and local laws, regulations,
9 rules, orders, judgments, decrees, permits, approvals, or other requirement of any
10 governmental agency having jurisdiction over the Collection, Transportation, Processing,
11 and Disposal of Discarded Materials. Applicable Law includes, but is not limited to, AB
12 939, AB 341, AB 1826, and SB 1383.

13 (h) BACK-HAUL. Generating and Transporting Recyclables and/or Organic
14 Waste to a destination owned and operated by the Generator using the Generator's own
15 employees and equipment, or as defined in 14 CCR section 18982(a)(66)(A).

16 (i) BIN. A container with capacity of approximately one (1) to eight (8) cubic
17 yards with a hinged lid and with wheels (where appropriate) that is serviced by a front
18 end-loading Collection vehicle. This includes Bins with Compactors attached to increase
19 the capacity of the Bin.

20 (j) BLUE CONTAINER. A container that is defined in 14 CCR section
21 18982.2(a)(5) and shall be used for the purpose of storage and Collection of Source
22 Separated Recyclable Materials or Source Separated Blue Container Organic Waste.

23 (k) BOARD. The San Bernardino County Board of Supervisors.

24 (l) BROWN CONTAINER. The same meaning as in 14 CCR section
25 18982.2(a) and shall be used for the purpose of storage and Collection of Source
26 Separated Food Waste.

27 (m) BULKY WASTE. Discarded furniture (including but not limited to chairs,
28 sofas, mattresses, and area rugs); appliances (including but not limited to refrigerators,

1 ranges, washers, dryers, water heaters, dishwashers, plumbing, small household
2 appliances, and other similar items, commonly known as "white goods") ; discarded
3 stereos, televisions , computers, VCR's, and other similar items (commonly known as
4 "Electronic- Waste"); wood waste (excluding treated wood), tree trunks, large branches,
5 and scrap wood that can be reasonably handled by two employees and complies with the
6 maximum size requirements of the Designated Facility. Bulky Waste does not include
7 C&D, waste tires, or large items such as car bodies, Jacuzzi tubs or spas, or other items
8 that cannot be handled by two Persons. In addition, Bulky Waste does not include waste
9 tires.

10 (n) CART. A plastic Container with a hinged lid and wheels that is serviced by
11 an automated or semi-automated Collection vehicle.

12 (o) CALIFORNIA CODE OF REGULATIONS or CCR. The State of California
13 Code of Regulations. CCR references in this ordinance are preceded with a number that
14 refers to the relevant Title of the CCR (e.g. "14 CCR" refers to Title 14 of CCR).

15 (p) CALRECYCLE. The California Department of Resources Recycling and
16 Recovery, which is the Department designated with the responsibility for developing,
17 implementing and enforcing State law and regulations on Jurisdictions (and others).

18 (q) CHANGE IN LAW. The imposition (or removal), after the establishment of
19 a Total Rate relative to a Franchise Agreement, of any duty or burden imposed upon the
20 Grantee in the performance of the Solid Waste Facility Fee required of it under its
21 Franchise Agreement which is or becomes additional to (or is subtracted from) or different
22 from those duties required or contemplated in its Franchise Agreement, or which must be
23 performed in a different manner from that in which it is initially contemplated to be
24 performed, and which results from any of the following:

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

27 (2) A regulatory agency or other administrative agency interpreting a
28 regulation, a judicial decision of a Federal court interpreting Federal law or statute, or a

1 judicial decision of a court having jurisdiction within California interpreting a Federal, State
2 or local law, statute, ordinance or regulation, in a manner different from the interpretation
3 which had previously been generally relied upon in California within the Solid Waste
4 Collection and hauling industry.

5 (3) CHANGE IN LAW does not include any of the items noted in
6 Subdivisions (1) or (2) above, which relate to any tax, [other than a business license tax
7 imposed by the County on a Grantee's performance of Solid Waste Facility Fee under its
8 Franchise Agreement] including without limit, any tax based or measured on net or gross
9 income, any business, payroll or franchise tax or any employment tax.

10 (r) CHANGE IN LAW ADJUSTMENT. The adjustment to Total Rate in the
11 event of a Change In Law.

12 (s) CHANGE IN OWNERSHIP. Occurs when either a single transaction or
13 event or the cumulative effect of more than one transaction or event, results in 50 percent
14 or more of the beneficial ownership of the Grantee being different than such ownership
15 as of the date of the approval by the County of the Franchise Agreement or, if applicable,
16 as of the date of the most recent consent of the County to a Change In Ownership. The
17 owners of the beneficial ownership of Grantee on the date of the approval of the Franchise
18 Agreement or, if applicable, on the date of the most recent consent of the County to a
19 Change In Ownership, shall be referred to in this Subdivision as an "initial owner". A
20 CHANGE IN OWNERSHIP will be determined by application of the following:

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

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

27 (3) Sales, Transfers, issuances or pledges of non-voting shares of stock
28 will not be considered in determining if a CHANGE IN OWNERSHIP has occurred, until

1 and unless and only to the extent that such stock is converted into voting shares of stock.

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

6 (t) CHANGE IN SERVICE LEVEL ADJUSTMENT. The adjustment to Total
7 Rate in the event of a change in service level and as described in the Franchise
8 Agreement.

9 (u) COLLECT or COLLECTION. The act of taking physical possession of
10 Discarded Materials at Single-Family premises, Multi-Family premises, or Commercial
11 Businesses within the County, and Transporting the Discarded Materials to a Designated
12 Facility for Processing, Transfer, or Disposal.

13 (v) COMMERCIAL BUSINESS. A firm, partnership, proprietorship, joint stock
14 company, corporation, or association, whether for profit or nonprofit, strip mall, industrial
15 facility, or a Multi-Family Residential Dwelling with five (5) dwellings or more, or as
16 otherwise defined in 14 CCR section 18982(a)(6).

17 (w) COMPLIANCE REVIEW. A review of records by the County to determine
18 compliance with the requirements of this ordinance.

19 (x) COMMUNITY COMPOSTING. Any activity that Composts green material,
20 agricultural material, food material, and vegetative food material, alone or in combination,
21 and the total amount of feedstock and Compost on-site at any one time does not exceed
22 100 cubic yards and 750 square feet as specified in 14 CCR section 17855(a)(4); or as
23 otherwise defined by 14 CCR section 18982(a)(8).

24 (y) COMPOST. Defined in 14 CCR section 17896.2(a)(4) which states, as of
25 the effective date of this ordinance, the product resulting from the controlled biological
26 decomposition of organic Solid Wastes that are Source Separated from the County Solid
27 Waste stream, or which are separated at a centralized facility.

28 (z) COMPOSTABLE PLASTICS. Plastic materials that meet the ASTM D6400

1 standard for compatibility, or as otherwise described in 14 CCR sections 18984.1(a)(1)(A)
2 or 18984.2(a)(1)(C).

3 (aa) CONSTRUCTION AND DEMOLITION DEBRIS or C&D. The
4 nonHazardous Waste building material, inerts, soil, packaging, Yard Trimmings, rubble,
5 and other used or Discarded Materials resulting from construction or demolition.

6 (bb) CONSUMER PRICE INDEX. The Consumer Price Index – All Urban
7 Consumers, Los Angeles-Long Beach-Anaheim, CA, all items less food and energy, as
8 published by the U.S. Department of Labor, Bureau of Labor Statistics, Series ID.
9 CUURS49ASAOLE, or the most similar successor index if the index is no longer
10 published.

11 (cc) CONTAINER CONTAMINATION or CONTAMINATED CONTAINER. A
12 Container, regardless of color, that contains Prohibited Container Contaminants, or as
13 otherwise defined in 14 CCR section 18982(a)(55).

14 (dd) COUNTY. San Bernardino County, State of California.

15 (ee) COUNTY SOLID WASTE DISPOSAL SYSTEM. At any particular time, the
16 then-existing landfill Disposal facilities which the County owns, leases or has a contractual
17 right to use.

18 (ff) DELINQUENT FEES. The fees under the Total Rate which are due for
19 Uniform Handling Service rendered to an owner's property (or which have been attempted
20 to be rendered, if Uniform Handling Service is not allowed to be provided by action of the
21 owner or tenant) but which have not been paid for 90 days or more after the mailing of
22 the invoice related to such service.

23 (gg) DEPARTMENT OF PUBLIC HEALTH, DIVISION OF ENVIRONMENTAL
24 HEALTH SERVICES. The County division of that name or such County department,
25 division or office which is the successor thereto.

26 (hh) DESIGNATED DISPOSAL FACILITY. A Disposal Facility that is approved
27 for use by the Division.

28 (ii) DESIGNATED FACILITY(IES). Any one of or any combination of the

1 following: Designated C&D Processing Facility; Designated Disposal Facility; Designated
2 High Diversion Organic Waste Processing Facility; Designated Organic Waste
3 Processing Facility, Designated SSR Processing Facility; and, Designated Transfer
4 Facility, and is approved for use by the Division.

5 (jj) DESIGNATED HIGH DIVERSION ORGANIC WASTE PROCESSING
6 FACILITY. A High Diversion Organic Waste Processing Facility that is approved for use
7 by the Division.

8 (kk) DESIGNATED ORGANIC WASTE PROCESSING FACILITY. An Organic
9 Waste Processing Facility that is approved for use by the Division.

10 (ll) DESIGNATED ORGANIC WASTE PROCESSING FACILITY FEE. The fee
11 charged for use of a Designed Organic Waste Processing Facility.

12 (mm) DESIGNATED SOURCE SEPARATED ORGANIC WASTE FACILITY. As
13 defined in 14 CCR section 18982(14.5), a Solid Waste Facility that accepts a Source
14 Separated Organic Waste Collection stream as defined in 14 CCR section 17402(a)(26.6)
15 and complies with one of the following:

16 (1) The facility is a “Transfer/processor,” as defined in 14 CCR section
17 18815.2(a)(62), that is in compliance with the reporting requirements of 14 CCR section
18 18815.5(d), and meets or exceeds the annual average Source Separated organic content
19 Recovery rate of 50 percent between January 1, 2022 and December 31, 2024 and 75
20 percent on or after January 1, 2025 as calculated pursuant to 14 CCR 18815.5(f) for
21 Organic Waste received from the Source Separated Organic Waste Collection stream.

22 (A) If a Transfer/processor has an annual average Source
23 Separated organic content Recovery rate lower than the rate required in Paragraph 1 of
24 this definition for two (2) consecutive reporting periods, or three (3) reporting periods
25 within three (3) years, the facility shall not qualify as a “Designated Source Separated
26 Organic Waste Facility.”

27 (2) The facility is a “composting operation” or “composting facility” as
28 defined in 14 CCR section 18815.2(a)(13), that pursuant to the reports submitted under

1 14 CCR section 18815.7 demonstrates that the percent of material removed for landfill
2 Disposal that is Organic Waste is less than the percent specified in 14 CCR section
3 17409.5.8(c)(2) or 17409.5.8(c)(3), whichever is applicable, and if applicable, complies
4 with the digestate handling requirements specified in 14 CCR section 17896.5.

5 (A) If the percent of material removed for landfill Disposal that is
6 Organic Waste is more than the percent specified in 14 CCR section 17409.5.8(c)(2) or
7 17409.5.8(c)(3), for two (2) consecutive reporting periods, or three (3) reporting periods
8 within three (3) years, the facility shall not qualify as a “Designated Source Separated
9 Organic Waste Facility.” For the purposes of this ordinance, the reporting periods shall
10 be consistent with those defined in 14 CCR section 18815.2(a)(49).

11 (nn) DESIGNEE. An entity that the County contracts with or otherwise arranges
12 to carry out any of the County’s responsibilities of this ordinance as authorized in 14 CCR
13 section 18981.2. A Designee may be a government entity, a hauler, a private entity, or a
14 combination of those entities.

15 (oo) DIRECTOR. The Director of the Department of Public Works or the
16 designee of such individual.

17 (pp) DISCARDED MATERIALS. Material deemed to have been discarded,
18 without regard to whether they are destined for Recycling or Disposal, and whether or not
19 they have been Source Separated, in all cases where a fee or other compensation, in any
20 form or amount, is directly or indirectly solicited from, or levied, charged, or otherwise
21 imposed on, or paid by, the Generator or Subscriber in exchange for Solid Waste
22 Handling Services. As used herein, Solid Waste Handling Services include, without
23 limitation, the provision of Containers for the Collection, removal, Transportation, delivery,
24 and Processing and/or Disposal of the material. Discarded Materials do not include Edible
25 Food that is recovered for human consumption. For the purposes of this Ordinance,
26 Discarded Materials include SSR, SSBCOW, SSGCOW, SSBRCOW, Solid Waste or
27 Mixed Waste, and C&D.

28 (qq) DISPOSE or DISPOSAL. The final disposition of any Solid Waste collected

1 by the Grantee at a permitted landfill or other permitted Solid Waste Facility.

2 (rr) DIVERT OR DIVERSION. To Divert from Disposal facilities or
3 Transformation facilities (including incineration, pyrolysis, distillation, gasification or
4 biological conversion) through source reduction, Recycling and Composting, as provided
5 in section 41780 of California Public Resources Code as such act may be hereafter
6 amended or superseded provided that Divert or Diversion shall include delivery to
7 Transformation facilities if the overall Diversion achieved by the County is at a level where
8 delivery to such facilities shall be considered Diversion pursuant to the Act.

9 (ss) DIVISION. The County Department of Public Works Solid Waste
10 Management Division or such County department, division or office which is the
11 successor thereto.

12 (tt) EDIBLE FOOD. Food intended for human consumption, or as otherwise
13 defined in 14 CCR section 18982(a)(18). Edible Food is not Solid Waste if it is recovered
14 and not discarded. Nothing in this ordinance or in 14 CCR Division 7, Chapter 12 requires
15 or authorizes the Recovery of Edible Food that does not meet the food safety
16 requirements of the California Retail Food Code.

17 (uu) ELECTRONIC WASTE. Electronic Waste materials generated by
18 Residential or Commercial Subscribers that render the items hazardous depending upon
19 their condition and density, such as, but not limited to, televisions, computer monitors
20 containing Cathode Ray Tubes (CRTs), cell phones, scanners, fax machines and other
21 items as determined by Applicable Laws and regulations.

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

25 (ww) EXCLUDED WASTE. Hazardous substance, Hazardous Waste, infectious
26 waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and
27 toxic substances or material that facility operator(s), which receive materials from the
28 County and its Generators, reasonably believe(s) would, as a result of or upon

1 acceptance, Transfer, Processing or Disposal, be a violation of local, State or Federal
2 law, regulation or ordinance, including: land use restrictions or conditions, waste that
3 cannot be disposed of in Class III landfills or accepted at the Facility by permit conditions,
4 waste that in County's or its designee's reasonable opinion would present a significant
5 risk to human health or the environment, cause a nuisance or otherwise create or expose
6 the County, or its Designee, to potential liability; but not including de minimis volumes or
7 concentrations of waste of a type and amount normally found in Single-Family or
8 multifamily Solid Waste after implementation of programs for the safe Collection,
9 Processing, Recycling, treatment, and Disposal of batteries and paint in compliance with
10 California Public Resources Code sections 41500 and 41802. Excluded Waste does not
11 include used motor oil filters, household batteries, Universal Wastes, and/or latex paint
12 when such materials are defined as allowable materials for Collection through the
13 County's Collection programs and the Generator or customer has properly placed the
14 materials for Collection pursuant to instructions provided by the County for Collection
15 services.

16 (xx) FOOD RECOVERY. Actions to Collect and distribute food for human
17 consumption which otherwise would be Disposed, as defined in 14 CCR section
18 18982(a)(24).

19 (yy) FOOD RECOVERY ORGANIZATION. An entity that primarily engages in
20 the Collection or receipt of Edible Food and distributes that Edible Food to the public for
21 Food Recovery either directly or through other entities, including, but not limited to:

22 (1) A food bank as defined in section 113783 of the Health and Safety
23 Code;

24 (2) A nonprofit charitable organization as defined in section 113841 of
25 the Health and Safety Code; and,

26 (3) A nonprofit charitable temporary food facility as defined in section
27 113842 of the Health and Safety Code.

28 (zz) FOOD RECOVERY SERVICE. A Person or entity that Collects and

1 Transports Edible Food to a Food Recovery Organization or other entities for Food
2 Recovery.

3 (aaa) FOOD SCRAPS. All food such as, but not limited to, fruits, vegetables,
4 meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells.
5 Food Scraps excludes fats, oils, and grease when such materials are Source Separated
6 from other Solid Waste Food Scraps.

7 (bbb) FOOD-SOILED PAPER. Compostable paper material that has come in
8 contact with food or liquid, such as, but not limited to, compostable paper plates, paper
9 coffee cups, napkins, pizza boxes, and milk cartons.

10 (ccc) FOOD WASTE. Source Separated Food Scraps, Food-Soiled Paper, and
11 Compostable Plastics. Food Waste is a subset of Organic Waste.

12 (ddd) FRANCHISE AGREEMENT. The agreement entered into between the
13 County and the Grantee under the provisions of section 46.0301 which
14 authorizes/requires the Grantee to provide Solid Waste Handling Services in a specified
15 Franchise Area

16 (eee) FRANCHISE AREA. The geographic territory in the Unincorporated County
17 for which the Grantee has been granted a franchise to provide Solid Waste Handling
18 Services, as specified in each Franchise Agreement.

19 (fff) FRANCHISE FEE. The fee paid to the County by the Grantee in
20 consideration of the granting of a franchise pursuant to this Division.

21 (ggg) GARBAGE HAULER. Any Person or entity who Collects garbage, unmixed
22 with rubbish, and transports it to a commercial garbage-feeding hog ranch or to a
23 commercial establishment for Processing for use in livestock feeding pursuant to the
24 requirements in Public Resources Code section 40059.4(b)(1-5).

25 (hhh) GENERATOR. Any Person who first Discards Materials, and by that act
26 makes Discarded Materials subject to regulation under federal, State, or local regulations.

27 (iii) GRANTEE. A Person granted a franchise pursuant to a Franchise
28 Agreement.

1 (jjj) GRAY/BLACK CONTAINER. The same meaning as in 14 CCR section
2 18982.2(a) and shall be used for the purpose of storage and Collection of Gray/Black
3 Container Waste or Mixed Waste.

4 (kkk) GRAY/BLACK CONTAINER WASTE. Solid Waste that is collected in a
5 Gray/Black Container that is part of a three-container Organic Waste Collection service
6 that prohibits the placement of Organic Waste in the Gray/Black Container as specified
7 in 14 CCR sections 18984.1(a) and (b) or as defined in 14 CCR section 17402(a)(6.6).
8 For the purposes of this Franchise Agreement, Gray/Black Container Waste includes
9 carpet and textiles.

10 (lll) GREEN CONTAINER. The same meaning as in 14 CCR section
11 18982.2(a) and shall be used for the purpose of storage and Collection of SSGCOW.

12 (mmm) GREEN WASTE. Discarded Materials consisting of grass clippings,
13 leaves, branches, tree trunks and other vegetative matter not more than six (6) inches in
14 diameter or four (4) feet in length.

15 (nnn) GROSS RECEIPTS. All monies received by Grantee for providing the Solid
16 Waste Handling Services specified in its Franchise Agreement.

17 (ooo) GROSS RECEIPTS LESS DISPOSAL CHARGES. Gross receipts less that
18 part of the monies received by the Grantee that are collected from Subscribers for
19 payment of the fee imposed for disposing of the Solid Waste at a landfill Disposal facility
20 and the fee imposed for other operations.

21 (ppp) GROSS RECEIPTS FOR COMMERCIAL FOOD WASTE SERVICES. All
22 monies received by Grantee for providing the Food Waste handling services specified in
23 its Franchise Agreement.

24 (qqq) GROSS RECEIPTS FOR COMMERCIAL FOOD WASTE SERVICES
25 LESS PROCESSING COSTS. Gross receipts for commercial Food Waste services less
26 that part of the monies received by the Grantee that are collected from Subscribers for
27 payment of the fee imposed for Processing of the Food Waste at an Organic Waste
28 Processing Facility.

1 (rrr) HIGH DIVERSION ORGANIC WASTE PROCESSING FACILITY. “High
2 Diversion Organic Waste Processing Facility” means a High Diversion Organic Waste
3 Processing Facility as defined in 14 CCR Section 18982(a)(33). Per SB 1383, the High
4 Diversion Processing Facility is a facility that is in compliance with the reporting
5 requirements of 14 CCR Section 18815.5(d) and meets or exceeds an annual average
6 Mixed Waste organic content recovery rate of fifty percent (50%) between January 1,
7 2022 and December 31, 2024, and seventy-five percent (75%) after January 1, 2025 as
8 calculated pursuant to 14 CCR Section 18815.5(e) for Organic Waste received from the
9 Mixed Waste.

10 (sss) HAZARDOUS WASTE. Any hazardous or toxic substance, material or
11 waste which is or becomes regulated by any local governmental authority, the State of
12 California, or the United States Government. The term “Hazardous Waste” includes,
13 without limitation, any material or substance which is: (i) petroleum or oil or gas or any
14 direct or derivate product or byproduct thereof; (ii) defined as a “Hazardous Waste,”
15 “extremely Hazardous Waste” or “restricted Hazardous Waste” under sections 25115,
16 25117 or 25122.7, or listed pursuant to section 25140, of the California Health and Safety
17 Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a
18 “hazardous substance” under section 25316 of the California Health and Safety Code,
19 Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act);
20 (iv) defined as a “Hazardous Waste,” “hazardous substance,” or “Hazardous Waste”
21 under sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code,
22 Division 20, Chapter 6.95 (Hazardous Wastes Release Response Plans and Inventory);
23 (v) defined as a “hazardous substance” under section 25281 of the California Health and
24 Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances);
25 (vi) “used oil” as defined under section 25250.1 of the California Health and Safety Code;
26 (vii) asbestos; (viii) listed under Captor 11 of Division 4.5 of Title 22 of the California Code
27 of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10
28 of Division 4.5 of Title 22 of the California Code of Regulations; (ix) defined as waste or

1 a hazardous substance pursuant to the Porter-Cologne Act, section 13050 of the
2 California Water Code; (x) designated as a “pollutant” pursuant to the Federal Water
3 Pollution Control Act, 33 U.S.C. Section 1317; (xi) defined as “ Hazardous Waste”
4 pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. section
5 6901, et seq. (42 U.S.C. section 6903); (xii) defined as a “hazardous substance” pursuant
6 to the Comprehensive Environmental Response, Compensation and Liability Act, 42
7 U.S.C. section 6901); (xiii) defined as “Hazardous Waste” pursuant to the Hazardous
8 Wastes Transportation Act 29 U.S.C. section 5101, et seq.; or (xiv) defined as such or
9 regulated by any “Superfund” or “Superlien” law, or any other federal, State or local law,
10 statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or
11 imposing liability or standards of conduct concerning Hazardous Wastes and/or oil wells
12 and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in
13 effect.

14 (ttt) HEALTH AND SAFETY PERMIT. A current permit issued by the
15 Department of Public Health, Division of Environmental Health Services to a refuse
16 Collection operator, Garbage Hauler or nondomestic waste hauler (all as defined in
17 section 33.0802 of this Code), in accordance with Title 14 of the Code of Regulations and
18 Title 3 of the County Code. The HEALTH AND SAFETY PERMIT evidences, for a
19 specified period of time, the health and safety inspection and the approval of vehicles,
20 facilities and equipment utilized by a refuse Collection operator, Garbage Hauler or
21 nondomestic waste hauler.

22 (uuu) HIGH DIVERSION ORGANIC WASTE PROCESSING FACILITY. A High
23 Diversion Organic Waste Processing Facility as defined in 14 CCR section 18982(a)(33).
24 Per SB 1383, the High Diversion Processing facility is a facility that is in compliance with
25 the reporting requirements of 14 CCR section 18815.5(d) and meets or exceeds an
26 annual average Mixed Waste organic content recovery rate of fifty percent (50%) between
27 January 1, 2022 and December 31, 2024, and seventy-five percent (75%) after January
28 1, 2025 as calculated pursuant to 14 CCR section 18815.5(e) for Organic Waste received

1 from the Mixed Waste.

2 (vvv) INCOMPATIBLE WASTE OR INCOMPATIBLES. Human-made inert
3 material, including, but not limited to, glass, metal, plastic, and also includes Organic
4 Waste that the receiving end-user, facility, operation, property, or activity is not designed,
5 permitted, or authorized to perform Organic Waste recovery activities as defined in 14
6 CCR section 18983.1(b), or as defined by 14 CCR section 17402(a)(7.5).

7 (www) LANDFILL DISPOSAL FACILITY. Any County owned/operated facility that
8 is designed to manage any type of Solid Waste and includes, but is not limited to,
9 Disposal, Transfer, Processing, composting and Transformation.

10 (xxx) LANDFILL DISPOSAL FACILITY FEE. The fee charged for use of a landfill
11 Disposal facility.

12 (yyy) LARGE EVENT. An event, including, but not limited to, a sporting event or
13 a flea market, that charges an admission price, or is operated by a local agency, and
14 serves an average of more than two thousand (2,000) individuals per day of operation of
15 the event, at a location that includes, but is not limited to, a public, nonprofit, or privately
16 owned park, parking lot, golf course, street system, or other open space when being used
17 for an event. If the definition in 14 CCR section 18982(a)(38) differs from this definition,
18 the definition in 14 CCR section 18982(a)(38) shall apply to this Ordinance.

19 (zzz) LARGE VENUE. A permanent venue facility that annually seats or serves
20 an average of more than two thousand (2,000) individuals within the grounds of the facility
21 per day of operation of the venue facility. For purposes of 14 CCR, Division 7, Chapter
22 12 and this Ordinance, a venue facility includes, but is not limited to, a public, nonprofit,
23 or privately owned or operated stadium, amphitheater, arena, hall, amusement park,
24 conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts
25 center, fairground, museum, theater, or other public attraction facility. For purposes of 14
26 CCR, Division 7 Chapter 12 and this Ordinance, a site under common ownership or
27 control that includes more than one Large Venue that is contiguous with other Large
28 Venues in the site, is a single Large Venue. If the definition in 14 CCR section

1 18982(a)(39) differs from this definition, the definition in 14 CCR section 18982(a)(39)
2 shall apply to this Ordinance.

3 (aaaa) MATERIALS RECOVERY FACILITY or MRF. A facility designed to remove
4 Recyclables and other valuable materials from the waste stream collected through a
5 residential, commercial or industrial Solid Waste Handling program that is approved to
6 operate by the appropriate State and local agencies.

7 (bbbb) MIXED WASTE. Organic Waste collected in a container that is required by
8 14 CCR sections 18984.1, 18984.2, or 18984.3 to be taken to a High Diversion Organic
9 Waste Processing Facility, as defined in 14 CCR section 17402(a)(11.5).

10 (cccc) MULCH. A layer of material applied on top of soil, and, for the purposes of
11 the Franchise Agreement, Mulch shall conform with the following conditions, or conditions
12 as specified in 14 CCR section 18993.1(f)(4):

13 (1) Meets or exceeds the physical contamination, maximum metal
14 concentration, and pathogen density standards for land applications specified in 14 CCR
15 section 17852(a)(24.5)(A)(1) through (3).

16 (2) Was produced at one or more of the following types of facilities:

17 (A) A compostable material handling operation or facility as
18 defined in 14 CCR section 17852(a)(12), that is permitted or authorized under Division 7
19 of Title 14 of the CCR, other than a chipping and grinding operation or facility as defined
20 in 14 CCR section 17852(a)(10);

21 (B) A Transfer/Processing facility or Transfer/Processing
22 operation as defined in 14 CCR section 17402(a)(30) and (31), respectively, that is
23 permitted or authorized under 14 CCR, Division 7, Chapter 12; or,

24 (C) A Solid Waste landfill as defined in Public Resources Code
25 section 40195.1 that is permitted under 27 CCR, Division 2.

26 (dddd) MULTI-FAMILY. Any Residential Premises, other than a Single-Family
27 Premises, with five (5) or more Dwelling Units used for Residential purposes (regardless
28 of whether residence therein is temporary or permanent, vacant or occupied), that receive

1 centralized, shared, Collection service for all units on the Premises which are billed to (1)
2 Customer at (1) address. Customers residing in Townhouses, mobile homes,
3 condominiums, or other structures with five (5) or more Dwelling Units who receive
4 individual service and are billed separately shall not be considered Multi-Family.

5 (eeee)MULTI-JURISDICTION LOAD/DETAIL REPORT. A report which sets out
6 the amount, and place of Collection, of Discarded Materials delivered to the landfill
7 Disposal system.

8 (ffff) NON-ORGANIC RECYCLABLES. Non-putrescible and non-hazardous
9 Recyclable wastes including, but not limited to, bottles, cans, metals, plastics, and glass,
10 or as defined in 14 CCR section 18982(a)(43). Non-Organic Recyclables are a subset of
11 Source Separated Recyclables.

12 (gggg)ONSITE WASTE ASSESSMENT. An in-person visit by the Grantee to a
13 customer to Collect and evaluate information on the types and quantities of Discarded
14 Materials generated by the customer, as well as identify opportunities for additional
15 Processing of Solid Waste.

16 (hhhh)ORGANIC WASTE. Solid Wastes containing material originated from living
17 organisms and their metabolic waste products including, but not limited to, Food Waste,
18 Green Waste, organic textiles and carpets, lumber, wood, paper products, printing and
19 writing paper, manure, biosolids, digestate, and sludges, or as defined in 14 CCR section
20 18982(a)(46). Biosolids and digestate are as defined in 14 CCR section 18982(a)(4) and
21 14 CCR section 18982(a)(16.5), respectively.

22 (iiii) ORGANIC WASTE HANDLING SERVICE.

23 (1) The Collection of Organic Waste from a commercial, residential,
24 construction, or industrial source; and

25 (2) The transportation of such Organic Waste to an Organic Waste
26 Processing Facility. Organic Waste Handling Services is a subset of Solid Waste
27 Handling Services.

28 (jjjj) ORGANIC WASTE PROCESSING FACILITY. A permitted facility where

1 Organic Waste are sorted, mulched or separated for the purposes of Recycling, reuse or
2 composting.

3 (kkkk) ORGANIC WASTE PROCESSING FACILITY FEE. The fee charged for
4 use of an Organic Waste Processing Facility.

5 (llll) OTHER OPERATIONS. All operational cost categories that are not
6 included in fuel, service, and landfill Disposal; OTHER OPERATIONS may include, but
7 are not limited to, non-County facilities for Transfer, Processing, composting and
8 Transformation.

9 (mmmm) PERSON. Without limitation, individuals, associations, clubs, societies,
10 firms, partnerships, joint ventures, sole proprietorships, corporations, limited liability
11 companies, schools, colleges and all governmental agencies and entities.

12 (nnnn)PROCESSING. The reduction, separation, recovery, conversion or
13 Recycling of Discarded Materials.

14 (oooo)PROHIBITED CONTAINER CONTAMINANTS. Excluded Waste placed in
15 any Container.

16 (1) Option 1, Three-Container Collection service (Blue Container, Green
17 Container, and Gray/Black Container): "Prohibited Container Contaminants" means the
18 following: (i) Discarded Materials placed in the Blue Container that are not identified as
19 acceptable Source Separated Recyclables for the County's Blue Container; (ii) Discarded
20 Materials placed in the Green Container that are not identified as acceptable Source
21 Separated Green Container Organic Waste for the County's Green Container; (iii)
22 Discarded Materials placed in the Gray/Black Container that are acceptable Source
23 Separated Recyclables and/or Source Separated Green Container Organic Waste to be
24 placed in County's Blue Container and/or Green Container; and (iv) Excluded Waste
25 placed in any container.

26 (2) (A) Option 2a: Two-Container Collection Service for
27 SSGCOW and Mixed Waste (Green Container and Gray Container) "Prohibited Container
28 Contaminants" means the following: (i) Discarded Materials placed in the Green

1 Container that are not identified as acceptable SSGCOW for the County's Green
2 Container; (ii) Discarded Materials placed in the Gray Container that are identified as
3 acceptable SSGCOW, which are to be separately collected in County's Green Container;
4 and, (iii) Excluded Waste placed in any container.

5 (B) Option 2b: Two-Container Collection Service for SSR and
6 Mixed Waste (Blue Container and Gray Container) "Prohibited Container Contaminants"
7 means the following: (i) Discarded Materials placed in the Blue Container that are not
8 identified as acceptable SSR for Jurisdiction's Blue Container; (ii) Discarded Materials
9 placed in the Gray Container that are identified as acceptable SSR, which are to be
10 separately Collected in Jurisdiction's Blue Container; and, (iii) Excluded Waste placed in
11 any container.

12 (3) Option 3: One-Container Collection Service "Prohibited Container
13 Contaminants" means Excluded Waste placed in any Container.

14 (pppp) PUTRESCIBLE WASTE. "Putrescible Waste" means wastes that are
15 capable of being decomposed by micro-organisms with sufficient rapidity as to cause
16 nuisances because of odors, gases, or other offensive conditions, and includes materials
17 such as, but not limited to Food Waste, offal, and dead animals; or as defined in 14 CCR
18 section 17402(a)(21).

19 (qqqq) RECYCLABLE MATERIALS OR RECYCLABLES. For purposes of this
20 Division 6 only, Discarded Materials which may be sorted, cleansed, treated, processed,
21 and/or reconstituted, and which is segregated for the purpose of reuse or Recycling,
22 including, but not limited to, separated paper, glass, cardboard, plastic, ferrous materials
23 or aluminum.

24 (rrrr) RECYCLE or RECYCLING. The process of Collecting, sorting, cleansing,
25 treating, and reconfiguring materials for the purpose of returning them to the economic
26 mainstream in the form of raw material for new, reused, or reconstituted products which
27 meet the quality standards necessary to be used in the marketplace. Recycling includes
28 processes deemed to constitute a reduction of Landfill Disposal pursuant to 14 CCR,

1 Division 7, Chapter 12, Article 2. Recycling does not include gasification or
2 Transformation as defined in Public Resources Code section 40201.

3 (ssss) REFUSE COLLECTION AREA. That area of the Unincorporated County
4 as provided for in Article 2.1 of Chapter 8 of Division 3 of Title 3 of this Code.

5 (tttt) RENEWABLE NATURAL GAS (RNG). Gas derived from Organic Materials
6 that has been Diverted from a Landfill and Processed at an in-vessel digestion facility that
7 is permitted or authorized by 14 CCR to recover Organic Waste, or as defined in 14 CCR
8 section 18982(a)(62).

9 (uuuu) RESIDENTIAL. A Single-Family Premises or Multi-Family Premises
10 including Single-Family homes, apartments, condominiums, Townhouse complexes,
11 mobile home parks, and cooperative apartments.

12 (vvvv) RESIDUAL SOLID WASTE. The Solid Waste destined for Disposal,
13 Transformation, or further Transfer/Processing as defined in 14 CCR sections 17402
14 (a)(30) or (31), as it currently exists or may be amended, which remains after Processing
15 has taken place.

16 (wwww) ROLL-OFF. An open-top Container with a capacity of seven (7) to
17 forty (40) cubic yards that is serviced by a Roll-Off Collection vehicle.

18 (xxxx) SB 1383. Senate Bill 1383 of 2016 approved by the Governor on September
19 19, 2016, which added sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health
20 and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of
21 Division 30 of the Public Resources Code, establishing methane emissions reduction
22 targets in a Statewide effort to reduce emissions of short-lived climate pollutants as
23 amended, supplemented, superseded, and replaced from time to time.

24 (yyyy) SECURITY. A corporate surety bond, a letter of credit or other Security
25 device acceptable to the Division, as described in the Franchise Agreement and County
26 Code section 46.0904.

27 (zzzz) SELF-HAUL. The Transportation of Solid Waste, Organic Waste, or
28 Recyclables from any premises by the owner or occupant using his or her own

1 employee(s) and equipment to a facility lawfully allowed to receive Solid Waste, Organic
2 Waste, or Recyclables in accordance with State and Federal Laws.

3 (aaaaa) SINGLE-FAMILY. Any detached or attached house or residence designed
4 or used for occupancy by one (1) family, provided that Collection service feasibly can be
5 provided to such Premises as an independent unit, and the Owner or Occupant of such
6 independent unit is billed directly for the Collection service. Single-Family includes
7 Townhouses, and each independent unit of duplex, tri-plex, or four-plex Residential
8 structures, regardless of whether each unit is separately billed for their specific Service
9 Level.

10 (bbbbbb) SOLID WASTE. Except as provided in Subdivisions (1), (2), (3) and (4),
11 all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage,
12 trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction
13 wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances
14 (subject to salvage and other special handling requirements under Applicable Law and
15 regulation), dewatered, treated, or chemically fixed sewage sludge which is not
16 Hazardous Waste, manure, vegetable or animal solid and semisolid wastes, and other
17 discarded solid and semisolid. Solid Waste may include Recyclables and Organic Waste
18 that has been discarded and has not been Source Separated into the designated
19 Container for such Source Separated material.

20 (1) SOLID WASTE does not include Hazardous Waste and does not
21 include low-level radioactive waste regulated under Health and Safety Code sections
22 114960 et seq., as it currently exists or may be amended.

23 (2) SOLID WASTE does not include medical waste (except treated
24 medical waste) which is regulated pursuant to the Medical Waste Management Act under
25 Health and Safety Code sections 117600 et seq., as it currently exists or may be
26 amended.

27 (3) SOLID WASTE does not include petroleum or a petroleum product
28 or fraction thereof at reasonably detectable levels, asbestos and, with respect to a

1 particular Solid Waste Facility, any waste or material which a regulatory agency, the
2 facility's Solid Waste Facility permit or County policy, does not allow to be accepted for
3 Transfer, Processing, composting, Transformation or Disposal at that facility.

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

16 (ccccc) SOLID WASTE FACILITY. Any facility that is designed to manage any
17 type of Solid Waste and includes Transfer, Processing, composting, Transformation and
18 Disposal facilities.

19 (ddddd) SOLID WASTE FACILITY FEE. The fee charged for use of a Solid Waste
20 Facility.

21 (eeee) SOLID WASTE HANDLING SERVICES. The following: (1) the Collection
22 of Discarded Materials from a commercial, residential, construction or industrial source;
23 (2) the transportation of such Discarded Materials to a Solid Waste Facility; and (3) the
24 Processing, composting, Transformation or Disposal of such Discarded Materials at the
25 Solid Waste Facility.

26 (ffff) SOURCE SEPARATED OR SOURCE SEPARATION. Materials, including
27 commingled Recyclables, that have been separated or kept separate from the Solid
28 Waste stream, at the point of generation, for the purpose of additional sorting or

1 Processing of those materials for Recycling or Reuse in order to return them to the
2 economic mainstream in the form of raw material for new, reused, or reconstituted
3 products that meet the quality standards necessary to be used in the marketplace, or as
4 defined in 14 CCR section 17402.5(b)(4). For the purposes of the Ordinance, Source
5 Separated shall include separation of materials by the Generator, Property Owner,
6 Property Owner's employee, property manager, or property manager's employee into
7 different containers for the purpose of Collection such that Source Separated materials
8 are separated from Gray/Black Container Waste/Mixed Waste and other Solid Waste for
9 the purposes of Collection and Processing.

10 (ggggg) SOURCE SEPARATED BLUE CONTAINER ORGANIC WASTE
11 (SSBCOW). Source Separated Organic Waste that can be placed in a Blue Container
12 that is limited to the Collection of those Organic Wastes and Non-Organic Recyclables as
13 defined in 14 CCR section 18982(a)(43); or as defined by 14 CCR section 17402(a)(18.7).
14 SSBCOW is a subset of Organic Waste.

15 (hhhhh) SOURCE SEPARATED BROWN CONTAINER ORGANIC WASTE
16 (SSBRCOW). Source Separated Food Waste that can be placed in a Brown Container
17 that is specifically intended for the separate Collection of Food Waste by the Generator,
18 excluding SSBCOW, carpets, non-compostable paper, and textiles.

19 (iiiiii) SOURCE SEPARATED GREEN CONTAINER ORGANIC WASTE
20 (SSGCOW). Source Separated Organic Waste that can be placed in a Green Container
21 that is specifically intended for the separate Collection of Organic Waste by the
22 Generator, excluding SSBCOW, carpets, non-compostable paper, and textiles.
23 SSGCOW is a subset of Organic Waste. (jjjjj) SOURCE SEPARATED
24 RECYCLABLES (SSR). Source Separated Non-Organic Recyclables and SSBCOW.

25 (kkkkk) STATE. The State of California.

26 (lllll) SUBSCRIBER. Any Person receiving Solid Waste Facility Fee pursuant to
27 a Franchise Agreement.

28 (mmmmm) TOTAL RATE. The inclusive rate schedule attached to each

1 Franchise Agreement which provides the rates to be paid to Grantee by Subscribers in
2 consideration of the Solid Waste Facility Fee provided by Grantee under its Franchise
3 Agreement.

4 (nnnnn) TRANSFER. The act of transferring Discarded Materials collected by
5 Grantee from Grantee's Collection vehicles into larger vehicles at a Designated Transfer
6 Facility for Transport to other Facilities for Processing or Disposing of such materials.
7 Transfer allows for removal of materials excluded or prohibited from handling at the
8 Transfer Facility (e.g., removal of Hazardous Waste).

9 (ooooo) TRANSFORMATION. The same meaning as set forth in Public
10 Resources Code section 40201, as it may be amended from time to time.

11 (ppppp) TRANSPORTATION OR TRANSPORT. The act of conveying collected
12 materials from one location to another.

13 (qqqqq) UNIFORM HANDLING AREAS. A Franchise Area, or a specified portion
14 of a Franchise Area, in which Uniform Handling Service has been imposed, as specified
15 in a Franchise Agreement.

16 (rrrrr) UNIFORM HANDLING SERVICE. The mandatory subscription to Solid
17 Waste handling service required of owners of Single-Family, Multi-Family, and/or
18 Commercial Businesses in a Uniform Handling Area.

19 (sssss) UNINCORPORATED COUNTY. Any community or other area within the
20 County which is outside the boundaries of all incorporated cities and towns.

21 (ttttt) UNIVERSAL WASTE. Any of the following waste that are conditionally
22 exempt from classification as Hazardous Wastes pursuant to Title 22 of the California
23 Code of Regulations (22 CCR), section 66261.9: (i) batteries as described in 22 CCR
24 section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as
25 described in 22 CCR section 66273.5; and (iv) cathode ray tube materials as described
26 in 22 CCR section 66273.6.

27 (uuuuu) VISUAL WASTE AUDIT. An in-person visual inspection of Solid Waste
28 containers to estimate and document the composition of Solid Waste placed in each

1 container and identify opportunities for Processing and contamination minimization.

2
3 **CHAPTER 3: FRANCHISE**

4 **Section**

5 **46.0301 Franchise Formation and Terms.**

6 **46.0302 Franchise Fee.**

7 **46.0303 Assignment and Change of Ownership.**

8 **46.0304 Title to Solid Waste.**

9
10 **46.0301 Franchise Formation and Terms.**

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

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

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

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

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

6 (c) (1) The terms and conditions by which the Grantee shall be obligated to
7 provide Solid Waste Facility Fee shall be as set forth in this Division 6 and, with respect
8 to the items set forth in this Subdivision (c), as set forth in the Franchise Agreement.

9 (A) The Franchise Area, including any uniform handling area.

10 (B) The specific Solid Waste Facility Fee to be provided by
11 Grantee, including appropriate operating requirements.

12 (C) The Total Rates related to the specified Solid Waste Facility
13 Fee to be provided by Grantee and the method of billing its Subscribers.

14 (2) (A) If the County and the Grantee so agree, the Franchise
15 Agreement may specify the Solid Waste Facility or facilities to which the Grantee will
16 transport the Solid Waste collected pursuant to Solid Waste Facility Fee provided under
17 the Franchise Agreement.

18 (B) If the County and the Grantee so agree, the Franchise
19 Agreement may allow the County to specify a different or additional Solid Waste Facility
20 to which the Grantee will transport the Solid Waste collected pursuant to the Solid Waste
21 Facility Fee provided under the Franchise Agreement. In such event, the Franchise
22 Agreement may contain a cost per ton mile figure which sets forth the increase in the
23 Grantee's demonstrable costs related to such a change.

24 (C) If the County and the Grantee so agree, the Franchise
25 Agreement may specify that upon the effective date of the Franchise Agreement the
26 Grantee waives and forgoes any other rights it might have to provide Solid Waste Facility
27 Fee in other specified portions of the Unincorporated County, including any rights it might
28 otherwise have under Public Resources Code section 49520 or other law to receive

1 advance notice of the cancellation of any permit or other authorization to provide such
2 services.

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

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

13 (e) The Franchise Agreement shall set forth the Total Rate (i.e., the inclusive
14 schedule of rates to be paid to Grantee for Solid Waste Facility Fee provided to
15 Subscribers under its Franchise Agreement). The Total Rate shall be subject to review
16 and adjustment pursuant to the provisions of this Division 6. If and when adjustments to
17 the Total Rate are made pursuant to the provisions of this Division 6, the Director shall
18 cause a certification of each such adjustment to be lodged with the County's official copy
19 of the Franchise Agreement. No Total Rate or adjustment to same shall be implemented
20 until approved by the Board or by the Director, as provided in this Division 6.

21 (f) Non-performance by Grantee of the terms and conditions contained in this
22 Division 6 or in its Franchise Agreement, or the occurrence of one or more of the events
23 set forth in section 33.0827 of this Code, shall provide grounds for the loss of or limitation
24 upon the Grantee's right to provide Solid Waste Facility Fee pursuant to its Franchise
25 Agreement and for the termination of its Franchise Agreement. Grantee shall perform no
26 Solid Waste Facility Fee under its Franchise Agreement without possessing the required
27 Health and Safety Permit.

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

1 the terms and conditions of this Division 6 shall prevail over any inconsistent provisions
2 of a Franchise Agreement.

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

9 **46.0302 Franchise Fee.**

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

19 (b) In the event that a Grantee under a Franchise Agreement in a uniform
20 handling area offers a fee waiver program as set forth in section 46.0505 of this code,
21 then such Grantee will not be required to pay a Franchise Fee to the County in an amount
22 proportionate to that waived pursuant to the Code.

23 **46.0303 Assignment and Change of Ownership.**

24 (a) Neither any Franchise Agreement nor any right or privilege granted in any
25 such agreement shall voluntarily or involuntarily be transferred, sold, hypothecated,
26 sublet, assigned or leased, in whole or in part, nor shall title thereto, either legal or
27 equitable, or any right, interest, or property therein (all collectively referred to herein as
28 "Transfer"), pass to or vest in any Person, except the Grantee, either by act of the Grantee

1 or by operation of law, without the prior written consent of the Board. Any attempt by
2 Grantee, either by act of Grantee or by operation of law, to Transfer any Franchise
3 Agreement without the prior written consent of the Board shall be void.

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

7 (1) The Grantee shall pay the County its reasonable expenses for
8 attorney's fees and investigation costs necessary to determine the suitability of any
9 proposed transferee or proposed new owners, and to review and finalize any
10 documentation required as a condition for approving any such Transfer or Change In
11 Ownership.

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

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

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

20 (B) That in the last five years, the proposed transferee or any
21 company managed by the proposed new owner (or by the proposed management of the
22 Grantee under the proposed new owner) has not received any citations, notice of
23 violations or other censure from any Federal, State or local agency having jurisdiction
24 over its waste management operations due to any failure to comply with Federal, State
25 or local waste management laws, where such failure either: (i) evidences a pattern of
26 disregard for such Federal, State or local waste management laws; or (ii) involves actions
27 which endangered the lives or property of any Person. Grantee shall supply the County
28 with a complete list of such citations, notices of violations and censures, if any;

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

5 (D) That the proposed transferee or any company managed by
6 the proposed new owner (or by the proposed management of the Grantee under the
7 proposed new owner) conducts its Solid Waste management operations in accordance
8 with sound waste management standards and practices and in full compliance with all
9 Federal, State and local laws regulating the Collection and Disposal of waste;

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

12 (F) Of the ability of the proposed Transferee or of the Grantee
13 under the proposed new ownership to obtain and maintain required insurance and bonds.

14 (c) The County may impose reasonable new conditions of approval on a
15 Franchise Agreement Transfer, or consent to a Change In Ownership of Grantee,
16 including, but not limited to, conditions requiring acceptance of amendments to the
17 relevant Franchise Agreement.

18 **46.0304 Title to Solid Waste.**

19 Ownership of Solid Waste shall Transfer to Grantee at such time as the Solid
20 Waste is abandoned and discarded by the Solid Waste Handling service Subscriber of
21 Grantee in the location provided in section 33.0808 of this Code.

22
23 **CHAPTER 4: GRANTEE COMPENSATION**

24 **Section**

25 **46.0401 Compensation.**

26 **46.0402 Adjustment to Total Rate.**

27 **46.0403 Notice to Subscribers Regarding Certain Adjustments.**

28 **46.0404 Discontinuance of Service for Non-Uniform Handling Service.**

1 **46.0401 Compensation.**

2 (a) Charges for Solid Waste Facility Fee (including, without limit, for use of a
3 Solid Waste Facility) provided to Grantee's Subscribers shall be paid by such service
4 Subscribers in accordance with the Total Rate approved by the Board in its approval or
5 extension of the Franchise Agreement with Grantee, as such Total Rate is adjusted
6 pursuant to section 46.0402.

7 (b) All charges for services rendered by a given Grantee shall be uniform and
8 non-discriminatory for the type of service provided and reasonably based upon the type
9 and/or number of containers, type of Solid Waste, whether compacted or loose, number
10 of separate pick-up points at any place of Collection, placement of container(s) or
11 distance of carry-out, frequency of Collection, remote location, terrain, Disposal costs,
12 and whether residential, commercial, construction or industrial Collection.

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

17 (2) Grantee shall refund to each Subscriber, on a pro rata basis, any
18 advance service payments made by such Subscriber for service not provided when
19 service is discontinued by timely written notification to Grantee by the Subscriber.
20 Grantee may not require written notice to be given more than 15 working (waste
21 Collection) days prior to the date on which service is desired to be discontinued.

22 (3) On a quarterly basis, the County shall be allowed to furnish, for
23 inclusion with Grantee's billing, a message for the purpose of public education regarding
24 waste Disposal, Recycling, or other environmental issues. If Grantee mails its billing in
25 an envelope, two of the four County messages may be in the form of a one page insert,
26 provided the insert is: print ready copy which conforms to Grantee's billing, is delivered
27 to Grantee by the Division 15 working (waste Collection) days in advance of Grantee's
28 billing date and does not cause an increase in the postal rates payable by Grantee for

1 mailing its billing. If the message is not in the form of an insert, it shall be printed by
2 Grantee on its bills. Such message shall not exceed 25 characters and shall be delivered
3 to Grantee by the Division 15 working (waste Collection) days in advance of Grantee's
4 billing date. Grantee shall include such insert in, or print such message on, each
5 Subscriber's next billing.

6 **46.0402 Adjustment to Total Rate.**

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

12 (a) Cost of Living Adjustment. A cost of living adjustment set forth in a
13 Franchise Agreement should be based on appropriate consumer or product price indices
14 and the adjustment shall be a pass through of 100 percent of any increase or decrease
15 as a part of the Total Rate.

16 (b) Landfill Disposal Facility Fee. The landfill Disposal facility fee adjustment
17 shall be the pass through of 100 percent of any increase or decrease in the fee charged
18 to the Grantee for use of a landfill Disposal facility approved for use by the Division,
19 calculated on a per Subscriber basis, and shall be effective as of the date of the change
20 to such fee.

21 (c) Franchise Fee Adjustment. The Franchise Fee adjustment shall be the
22 pass through of 100 percent of any increase or decrease in the Franchise Fee and shall
23 be effective as of the date the Franchise Fee increase or decrease is payable by the
24 Grantee

25 (d) Extraordinary Adjustment. The Franchise Agreement may allow for
26 adjustments to the Total Rate to account for infrequent extraordinary events which,
27 although they do not prevent either party from performing and do not implicate force
28 majeure provisions, they nevertheless increase the cost of providing service such that

1 Grantee's compensation and the rate adjustment mechanism provided in the Franchise
2 Agreement result in Grantee's suffering losses which are substantially outside the
3 commercially reasonable expectations of the parties. In no event shall any extraordinary
4 adjustment be effective prior to the Board's approval of an amendment to the applicable
5 Franchise Agreement.

6 (e) Change in Service Level Adjustments.

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

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

21 (f) Change in Law Adjustments.

22 (1) The Total Rate shall be increased (or decreased) by 100 percent of
23 the increase (or decrease) or incremental increase (or incremental decrease), as the case
24 may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether fixed or
25 variable) associated with the change in the manner or nature of conducting Solid Waste
26 Facility Fee necessitated by a Change In Law. A Change In Law Adjustment shall be
27 effective on and after the actual date of the change in operations which resulted from the
28 Change In Law, but, absent the consent of the Division, not sooner than the effective date

1 of the Change In Law. In no event shall any Change In Law Adjustment be effective prior
2 to the Board's approval of an amendment to the applicable Franchise Agreement.

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

7 **46.0403 Notice to Subscribers Regarding Certain Adjustments.**

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

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

14 Where a waiver from Uniform Handling Service has been granted, Grantee may
15 discontinue service for non-payment of Subscriber's billing or Subscriber's failure to
16 substantially comply with the requirements of the applicable provisions of State or local
17 law which govern use, storage and Collection of Solid Waste. After the Grantee has given
18 15 days' written notice to Subscriber for non-payment, Grantee shall notify the Director in
19 writing of any service termination including a written copy of the notice to the Subscriber.
20 Upon payment of the Delinquent Fees, if applicable, Grantee shall resume Collection on
21 the next regularly scheduled Collection day. Any Grantee operating in a Uniform Handling
22 Area shall not discontinue service except as allowed in section 46.0507.

23
24 **CHAPTER 5: UNIFORM HANDLING SERVICE**

25 **Section**

26 **46.0501 Uniform Handling Service.**

27 **46.0502 Owner Responsible for Payment for Uniform Handling Service.**

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

- 1 **46.0504 Exemption from Uniform Handling Service.**
- 2 **46.0505 Temporary Suspension of Service or Waiver of Fees.**
- 3 **46.0506 Handling of Delinquent Accounts.**
- 4 **46.0507 Discontinuance of Service.**
- 5 **46.0508 Penalties for Violations.**
- 6 **46.0509 Illegal Dumping Retrieval Services.**

7

8 **46.0501 Uniform Handling Service.**

9 (a) Uniform Handling Service shall be implemented in every Franchise Area,
10 and imposed on the owners of all classes of dwellings or commercial or industrial units
11 within a given uniform handling area, unless otherwise specified within a Franchise
12 Agreement. All owners of a dwelling or a commercial or industrial unit within the uniform
13 handling area who are required to have Uniform Handling Service shall, upon notice
14 thereof, be required to accept Uniform Handling Service from the Grantee (or one of the
15 Grantees) holding a Franchise Agreement for the uniform handling area and pay the rate
16 for such services currently in effect under the Total Rate of the applicable Franchise
17 Agreement.

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

22 **46.0502 Owner Responsible for Payment for Uniform Handling Service.**

23 (a) The owner of each dwelling or commercial or industrial unit subject to
24 Uniform Handling Service shall be required to accept, and pay the applicable rate set out
25 in the Total Rate for, the Uniform Handling Service rendered to such unit by a Grantee
26 and shall place at a location accessible to the Grantee, a container(s) of adequate
27 capacity and functional design in accordance with this Division 6 of Title 4 and with
28 Division 3 of Title 3 of this Code for the storage of Solid Waste generated on the premises.

1 Such owner shall be responsible to provide such container(s) unless the Franchise
2 Agreement requires the Grantee to provide such container(s).

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

10 **46.0503 Failure to Provide Sufficient Solid Waste Containers.**

11 When in the judgment of the Director (whether or not at the request of the Grantee
12 or owner) additional Solid Waste container(s) compatible with the Solid Waste Handling
13 system are required, they must be provided by the owner, or by the Grantee if the
14 Franchise Agreement requires the Grantee to provide container(s), upon written
15 notification by the Director. All containers shall conform to the requirements of sections
16 33.0806 and 33.0807 of this Code.

17 **46.0504 Self-Haul Exemption from Uniform Handling Service.**

18 (a) Dwellings.

19 (1) The owner of any dwelling may apply to the Division for an exemption
20 from Uniform Handling Service by submitting a uniform handling exemption request form
21 to the Director or designee accompanied by required documentation identified in the form
22 and a non-refundable application fee requesting a permit to provide Self-Haul Solid Waste
23 Handling. The owner may be granted an exemption provided he/she can adequately
24 document that all Solid Waste generated at the dwelling is transported in a safe and
25 sanitary manner to a landfill Disposal facility owned by San Bernardino County and to
26 proper Recycling and organic Processing facilities (pursuant to conditions listed on
27 exemption application). Upon approval of the exemption request, the Director will notify
28 the owner and the Grantee of the exemption. Exemptions are issued on an annual basis,

1 July 1 through June 30. Exemptions that are not obtained or renewed prior to July 1 of
2 each year will not be effective until the next billing period in accordance with the Franchise
3 Agreement applicable to the owner's dwelling.

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

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

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

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

26 (b) Commercial/Industrial Units.

27 (1) The owner of any commercial or industrial unit may apply for
28 exemption from Uniform Handling Service by submitting a written application to the

1 Director on a form issued by the Director, accompanied by a non-refundable application
2 fee, requesting a permit to provide Self-Haul Solid Waste Handling and transportation.
3 This permit, if approved, shall be valid for one year, and must be renewed annually
4 thereafter at the discretion of the Director upon submittal of application and application
5 fees to the Director.

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

8 (3) The owner may be granted an exemption provided he or she can
9 establish to the satisfaction of the Director that he or she can properly transport all Solid
10 Waste generated on the premises, to an approved Solid Waste facility and Recycling and
11 organic Processing facilities (pursuant to conditions listed on exemption application), in a
12 safe and sanitary manner in accordance with each of the following conditions:

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

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

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

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

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

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

28 **46.0505 Temporary Suspension of Service or Waiver of Fees.**

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

3 (b) The owner shall give written notification to the Grantee at least 15 working
4 (waste Collection) days prior to the first day of the period for which suspension of service
5 is requested pursuant to this section.

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

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

13 (e) In addition, the Director and/or each Grantee servicing a Franchise Area is
14 authorized to waive the Total Rate established in the applicable Franchise Agreement for
15 an individual owner under circumstances approved by the Director or designee, including
16 but not limited to infrequent use of the dwelling or when the property does not require
17 regular Collection service.

18 **46.0506 Handling of Delinquent Accounts.**

19 (a) The Total Rate owed by the owner of a dwelling or commercial or industrial
20 unit for Uniform Handling Service rendered to such owner's property (or which have been
21 attempted to be rendered, if Uniform Handling Service is not allowed to be provided by
22 action of the owner or tenant) shall be a civil debt owed to the Grantee providing the
23 Uniform Handling Service.

24 (b) Any Delinquent Fees, and the related penalties and interest and costs of
25 Collection, shall be considered a debt owed to the County.

26 (c) Annually each Grantee shall provide a list to the Division of all accounts
27 which have Delinquent Fees. This list shall set out the amount of the Delinquent Fees,
28 the time period for which the services related to the Delinquent Fees were provided, the

1 identity of the property to which the service has been provided and the owner of such
2 property.

3 (d) Pursuant to Health and Safety Code sections 5473 through 5473a, the
4 County elects to have Delinquent Fees, and the related penalties and interest and costs
5 of Collection, collected on the tax roll in the same manner, by the same Person, and at
6 the same time as, together with but not separately from, its general taxes. This election
7 shall remain in effect until June 30, 2025.

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

10 (A) A basic penalty of 10 percent of the Delinquent Fees, which
11 shall be assessed and shall be due and owing at the same time and in the same manner
12 as the Delinquent Fees; and

13 (B) Simple interest on the Delinquent Fees of one and one-half
14 percent per month, which interest shall be assessed and shall be due and owing at the
15 same time and in the same manner as the Delinquent Fees.

16 (2) The County shall cause a written report to be prepared each year
17 and filed with the Clerk of the Board. The report shall contain a description of each parcel
18 of real property receiving Uniform Handling Service for which Delinquent Fees exist, and
19 the amount of the Delinquent Fees (and the associated basic penalty and interest and
20 costs of Collection) related to that real property.

21 (3) After providing any statutorily required notice and holding any
22 statutorily required hearing, and following the final determination of the Board as to the
23 Delinquent Fees detailed in the report, pursuant to Health and Safety Code section
24 5473.4, the Clerk of the Board shall, on or before August 10 of each year, file with the
25 County Auditor/Controller-Recorder a copy of the report with a statement endorsed
26 thereon over his or her signature that the report has been finally adopted by the Board.
27 The Auditor/Controller-Recorder shall then enter the amounts of the Delinquent Fees (and
28 the associated basic penalty and interest and costs of Collection) against the respective

1 lot or parcel of land as they appear on the current assessment roll. Pursuant to Health
2 and Safety Code sections 5473.5 and 5473.6, the amount of charges shall constitute a
3 lien against the lot or parcel of land against which the charge has been imposed and the
4 tax collector shall include the amount of charges on bills for taxes levied against the
5 respective lots and parcels of land.

6 (e) Any Delinquent Fees (and the associated basic penalty and interest and
7 costs of Collection) which are collected by the County shall be allocated as follows:

8 (1) First, to the County up to the amount of the County's costs of
9 Collection;

10 (2) Next, to the Grantee which provided the Uniform Handling Service
11 which gave rise to the Delinquent Fees, up to the amount of the Delinquent Fees and the
12 associated interest provided for in Subdivision (d)(1)(B); and

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

14 (f) As used herein, the County's costs of Collection include, but are not limited
15 to, any staff time and related expenses or Division charges involved in preparing the
16 report, placing the Delinquent Fees on the tax roll, collecting or distributing the Delinquent
17 Fees and determining which monies received by the Division from the tax collector relate
18 to which Delinquent Fees account.

19 (g) The County has no liability to pay the Grantee any amount or sum for any
20 Delinquent Fees and/or the associated interest to the extent same are not collected by
21 the County.

22 **46.0507 Discontinuance of Service.**

23 Unless Grantee is otherwise directed by Director, Grantee shall not refuse to
24 provide, or discontinue the providing of, Solid Waste Handling service to any Subscriber
25 in a uniform handling area required to subscribe for Uniform Handling Service.

26 **46.0508 Penalties for Violations.**

27 Except as otherwise allowed in sections 46.1301, 46.1302, 46.1303, and 45.1304,
28 it shall be unlawful for any Person to fail or refuse to subscribe or pay for Uniform Handling

1 Service implemented under this Chapter. Such a failure or refusal to subscribe or pay for
2 required Uniform Handling Service shall subject such Person to the penalties provided in
3 section 46.1501.

4 **46.0509 Illegal Dumping Retrieval Service Fee.**

5 Within uniform handling areas, at the direction of the County, Grantee agrees to
6 bill Subscribers for and Collect an illegal dumping retrieval service fee as established from
7 time to time by the Board as part of the County Code. Such fee may be changed by the
8 Board, by providing 60 days written notice of a change to Grantee. The Grantee, as
9 directed in writing by the County, shall either remit the fee collected to the County or
10 provide mutually agreed upon specified illegal dumping retrieval and Disposal services.

11
12 **CHAPTER 6: COMMERCIAL SOLID WASTE AND ORGANIC WASTE**
13 **RECYCLING PROGRAM**

14 **Section**

15 **46.0601 Purpose.**

16 **46.0602 Definitions.**

17 **46.0603 Commercial Solid Waste Recycling.**

18 **46.0604 Commercial Organics Recycling/Diversion.**

19 **46.0605 Donate or Sell of Recyclables.**

20
21 **46.0601 Purpose.**

22 This Chapter shall apply to Businesses subject to the AB 341 and AB 1826 laws.

23 **46.0602 Definitions.**

24 For purposes of this Chapter the following terms shall have the meanings set forth
25 in this Section:

26 (a) **BUSINESS.** A commercial or public entity, including, but not limited to, a
27 firm, partnership, proprietorship, joint stock company, corporation, or association that is
28 organized as a for-profit or nonprofit entity, or a multifamily Residential dwelling with five

1 or more units, located within the Unincorporated County.

2 **46.0603 Commercial Solid Waste Recycling.**

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

6 (b) A Business that generates four or more cubic yards of commercial Solid
7 Waste per week or is a multifamily Residentialdwelling of five units or more shall arrange
8 for Recycling services, consistent with State and local laws by taking at least one of the
9 following actions:

10 (1) Source separate Recyclables from the Solid Waste being discarded
11 and subscribe to the Grantee for the location of the Business, for the pickup and Diversion
12 of the Recyclables separately from the discarded Solid Waste.

13 (2) Source separate Recyclables from the Solid Waste being discarded
14 and Self-Haul the Recyclables to a permitted Materials Recovery Facility, Recycling
15 facility, or other Mixed Waste Processing facility for Diversion from Disposal in a landfill.

16 (3) Subscribe, with the Grantee for the location of the Business, to a
17 Recycling service that includes Mixed Waste Processing that specifically includes the
18 Diversion of the Recyclables from Disposal in a landfill.

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

21 (c) Commercial Recycling Collection containers:

22 (1) Each Business subject to this Section that provides customers
23 access to the Business shall provide customers with a commercial Solid Waste Recycling
24 Bin or container to Collect material purchased on the premises and that meets the
25 following requirements:

26 (A) Is adjacent to each Bin or container for trash other than
27 recyclable commercial Solid Waste, except in restrooms.

28 (B) Is visible and easily accessible.

1 (C) Is clearly marked with education signage indicating what is
2 appropriate to place in the commercial Solid Waste Recycling Bin or container.

3 (2) Full-service restaurants are exempt from the requirement to provide
4 customers with a commercial Solid Waste Recycling Bin or container if the full-service
5 restaurant provides its employees with a commercial Solid Waste Recycling Bin or
6 container to Collect material purchased on the premises and implements a program to
7 Collect recyclable commercial Solid Waste.

8 (d) Each Business subject to this Section that does not subscribe with the
9 Grantee for the location of the Business shall be responsible for ensuring and
10 demonstrating its compliance with the requirements of this Section to the Division with
11 satisfactory proof of acceptable levels of waste Diversion as determined by the Director
12 or designee and requested by the Division.

13 (e) To comply with this Chapter, property owners of multifamily
14 Residentialdwellingsof five units or more may require tenants to source separate their
15 Recyclables. Tenants must source separate their Recyclables as required by property
16 owners of multifamily Residentialdwellingsof five units or more.

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

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

26 (1) Lack of sufficient space in the Business to provide additional
27 Recycling Bins.

28 (2) The current implementation by a Business of actions that result in

1 the Recycling of a significant portion of its commercial waste.

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

4 (4) Lack of viable markets or Recycling facilities available for
5 Recyclables generated by the Business.

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

7 **46.0604 Commercial Organics Recycling/Diversion.**

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

11 (b) A Business generating two cubic yards or more of commercial Solid Waste
12 per week shall arrange for Recycling services specifically for Organic Waste, consistent
13 with State and local laws, by taking one, or any combination, of the following actions:

14 (1) Source separate Organic Waste from other Solid Waste and
15 subscribe to the Grantee for the location of the Business, for the Collection and Recycling
16 of the Organic Waste.

17 (A) If the Grantee for the location of the Business does not offer a
18 program for the Collection and Recycling of the Organic Waste, a Business may contract
19 with another entity for the service. That a hauler that is not a Grantee may provide the
20 Collection and Recycling of Organic Waste at a lower cost to Business does not authorize
21 a Business to use the hauler that is not a Grantee, if the Grantee provides a Collection
22 and Recycling of Organic Waste program to Business.

23 (2) Recycle its Organic Waste onsite or Self-Haul its own Organic Waste
24 for Recycling.

25 (3) Subscribe, with the Grantee for the location of the Business, to an
26 Organic Waste Recycling service that may include Mixed Waste Processing that
27 specifically Recycles Organic Waste.

28 (4) Sell or donate recyclable Organic Waste to the Grantee or a third

1 party in compliance with the Franchise Agreement.

2 (c) Commercial Organic Waste Collection containers:

3 (1) Each Business subject to this Section that provides customers
4 access to the Business shall provide customers with an Organic Waste Recycling Bin or
5 container to Collect material purchased on the premises for immediate consumption and
6 that meets the following requirements:

7 (A) Is adjacent to each Bin or container for trash other than
8 recyclable Organic Waste, except in restrooms.

9 (B) Is visible and easily accessible.

10 (C) Is clearly marked with education signage indicating what is
11 appropriate to place in the Organic Waste Recycling Bin or container.

12 (2) Full-service restaurants are exempt from the requirement to provide
13 customers with an Organic Waste Recycling Bin or container if the full-service restaurant
14 provides its employees with an Organic Waste Recycling Bin or container to Collect
15 material purchased on the premises for immediate consumption and implements a
16 program to Collect recyclable Organic Waste.

17 (d) When arranging for gardening or landscaping services, the contract or work
18 agreement between a Business subject to this Section and a gardening or landscaping
19 service shall require that the Organic Waste generated by those services be managed in
20 compliance with this Section.

21 (e) A Business that is a multifamily Residentialdwelling is not required to
22 arrange for the Organic Waste Recycling services specified in this Section for food waste
23 that is generated by the Business.

24 (f) Each Business subject to this Section that does not subscribe with the
25 Grantee for the location of the Business shall be responsible for ensuring and
26 demonstrating its compliance with the requirements of this Section to the Division with
27 satisfactory proof of acceptable levels of Organic Waste Recycling as determined by the
28 Director and requested by the Division, or its designee.

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

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

10 (1) Lack of sufficient space in the Business to provide additional Organic
11 Waste Recycling Bins.

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

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

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

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

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

22 **46.0605 Donate or Sell of Recyclables.**

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

26
27 **CHAPTER 7: RESERVED**

28

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

3 **Section**

4 **46.0801 General.**

5 **46.0802 Types of Reports.**

6 **46.0803 County Right of Audit.**

7
8 **46.0801 General.**

9 (a) Each Grantee shall keep, maintain, and furnish copies of such operating
10 records and reports as may be requested by the Division to ascertain compliance with
11 Division 6 and as set forth in the Franchise Agreement. The Division reserves the right
12 to request that additional information be provided to it, as necessary to meet its needs,
13 including but not limited to AB 939, AB 341, AB 1826 and SB 1383, as may be amended,
14 and other applicable reporting requirements.

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

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

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

25 **46.0802 Types of Reports.**

26 Each Franchise Agreement shall require the Grantee to provide specific
27 information to the County related to the operation of the franchise, including but not limited
28 to the following types of reports:

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

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

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

23 (d) Within 120 days following the close of Grantee’s fiscal year, Grantee shall
24 furnish a summary of the reports required to be provided quarterly pursuant to subdivision
25 (b), above. The summary must be reviewed by the Grantee’s independent certified public
26 account, in accordance with the standards of the accounting industry, and include the
27 appropriate statement from said accountant relative to his or her review.

28 (e) Within 120 days following the close of Grantee’s fiscal year, Grantee shall

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

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

25 (g) Grantee shall be required to provide audited financial statements upon 120
26 days advance written notice by the Division, for its most recently completed fiscal year,
27 together with the related opinion of the independent certified public accountant who
28 certified such audited financial statement. The Grantee shall make the audited financial

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

12 **46.0803 County Right of Audit.**

13 Grantee shall make its Subscriber base and business, operational and financial
14 records available to the Division, or its designee, for audit at reasonable times for
15 purposes relevant to review of performance and rate adjustment issues relevant to the
16 Grantee's Franchise Agreement. In the event an audit is undertaken and shows that the
17 Franchise Fee paid by Grantee to the County (relative to any period of time in excess of
18 three months) has been understated by at least \$50,000 or two percent, whichever is
19 less, then Grantee shall reimburse County for the cost of such audit and shall, in addition,
20 pay the County the amount of the understated Franchise Fee, plus simple interest on
21 such understated amount at the rate of 10 percent per annum from the date originally due
22 until paid.

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

25 **Section**

- 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

5 **46.0901 Indemnification of County.**

6 Separate and distinct from the insurance provisions required by this Division 6,
7 each Franchise Agreement shall require each Grantee to appear and defend (with
8 counsel approved by County) all actions against the Division and the County, and the
9 Grantee agrees to defend (with counsel approved by County), indemnify, and hold the
10 County and/or its officers, agents, volunteers and employees harmless from and against,
11 any and all claims and demands, causes of action of every kind and description,
12 damages, liabilities, costs or expenses for any damages or injuries to any Person or
13 property, including, but not limited to, injury to Grantee's officers, agents, or employees
14 which arise directly or indirectly from or are connected with or are caused or claimed to
15 be caused by acts, errors or omissions of Grantee, or its officers, agents, or employees,
16 in exercising its rights or in performing its duties under its Franchise Agreement or under
17 this Division 6, and all costs and expenses of investigating and defending against same,
18 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 has negligently or willfully
21 acted or failed to act with respect to the Collection, handling or transportation of
22 Hazardous Waste, Grantee shall indemnify, defend (with counsel approved by County),
23 protect and hold harmless the County and its respective officers, employees, agents,
24 volunteers, assigns, and any successor or successors harmless from and against all
25 claims, actual damages (including, but not limited to, special and consequential
26 damages), natural resources damage, punitive damages, injuries, costs, response
27 remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action,
28 suits, legal or administrative proceedings, interest, fines, charges, penalties, and

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

15 **46.0903 Insurance Requirements.**

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

- 24 (1) Workers compensation.
- 25 (2) Comprehensive general and automobile liability insurance.
- 26 (3) Environmental liability.

27 (b) Prior to commencing operations under a Franchise Agreement, Grantee
28 shall furnish to the Division certificates of insurance evidencing the required insurance

1 coverage. Each such certificate shall provide that the insurance coverage evidenced
2 thereby shall not be expired, canceled, terminated or reduced in amount without at least
3 30 days advance written notice to the Division. Within 60 days after the effective date of
4 a Franchise Agreement, the Grantee shall furnish to the Division certified copies of all of
5 the policies and endorsements required by this Section. Proofs of renewal or of
6 substitution of carriers shall be provided to the Division promptly as such events occur.

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

17 (d) Grantee shall not be required to maintain separate policies of insurance for
18 any type of insurance required under both this section and Chapter 8 of Division 3 of Title
19 3 of this Code. However, Grantee must maintain the level of insurance which is the higher
20 of that required in this section and Chapter 8 of Division 3 of Title 3 of this Code, and must
21 obtain and maintain insurance coverage which satisfies all of the provisions of this section
22 and Chapter 8 of Division 3 of Title 3 of this Code, including without limit, providing
23 certificates of insurance to all specified departments of the County and requiring
24 notification of the cancellation or termination of any insurance policy be given by the
25 insurance company to all specified departments of the County.

26 **46.0904 Performance Bonds or Other Security.**

27 Grantee shall furnish to the County, without additional charge, a corporate surety
28 bond, a letter of credit or other Security device acceptable to the Division, as Security for

1 performance under its Franchise Agreement (collectively "Security"). The amount of the
2 Security shall be the average of one month's expected Gross Receipts less Disposal
3 charge. Adequate proof of the existence of the Security shall be provided (e.g., a
4 certificate from the surety showing that the bond premiums have been paid in full shall
5 accompany the bond and each renewal thereof). The surety on the bond, the bank on
6 which the letter of credit is drawn and the surety for any other Security device shall be a
7 company or financial institution acceptable to the County and shall be authorized to do
8 business in the State of California. A surety company shall be as defined in Code of Civil
9 Procedure section 995.120 or any successor section. The surety must be acceptable to
10 the County and may be subject to objection to sufficiency pursuant to Code of Civil
11 Procedure sections 995.660 et seq., or any successor sections.

12 **46.0905 Liquidated Damages Deposit.**

13 Each Grantee shall be required to maintain a bank account from which the Division
14 will have the ability to remove, on the sole signature of the Director, sums of money equal
15 to any liquidated damages assessed against Grantee under the provisions of section
16 46.1002 of this code.

17 **46.0906 Modification.**

18 The requirements of this Chapter may be modified or waived in writing by the Board
19 upon the request of Grantee, provided the Board reasonably determines such
20 modification or waiver is in the best interest of County and of the public welfare,
21 considering all relevant factors, including acceptable financial guarantees provided by
22 Grantee or by a parent company of Grantee.

23
24 **CHAPTER 10: FRANCHISE ADMINISTRATION, ENFORCEMENT AND REMEDIES**

25 **Sections**

- 26 **46.1001 Administration, Enforcement and Remedies.**
- 27 **46.1002 Liquidated Damages.**
- 28 **46.1003 Resolution of Subscriber Complaints.**

1 **46.1004 Notices.**

2
3 **46.1001 Administration, Enforcement and Remedies.**

4 (a) If the Director determines at any time that the Grantee’s performance of the
5 Solid Waste Facility Fee authorized or required in its Franchise Agreement, or any of its
6 other actions, are not in conformity with the provisions of the Franchise Agreement, the
7 provisions of this Code, the requirements of the CalRecycle, or its successor agency,
8 including but not limited to, requirements for source reduction and Recycling (as to the
9 waste stream subject to the Franchise Agreement) or any other applicable Federal, State,
10 or local law or regulation, including but not limited to, the laws governing Collection,
11 Transfer, storage and/or Disposal of Solid Waste, the Director will notify Grantee in writing
12 of such deficiencies (“notice of deficiency”) as shall be defined in the Franchise
13 Agreement with the Grantee.

14 (b) The notice of deficiency may provide a reasonable time within which
15 correction of all noted deficiencies is to be made. Some deficiencies are by their nature
16 not curable, and no time period to correct or remedy such deficiency shall be given in the
17 notice of deficiency.

18 (c) The Director shall review the Grantee’s response to the notice of deficiency.
19 If the Director determines that the Grantee has not cured the deficiency, or if there is no
20 cure period provided in the notice of deficiency given the nature of the deficiency, the
21 Director shall either:

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

24 (2) Decide the matter and notify the Grantee of that decision, in writing.

25 (A) The decision of the Director may be to terminate the Franchise
26 Agreement or may be to impose some lesser sanction;

27 (B) The decision of the Director shall be final and binding on
28 Grantee unless the Grantee files a “notice of appeal” with the Director within 30 days of

1 receipt of the Director's decision. The notice of appeal shall be in writing, shall contain a
2 detailed and precise statement of the basis for the appeal, and shall be accompanied by
3 the fee, if any, which is applicable to the filing of such an appeal.

4 (C) Within ten working days of receipt of a notice of appeal, the
5 Director shall either refer the appeal to the Board for proceedings in accordance with
6 subdivision (d), or refer the matter to a hearing officer for proceedings pursuant to Chapter
7 27 of Division 2 of Title 1 of this Code.

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

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

13 (B) Set the matter for hearing.

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

15 (A) The Board shall give Grantee, and any interested Person
16 requesting the same, 14 days written notice of the time and place of the public hearing.
17 At the hearing, the Board shall consider the report of the Director indicating the
18 deficiencies, and shall give the Grantee, or its representatives and any other interested
19 Person, a reasonable opportunity to be heard.

20 (B) Based on the evidence presented at the public hearing, the
21 Board shall decide the appropriate action to be taken. If, based upon the record, the Board
22 determines that as noted in the notice of deficiency, the Grantee's performance of the
23 Solid Waste Facility Fee authorized or required in its Franchise Agreement, or any of its
24 other actions, are not in conformity with the provisions of the Franchise Agreement, the
25 provisions of this Code, the requirements of the CalRecycle, or its successor agency,
26 including but not limited to, requirements for source reduction and Recycling (as to the
27 waste stream subject to the Franchise Agreement) or any other applicable Federal, State,
28 or local law or regulation, including but not limited to the laws governing Collection,

1 Transfer, storage and/or Disposal of Solid Waste, then the Board, in the exercise of its
2 sole discretion, may terminate the Franchise Agreement immediately or impose such
3 lesser sanction as it deems appropriate. The decision of the Board shall be final and
4 conclusive.

5 (e) Grantee's performance under its Franchise Agreement is not excused
6 during the period of time prior to the Director's or the Board's final determination, as the
7 case may be, regarding the validity of, and appropriate response to, the deficiencies noted
8 in the notice of deficiency.

9 (f) In the event Grantee: (i) has received a notice of deficiency and fails to
10 perform Solid Waste Facility Fee; or (ii) has had its Franchise Agreement terminated; the
11 County, acting through the Division, reserves the right, in addition to all other rights
12 available to the County, to take any one or combination of the following actions:

13 (1) To rent or lease from Grantee, at its respective fair and reasonable
14 rental value, all or any part of the Grantee's equipment (including Collection containers
15 utilized by Subscribers and office equipment and billing programs), equipment yard and
16 office utilized by Grantee in providing the Solid Waste Facility Fee required under its
17 Franchise Agreement. The County may rent or lease such equipment and real property
18 for a period not to exceed 6 months, for the purpose of performing the Solid Waste Facility
19 Fee, or any part thereof, which Grantee is (or was) obligated to provide pursuant to its
20 Franchise Agreement. The County may use said rented equipment and real property to
21 directly perform such Solid Waste Handling service or to assign it to some other Grantee
22 or Person to act on the County's behalf. Grantee shall be held responsible for the costs
23 to insure the County or its assignee from all liability resulting from the operation of
24 Grantee's equipment. In the case of equipment or real property not owned by Grantee,
25 Grantee shall assign to the County, to the extent Grantee is permitted to do so under the
26 instruments pursuant to which Grantee possesses such equipment or real property, the
27 right to possess the equipment or real property.

28 (2) As used in this Subdivision, means the rate for such equipment as

1 listed in the State Department of Transportation publication, Labor Surcharge and
2 Equipment Rental Rates, in effect at the time the County leases the equipment. If a
3 particular piece of equipment is not listed in said publication or if said publication is not
4 current, the reasonable rental value may be established by the Director by any equitable
5 alternative method. For real property, the REASONABLE RENTAL VALUE means its
6 market rental rate as established by the Director using an equitable method.

7 (3) If the County exercises its rights under this Subdivision, the County
8 shall pay or owe Grantee the reasonable rental value of the equipment and real property
9 so used for the period of the County's possession thereof. The County may offset any
10 amounts due to Grantee pursuant to this provision against any amounts due to County
11 from Grantee.

12 (4) All revenues owed by Subscribers which are attributable to services
13 performed by or at the direction of the County during County's assumption of Grantee's
14 Solid Waste Handling duties shall be billed by and paid to the County. To the extent
15 Grantee receives such revenue after County's assumption of Grantee's Solid Waste
16 Handling duties, Grantee shall pay such revenue to County promptly after receipt thereof
17 (or promptly after County has performed the services related to such revenue, if the
18 revenue was received by the Grantee prior to the County's assumption of duties) and
19 Grantee shall be deemed to have assigned to County all of Grantee's right and interest
20 to any such revenues.

21 (g) The County rights set forth in this Section are in addition to, and not in
22 limitation of, any other powers or rights available to the County upon failure of Grantee to
23 perform its obligations under Division 6 or its Franchise Agreement. Further, by entering
24 into its Franchise Agreement issued pursuant to Division 6 each Grantee acknowledges
25 that its violation of the terms of Division 6 or its breach of the terms of its Franchise
26 Agreement shall cause the County to suffer irreparable injury and damages sufficient to
27 support injunctive relief to enforce the provisions of the Franchise Agreement, and to
28 enjoin the breach thereof.

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

5 **46.1002 Liquidated Damages.**

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

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

1 liquidated damages and the fact that Grantee will have had ample opportunity to consult
2 with legal counsel and obtain an explanation of the liquidated damage provision contained
3 therein.

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

9 **46.1003 Resolution of Subscriber Complaints.**

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

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

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

22 (c) The Director shall determine if the Subscriber's complaint is justified, and if
23 so, what remedy, if any, shall be applied. The remedy provided to the Subscriber under
24 this Section shall be limited to a refund of Subscriber charges related to the period of
25 violation of any of the terms of Division 6 or of the breach of any term of the applicable
26 Franchise Agreement. In addition to any other remedy of County contained in this Section,
27 County may impose liquidated damages of up to \$100.00 payable to the County for any
28 single event or series of related events, or actual damages as demonstrated during the

1 resolution procedure.

2 (d) The Director may delegate the duties under this Section to a designee. The
3 decision of the Director or a designee shall be final on any matter of \$5,000.00 or less.
4 In the event of a decision on a matter awarding more than \$5,000.00, Grantee may seek
5 review pursuant to the notice of appeal procedure contained in section 46.0801.

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

9 **46.1004 Notices.**

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

19
20 **CHAPTER 11: GRANTEE SB 1383 ORGANIC WASTE COLLECTION SERVICES**
21 **IMPLEMENTATION**

22 **Section**

23 **46.1101 Requirements for Grantees.**

24 **46.1102 Education, Equipment, Monitoring and Reporting.**

25
26 **46.1101 Requirements for Grantees.**

27 Grantees providing SB 1383-compliant residential, Commercial, or industrial
28 Organic Waste Collection services to Generators within the County’s boundaries, except

1 in a Franchise Area that has been granted a waiver from SB 1383 Organic Waste
2 Collection services, shall meet the following requirements and standards as a condition
3 of approval of a contract, agreement, or other authorization with the County to Collect
4 Organic Waste:

5 (a) Through written notice to the County, identify facilities to which they will
6 transport Organic Waste including facilities for Source Separated Recyclables, Source
7 Separated Green Container Organic Waste, Source Separated Brown Container Organic
8 Waste, and Mixed Waste.

9 (b) Transport Source Separated Recyclables, Source Separated Green
10 Container Organic Waste, Source Separated Brown Container Organic Waste, and Mixed
11 Waste to a facility, operation, activity or property that recovers Organic Waste as defined
12 in 14 CCR Division 7, Chapter 12, Article 2.

13 (c) Obtain approval from the County to haul Organic Waste, unless it is
14 transporting Source Separated Organic Waste to a Community Composting site or
15 lawfully transporting Construction & Demolition debris in such a manner that complies
16 with 14 CCR section 18989.1 and section 63.1501 of the County Code.

17 **46.1102 Education, Equipment, Monitoring and Reporting.**

18 Grantee shall comply with Education, Equipment, signage, container labeling,
19 container color, contamination Monitoring, and Reporting, and other requirements
20 contained within its Franchise Agreement.

21
22 **CHAPTER 12: COMMERCIAL BUSINESSES SB 1383 ORGANIC WASTE**
23 **COLLECTION SERVICES IMPLEMENTATION**

24 **Section**

- 25 **46.1201 Purpose.**
- 26 **46.1202 Requirements for Commercial Businesses.**
- 27 **46.1203 Donate or Sell of Recyclables.**

28

1 **46.1201 Purpose.**

2 This Chapter shall apply to Commercial Businesses subject to the Organic Waste
3 Collection services requirements of the SB 1383 Regulations.

4 **46.1202 Requirements for Commercial Businesses.**

5 Generators that are Commercial Businesses, including Multi-family Residential
6 Dwellings with five or more units, shall comply with the following requirements:

7 (a) Subscribe to the County's Collection services and comply with the
8 requirements of those services as described below in subsection (b), except for those
9 that meet the Self-Hauler requirements of this ordinance. The County shall have the right
10 to review the number and size of a Generator's containers and frequency of Collection to
11 evaluate adequacy of capacity provided for each type of Collection service for proper
12 separation of materials and containment of materials; and, Commercial Businesses shall
13 adjust their service level for their Collection services as requested by the County.

14 (b) Except for those that meet the Self-Hauler requirements of this ordinance,
15 participate in the County's Organic Waste Collection services by placing designated
16 materials in designated containers as described below and specified in the Franchise
17 Agreement.

18 (1) Option 1: A three and three-plus-container Collection service (Blue
19 Container, Green Container, Brown Container, and/or Gray Container).

20 (A) Option 1a: Generator shall place Source Separated Green
21 Container Organic Waste, including Food Waste, in the Green Container; Source
22 Separated Recyclables in the Blue Container; and Gray Container Waste in the Gray
23 Container. Generator shall not place materials designated for the Gray Container into the
24 Green or Blue Containers.

25 (B) Option 1b: Generator shall place Source Separated Green
26 Container Organic Waste, except Food Waste, in the Green Container; Source Separated
27 Recyclables in the Blue Container; and Mixed Waste, including Food Waste, in the Gray
28 Container. Generator shall not place materials designated for the Green Container or

1 Blue Container in the Gray Container.

2 (C) Option 1c: Generator shall place Source Separated Green
3 Container Organic Waste, except Food Waste, in the Green Container; Source Separated
4 Brown Container Organic Waste in the Brown Container; Source Separated Recyclables
5 in the Blue Container; and Gray Container Waste in the Gray Container. Generator shall
6 not place materials designated for the Gray Container into the Green, Brown, or Blue
7 Containers.

8 (2) Option 2: Two-container Collection service (Green Container/Gray
9 Container system or Blue Container/Gray Container system).

10 (A) Option 2a, Green Container/Gray Container: Generator shall
11 place only Source Separated Green Container Organic Waste in a Green Container.
12 Generator shall place all other materials (Mixed Waste) in a Gray Container.

13 (B) Option 2b, Blue Container/Gray Container: Generator shall
14 place only Source Separated Recyclables in a Blue Container. Generator shall place all
15 other materials (Mixed Waste) in a Gray Container.

16 (3) Option 3: An unsegregated single container (one-container)
17 Collection service.

18 (A) Generator shall place all materials (Mixed Waste) in a Gray
19 Container.

20 (c) Supply and allow access to adequate number, size and location of
21 Collection containers with sufficient labels or colors for employees, contractors, tenants,
22 and customers, consistent with County's container Collection systems.

23 (d) Excluding Multi-Family Residential Dwellings, shall provide containers for
24 the Collection of Source Separated Green Container Organic Waste, Source Separated
25 Brown Container Organic Waste, and Source Separated Recyclables in all indoor and
26 outdoor areas where Disposal containers are provided for customers, for materials
27 generated by that Commercial Business. Such containers do not need to be provided in
28 restrooms. If a Commercial Business does not generate any of the materials that would

1 be collected in one type of container, then the Commercial Business does not have to
2 provide that particular container in all areas where Disposal containers are provided for
3 customers. Pursuant to 14 CCR section 18984.9(b), the containers provided by the
4 Commercial Business shall have either:

5 (1) A body or lid that conforms with the container colors provided through
6 the Collection service provided by the County, with either lids conforming to the color
7 requirements or bodies conforming to the color requirements, or both lids and bodies
8 conforming to color requirements. A Commercial Business is not required to replace
9 functional containers, including containers purchased prior to January 1, 2022, that do
10 not comply with the requirements of the subsection prior to the end of the useful life of
11 those containers, or prior to January 1, 2036, whichever comes first.

12 (2) Container labels that include language or graphic images, or both,
13 indicating the primary material accepted and the primary materials prohibited in that
14 container, or containers with imprinted text or graphic images that indicate the primary
15 materials accepted and primary materials prohibited in the container. Pursuant to 14 CCR
16 section 18984.8, the container labeling requirements are required on new containers
17 commencing January 1, 2022.

18 (e) Multi-Family Residential Dwellings are not required to comply with container
19 replacement requirements or labeling requirement in subsection (d) above pursuant to 14
20 CCR section 18984.9(b).

21 (f) To the extent practical through education, training, Inspection, and/or other
22 measures, excluding Multi-Family Residential Dwellings, shall prohibit employees from
23 placing materials in a container not designated for those materials per the County's Blue
24 Container, Green Container, Brown Container, and Gray Container Collection service.

25 (g) Excluding Multi-Family Residential Dwellings, shall periodically inspect Blue
26 Containers, Green Containers, Brown Containers, and Gray Containers for contamination
27 and inform employees if containers are contaminated and of the requirements to keep
28 contaminants out of those containers pursuant to 14 CCR section 18984.9(b)(3).

1 (h) Annually provide information to employees, contractors, tenants, and
2 customers about Organic Waste Recovery requirements and about proper sorting of
3 Source Separated Green Container Organic Waste, Source Separated Brown Container
4 Organic Waste, and Source Separated Recyclables.

5 (i) Provide education information before or within 14 days of occupation of the
6 premises to new tenants that describes the requirements to keep Source Separated
7 Green Container Organic Waste, Source Separated Brown Container Organic Waste,
8 and Source Separated Recyclables separate from Gray Container Waste (when
9 applicable) and the location of containers and the rules governing their use at each
10 property.

11 (j) Provide or arrange access for County or its agent to their properties during
12 all inspections conducted in accordance with this ordinance to confirm compliance with
13 the requirements of this ordinance.

14 (k) Nothing in this section prohibits a Generator from preventing or reducing
15 waste generation, managing Organic Waste on site, or using a Community Composting
16 site pursuant to 14 CCR section 18984.9(c).

17 **46.1203 Donate or Sell of Recyclables.**

18 Nothing in this Chapter is intended to limit the right of any Commercial Business
19 to donate or sell its Recyclables or Organic Waste as provided by sections 41952,
20 42649.84 and 42649.5 of the Public Resources Code.

21
22 **CHAPTER 13: SINGLE-FAMILY GENERATORS SB 1383 ORGANIC WASTE**
23 **COLLECTION SERVICES IMPLEMENTATION**

24 **Section**

25 **46.1301 Purpose.**

26 **46.1302 Requirements for Single-Family Generators.**

27
28 **46.1301 Purpose.**

1 This Chapter shall apply to Single-Family Generators subject to the Organic Waste
2 Collection services requirements of the SB 1383 Regulations.

3 **46.1302 Requirements for Single-Family Generators.**

4 Single-Family Organic Waste Generators shall comply with the following
5 requirements:

6 (a) Shall subscribe to the County's Organic Waste Collection services for all
7 Organic Waste generated as described in subsection (b) below. The County shall have
8 the right to review the number and size of Generator's containers to evaluate adequacy
9 of capacity provided by each type of Collection service for proper separation of materials
10 and containment of materials; and a Single-Family Generator shall adjust its service level
11 for its Collection services as requested by the County. Generators may additionally
12 manage their Organic Waste by preventing or reducing their Organic Waste, managing
13 Organic Waste on site, and/or using a Community Composting site pursuant to 14 CCR
14 section 18984.9(c).

15 (b) Shall participate in the County's Organic Waste Collection services by
16 placing designated materials in designated containers as described below and shall not
17 place Prohibited Container Contaminants in Collection containers.

18 (1) Option 1: A three- and three-plus container Collection service (Blue
19 Container, Green Container, and Gray Container).

20 (A) Option 1a: Generator shall place Source Separated Green
21 Container Organic Waste, including Food Waste, in the Green Container; Source
22 Separated Recyclables in the Blue Container; and Mixed Waste in the Gray Container.
23 Generator shall not place materials designated for the Green Container or Blue Container
24 in the Gray Container.

25 (B) Option 1b: Generator shall place Source Separated Green
26 Container Organic Waste, except Food Waste, in the Green Container; Source Separated
27 Recyclables in the Blue Container; and Mixed Waste, including Food Waste, in the Gray
28 Container. Generator shall not place materials designated for the Green Container or

1 Blue Container in the Gray Container.

2 (2) Option 2: Two-container Collection service (Green Container/Gray
3 Container system or Blue Container/Gray Container system).

4 (A) Option 2a, Green Container/Gray Container: Generator shall
5 place only Source Separated Green Container Organic Waste in a Green Container.
6 Generator shall place all other materials (Mixed Waste) in a Gray Container.

7 (B) Option 2b, Blue Container/Gray Container: Generator shall
8 place only Source Separated Recyclables in a Blue Container. Generator shall place all
9 other materials (Mixed Waste) in a Gray Container.

10 (3) Option 3: An unsegregated single container (one-container)
11 Collection service.

12 (A) Generator shall place all materials (Mixed Waste) in a Gray
13 Container.

14

15 **CHAPTER 14: SB 1383 WAIVERS FOR GENERATORS**

16 **Section**

17 **46.1401 Purpose.**

18 **46.1402 De Minimis Waivers.**

19 **46.1403 Physical Space Waivers.**

20 **46.1404 Collection Frequency Waivers.**

21 **46.1405 Review and Approval of Waivers.**

22

23 **46.1401 Purpose.**

24 This Chapter shall apply to Generators subject to the Organic Waste Collection
25 services requirements of the SB 1383 Regulations.

26 **46.1402 De Minimis Waivers.**

27 The County may waive a Commercial Business' obligation (including Multi-Family
28 Dwellings with five or more units) to comply with some or all of the SB 1383 Organic

1 Waste requirements of this ordinance if the Commercial Business provides
2 documentation that the Commercial Business generates below a certain amount of
3 Organic Waste material as described below in subsection (b). Commercial Businesses
4 requesting a de minimis waiver shall:

5 (a) Either provide documentation that:

6 (1) The Commercial Business' total Solid Waste Collection service is two
7 cubic yards or more per week and Organic Waste subject to Collection in a Blue
8 Container, Green Container, or Brown Container comprises less than 20 gallons per week
9 per applicable container of the business' total waste; or

10 (2) The Commercial Business' total Solid Waste Collection service is
11 less than two cubic yards per week and Organic Waste subject to Collection in a Blue
12 Container, Green Container, or Brown Container comprise less than 10 gallons per week
13 per applicable container of the business' total waste.

14 (b) Notify the County if circumstances change such that the Commercial
15 Business' Organic Waste exceeds the threshold required for a de minimis waiver, in which
16 case the waiver will be rescinded.

17 (c) Provide written verification of eligibility for a de minimis waiver every 5
18 years, if County has approved a de minimis waiver.

19 **46.1403 Physical Space Waivers.**

20 The County may waive a Commercial Business' or property owner's obligations
21 (including Multi-Family Residential Dwellings with five or more units) to comply with some
22 or all of the SB 1383 Recyclables and/or Organic Waste Collection service requirements
23 if the County has evidence from its own staff, a hauler, licensed architect, or licensed
24 engineer demonstrating that the premises lacks adequate space for the Collection
25 containers required for compliance with the SB 1383 Organic Waste Collection
26 requirements of this Ordinance.

27 (a) A Commercial Business or property owner may request a physical space
28 waiver through the following process:

1 (1) Provide documentation that the premises lacks adequate space for
2 Blue Containers and/or Green Containers including documentation from its hauler,
3 licensed architect, or licensed engineer.

4 (2) Provide written verification to the County that it is still eligible for a
5 physical space waiver every five years if the County has approved an application for such
6 waiver.

7 **46.1404 Collection Frequency Waiver.**

8 The County, at its discretion and in accordance with 14 CCR section
9 18984.11(a)(3), may allow the owner or tenant of any residence, premises, business
10 establishment or industry that subscribes to the County's three-, three-plus, or two-
11 container SB 1383 Organic Waste Collection service to arrange for the Collection of their
12 Blue Container, Gray Container, or both once every 14 days rather than once per week.

13 **46.1405 Review and Approval of Waivers.**

14 The Director, or designee, shall have the authority to review and approve all
15 waivers.

16
17 **CHAPTER 15: REQUIREMENTS FOR FACILITY OPERATORS AND**
18 **COMMUNITY COMPOSTING OPERATIONS**

19 **Section**

20 **46.1501 Requirements for Facility Operators and Community**
21 **Composting Operations.**

22
23 **46.1501 Requirements for Facility Operators and Community Composting**
24 **Operations.**

25 (a) Owners of facilities, operations, and activities that recover Organic Waste,
26 including, but not limited to, Compost facilities, in-vessel digestion facilities, and publicly-
27 owned treatment works shall, upon County request, provide information regarding
28 available and potential new or expanded capacity at their facilities, operations, and

1 activities, including information about throughput and permitted capacity necessary for
2 planning purposes. Entities contacted by the County shall respond within 60 days.

3 (b) Community Composting operators, upon County request, shall provide
4 information to the County to support Organic Waste capacity planning, including, but not
5 limited to, an estimate of the amount of Organic Waste anticipated to be handled at the
6 Community Composting operation. Entities contacted by the Jurisdiction shall respond
7 within 60 days.

8
9 **CHAPTER 16: PENALTIES FOR VIOLATION**

10 **Section**

11 **46.1601 Penalties for Violation.**

12
13 **46.1601 Penalties for Violation.**

14 A violation of this Division is an infraction punishable as provided in section
15 11.0201 of this Code. Each and every day constitutes a separate violation of this
16 provision.

17
18 **CHAPTER 17: AMENDMENT**

19 **Section**

20 **46.1701 Amendment.**

21
22 **46.1701 Amendment.**

23 The County retains the right to amend Division 6 in any respect, notwithstanding
24 the existence of one or more Franchise Agreement. Until the commencement date of any
25 extended term of a Franchise Agreement, including its extension pursuant to the terms of
26 section 46.0301(d) of this Code, the Grantee shall be subject to and bound by the terms
27 of Division 6 as same exists on the date of the granting of its Franchise Agreement by the
28 County. Each Grantee shall be subject to and bound by the terms of Division 6, as

1 amended, upon the commencement date of any extension of the term of the Franchise
2 Agreement of the Grantee, including its extension pursuant to the terms of section
3 46.0301(d) of this Code. The amendments to Division 6 to which a Grantee shall be
4 subject upon the commencement date of its Franchise Agreement or of the extension of
5 its Franchise Agreement shall be those amendments which have been adopted by the
6 Board (whether or not the amendment is effective) prior to the following date, as
7 applicable: (i) the date the Board acts to grant Grantee its Franchise Agreement; (ii) the
8 date by which the Board is required to determine that the Grantee's Franchise Agreement
9 shall not be extended, as provided in section 46.0301(d) of this Code, in the event that
10 the Franchise Agreement is extended pursuant to the terms of section 46.0301(d) of this
11 Code; or (iii) the date the Board acts to extend the term of Grantee's Franchise
12 Agreement, if the agreement is extended other than pursuant to the provisions of section
13 46.0301(d) of this Code.

14

15 SECTION 2. Chapter 15 is added to Title 3, Division 3 to read in its entirety as
16 follows:

17 **CHAPTER 15: FOOD RECOVERY**

18 **Section**

19 **33.1501 Intent and Enforcement Authority.**

20 **33.1502 Scope of Authority.**

21 **33.1503 Definitions.**

22 **33.1504 Tier One and Tier Two Commercial Edible Food Generators.**

23 **33.1505 Food Recovery organizations and Food Recovery services.**

24 **33.1506 Edible Food Recovery capacity planning.**

25 **33.1507 Inspections and investigations.**

26 **33.1508 Enforcement.**

27

28 **33.1501 Intent and Enforcement Authority.**

1 On September 19, 2016, Governor Brown signed into law Senate Bill No. 1383
2 (SB 1383), the Short-lived Climate Pollutant Reduction Act, which places requirements
3 on multiple entities including the San Bernardino County, other jurisdictions, Residential
4 households, Commercial Businesses and business owners, commercial Edible Food
5 Generators, Solid Waste haulers, Self-Haulers, Food Recovery organizations, and Food
6 Recovery services to support achievement of statewide Organic Waste Disposal
7 reduction targets, reduce greenhouse gas emissions generated from the production of
8 methane from the landfilling of organics and also help reduce food insecurity by requiring
9 commercial Edible Food Generators arrange to have the maximum amount of their Edible
10 Food, that would otherwise be disposed, be recovered for human consumption.

11 **33.1502 Scope of Authority.**

12 Pursuant to Title 14, Division 7, Chapter 12, Section 18791.2 of CCR, San
13 Bernardino County has found that the public's interest in achieving the organic waste
14 Disposal targets set by the State will be best served by Department of Public Health,
15 Division of Environmental Health Services ("DEHS"). The Director, each Inspector, other
16 designated employees of DEHS and Enforcement Officers as defined in this Chapter are
17 hereby authorized to enforce and administer all State law pertaining to environmental
18 health and all provisions of this Environmental Health Code (E.H. Code) within this
19 jurisdiction, the unincorporated areas of San Bernardino County and any contracted cities
20 therein. This authority is granted to the Director, each Inspector, other designated
21 employees of DEHS and Enforcement Officers as defined in this Chapter. DEHS may
22 charge reasonable fees for their services, including fees as are prescribed by the San
23 Bernardino County Code Schedule of Fees.

24 **33.1503 Definitions.**

25 For the purposes of this Chapter, the following terms have the following meanings.
26 The word "shall" is mandatory and not merely directory or permissive.

27 CALRECYCLE. California's Department of Resources Recycling and Recovery,
28 which is the Department designated with responsibility for developing, implementing, and

1 enforcing SB 1383 Regulations on Jurisdictions (and others).

2 CALIFORNIA CODE OF REGULATIONS or CCR means the State of California
3 Code of Regulations. CCR references in this ordinance are preceded with a number that
4 refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).

5 COMMERCIAL EDIBLE FOOD GENERATOR includes a Tier One or a Tier Two
6 Commercial Edible Food Generator as defined in section 33.1503 of this ordinance or as
7 otherwise defined in 14 CCR section 18982(a)(73) and (a)(74). For the purposes of this
8 definition, Food Recovery Organizations and Food Recovery Services are not
9 Commercial Edible Food Generators pursuant to 14 CCR section 18982(a)(7).

10 COMPOSTABLE PLASTICS means plastic materials that meet the ASTM D6400
11 standard for compostability, or as otherwise described in 14 CCR section
12 18984.1(a)(1)(A) or 18984.2(a)(1)(C).

13 EDIBLE FOOD means food intended for human consumption and collected or
14 received from a Tier One or Tier Two Commercial Edible Food Generator. For the
15 purposes of this ordinance or as otherwise defined in 14 CCR section 18982(a)(18),
16 “Edible Food” is not solid waste if it is recovered and not discarded. Nothing in this
17 ordinance or in 14 CCR, Division 7, Chapter 12 requires or authorizes the Recovery of
18 Edible Food that does not meet the food safety requirements of the California Retail Food
19 Code.

20 EDIBLE FOOD RECOVERY means actions to Collect, receive, and/or re distribute
21 Edible Food for human consumption from Tier One and Tier Two Commercial Edible Food
22 Generators that otherwise would be disposed.

23 ENFORCEMENT ACTION means an action of DEHS or its Enforcement Officer to
24 address non-compliance with this ordinance including, but not limited to, issuing
25 administrative citations, fines, penalties, or using other remedies.

26 ENFORCEMENT OFFICER means an entity that DEHS contracts with or
27 otherwise arranges to carry out any of the DEHS’s responsibilities of this ordinance as
28 authorized in 14 CCR section 18981.2. An Enforcement Officer may be a government

1 entity, a hauler, a private entity, or a combination of those entities, specifically:

2 (a) The Division Chief, each Code Enforcement Supervisor, and each Code
3 Enforcement Officer or other designated employee of the Code Enforcement Division of
4 the Land Use Services Department;

5 (b) The Building Official, each Regional Building and Safety Supervisor, each
6 Building Inspector, and other designated employees of the Building and Safety Division
7 of the Land Use Services Department;

8 (c) The Fire Chief/Fire Warden, Fire Marshal, and other designated employees
9 of the San Bernardino County Fire Protection District;

10 (d) The Division Chief, each Animal Control Supervisor/Officer, and other
11 designated employees of the Animal Care and Control Program of the Department of
12 Public Health;

13 (e) The Sheriff-Coroner, each Deputy Sheriff (all ranks), and other designated
14 employees of the Department of the Sheriff-Coroner;

15 (f) The Director and other designated employees of the Public Works
16 Department; and

17 (g) Any other Director and other designated employees of a County
18 Department or Special District as designated by DEHS Administrative Officer or the Board
19 of Supervisors.

20 FOOD DISTRIBUTOR means a company that distributes food to entities including,
21 but not limited to, Supermarkets and Grocery Stores.

22 FOOD FACILITY has the same meaning as in Section 113789 of the Health and
23 Safety Code.

24 FOOD RECOVERY means actions to Collect and distribute food for human
25 consumption that otherwise would be disposed, or as otherwise defined in 14 CCR
26 section 18982(a)(24).

27 FOOD RECOVERY ORGANIZATION means an entity that engages in the
28 Collection or receipt of Edible Food from Commercial Edible Food Generators and

1 distributes that Edible Food to the public for Food Recovery either directly or through
2 other entities, including, but not limited to:

- 3 (a) A food bank as defined in Section 113783 of the Health and Safety Code;
- 4 (b) A nonprofit charitable organization as defined in Section 113841 of the
5 Health and Safety code; and,
- 6 (c) A nonprofit charitable temporary food facility as defined in Section 113842
7 of the Health and Safety Code.

8 A Food Recovery Organization is not a Commercial Edible Food Generator for the
9 purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12
10 pursuant to 14 CCR Section 18982(a)(7).

11 FOOD RECOVERY SERVICE means a Person or entity that Collects and
12 transports Edible Food from a Commercial Edible Food Generator to a Food Recovery
13 Organization or other entities for Food Recovery. A Food Recovery Service is not a
14 Commercial Edible Food Generator for the purposes of this ordinance and
15 implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section
16 18982(a)(7).

17 FOOD SCRAPS means non-wholesome or inedible food such as, but not limited
18 to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread,
19 cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials
20 are Source Separated from other Food Scraps.

21 FOOD SERVICE PROVIDER means an entity primarily engaged in providing food
22 services to institutional, governmental, commercial, or industrial locations of others based
23 on contractual arrangements with these types of organizations.

24 FOOD-SOILED PAPER is compostable paper material that has come in contact
25 with food or liquid, such as, but not limited to, compostable paper plates, paper coffee
26 cups, napkins, pizza boxes, and milk cartons.

27 FOOD WASTE means Food Scraps, Food-Soiled Paper, and Compostable
28 Plastics.

1 GROCERY STORE means a store primarily engaged in the retail sale of canned
2 food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area
3 that is not separately owned within the store where the food is prepared and served,
4 including a bakery, deli, and meat and seafood departments.

5 HEALTH FACILITY means a health facility as defined in Section 1250 of the Health
6 and Safety Code.

7 HOTEL means a hotel as defined in Section 17210 of the Business and
8 Professions Code.

9 INSPECTION means, for the purposes of Edible Food Recovery, actions to review
10 contracts and other records related to the recovery of Edible Food and may occur off-site
11 via email and other forms of electronic communication, as well as the on-site review of an
12 entity's records and Collection, handling, and other procedures for the recovery of Edible
13 Food to determine if the entity is complying with the requirements of this Ordinance.

14 LARGE EVENT means an event, including, but not limited to, a sporting event or
15 a flea market, that charges an admission price, or is operated by a local agency, and
16 serves an average of more than 2,000 individuals per day of operation of the event, at a
17 location that includes, but is not limited to, a public, nonprofit, or privately owned park,
18 parking lot, golf course, street system, or other open space when being used for an event.
19 If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition
20 in 14 CCR Section 18982(a)(38) shall apply to this ordinance.

21 LARGE VENUE means a permanent venue facility that annually seats or serves
22 an average of more than 2,000 individuals within the grounds of the facility per day of
23 operation of the venue facility. For purposes of this ordinance and implementation of 14
24 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public,
25 nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement
26 park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing
27 arts center, fairground, museum, theater, or other public attraction facility. For purposes
28 of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a site under

1 common ownership or control that includes more than one Large Venue that is contiguous
2 with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR
3 Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section
4 18982(a)(39) shall apply to this ordinance.

5 LOCAL EDUCATION AGENCY means a school district, charter school, or county
6 office of education that is not subject to the control of city or county regulations
7 related to Solid Waste, or as otherwise defined in 14 CCR Section 18982(a)(40).

8 NOTICE OF VIOLATION (NOV) means a notice that a violation has occurred that
9 includes a compliance date to avoid an action to seek penalties, or as otherwise defined
10 in 14 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.

11 RESTAURANT means an establishment primarily engaged in the retail sale of food
12 and drinks for on-premises or immediate consumption, or as otherwise defined in 14 CCR
13 Section 18982(a)(64).

14 SELF-HAULER means, for the purposes of Edible Food Recovery, a Commercial
15 Edible Food Generator which holds a contract with and hauls Edible Food to a Food
16 Recovery Organization or other site for redistribution according to the requirements of this
17 Ordinance.

18 STATE AGENCY means State office, officer, department, division, bureau, board,
19 and commission.

20 SUPERMARKET means a full-line, self-service retail store with gross annual sales
21 of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned
22 goods, or nonfood items and some perishable items, or as otherwise defined in 14 CCR
23 Section 18982(a)(71).

24 TIER ONE COMMERCIAL EDIBLE FOOD GENERATOR means a Commercial
25 Edible Food Generator that is one of the following:

- 26 (a) Supermarket.
27 (b) Grocery Store with a total facility size equal to or greater than 10,000 square
28 feet.

- 1 (c) Food Service Provider.
- 2 (d) Food Distributor.
- 3 (e) Wholesale Food Vendor.

4 If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible
5 Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73)
6 shall supersede and apply to this ordinance.

7 TIER TWO COMMERCIAL EDIBLE FOOD GENERATOR means a Commercial
8 Edible Food Generator that is one of the following:

- 9 (a) Restaurant with 250 or more seats, or a total facility size equal to or greater
10 than 5,000 square feet.
- 11 (b) Hotel with an on-site Food Facility and 200 or more rooms.
- 12 (c) Health facility with an on-site Food Facility and 100 or more beds.
- 13 (d) Large Venue.
- 14 (e) Large Event.
- 15 (f) A State agency with a cafeteria with 250 or more seats or total cafeteria
16 facility size equal to or greater than 5,000 square feet.
- 17 (g) A Local Education Agency facility with an on-site Food Facility.

18 If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible
19 Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74)
20 shall supersede and apply to this Ordinance.

21 WHOLESale FOOD VENDOR means a business or establishment engaged in
22 the merchant wholesale distribution of food, where food (including fruits and vegetables)
23 is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor,
24 or other destination, or as otherwise defined in 14 CCR Section 189852(a)(76).

25 **33.1504 Tier One and Tier Two Commercial Edible Food Generators.**

- 26 (a) Tier One Commercial Edible Food Generators must comply with the
27 requirements of this Section commencing January 1, 2022, and Tier Two Commercial
28 Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR

1 Section 18991.3.

2 (b) Large Venue or Large Event operators not providing food services, but
3 allowing for food to be provided by others, shall require Food Facilities operating at the
4 Large Venue or Large Event to comply with the requirements of this Section, commencing
5 January 1, 2024.

6 (c) Tier One and Tier Two Commercial Edible Food Generators shall comply
7 with the following requirements:

8 (1) Arrange to recover the maximum amount of Edible Food that would
9 otherwise be disposed.

10 (2) Use the CalRecycle Model Food Recovery Agreement or the
11 contractual elements contained in the Requirements for Food Recovery Organizations
12 and Food Recovery Services section of this Ordinance to contract with, or otherwise enter
13 into a written agreement with Food Recovery Organizations or Food Recovery Services
14 for:

15 (A) The Collection of Edible Food for Edible Food Recovery from
16 the Tier One or Tier Two Commercial Edible Food Generator's premises; or

17 (B) The acceptance of Edible Food that the Tier One or Tier Two
18 Commercial Edible Food Generator Self-Hauls to the Food Recovery Organization.

19 (3) Shall not intentionally spoil Edible Food that is capable of being
20 recovered by a Food Recovery Organization or a Food Recovery Service.

21 (4) Allow DEHS or its Enforcement Officer to access the premises and
22 review records related to Edible Food Recovery and/or provide them electronically if
23 requested by DEHS.

24 (5) Keep records that include the following information:

25 (A) A list of each Food Recovery Organization or a Food
26 Recovery Service that Collects or receives Edible Food from the Tier One or Tier Two
27 Commercial Edible Food Generator pursuant to a contract or written agreement as
28 required by this Ordinance.

1 (B) A copy of all contracts or written agreements established
2 under the provisions of this Ordinance.

3 (C) A record of the following information for each of those Food
4 Recovery Services or Food Recovery Organizations:

5 (i) The name, address and contact information of the
6 Food Recovery Service or Food Recovery Organization.

7 (ii) The types of food that will be collected by or Self-
8 Hauled to the Food Recovery Service or Food Recovery Organization.

9 (iii) The established schedule or frequency that food will be
10 collected or Self-Hauled.

11 (iv) The quantity of food, measured in pounds recovered
12 per month, collected or Self-Hauled to a Food Recovery Service or Food Recovery
13 Organization for Food Recovery.

14 (6) Commencing no later than July 1, 2022 for Tier One Commercial
15 Edible Food Generators and July 1, 2024 for Tier Two Commercial Edible Food
16 Generators, and July 1 each year therein after, they shall provide an annual Edible Food
17 Recovery report to County that includes, but is not limited to, the information collected in
18 records per section 33.1504(5) in addition to the following information: a list of all types
19 of Edible Food categories they generate, such as “baked goods,” that are not accepted
20 by the Food Recovery Organizations and Food Recovery Services with whom they
21 contract, and certification that all staff responsible for Edible Food Recovery have
22 obtained a valid and unexpired San Bernardino County food handler card. With the
23 exception of the food safety and handling training certification, Tier One and Tier Two
24 Commercial Edible Food Generators may coordinate with their Edible Food Recovery
25 contractors to supply this information.

26 (7) Tier One and Tier Two Commercial Edible Food Generators who
27 Self-Haul.

28 Edible Food shall require those transporting Edible Food for recovery to

1 obtain a valid and unexpired San Bernardino County food handler card and follow the
2 best practices and standards for proper temperature control, methods, and procedures
3 for the safe handling and transport of food.

4 (8) Nothing in this ordinance shall be construed to limit or conflict with
5 the protections provided by the California Good Samaritan Food Donation Act of 2017,
6 the Federal Good Samaritan Act, or share table and school food donation guidance
7 pursuant to Senate Bill 557 of 2017.

8 **33.1505 Food Recovery organizations and Food Recovery services.**

9 (a) Food Recovery Services operating in the County and collecting or receiving
10 Edible Food directly from Tier One and/or Tier Two Commercial Edible Food Generators
11 via a contract or written agreement established under the requirements of this Ordinance,
12 shall maintain the following records:

13 (1) The name, address, and contact information for each Tier One and
14 Tier Two Commercial Edible Food Generator from which the service Collects Edible
15 Food.

16 (2) The quantity in pounds of Edible Food by type collected from each
17 Tier One and Tier Two Commercial Edible Food Generator per month.

18 (3) The quantity in pounds of Edible Food by type transported to each
19 Food Recovery Organization or redistribution site per month.

20 (4) The name, address, and contact information for each Food Recovery
21 Organization or redistribution site that the Food Recovery Service transports Edible Food
22 to for Edible Food Recovery.

23 (b) Commencing no later than July 1, 2022, Food Recovery Organizations and
24 Food Recovery Services operating in the county and collecting or receiving Edible Food
25 from Tier One and Tier Two Commercial Edible Food Generators or any other source
26 shall report to County the following: a detailed Edible Food activity report of the
27 information collected as required under this Ordinance, including information collected in
28 records per section 33.1505(a) in addition to a brief analysis of any necessary process

1 improvements or additional infrastructure needed to support Edible Food Recovery
2 efforts, such as training, staffing, refrigeration, vehicles, etc., and an up to date list of Tier
3 One and Tier Two Commercial Edible Food Generators with whom they have contracts
4 or agreements established as required under this Ordinance. This Edible Food activity
5 report shall be submitted quarterly, or at the discretion of DEHS or its Enforcement Officer,
6 and shall cover the activity that occurred since the period of the last submission.

7 (c) In order to provide the required records to the State, the County, and Tier
8 One or Tier Two Commercial Edible Food Generators, contracts between Food Recovery
9 Organizations and Food Recovery Services and Tier One and Tier Two Commercial
10 Edible Food Generators shall include the following elements:

11 (1) List/description of allowable foods the Food Recovery
12 Organization/Food Recovery Service will receive.

13 (2) List/description of foods not accepted by the Food Recovery
14 Organization/Food Recovery Service.

15 (3) Conditions for refusal of food.

16 (4) Food safety requirements, training, and protocols.

17 (5) Transportation and storage requirements and training.

18 (6) A protocol for informing the Tier One or Tier Two Commercial Edible
19 Food Generators of a missed or delayed pickup.

20 (7) Notice that donation dumping is prohibited.

21 (8) Provisions to Collect sufficient information to meet the record-
22 keeping requirements of this Ordinance.

23 (9) Fees/financial contributions/acknowledgement of terms for the
24 pickup and redistribution of Edible Food.

25 (10) Terms and conditions consistent with the CalRecycle Model Food
26 Recovery Agreement.

27 (11) Information supplying the Tier One or Tier Two Commercial Edible
28 Food Generators with the annual amount of Edible Food recovered.

1 (12) Contact name, address, phone number, and email for both
2 responsible parties, including the current on-site staff responsible for Edible Food
3 Recovery.

4 (13) Food Recovery Organizations accepting Self-Hauling of Edible Food
5 from Tier One and Tier Two Commercial Edible Food Generators must provide a
6 schedule, including days of the week and acceptable times for drop-offs, and information
7 about any limitation on the amount of food accepted, and/or the packaging requirements
8 or other conditions of transport, such as, but not limited to, maintaining proper
9 temperature control, and other requirements for the safe handling and transport of food,
10 the self- hauler must follow for the Edible Food to be accepted.

11 (d) Food Recovery Organizations and Food Recovery Services operating in the
12 County shall use the appropriate temperature control equipment and methods and
13 maintain the required temperatures for the safe handling of Edible Food recovered from
14 Tier One and Tier Two Commercial Edible Food Generators for the duration of the
15 transportation of the Edible Food for redistribution, including Edible Food transported by
16 private vehicles.

17 (e) In order to ensure recovered Edible Food is eaten and to prevent donation
18 dumping, Food Recovery Organizations and Food Recovery Services operating in the
19 County shall provide documentation that all redistribution sites which are not themselves
20 Food Recovery Organizations to which they deliver Edible Food have a feeding or
21 redistribution program in place to distribute, within a reasonable time, all the Edible Food
22 they receive. Such documentation may include a website address which explains the
23 program or pamphlets/brochures prepared by the redistribution site.

24 (f) Food Recovery Organizations and Food Recovery Services operating in the
25 county shall visually inspect all Edible Food recovered or received from a Tier One and
26 Tier Two Commercial Edible Food Generator. If significant spoilage is found, or if the food
27 is otherwise found to be unfit for redistribution for human consumption, Food Recovery
28 Organizations and Food Recovery Services shall immediately notify the County using the

1 process found on the San Bernardino County's DEHS website. The notice shall include:

2 (1) The type and amount, in pounds, of spoiled food or food unfit for
3 redistribution for human consumption, or provide a photographic record of the food, or
4 both.

5 (2) The date and time such food was identified.

6 (3) The name, address and contact information for the Tier One or Tier
7 Two Commercial Edible Food Generator which provided the food.

8 (4) The date and time the food was picked up or received.

9 (5) A brief explanation of why the food was rejected or refused.

10 (g) Contracts between Tier One or Tier Two Commercial Edible Food
11 Generators and Food Recovery Organizations or Food Recovery Services shall not
12 include any language prohibiting Tier One or Tier Two Commercial Edible Food
13 Generators from contracting or holding agreements with multiple Food Recovery
14 Organizations or Food Recovery Services.

15 (h) Allow DEHS or its Enforcement Officer for Edible Food Recovery to access
16 the premises and inspect procedures and review records related to Edible Food Recovery
17 and/or provide them electronically if requested by the County.

18 **33.1506 Edible Food Recovery capacity planning.**

19 (a) In order to support Edible Food Recovery capacity planning assessments
20 or other such studies, Food Recovery Services and Food Recovery Organizations
21 operating in the County shall provide information and consultation to the County upon
22 request, regarding existing, or proposed new or expanded, Edible Food Recovery
23 capacity that could be accessed by the County and its Tier One and Tier Two Commercial
24 Edible Food Generators. A Food Recovery Service or Food Recovery Organization
25 contacted by the County shall respond to such requests for information within 60 days.

26 **33.1507 Inspections and Investigations.**

27 (a) DEHS or its Enforcement Officer are authorized to conduct inspections and
28 investigations, at random or otherwise, to confirm compliance with this Ordinance by Tier

1 One and Tier Two Commercial Edible Food Generators, Food Recovery Services, and
2 Food Recovery Organizations, subject to Applicable Laws.

3 (b) Regulated entities shall provide or arrange for access during all inspections
4 and shall cooperate with the County's representative during such inspections and
5 investigations. Such inspections and investigations may include confirmation of proper
6 placement of materials in containers, Edible Food Recovery activities, records, or any
7 other requirement of this Ordinance described herein. Failure to provide or arrange for:
8 (i) access to an entity's premises; (ii) access to records for any inspection or investigation
9 is a violation of this Ordinance and may result in penalties described.

10 (c) Any records obtained by the County during its inspections or other reviews
11 shall be subject to the requirements and applicable disclosure exemptions of the Public
12 Records Act as set forth in Government Code Section 6250 et seq.

13 (d) DEHS or its Enforcement Officer are authorized to conduct any inspections,
14 or other investigations as reasonably necessary to further the goals of this Ordinance,
15 subject to Applicable Laws.

16 (e) DEHS or its Enforcement Officer shall receive complaints from Persons
17 regarding an entity that may be potentially non-compliant with this Ordinance or SB 1383
18 Edible Food Recovery Regulations, including receipt of anonymous complaints.

19 **33.1508 Enforcement.**

20 (a) Violation of any provision of this Ordinance shall constitute grounds for
21 issuance of a Notice of Violation and assessment of a fine by DEHS or its Enforcement
22 Officer. DEHS may commence Enforcement Actions under this Ordinance by issuing an
23 administrative citation and assessing a fine. County's procedures on imposition of
24 administrative fines are hereby incorporated in their entirety, as modified from time to
25 time, and shall govern the imposition, enforcement, Collection, and review of
26 administrative citations issued to enforce this Ordinance and any rule or regulation
27 adopted pursuant to this Ordinance, except as otherwise indicated in this Ordinance.

28 (b) Other remedies allowed by law may be used, including civil action or

1 prosecution as an infraction. DEHS may pursue civil actions in the California courts to
2 seek recovery of unpaid administrative citations. DEHS may elect to delay court action
3 until such time as a sufficiently large number of violations, or cumulative size of violations
4 exist such that court action is a reasonable use of County staff and resources.

5 (c) Responsible Entity for Enforcement

6 (1) Enforcement pursuant to this Ordinance may be undertaken by
7 DEHS Enforcement Official or county manager or representative who will interpret the
8 Ordinance; determine the applicability of waivers, if violation(s) have occurred; implement
9 Enforcement Actions; and, determine if compliance standards are met.

10 (d) Process for Enforcement

11 (1) DEHS will monitor compliance with the Ordinance randomly and
12 through investigation of complaints, and an inspection program.

13 (2) DEHS may issue an official notification to notify regulated entities of
14 its obligations under the Ordinance.

15 (3) DEHS will issue a Notice of Violation to any Tier One or Tier Two
16 Commercial Edible Food Generator found to have Edible Food in any waste Collection
17 container, or to any Food Recovery Organization or Food Recovery Service found to have
18 Edible Food recovered from a Tier One or Tier Two Edible Food Generator in a waste
19 Collection container which has not been documented by a notice of significant spoilage
20 as required in this Ordinance. Such notice will be provided by written communication
21 immediately upon identification of the violation or within three (3) calendar days after
22 determining that a violation has occurred. If DEHS observes Edible Food in a Tier One or
23 Tier Two Commercial Edible Food Generator, or Food Recovery Organization, or Food
24 Recovery Service waste container on more than two (2) consecutive occasion(s), DEHS
25 may assess an administrative citation and fine, pursuant to the Edible Food Recovery
26 penalties provisions contained in this Ordinance, on the Tier One or Tier Two Commercial
27 Edible Food Generator, Food Recovery Organization, or Food Recovery Service.

28 (4) DEHS shall issue a Notice of Violation requiring compliance within

1 60 days of issuance of the notice.

2 (5) Absent compliance by the entity within the deadline set forth in the
3 Notice of Violation, DEHS shall commence an action to impose penalties, via an
4 administrative citation and fine, pursuant to the Edible Food Recovery penalties
5 provisions contained in this Ordinance.

6 (e) Penalty Amounts for Types of Violations

7 The penalty levels are as follows:

8 (1) For a first violation, the amount of the base penalty shall be \$100 per
9 violation.

10 (2) For a second violation, the amount of the base penalty shall be \$200
11 per violation.

12 (3) For a third or subsequent violation, the amount of the base penalty
13 \$500 per violation.

14 (f) Compliance Deadline Extension Considerations

15 DEHS may extend the compliance deadlines set forth in a Notice of
16 Violation issued when such failure or delay in compliance is caused by or results from
17 causes beyond the reasonable control of the entity such as:

18 (1) Acts of God such as earthquakes, wildfires, flooding, and other
19 emergencies or natural disasters;

20 (2) Delays in obtaining discretionary permits or other government
21 agency approvals; or,

22 (3) Deficiencies in Organic Waste Recycling infrastructure or Edible
23 Food Recovery capacity and DEHS is under a corrective action plan with CalRecycle
24 pursuant to 14 CCR Section 18996.2 due to those deficiencies.

25 (g) Appeals Process

26 (1) Persons receiving an administrative citation containing a penalty for
27 an uncorrected violation may request a hearing to appeal the citation. A hearing will be
28 held only if it is requested within the time prescribed and consistent with County's

1 procedures in DEHS's codes for appeals of administrative citations. Evidence may be
2 presented at the hearing. DEHS will appoint a hearing officer who shall conduct the
3 hearing and issue a final written order.

4 (h) Education Period for Non-Compliance

5 Beginning January 1, 2022 and through December 31, 2023, DEHS will
6 conduct inspections to determine compliance, and if DEHS determines that a Tier One
7 Commercial Edible Food Generator, Food Recovery Organization, or Food Recovery
8 Service is not in compliance, it shall provide educational materials and training to the
9 entity describing its obligations under this Ordinance and a notice that compliance is
10 required by January 1, 2022, and that violations may be subject to administrative civil
11 penalties starting on January 1, 2024.

12 (i) Civil Penalties for Non-Compliance

13 Beginning January 1, 2024, if DEHS determines that Tier One or Tier Two
14 Commercial Edible Food Generator, Food Recovery Organization, or Food Recovery
15 Service is not in compliance with this ordinance, it shall document the noncompliance or
16 violation, issue a Notice of Violation, and take Enforcement Action pursuant to this
17 ordinance, as needed.

18
19 SECTION 3. Section 14.0117 is added to the San Bernardino County Code to
20 read as follows:

21 **14.0117 Recovered Organic Waste Product - Mulch Procurement.**

22 All County departments when procuring mulch shall procure Mulch that meets or
23 exceeds the physical contamination, maximum metal concentration, and pathogen
24 density standards for land application specified in Title 14 of the California Code of
25 Regulations, Division 7, Section 17852(a)(24.5)(A)1 through 3. The Mulch is required to
26 be produced at one or more of the following:

27 (1) A compostable material handling operation or facility as defined in
28 14 CCR Section 17852(a)(12), other than a chipping and grinding operation or facility as

1 defined in 14 CCR Section 17852(a)(10), that is permitted or authorized under this
2 division; or

3 (2) A Transfer/Processing facility or Transfer/Processing operation as
4 defined in 14 CCR Sections 17402(a)(30) and (31), respectively, that is permitted or
5 authorized under this division; or

6 (3) A Solid Waste landfill as defined in Public Resources Code Section
7 40195.1 that is permitted under Division 2 of Title 27 of the California Code of Regulations.
8

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

15
16 SECTION 5. This ordinance shall take effect thirty (30) days from the date of
17 adoption.

18
19 _____
CURT HAGMAN, Chairman
Board of Supervisors

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

23 LYNNA MONELL, Clerk of the
24 Board of Supervisors
25
26 _____
27
28

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

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 14th day of June, 2022, at which meeting were present
7 Supervisors: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe
8 Baca, Jr. and the Clerk, the foregoing ordinance was passed and adopted by the following
9 vote, to wit:

10 AYES: SUPERVISORS: Col. Paul Cook (Ret.), Janice Rutherford,
11 Dawn Rowe, Curt Hagman, Joe Baca, Jr.

12 NOES: SUPERVISORS: None

13 ABSENT: SUPERVISORS: None

14 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal
15 of the Board of Supervisors this 14th day of June, 2022.

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

20 _____
21 Deputy

22 Approved as to Form:

23 TOM BUNTON
24 County Counsel

25 By: _____
26 JOLENA E. GRIDER
27 Deputy County Counsel

28 Date: _____