



# Department of Public Works

Kim MacFarlane, P.E.  
Director

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## SPECIAL AGENDA TUOLUMNE COUNTY BOARD OF SUPERVISORS Solid Waste Committee August 16, 2023 at 3:00 p.m.

**LOCATION:**  
Conference Room 3A  
48 Yaney Avenue, Sonora, Ca 95370

### **\*ZOOM OPTION AVAILABLE FOR THE PUBLIC\***

Meeting ID: 860 4590 5231

Passcode: 768280

<https://tuolumne-ca->

[gov.zoom.us/j/86045905231?pwd=dCs0eitYZ3dBUURkR28xRXIMVHZUZz09](https://gov.zoom.us/j/86045905231?pwd=dCs0eitYZ3dBUURkR28xRXIMVHZUZz09)

#### ADMINISTRATION

Assistant to the  
Department Head  
Emma Hawks  
209.694.2718

#### AIRPORTS

Airport Manager  
Drew Njirich  
209.533.5685

#### BUSINESS

Business Manager  
Janelle Kostlivy  
209.533.5972

#### ENGINEERING

Supervising Engineer  
Blossom Scott-Heim, P.E.  
209.533.5904

#### FLEET SERVICES

Fleet Services Manager  
Mike Young  
209.536.1622

#### GEOGRAPHIC INFORMATION SYSTEMS

GIS Coordinator  
Madeline Amlin  
209.533.6592

#### ROAD OPERATIONS

Superintendent of  
Roads and Fleet  
Mike Cagnetti  
209.533.5609

#### SOLID WASTE

209.533.5588

#### SURVEYING

County Surveyor  
Warren Smith, L.S.  
209.533.5626

#### 1. INTRODUCTIONS

#### 2. PUBLIC FORUM

The public may speak on any item not on the printed agenda. No action may be taken by the Committee. The amount of time allocated for the public forum is limited to 15 minutes.

#### 3. COMMITTEE BUSINESS

A. Consideration of approving the minutes of the meeting on July 13, 2023.

#### 4. STAFF / COMMITTEE REPORTS

- Tire Amnesty Event
- August 19<sup>th</sup> Household Hazardous Waste Collection Event
- August 26<sup>th</sup> Green Waste Dollar Dump Day

#### 5. DISCUSSION ITEMS

- Moore Bros Scavenger and Burns Refuse Service Franchise Collection Agreements

#### 6. NEXT MEETING – September 13, 2023.

#### 7. ADJOURNMENT

*The Board of Supervisors Solid Waste Committee serves as an advisory group to the Board of Supervisors by reviewing, commenting on and recommending new and/or modifications to existing policy related to the Solid Waste Collection, management and disposal systems within the County.*

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Department of Public Works at (209) 533-5601. Notifications 48 hours prior to the meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting



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## MINUTES **UNAPPROVED** TUOLUMNE COUNTY BOARD OF SUPERVISORS Solid Waste Committee July 13, 2023 at 2:00 P.M.

**PRESENT:** Supervisor Ryan Campbell; Supervisor Goldemberg; Andy Merrill, City Council Member; John La Torre, At-Large Public Committee Member

**STAFF:** Kim MacFarlane, Director of Public Works; Halee Eaton, Administrative Assistant; Amy Welch, Solid Waste Technician II; Monique Figueroa, Solid Waste Technician I; Bryce Howard, Solid Waste Consultant

**GUESTS:** Jim Garcia, District Manager at Cal Sierra; Vanessa Barberis, Public Sector Manager, Waste Management; John Martin, Serio-US Lock; A Member of the Public

**ABSENT:** Supervisor Jaron Brandon; Monique Holcomb, At-Large Public Committee Member

### CALL TO ORDER

Supervisor Campbell called the meeting of Thursday, July 13, 2023, to order at 2:01 P.M.

### PUBLIC FORUM

John Martin introduced Serio-US Lock, what the company does, and what they could provide to Tuolumne County. Serio-US Industries is a small company out of Maryland that developed an animal proof lock for solid waste containers over 30 years ago. They recently developed locks for roller containers and residential bins designed with a gravity plus technology to ensure that they stay locked if they are knocked over, but also open automatically when dumped. This lock prevents animals, people, and third-party contamination from getting into the containers while preventing an interference during collection. Serio-US lock has partnered with counties and jurisdictions across the country, especially in California, regarding SB 1383's curbside organic collection requirements. They are interested in engaging in a pilot program and providing locks to franchise haulers within Tuolumne County. Sample designs are available for review on their website, the address is [www.seriouslock.com](http://www.seriouslock.com).

Vanessa Barberis from Waste Management addressed concerns about green waste curbside pickup that had been expressed at the prior committee meeting. In order to provide curbside green waste pickup services Waste Management would need to purchase over 9,000 new green waste carts for customers, new trucks, additional drivers, and pay for additional transportation to the J59 Landfill in Merced County where green waste material is accepted. There has been a recent significant change in the green waste disposal cost at the landfill. Originally the cost per ton was \$10 and is now \$53 per ton. In January of 2024, they will begin accepting organic waste as well as green (yard) waste, price of disposal may again significantly increase to \$63 per ton. Cal Sierra has taken these factors into consideration and loosely proposes the rate increase to be around \$11 per month per

customer. If Tuolumne County would like to consider adding this service going forward, it would more than likely, require a few months to come up with a formal proposal. Jim and Vanessa had previously discussed Tuolumne County's 5-year exemption from SB 1383, with that exemption it allows the county to push things out and not have a significant rate increase while other jurisdictions are having to get the logistics figured out regarding service. Other things to consider, is that there is a major supply chain issue right now. With all the different entities and jurisdictions within the State of California, disposal carts and trucks are on backorder. Vanessa said that an order placed today for a truck would not be received until 2025. The rate increase could potentially be significant for those on a fixed income or those that are already composting.

John La Torre questioned if there would or could be any sort of exemption for residents to opt out of the program.

Discussion ensued.

## **COMMITTEE BUSINESS**

### **A. Consideration of approving the minutes of the meeting on Wednesday, May 10, 2023.**

Supervisor Campbell looked for a motion to approve the minutes with suggested changes. A motion was made by John La Torre and a second by Andy Merrill. Motion passes 3 – 0 – 1 with Supervisor Brandon and Committee Member Holcomb absent and Supervisor Goldemberg abstaining.

## **STAFF / COMMITTEE REPORTS**

- **Solid Waste Consultant Introduction**

Kim MacFarlane introduced Solid Waste Consultant, Bryce Howard. Public Works is still actively looking for someone to fill the Solid Waste Director's position. The Solid Waste Specialist position will also be opened for recruitment to take on the Household Hazardous Waste program and landfill Observation & Maintenance Programs. Bryce will be in the office one day a week and will be teleworking one day of the week as well. He will be handling the upcoming renewal of franchise agreements with Burns Refuse Service and Moore Bros. Scavenger Co., as well as submittal of the Electronic Annual Reports to Cal Recycle for the Unincorporated area of Tuolumne County as well as the City of Sonora.

- **E-Cigarette Disposal**

Jim Garcia provided an update on the disposal of E-Cigarette's stating that they are accepted at the Cal Sierra Transfer Station. They are treated and processed the same way as the lithium batteries and the whole unit is accepted. A member of the public stated that local smoke shops have not received any information on how to properly dispose of these items and have been collecting them until they are notified. It was recommended that an advertisement or flyer should be created to inform people of how to properly dispose of these devices. Chair Campbell stated that he would reach out to Katie with Tuolumne County Public Health Department's Tobacco Cessation Program to possibly creating a flyer or some way to inform these business owners of the proper disposal and location of places to dispose of them.

- Green Waste Dollar Dump Days**

Amy Welch and Jim Garcia gave an update on the first Green Waste Dollar Dump Day that took place on Saturday, July 8, 2023, between the hours of 8:00 A.M. and 12:00 P.M. and 1:00 P.M. and 3:00 P.M. The Tuolumne County Solid Waste Division, in co-operation with Cal Sierra Disposal hosted a “Green Waste Dollar Days” event for Tuolumne County residents. The event was held in East Sonora at the Cal Sierra Earth Resource Facility located at 14909 Camage Avenue. Jim Garcia stated that 82 customers came through the Earth Resource Facility that utilized the program and approximately 70% came with only the one cubic yard. The next Green Waste Dollar Dump Day event will be held on August 26, 2023, and the other two towards the end of the year.
- Moore Bros Scavenger Co. and Burns Refuse Service Franchise Collection Agreements**

Bryce Howard informed the committee members of the Moore Bros Scavenger and Burns Refuse Service Franchise Collection Agreements coming up for renewal in September. A meeting took place earlier this week to discuss the renewal process with the haulers. This item will be brought back at the next Solid Waste Committee Meeting for review, pending a follow up meeting with both franchisees.

## DISCUSSION ITEMS

- Illegal Dumping in Tuolumne County**

Kim MacFarlane discussed development of a tool kit requested by one of the committee members at the previous Solid Waste Committee Meeting. The Solid Waste division is working on a draft version of a flow chart that will explain the process for requesting and reporting illegal dumping on public and/or private lands. Supervisor Campbell recommended that this item and the flow chart be discussed with the other committee members not present. Kim MacFarlane volunteered to meet and discuss with Supervisor Brandon and committee member Holcomb.
- Ammonia Refrigerator Disposal**

Amy Welch explained how much of an issue disposing ammonia refrigerators is becoming lately. Amy reached out to Larry Sweetser who provided the names of two companies that we requested quotes from. There are many variables and different issues that require direction for a program to be added to the collection of these hazardous items. The first being the number of refrigerators expected to be received per year. Refrigerators can only be accumulated for 90 days before they must be processed and picked up due to hazardous waste storage regulations. The second issue would be storage, the transfer stations are unable to accept these units due to their permits. The hazardous waste facility on High School Road does not currently have anywhere to store the units and are unable to transport the scrap metal back to the transfer stations after the hazardous waste has been removed. Therefore, the facility does not accept them. Jim Garcia indicates that the J59 Landfill will accept the unit for \$18 and then has A & S Metals pick them up to be recycled.

Discussion ensued.

**NEXT MEETING**

The next scheduled Board of Supervisors Solid Waste Committee Meeting will be held on Wednesday, August 9, 2023 at 1 P.M.

**ADJOURNMENT**

Chair Campbell adjourned the Board of Supervisors Solid Waste Committee Meeting of Thursday, July 13, 2023 at 3:28 P.M.

DRAFT

**AMENDED AND RESTATED  
FRANCHISE AGREEMENT  
BETWEEN THE COUNTY OF TUOLUMNE AND  
BURNS REFUSE SERVICE MOORE BROS. SCAVENGER, INC.  
FOR COLLECTION OF SOLID WASTE  
IN COLLECTION AREA 3  
AS PER THE MAP ENTITLED  
“SOLID WASTE COLLECTION AREAS OF TUOLUMNE COUNTY”  
APPROVED BY THE BOARD OF SUPERVISORS  
RESOLUTION NO. \_\_\_\_\_ ADOPTED ON \_\_\_\_\_, 2023**

## AMENDED AND RESTATED FRANCHISE AGREEMENT

This Amended and Restated Franchise Agreement (“Agreement”), made effective October 1, 2023 (“Effective Date”), by and between COUNTY OF TUOLUMNE, (“County”) and Burns Refuse Service, Inc, (“Franchisee”). This Agreement amends and restates that certain Franchise Agreement made March 28, 1995, by and between the County and Moore Bros. Scavenger, Inc, as amended by amendments dated September 14, 1999, June 13, 2000, March 13, 2001 and December 13, 2011 (“Original Agreement”). This Agreement supersedes the Original Agreement in its entirety.

WHEREAS, the County wishes pursuant to Title 7 of the Tuolumne County Ordinance Code to enter into an exclusive franchise agreement with Franchisee to provide Solid Waste Collection and Recycling Services for customers within Collection Area 3 in the County of Tuolumne; and

WHEREAS, Franchisee wishes to enter into a franchise agreement with County for said services.

NOW THEREFORE, County and Franchisee hereby agree as follows:

### **I. Definitions.**

A. Definitions for terms and phrases not defined in this Agreement shall have the meanings given to them in Title 7 of Tuolumne County Ordinance Code.

B. References to “Title,” “Chapter” or “Section” are to the Tuolumne County Ordinance Code unless otherwise indicated.

C. “Acceptable Waste” means all Solid Waste and Recyclables other than Excluded Waste.

D. “Applicable Law” means any law, regulation, requirement, or order of any Federal, State or local agency, court or other domestic or foreign governmental body, or interpretation thereof by any court or administrative agency of competent jurisdiction, and requirements of all permits, licenses, and governmental approvals applicable to this Agreement.

E. “Collection Services” means the process by which Solid Waste (such as Refuse, Recyclables or Organic Waste) is removed from a Commercial or Residential Premises, transported to a transfer, disposal or processing facility, and subsequently disposed or processed.

F. “Commercial Premises” means a Premises in the County that is not a Residential Premises.

G. "Commercial Business (Commercial)" means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, or industrial facility, or as otherwise defined in 14 CCR Section 18982(a)(6) or County Ordinance Section 7.25.020.C., with the exception that Multi-Family is excluded from the definition of Commercial Business for the purposes of this Agreement

H. "Compostable Plastics" or "Compostable Plastic" means plastic materials that meet the ASTM D6400 standard for compostability, or as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2(a)(1)(C) or County Ordinance Section 7.25.020.H.

I. "County Contract Manager" means the County Administrative Officer and the Solid Waste Director or their designated representative who is responsible for the administrative management of this Agreement.

J. "Customer" means an owner or occupant of a Commercial or Residential Premises who has the legal right to initiate, cancel or make changes to Collection Services or as otherwise defined in County Ordinance Section 7.08.080.

K. "Dwelling Unit" means any individual living unit that includes a kitchen, and a room or suite of rooms, and is designed or occupied as separate living quarters for an individual or group of individuals. However, Dwelling Unit does not include a hotel or motel unit.

L. "Edible Food" means food intended for human consumption. For the purposes of this Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this Agreement.

M. "Electronic Waste (E-Waste)" means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices.

N. "Excluded Waste" means Hazardous Waste, Infectious Waste, Medical Waste, regulated radioactive waste, volatile, corrosive, flammable, explosive, toxic substance or material, as defined by, characterized, or listed under applicable federal, state, or local laws or regulations, any materials containing information protected by federal, state or local privacy and security laws or regulations (unless tendered to Company pursuant to a separate agreement), or any material the acceptance or handling of which would cause a violation of any Applicable Law, damage to Franchisee's equipment or facilities, or present a substantial endangerment to the health or safety of the public or Franchisee's employees, but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe collection, processing, recycling, treatment and



disposal of batteries and paint in compliance with Sections 41500 (HHWE preparation) and 41802 (HHWE approval) of the California Public Resources Code. Title to and liability for Excluded Waste shall remain with the generator at all times. Excluded Waste in this Agreement does include tires, motor oil and filters, household batteries, Universal Waste, Electronic Waste and latex paint.

O. "Food Recovery" means actions to collect and distribute food for human consumption which otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24) or County Ordinance Section 7.25.020.O.

P. "Food Scraps" means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

Q. "Food-Soiled Paper" means compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

R. "Food Waste" means Source Separated Food Scraps, Food-Soiled Paper, and Compostable Plastics. Edible Food separated for Food Recovery shall not be considered Food Waste.

S. "Gross Receipts" means total cash receipts collected from Customers by the Franchisee for the provision of services pursuant to this Agreement without any deductions. Gross Receipts do not include revenues from the sale Recyclables.

T. "Hazardous Waste" means any waste which meets the definitions set forth in 22 CCR Section 66261.3, et seq. and is required to be managed; or as otherwise defined in 14 CCR Section 17402(a)(7).

U. "Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

V. "Medical Waste" means any Solid Waste that is generated or has been used in the diagnosis, treatment, or immunization of human beings or animals, or research pertaining thereto, and shall include, but not be limited to, biomedical, biohazardous and medical waste, or other Solid Waste resulting from medical activities or services as defined by the Tuolumne County Code, or any State or federal law or regulation, all as currently enacted or subsequently amended.

W. "Multi-Family or Multi-Family Dwelling Unit" means of, from, or pertaining to residential Premises with five (5) or more dwelling units. Multi-Family Premises do not

include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses or as otherwise defined in County Ordinance Section 7.25.020.X.

X. “Organic Waste” means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, vegetative matter from normal yard and landscape maintenance and installation (palm, yuca, cactus, grass clippings, leaves, prunings, weeds, branches, brush, undecorated Christmas tress), Food Waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46) and County Ordinance Section 7.25.020.CC. Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

Y. “Non-Organic Recyclables” means non-putrescible and non-hazardous recyclable wastes including, but not limited to, bottles, cans, metals, plastics, and glass, or as otherwise defined in 14 CCR Section 18982(a)(43) and County Ordinance Section 7.25.020.AA

Z. “Paper Products” include, but are not limited to, paper, janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling; or as otherwise defined in 14 CCR Section 18982(a)(51) and County Ordinance Section 7.25.020.EE.

AA. “Printing and Writing Papers” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications; or as otherwise defined in 14 CCR Section 18982(a)(54) and County Ordinance Section 7.25.020.FF.

BB. “Premises” means any parcel of real property in the County where Solid Waste is generated or accumulated or as otherwise defined in County Ordinance Section 7.30.010.C.

CC. “Recyclables” and “Recyclable Materials” means Non-Organic Recyclables, Paper Products, Printing and Writing Paper materials and for this Agreement are described as such in Exhibit D.

DD. “Refuse” means Solid Waste that is set out for collection and disposal pursuant to this Agreement. Refuse does not include Recyclables nor does it include Excluded Waste.

EE. “Single-Family Premises” means (i) any Premises with less than five (5) Dwelling Units, and (ii) any Premises with five (5) or more Dwelling Units where each Dwelling Unit receives individualized Refuse Collection Services (and not centralized Refuse Collection Services) or as otherwise defined in County Ordinance Section 7.25.020.NN.

FF. “Solid Waste” means all putrescible and non-putrescible solid, semi-solid, and liquid wastes that are generated or coming to exist in the County, including discarded Recyclables and Organic Waste, but excluding Excluded Waste or as otherwise defined in County Ordinance Section 7.08.290.

GG. “Universal Waste” means all wastes defined by 22 CCR Subsections 66273.1 through 66273.9. These include, but are not limited to, batteries, fluorescent light bulbs, mercury switches, and electronic waste.

HH. “Waste Containers”: means a container that conforms to specifications as otherwise provided in the County Code, in which solid waste is deposited or as otherwise defined in County Ordinance Section 7.08.330.

## **II. Grant of Franchise.**

Franchisee shall have the sole and exclusive right and franchise, in accordance with the terms and conditions of this Agreement and Title 7, to provide Collection Services for Residential and Commercial Customers within the County of Tuolumne for solid waste Collection Area 3 as described in the map (Exhibit F) adopted by Resolution No. 136-94 of the Tuolumne County Board of Supervisors. County agrees not to let any contract to, or enter into any contract with any other person for the collection of Solid Waste or Recycling services required to be performed by Franchisee. County agrees not to engage other individuals or itself become involved in the activity of collection services or any other activity that would impair the exclusive right of the Franchisee.

## **III. Term of Franchise.**

- A. The term of this Agreement shall commence on the Effective Date and shall terminate September 30, 2033, unless sooner terminated as hereinafter provided.
- B. Upon mutual written agreement at least eighteen months prior to the end of the term in paragraph A, this Agreement may be renewed for an additional term of ten (10) years.
- C. The franchise in this Agreement does not include those permits authorized by the Solid Waste Manager under Section 7.12.060.

## **IV. Services of Franchisee.**

- A. Franchisee undertakes and agrees, in accordance with the terms and conditions herein contained, to provide the Solid Waste Collection and Recycling Services for Residential, and Commercial Customers comprised of furnishing the necessary labor, vehicles, equipment, and facilities to provide such services. Franchisee has no obligation to collect Excluded Waste.

1. Organic Waste Collection. County has been granted a waiver pursuant to Section

18984.12 of the California Code of Regulations as a “Rural Jurisdiction” and therefor as part of this agreement is not implementing Organic Waste Collection Services . In the future if the County desires or is required to implement Collection Services with respect to source-separated Organic Waste, Franchisee will propose a plan to collect Organic Waste; and upon mutual agreement the County will grant Franchisee the exclusive right to provide such services. The County and Franchisee will collaborate and agree upon an Organic Waste collection program, including Franchisee’s compensation, before such Collection Services are implemented. In the event the County is required to comply with the provisions of AB 1826 and SB 1383 requiring the collection and recycling of organic waste from regulatory defined generators, Franchisee shall comply with all hauler-specific requirements set forth in AB 1826 and SB 1383, and shall also assist the County in complying with AB 1826 and SB 1383 by providing education and outreach regarding the importance of reducing landfilled organic waste, type of materials that are acceptable for the recycling of organic waste, and the availability of organic waste collection programs. In addition, Franchisee shall agree to collect organic waste from Customers at rates as shall be mutually agreed to by Franchisee and the County and set forth in an amendment to this Agreement.

- B. Residential Refuse Collection Services. The Franchisee shall each week collect and dispose of all Refuse from Residential Customers within Collection Area 3 that is placed at the roadside on public streets, alleyways or other locations approved by Franchisee at rates specified in Exhibit E. The Waste Container will consist of a customer provided can.
- C. Residential Recyclables Collection. The Franchisee shall every other week collect and remove Recyclables (as listed in Exhibit D) from Residential Customers who subscribe to Refuse Collection Services within Collection Area 3, provided that such Recyclables are placed at the roadside on public streets, alleyways or other locations approved by Franchisee. The “Recycling Container” will consist of a customer provided can with a recycling label provided by the Franchisee. .
- D. Commercial Refuse Collection Services. Franchisee shall at least once each week collect and dispose all Refuse from Commercial Customers within Collection Area 4 that is placed at the roadside on public streets, alleyways or other locations approved by Franchisee and County Contract Manager. Franchisee shall provide a sufficient number and size of Waste Containers to properly contain Refuse generated from eligible commercial premises; available container sizes and rates are set forth in Exhibit E.
- E. Commercial – Recycling Collection Services. Franchisee shall every other week collect and remove Recyclables (as listed in Exhibit D) from commercial Customers who subscribe to Refuse and Recycling Collection Services within Collection Area 3, provided that such Recyclables are placed at the roadside on

public streets, alleyways or other locations approved by Franchisee. The Customer will provide a "Recycling Container" with a recycling label provided by the Franchisee or the Franchisee shall provide Recycling Bin. Rates and available container and bin sizes are set forth in Exhibit A.

- F. Roll-Off Services. Customers may subscribe for Refuse and/or Recyclables Collection Services at the rates specified in Exhibit E.
  
- G. Operations Plan. Franchisee shall annually submit to the County an updated operations plan, including, but not limited to, franchise operating plan contents as described in Section 7.16.030. Changes to the operations plan shall be submitted to the County Contract Manager for approval. Such approval shall not be unreasonably withheld.
  
- H. Recycling Public Awareness Program. County and Franchisee shall work jointly to develop and implement the Recycling Public Awareness Program described below:
  - 1. Franchisee will distribute by mail or billing inserts new program announcements.
  - 2. Franchisee will distribute information regarding the recycling program.
  - 3. County and Franchisee will cooperate in contacting local media to seek coverage of the recycling program to increase citizen awareness of the benefits of recycling.
  - 4. Franchisee will make presentations at public meetings and community events upon request.
  - 5. County reserves the right to approve any and all public awareness materials prior to distribution.
  - 6. Franchisee agrees to sponsor and provide recycling/source reduction information as described in Exhibit A.
  
- I. The California Public Resources Code requires the County to prepare and implement a Source Reduction and Recycling Element ("SRRE") and a Household Hazardous Waste Element ("HHWE"). Franchisee shall be responsible for implementing provisions of these plans to the extent such plans impose duties upon Franchisee. The County Contract Manager and Franchisee shall meet annually prior to October 1<sup>st</sup> to determine the responsibilities for the SRRE and HHWE and determine if any rate adjustments are necessary to fund these programs for the subsequent contract year after the anniversary date. The County Contract Manager and Franchisee must mutually agree on a program to be presented to the County. The Board of Supervisors is to receive, as a minimum, the following:

1. Proposed program description;
  2. Diversion expected;
  3. Cost of proposed program; and
  4. How proposed program integrates with existing programs.
- J. The Franchisee will not be responsible for providing services where there is unacceptable safety or risk factors. The County Contract Manager and Franchisee shall establish standards for bridges and roads. If unsafe conditions persist, the Franchisee has the right to ask for a waiver from providing service. If a location is found to be unsafe and, the potential Customer wants service, the refuse is to be located at a site mutually agreed upon by Franchisee, County Contract Manager and Customer or service can be denied without being a violation of this Agreement.
- K. Franchisee agrees to provide the following ancillary services, as contained herein:
1. Franchisee agrees to conduct a cleanup coupon program as provided in Exhibit B.
  2. Franchisee agrees to provide, free of charge, annual curbside Christmas tree pickup to all Residential Customers within Collection Area 3, including transport to an appropriate facility. The pickup shall be scheduled so that all Residential Customers shall have at least one opportunity for free pickup with at least two weeks prior notice and all pickups shall occur by the third Saturday following January 1<sup>st</sup>. Trees shall be reduced by residents to sections no more than four feet in length, tied and bundled.
  3. Franchisee agrees to use its best effort in load checking during the collection of Solid Waste to screen out Excluded Wastes. In the event that Excluded Wastes are found, the container shall not be serviced and a notice of the correct disposal method for the waste shall be left for the Customer.
- L. Franchisee agrees to install and maintain computers and software compatible with County approved programs for basic, efficient office practices. Appropriate employee training will be included.

V. **Obligations of Franchisee**

- A. Franchisee shall comply with all federal, state, local statutes, ordinances and regulations, including Titles 7 and 8.

B. Franchisee, prior to award of franchise, shall provide and maintain at its own expense at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the County as may be required by the Risk Manager of the County. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation in the policy, notices of same shall be given to the Risk Manager of the County or delivered in person to Risk Manager. Coverage shall be at least as broad as:

1. Worker's Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
2. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
3. Automobile Liability: ISO Form Number CA 00 20 covering any auto (Code 1), or if Franchisee has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

If the Franchisee maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Franchisee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (a) Additional Insured Status. The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Franchisee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Franchisee's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
- (b) Primary Coverage. For any claims related to this contract, the Franchisee's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees and

volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Franchisee's insurance and shall not contribute with it.

- (c) Umbrella or Excess Policy. The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true “following form” or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the additional Insured, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor’s primary and excess liability policies are exhausted.
- (d) Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with thirty (30) days’ notice to the County.
- (e) Waiver of Subrogation. Franchisee hereby grants to County a waiver of any right to subrogation which any insurer of said Franchisee may acquire against the County by virtue of the payment of any loss under such insurance. Franchisee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
- (f) Self-Insured Retentions. Self-insured retentions must be declared to and approved by the County. The County may require the Franchisee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000, unless approved in writing by County. Any and all deductibles and SIRs shall be the sole responsibility of Franchisee or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. County may deduct from any amounts otherwise due Franchisee to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. County reserves the right to obtain a copy of any policies and endorsements for verification.
- (g) Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best’s



- rating of no less than A:VII, unless otherwise acceptable to the County.
- (h) Verification of Coverage. Contractor shall furnish the County with original Certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this clause and a copy of the Declarations and Endorsement Page of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
  - (i) Special Risks or Circumstances. County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Failure to Comply: Upon failure to comply with any of these insurance requirements, this Agreement may be forthwith declared suspended or terminated. Failure to obtain and/or maintain any required insurance shall not relieve any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the indemnification obligations.

- C. Franchisee, shall, prior to this Agreement becoming effective, deliver to the Risk Manager a Faithful Performance Surety Bond in the amount of ten thousand dollars (\$10,000.00) which shall be approved by the Risk Manager to secure the full and faithful performance of the terms, obligations and agreements on the part of Franchisee to be performed. Risk Manager shall retain the right to approve or disapprove of Franchisee's surety.

The Faithful Performance Surety Bond shall not be subject to cancellation and shall be in full force and effect for at least one year, and shall be renewed, or a new bond furnished, subject to the same approval, not less than thirty (30) days prior to the expiration of the then existing bond on file with Risk Manager. Franchisee shall, at all times during the term of this Agreement, maintain a Faithful Performance Surety Bond, in accordance with the terms of this paragraph, in full force and effect.

- D. In the event of the termination or cancellation of the insurance policies required by this Agreement, or the failure of Franchisee to obtain the insurance policy or performance bond required by this Agreement, the franchise may be terminated by County upon written notice to Franchisee. If insurance is terminated due to an unforeseeable event, not the fault of the Franchisee, the Franchisee will have sixty (60) days to have insurance policies replaced without breaching this Agreement.

- E. Franchisee shall hold harmless, defend and indemnify County and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Franchisee 's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the County.

If such indemnification becomes necessary, the County Counsel for the County shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the County. This indemnification clause shall survive the termination or expiration of this Agreement.

- F. Franchisee shall not assign, or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise, without the prior written consent of County. Any attempt to do so without that consent shall be null and void, and any assignee, or transferee shall acquire no right or interest by reason of such attempted assignment, or transfer. County shall not unreasonably withhold consent.

## **VI. County Franchise Fee.**

- A. In consideration of the exclusive franchise provided by this Agreement, Franchisee agrees to pay the negotiated amount of Franchise Fees to the County each quarter equal to 1½% of the Gross Receipts for all services performed under this agreement. Franchise Fees shall be deposited into the Solid Waste Compliance Fund.
- Franchisee shall prepare and mail remittance each quarter not later than twenty (20) calendar days after the end of each quarter. The remittance will be accompanied by a report setting forth the basis and calculations used for computing the amount due. The figures used shall agree with the general books of account of Franchisee. Said books of account shall be made available to County upon demand for the purposes of audit, pursuant to Title 7.
- B. Franchisee shall reimburse County for County costs associated with any audit, review or required report as provided in Section 7.16.070.
- C. Franchisee agrees to provide all Solid Waste Collection Services, equipment, and containers needed by County facilities and properties as listed in Exhibit C at no charge to County. Containers shall be of the type and size the Franchisee owns or controls and shall be distributed to County property, including any other County property or property currently or in the future owned, rented or occupied by the County requiring such service. The Facilities Manager and/or County Contract Manager will provide the service level, frequency and location of the services needed. The Facilities Manager and/or County Contact Manager may, from time to time, order changes in the services described in this paragraph. The Franchisee

will not be responsible for paying to the County any integrated waste management fee for the provision of these services.

**VII. Franchisee Fees, Charges and Adjustments to Fees & Charges.**

A. Upon the Effective Date of this Agreement, Franchisee's rates and services will be as described Exhibit E. Rates for additional services not specified in Exhibit E shall be as agreed between Franchisee and a customer with written notice to the County Contract Manager; provided, however, that in the case of a dispute, the dispute shall be submitted to the County Contract Manager for resolution.

B. Applications for rate increases will be based as follows:

1. Water, Sewer and Trash CPI Indexed Rates. The rates approved as part of this Agreement, and all rates established by the Board of Supervisors pursuant to Title 7 hereafter, shall be considered for periodic increases which are 100 percent of the percentage of change in the Consumer Price Index CUUR0000SEHG CPI-U Water Sewer and Trash Collection Services, as published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"). The CPI adjustment will be calculated using the change in the 12-month annual average of monthly CPI index values between the July 1<sup>st</sup> to June 30 period (fiscal year) of the year immediately prior to the adjustment date.. Should the Bureau of Labor Statistics of the Department of Labor discontinue publication of the described index, or publish it less frequently, or alter it in any other manner, the parties shall mutually adopt a substitute index or procedure which reasonably reflects and monitors consumer prices.

The first adjustment will occur on January 1, 2024, and rates shall be adjusted in the same manner annually thereafter.

Adjustments in accordance with the CPI shall be subject to the following qualifications:

- a. Rates adjusted in accordance with the CPI shall not be greater than six percent (6%) nor less than zero percent (0%) in any one year regardless of the percentage changes in the CPI; and
- b. In the event Franchisee obtains a return on revenues that averages more than ten percent (10%) per annum, using a 3-year rolling average, then the Franchisee will not be entitled to make a CPI adjustment for the immediately succeeding year, and continually thereafter so long as the 3-year rolling average of return on revenues exceeds (10%).

- c. In the event Franchisee obtains a return on revenues that averages more than ten percent (10%) per annum, using a three year rolling average, then Franchisee shall refund full amount above ten percent (10%) to Customers through a rate reduction for the following year.
  - d. Franchisee shall be entitled to a fair return on revenues. Return on revenues is hereby defined as the ratio of net income to gross revenues. Net income is arrived at by deducting all expenses (including taxes) from gross revenues.
2. Adjustment for Extraordinary Costs. The process for effecting any rate adjustment above the annual CPI increase shall be made by application. Franchisee may apply to County for consideration of a special interim rate review as provided in Title 7. If, in any contract year, Franchisee incurs extraordinary expenses, over and above the annual CPI increase for reasons beyond Franchisee's control, Franchisee may request an adjustment in rates to compensate for the amount of such increased cost. Nothing herein shall obligate the County to grant such increase, but it shall negotiate in good faith and not withhold approval of such increase where Franchisee has provided reasonably requested documentation, as provided in this Section. If in any contract year Franchisee is subject to (i) a landfill disposal or processing increase, (ii) new or increased governmental fees, charges or other amounts, (iii) increased costs or reduced revenues due to a change in Applicable Law, (iv) a change in Collection Services (e.g., implementation of Organic Waste Collection Services), all of said increased costs or reduced revenue may be passed through by means of an Extraordinary Adjustment rate increase. In the event that Franchisee requests an Extraordinary Adjustment, the Extraordinary Adjustment shall be based on evidence or data presented by Franchisee that a singular and/or unexpected occurrence has occurred within the past 12 months that has effected and will continue to have a significant financial effect on Franchisee's revenues and/or expenses and that Franchisee's costs for the required franchise services have undergone and will continue to undergo a significant increase or decrease due to this occurrence. The Franchisee shall be responsible for both its and the County's reasonable associated costs to complete the Extraordinary Adjustment. If the increase is due to the imposition of a host fee, the County will review the fees to determine if the increase should be passed through.

At County's expense County may initiate an interim rate review at its option. Any rate review, whether initiated by County or Franchisee, will follow the format specified for in Title 7.

Franchisee shall provide written notice to Customers of proposed rate changes and annual rate pursuant to Title 7. Prior to providing said notice to Customers, Franchisee shall provide said notice to County for review and approval.

### **VIII. Performance Review**

- A. Franchisee shall maintain complete and accurate financial records with respect to gross revenue, costs, expenses, receipts, inventory, and other such information required to assess Franchisee's financial position relating to residential, commercial and industrial Solid Waste Collection and Recycling Services under County's jurisdiction. All such records shall be maintained in accordance with generally accepted accounting principles and Title 7. Franchisee considers confidential and/or trade secret shall be subject to a confidentiality agreement with the County; however Franchisee understands County must comply with the California Public Records Act and any other Applicable Law that may require disclosure.
- B. In addition to financial records, Franchisee shall maintain complete and accurate records for all aspects of Franchisee's compliance with this Agreement including, but not limited to, collection route maps, Customer lists and payment records, disposal records by truck, local enforcement agency records of inspection, truck inspection records, SRRE and HHWE compliance records, Customer complaints, and other like materials.
- C. All records required to be kept by Franchisee shall be clearly identified and readily accessible. Franchisee shall provide free access to the representatives of County (according to Title 7) or their agent during all normal business hours to such books or records, and give the County the right to examine and audit same, and to make transcripts therefrom or copies as necessary. All records will be maintained for five years after the completion of the year which they were prepared.
- D. Franchisee shall prepare, mail and collect bills (or shall issue written receipts for cash payments) for Solid Waste Collection Services provided by Franchisee under this Agreement. Bills for services shall at a minimum be mailed to Customers annually in advance of the provision of services.

Franchisee shall maintain copies of said billings and receipts in chronological order for a period of three (3) years after the date of service for inspection by County. Franchisee may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

- E. Franchisee agrees to indemnify County against all fines or penalties imposed by the California Integrated Waste Management Board or other regulatory agencies in the event that regulatory objectives are not met for the residential and

commercial sector served by Franchisee for which Franchisee is responsible. Such indemnity shall be limited to exclude all damages or claims to the extent that they are caused by, arise from or in connection with (i) any negligent actions or omissions or willful misconduct of the County, or its employees, agents, appointed and elected officials; or (ii) the failure of the County or its employees, agents, appointed and elected officials to comply with or enforce applicable solid waste and/or recycling statutes, ordinances, regulations, or other requirements, other than failures attributable to Franchisee's performance under this Agreement. The extent of the Franchisee's liability under this Section shall not exceed the amount of Franchisee's proportionate share of fault.

- F. Franchisee shall be responsible for the prompt, courteous and reasonable resolution of all Customer complaints.

Franchisee shall record in a separate log all complaints, noting the name and address of complainant, date and time of complaint, nature of complaint and resolution. This complaint log will be retained by the Franchisee at the office and be available for inspection by the County Contract Manager during regular business hours. The Franchisee will submit a copy of the complaint log annually to County Contract Manager.

- G. Franchisee shall, on an annual basis, file reports as required by law and provide reports to County Contract Manager pursuant to local, state and federal laws. All such reports must contain information sufficient to report its progress to the State regarding the implementation of County's SRRE and HHWE pursuant to the California. Public Resources Code. In addition to any reports required by law, the Franchisee shall provide any reports that are needed by the County Contract Manager in the execution of their duties to the County or needed for the enforcement of this Agreement.

## **IX. Liquidated Damages**

- A. County finds, and Franchisee agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which will be incurred by County as a result of a material breach by Franchisee of its obligations under this Agreement.
- B. Accordingly, the Board may, in its discretion, assess liquidated damages not to exceed the sum of five hundred dollars (\$500) per day, for each calendar day that service is not provided by Franchisee in accordance with this Agreement. Any assessment of liquidated damages must be a reasonable approximation of actual harm to the County. County will not assess liquidated damages unless and until (i) it has provided written notice of the alleged performance failure to Franchisee; (ii) the County Contract Manager and Franchisee meet to discuss the validity of alleged performance failures; and (iii) Franchisee thereafter (within 30 days) fails to correct such performance failures. In addition, the Board may order the

assessment against the cash bond required by this Agreement, the termination of this Agreement, or both.

- C. County finds, and Franchisee acknowledges and agrees that the above-described liquidated damages provisions represent a reasonable sum in light of all of the circumstances. Liquidated damages shall be applicable to each calendar day during which Franchisee has been found by the Board to be in default pursuant to this Article. Franchisee shall pay any liquidated damages assessed by the Board within ten (10) days after they are assessed. If they are not paid within the ten-day period, County may withdraw them from the security fund established by the performance bond required by this Agreement. Claims for liquidated damages must be made within 60 days of when County knew or should have known of the performance issue.

**X. Termination of Franchise.**

- A. In the event Franchisee should default in the performance of any material provisions of this Agreement, and the default is not cured within thirty (30) days after receipt of written notice of default from the County, then County may, at its option, hold a hearing to determine whether this Agreement should be terminated. In the event County decides to terminate this Agreement, County shall serve ten (10) days' written notice of its intention to terminate upon Franchisee. In the event County exercises its right to terminate this Agreement, County may, at its option, either directly undertake performance of the services or arrange with other persons to perform the services. In either event, Franchisee shall be liable to County for any expense County incurs in performing the services.
- B. In the event County exercises its option under this Article to terminate this Agreement, and directly performs the services, County shall pay to Franchisee, from revenues received by County from Customers, any amounts due Franchisee for services performed as of the date of termination, which amount remain unpaid ninety (90) days from such date. If County arranges with other persons to perform the services, County shall ensure that such other persons pay Franchisee the amounts due under this paragraph and agrees to pay such amounts in the event the other persons do not. County may take possession of Franchisee's equipment necessary to perform the services required under this Agreement, and retain it until County can purchase or otherwise acquire equipment suitable for that purpose, but in no event longer than one hundred and twenty (120) days. County shall compensate Franchisee for the reasonable rental value of its equipment during the period County retains possession of it.
- C. County further reserves the right to terminate this Agreement or impose liquidated damages in the event of any of the following, unless such event is susceptible to cure and has been cured promptly upon written notice to Franchisee by County:

1. If Franchisee becomes insolvent, unable or unwilling to pay its debts, or upon listing of an order for relief in favor of Franchisee in a bankruptcy proceeding.
2. If Franchisee fails to abide by County's direction as provided in Article XII.
3. If Franchisee knowingly violates any orders or rulings of any regulatory body having jurisdiction over Franchisee relative to this Agreement, provided that Franchisee may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until resolution of that proceeding.
4. If Franchisee ceases to provide Solid Waste Collection or Recycling Services as required under this Agreement over all or a substantial portion of its service area for a period of seven (7) days or more, for any reason within the control of Franchisee. (For purposes of this section, a labor strike or similar organized work stoppage, acts of nature, or inaccessibility due to acts of nature which are not encountered in the normal course of business, will not be deemed to be within the control of Franchisee.)
5. If Franchisee willfully fails to make any payments or reports required under this Agreement and fails to cure such failure promptly after written notice.
6. If Franchisee, one of its officers or managers, is found guilty of a felony relating to Solid Waste Collection or Recycling Services, or is found guilty of illegal dumping of solid or hazardous waste, and fails to implement corrective action promptly and to the County's reasonable satisfaction.
7. In the event that this Agreement is terminated by County upon the failure of Franchisee to secure and maintain the insurance policies and/or performance bond required under the terms of this Agreement, Franchisee shall be liable to County for any and all damages suffered by County arising out of failure to provide insurance under this Agreement.

D. **Franchisee's Liability to Perform Due to Uncontrollable Circumstances**

Franchisee's failure to perform under the terms of this Agreement by reason of a major disaster, epidemic, or other act of God or other event beyond Franchisee's reasonable control shall not constitute a breach of this Agreement for purposes of paragraph A, above.



**XI. Arbitration, Judicial Venue and Governing Law.**

- A. Prior to any action by the County or Franchisee in taking any item of this Agreement to arbitration or court, the item shall be reviewed by the CAO. If the Franchisee or Board of Supervisors does not concur with the decision of the CAO, either party may proceed.
- B. Arbitration. Franchisee and County may agree that any dispute arising out of this Agreement shall be decided by arbitration in accordance with California Code of Civil Procedure section 1280, et seq. or like statute. If both parties agree to arbitration, the parties shall have the right of discovery under the California discovery statutes.
- C. Attorneys' Fees. The parties shall share the cost of any arbitration. In the event suit or action or arbitration is instituted as a result of a dispute under this Agreement, the prevailing party shall be awarded its attorneys' fees and costs, including, but not limited to, expert witness fees.
- D. Standing. Only the County and the Franchisee shall have standing to bring or become a party to arbitration claims or legal actions under this Agreement.

**XII. Disposition of Solid Waste.**

- A. All Acceptable Waste collected by Franchisee shall become the property of Franchisee upon placement by the Customer for collection, and shall be forthwith removed and conveyed to the Cal Sierra/Waste Management Material Recovery Facility/Transfer Station or other County authorized facility by Franchisee, subject to the provisions of this Agreement.
- B. Notwithstanding the provisions of Paragraph A, County has the right to direct that any Acceptable Waste collected by Franchisee shall be delivered to a County-authorized facility.
- C. In the event that modifications to Franchisee's operations are necessary to comply with the terms and conditions of this Article, and the modification thereof affect Franchisee's costs of doing business, Franchisee or County may initiate a rate adjustment pursuant to Article VII and Title 7.

**XIII. Miscellaneous Provisions.**

- A. The failure of either party at any time to require performance by the other party herein shall not affect the right of such party to enforce the same thereafter, nor shall the waiver by either party of any breach of any provision or as a waiver of the provision itself.
- B. All terms used in the singular or in the masculine gender shall apply to the plural or to the feminine or neuter gender as the context thereof requires.

- C. The Article headings used in this Agreement are intended solely for convenience and reference and shall not in any way or manner amplify, limit, modify, or otherwise be used in the interpretation of this Agreement.
- D. This Agreement may be amended at any time by mutual agreement of the parties, provided such amendment shall be operative and valid only if set forth in writing and signed by all of the parties.
- E. This Agreement constitutes the entire understanding with respect to the subject matter hereof and supersedes any and all prior understandings or agreements, whether written or oral, including without limitation the Original Agreement.
- F. This Agreement shall be binding on the parties hereto and on their respective successors and assigns.
- G. If any term, provision or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- H. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party hereto, by the other party to this Agreement shall be in writing and shall be deemed duly served when personally delivered to the party to whom they are directed, or in lieu of such personal service when deposited in the United States mail, first-class certified or registered mail, postage prepaid, addressed to County at 2 South Green Street, Sonora, California 95370, with a duplicate copy to the County Counsel, 2 South Green Street; Sonora, California 95370 or to Franchisee at P.O. Box 278, Big Oak Flat, CA 95305-0278.
- I. It shall be Franchisee's and County's responsibility to enforce this franchise pursuant to Section 7.04.040. Franchisee may enforce this Agreement civilly without the consent of the County. County may enforce criminally without the consent of Franchisee.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, County has caused its name and seal to be hereunto subscribed and affixed by the Board Clerk, duly authorized, and said Franchisee has caused its corporate name and seal to be hereunto subscribed and affixed by its President and Secretary.

<p>COUNTY OF TUOLUMNE</p> <p>By _____ Kathleen K. Haff, Chair, Board of Supervisors</p>	<p>MOORE BROS. SCAVENGER, INC</p> <p>By _____ Steve Moore, President</p>
<p>ATTEST:</p> <p>By _____ Clerk of the Board of Supervisors</p>	<p>ATTEST:</p> <p>By _____ Secretary</p>
<p>APPROVED AS TO FORM:</p> <p>By _____ Cody M. Nesper, Deputy County Counsel</p>	

- A – PUBLIC INFORMATION AND EDUCATION
- B – CLEAN UP COUPON PROGRAM FOR TUOLUMNE COUNTY
- C – COUNTY FACILITIES
- D – RECYCLABLE MATERIALS
- E – RATE SHEET
- F – FRANCHISE MAP

**EXHIBITS  
&  
ATTACHMENTS**

DRAFT

## **EXHIBIT A**

### **Public Information and Education**

Franchisee's public education program shall focus on providing information to Customers to ensure that they understand: (i) the services that are provided under this Agreement, (ii) the proper method for placing materials in Containers for Collection and setting Containers out for Collection, and (iii) materials prohibited from Collection such as Hazardous Waste. Educational information may include, but not be limited to, newsletters, flyers, door hangers, notification tags, and direct contact. Franchisee shall allow the County a reasonable opportunity to review public education materials, request modifications to materials, and approve all public education materials before printing, publication, distribution, and/or release. County shall have the right to request that Franchisee include the County name, County logo, and/or community names on public education materials.

Franchisee shall prepare and distribute a "Starter Kit" to all new subscribing customers. The Starter Kit shall include a service information brochure describing how to drop off recyclable materials at Franchisee's drop-off recycling facility and list the acceptable materials that can be included. Information about materials to be excluded from collection, suggestions for proper placement of containers on collection day and information on the proper disposal of other waste streams, such as; household hazardous waste, sharps, E-waste, Universal Waste will be included.

Educational speaking engagements and facility tours will be conducted by the Franchisee or its agent upon request. The presentations and tours shall aim to educate the public on the environmental benefits of recycling and resource conservation and provide them with information on increasing waste reduction and recycling at their homes and businesses. Presentations will be available to groups, civic organizations, schools or businesses. Schedules for speaking engagements and tours will be set by the Franchisee.

## EXHIBIT B

### CLEAN UP COUPON PROGRAM FOR TUOLUMNE COUNTY

The Franchisee will provide the following program as the countywide Clean Up Program through the term of the Agreement, as mutually agreed between the Franchisee and County.

The Franchisee will make available to Collection Area 4 Residential Customers two coupons per year redeemable at the Groveland Transfer Station. These coupons will be valid from January 1 to December 31 of each year through the term of the Agreement. Customers will pick up the coupons at the Franchisee's office, currently located at 11300 Wards Ferry Road, Big Oak Flat, CA. The participants must be a Residential Customer for solid waste collection services, *in good standing*, when applying for a coupon.

The following restrictions apply:

- Only the Tuolumne County citizen who signed the coupon will be able to redeem it. (Valid ID. will be required)
- Each coupon will be valid only for the period specified on the coupon. (Freon appliances will require *the then current established* fee for Freon removal with presentation of coupon)
- Each coupon is good for up to one (1) cubic yard. Materials for disposal may include items, such as junk, bulky waste or one appliance, or one piece of furniture.
- Both coupons can be redeemed at the same time or on separate dates. No Household Garbage or Hazardous Waste is permitted.

The County will waive the per ton Integrated Waste Management Fee. The Franchisee which issues the coupon will be responsible for the remaining dollar value of the coupon. The Franchisee will pay the value of the coupon at the rate of the then current established rates.

## **EXHIBIT C**

The following facilities are identified as Tuolumne County facilities for the purposes of Section VI-C.

The Groveland Youth Center  
18950 Highway 120, Groveland

The Groveland Community Hall  
18720 Highway 120, Groveland

Tuolumne County Road Department Yard  
11240 Wards Ferry Road, Big Oak Flat

Groveland Library & Museum  
18990 Highway 120, Groveland

Groveland Community Resilience Center  
18986 Ferretti Road, Groveland

## **EXHIBIT D**

Notwithstanding the definition in Title 7 of Tuolumne County Ordinance Code, for all purposes under this Agreement “**Recyclable**” or “**Recyclable Material**” means the following materials,

1. “Non-Organic Recyclables” for this Agreement means the following non-putrescible and non-hazardous recyclable wastes: aluminum, tin, bimetal cans; plastics bottles labeled #1 and #2; glass bottles and jars.
2. “Paper Products” for this Agreement includes paper, janitorial supplies, cartons, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling.
3. “Printing and Writing Papers” for this Agreement include copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications.

Materials may be added to or deleted from this Exhibit with written approval by the Franchisee and County Contract Manager.



DRAFT

**AMENDED AND RESTATED  
FRANCHISE AGREEMENT  
BETWEEN THE COUNTY OF TUOLUMNE AND  
MOORE BROS. SCAVENGER, INC.  
FOR COLLECTION OF SOLID WASTE  
IN COLLECTION AREA 4  
AS PER THE MAP ENTITLED  
“SOLID WASTE COLLECTION AREAS OF TUOLUMNE COUNTY”  
APPROVED BY THE BOARD OF SUPERVISORS  
RESOLUTION NO. \_\_\_\_\_ ADOPTED ON \_\_\_\_\_, 2023**

## AMENDED AND RESTATED FRANCHISE AGREEMENT

This Amended and Restated Franchise Agreement (“Agreement”), made effective October 1, 2023 (“Effective Date”), by and between COUNTY OF TUOLUMNE, (“County”) and Moore Bros. Scavenger, Inc, (“Franchisee”). This Agreement amends and restates that certain Franchise Agreement made March 28, 1995, by and between the County and Moore Bros. Scavenger, Inc, as amended by amendments dated September 14, 1999, June 13, 2000, March 13, 2001 and December 13, 2011 (“Original Agreement”). This Agreement supersedes the Original Agreement in its entirety.

WHEREAS, the County wishes pursuant to Title 7 of the Tuolumne County Ordinance Code to enter into an exclusive franchise agreement with Franchisee to provide Solid Waste Collection and Recycling Services for customers within Collection Area 4 in the County of Tuolumne; and

WHEREAS, Franchisee wishes to enter into a franchise agreement with County for said services.

NOW THEREFORE, County and Franchisee hereby agree as follows:

### **I. Definitions.**

A. Definitions for terms and phrases not defined in this Agreement shall have the meanings given to them in Title 7 of Tuolumne County Ordinance Code.

B. References to “Title,” “Chapter” or “Section” are to the Tuolumne County Ordinance Code unless otherwise indicated.

C. “Acceptable Waste” means all Solid Waste and Recyclables other than Excluded Waste.

D. “Applicable Law” means any law, regulation, requirement, or order of any Federal, State or local agency, court or other domestic or foreign governmental body, or interpretation thereof by any court or administrative agency of competent jurisdiction, and requirements of all permits, licenses, and governmental approvals applicable to this Agreement.

E. “Collection Services” means the process by which Solid Waste (such as Refuse, Recyclables or Organic Waste) is removed from a Commercial or Residential Premises, transported to a transfer, disposal or processing facility, and subsequently disposed or processed.

F. “Commercial Premises” means a Premises in the County that is not a Residential Premises.

G. “Commercial Business (Commercial)” means a firm, partnership, proprietorship, joint- stock company, corporation, or association, whether for-profit or nonprofit, strip mall, or industrial facility, or as otherwise defined in 14 CCR Section 18982(a)(6) or County Ordinance Section 7.25.020.C., with the exception that Multi-Family is excluded from the definition of Commercial Business for the purposes of this Agreement

H. “Compostable Plastics” or “Compostable Plastic” means plastic materials that meet the ASTM D6400 standard for compostability, or as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2(a)(1)(C) or County Ordinance Section 7.25.020.H.

I. “County Contract Manager” means the County Administrative Officer and the Solid Waste Director or their designated representative who is responsible for the administrative management of this Agreement.

J. “Customer” means an owner or occupant of a Commercial or Residential Premises who has the legal right to initiate, cancel or make changes to Collection Services or as otherwise defined in County Ordinance Section 7.08.080.

K. “Dwelling Unit” means any individual living unit that includes a kitchen, and a room or suite of rooms, and is designed or occupied as separate living quarters for an individual or group of individuals. However, Dwelling Unit does not include a hotel or motel unit.

L. “Edible Food” means food intended for human consumption. For the purposes of this Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this Agreement.

M. “Electronic Waste (E-Waste)” means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices.

N. “Excluded Waste” means Hazardous Waste, Infectious Waste, Medical Waste, regulated radioactive waste, volatile, corrosive, flammable, explosive, toxic substance or material, as defined by, characterized, or listed under applicable federal, state, or local laws or regulations, any materials containing information protected by federal, state or local privacy and security laws or regulations (unless tendered to Company pursuant to a separate agreement), or any material the acceptance or handling of which would cause a violation of any Applicable Law, damage to Franchisee’s equipment of facilities, or present a substantial endangerment to the health or safety of the public or Franchisee’s employees, but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after

implementation of programs for the safe collection, processing, recycling, treatment and disposal of batteries and paint in compliance with Sections 41500 (HHWE preparation) and 41802 (HHWE approval) of the California Public Resources Code. Title to and liability for Excluded Waste shall remain with the generator at all times. Excluded Waste in this Agreement does include tires, motor oil and filters, household batteries, Universal Waste, Electronic Waste and latex paint.

O. “Food Recovery” means actions to collect and distribute food for human consumption which otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24) or County Ordinance Section 7.25.020.O.

P. “Food Scraps” means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

Q. “Food-Soiled Paper” means compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

R. “Food Waste” means Source Separated Food Scraps, Food-Soiled Paper, and Compostable Plastics. Edible Food separated for Food Recovery shall not be considered Food Waste.

S. “Green Waste” means any vegetative matter resulting from normal yard and landscaping maintenance and installation that is not more than three (3) feet in its longest dimension or six (6) inches in diameter. Green Waste includes, but is not limited to, plant debris such as palm, yucca and cactus, grass clippings, leaves, prunings, weeds, branches, brush, undecorated Christmas trees, and other forms of vegetative waste.

T. “Gross Receipts” means total cash receipts collected from Customers by the Franchisee for the provision of services pursuant to this Agreement without any deductions. Gross Receipts do not include revenues from the sale Recyclables.

U. “Hazardous Waste” means any waste which meets the definitions set forth in 22 CCR Section 66261.3, et seq. and is required to be managed; or as otherwise defined in 14 CCR Section 17402(a)(7).

V. “Infectious Waste” means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

W. “Medical Waste” means any Solid Waste that is generated or has been used in the diagnosis, treatment, or immunization of human beings or animals, or research pertaining

thereto, and shall include, but not be limited to, biomedical, biohazardous and medical waste, or other Solid Waste resulting from medical activities or services as defined by the Tuolumne County Code, or any State or federal law or regulation, all as currently enacted or subsequently amended.

X. “Multi-Family or Multi-Family Dwelling Unit” means of, from, or pertaining to residential Premises with five (5) or more dwelling units. Multi-Family Premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses or as otherwise defined in County Ordinance Section 7.25.020.X.

Y. “Organic Waste” means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, Green Waste, Food Waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46) and County Ordinance Section 7.25.020.CC. Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

Z. “Non-Organic Recyclables” means non-putrescible and non-hazardous recyclable wastes including, but not limited to, bottles, cans, metals, plastics, and glass, or as otherwise defined in 14 CCR Section 18982(a)(43) and County Ordinance Section 7.25.020.AA

AA. “Paper Products” include, but are not limited to, paper, janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling; or as otherwise defined in 14 CCR Section 18982(a)(51) and County Ordinance Section 7.25.020.EE.

BB. “Printing and Writing Papers” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications; or as otherwise defined in 14 CCR Section 18982(a)(54) and County Ordinance Section 7.25.020.FF.

CC. “Premises” means any parcel of real property in the County where Solid Waste is generated or accumulated or as otherwise defined in County Ordinance Section 7.30.010.C.

DD. “Recyclables” and “Recyclable Materials” means Non-Organic Recyclables, Paper Products, Printing and Writing Paper materials and for this Agreement are described as such in Exhibit D.

EE. “Refuse” means Solid Waste that is set out for collection and disposal pursuant to this Agreement. Refuse does not include Recyclables nor does it include Excluded Waste.

FF. “Single-Family Premises” means (i) any Premises with less than five (5) Dwelling Units, and (ii) any Premises with five (5) or more Dwelling Units where each Dwelling Unit receives individualized Refuse Collection Services (and not centralized Refuse Collection Services) or as otherwise defined in County Ordinance Section 7.25.020.NN.

GG. “Solid Waste” means all putrescible and non-putrescible solid, semi-solid, and liquid wastes that are generated or coming to exist in the County, including discarded Recyclables and Organic Waste, but excluding Excluded Waste or as otherwise defined in County Ordinance Section 7.08.290.

HH. “Universal Waste” means all wastes defined by 22 CCR Subsections 66273.1 through 66273.9. These include, but are not limited to, batteries, fluorescent light bulbs, mercury switches, and electronic waste.

II. “Waste Containers” means a container that conforms to specifications as otherwise provided in the County Code, in which solid waste is deposited or as otherwise defined in County Ordinance Section 7.08.330

## **II. Grant of Franchise.**

Franchisee shall have the sole and exclusive right and franchise, in accordance with the terms and conditions of this Agreement and Title 7, to provide Collection Services for Residential and Commercial Customers within the County of Tuolumne for solid waste Collection Area 4 as described in the map (Exhibit F) adopted by Resolution No. 136-94 of the Tuolumne County Board of Supervisors. County agrees not to let any contract to, or enter into any contract with any other person for the collection of Solid Waste or Recycling services required to be performed by Franchisee. County agrees not to engage other individuals or itself become involved in the activity of collection services or any other activity that would impair the exclusive right of the Franchisee.

## **III. Term of Franchise.**

- A. The term of this Agreement shall commence on the Effective Date and shall terminate September 30, 2033, unless sooner terminated as hereinafter provided.
- B. Upon mutual written agreement at least eighteen months prior to the end of the term in paragraph A, this Agreement may be renewed for an additional term of ten (10) years.
- C. The franchise in this Agreement does not include those permits authorized by the Solid Waste Manager/Director under Section 7.12.060.

## **IV. Services of Franchisee.**

- A. Franchisee undertakes and agrees, in accordance with the terms and conditions herein contained, to provide the Solid Waste Collection and Recycling Services for Residential, and Commercial Customers comprised of furnishing the necessary labor, vehicles, equipment, and facilities to provide such services. Franchisee has no obligation to collect Excluded Waste.

1. Organic Waste Collection. County has been granted a waiver pursuant to Section 18984.12 of the California Code of Regulations as a “Rural Jurisdiction” and therefor as part of this agreement is not implementing Organic Waste Collection Services . In the future if the County desires or is required to implement Collection Services with respect to source-separated Organic Waste, Franchisee will propose a plan to collect Organic Waste; and upon mutual agreement the County will grant Franchisee the exclusive right to provide such services. The County and Franchisee will collaborate and agree upon an Organic Waste collection program, including Franchisee’s compensation, before such Collection Services are implemented. In the event the County is required to comply with the provisions of AB 1826 and SB 1383 requiring the collection and recycling of organic waste from regulatory defined generators, Franchisee shall comply with all hauler-specific requirements set forth in AB 1826 and SB 1383, and shall also assist the County in complying with AB 1826 and SB 1383 by providing education and outreach regarding the importance of reducing landfilled organic waste, type of materials that are acceptable for the recycling of organic waste, and the availability of organic waste collection programs. In addition, Franchisee shall agree to collect organic waste from Customers at rates as shall be mutually agreed to by Franchisee and the County and set forth in an amendment to this Agreement.
- B. Residential Refuse Collection Services. The Franchisee shall each week collect and dispose of all Refuse from Residential Customers within Collection Area 4 that is placed at the roadside on public streets, alleyways or other locations approved by Franchisee at rates specified in Exhibit E.
- C. Recycling Services. The Franchisee shall accept Recyclable Materials from Customers in Collection Area 4 at the drop-off recycling facility located at the headquarters for Moore Bros. Scavenger, Inc. at 11300 Wards Ferry Road, Big Oak Flat, CA. Recyclable materials accepted are listed in Exhibit D.
- D. Commercial Refuse Collection Services. Franchisee shall at least once each week collect and dispose all Refuse from Commercial Customers within Collection Area 4 that is placed at the roadside on public streets, alleyways or other locations approved by Franchisee and County Contract Manager. Franchisee shall provide a sufficient number and size of Waste Containers to properly contain Refuse generated from eligible commercial premises; available container sizes and rates are set forth in Exhibit E.
- E. Commercial – Recycling Collection Services. Franchisee shall provide monthly cardboard collection service within Collection Area 4 that is placed at the roadside on public streets, alleyways or other locations approved by Franchisee and County Contract Manager. Franchisee shall provide containers at rates set forth in Exhibit E.
- F. Roll-Off Services. Customers may subscribe for Refuse and Recyclables

Collection Services at the rates specified in Exhibit E.

- G. Operations Plan. Franchisee shall annually submit to the County an updated operations plan, including, but not limited to, franchise operating plan contents as described in Section 7.16.030. Changes to the operations plan shall be submitted to the County Contract Manager for approval. Such approval shall not be unreasonably withheld.
- H. Recycling Public Awareness Program. County and Franchisee shall work jointly to develop and implement the Recycling Public Awareness Program described below:
1. Franchisee will distribute by mail or billing inserts new program announcements.
  2. Franchisee will distribute information regarding the recycling program.
  3. County and Franchisee will cooperate in contacting local media to seek coverage of the recycling program to increase citizen awareness of the benefits of recycling.
  4. Franchisee will make presentations at public meetings and community events upon request.
  5. County reserves the right to approve any and all public awareness materials prior to distribution.
  6. Franchisee agrees to sponsor and provide recycling/source reduction information as described in Exhibit A.
- I. The California Public Resources Code requires the County to prepare and implement a Source Reduction and Recycling Element (“SRRE”) and a Household Hazardous Waste Element (“HHWE”). Franchisee shall be responsible for implementing provisions of these plans to the extent such plans impose duties upon Franchisee. The County Contract Manager and Franchisee shall meet annually prior to October 1<sup>st</sup> to determine the responsibilities for the SRRE and HHWE and determine if any rate adjustments are necessary to fund these programs for the subsequent contract year after the anniversary date. The County Contract Manager and Franchisee must mutually agree on a program to be presented to the County. The Board of Supervisors is to receive, as a minimum, the following:
1. Proposed program description;
  2. Diversion expected;
  3. Cost of proposed program; and



4. How proposed program integrates with existing programs.
- J. The Franchisee will not be responsible for providing services where there is unacceptable safety or risk factors. The County Contract Manager and Franchisee shall establish standards for bridges and roads. If unsafe conditions persist, the Franchisee has the right to ask for a waiver from providing service. If a location is found to be unsafe and, the potential Customer wants service, the refuse is to be located at a site mutually agreed upon by Franchisee, County Contract Manager and Customer or service can be denied without being a violation of this Agreement.
- K. Franchisee agrees to provide the following ancillary services, as contained herein:
  1. Franchisee agrees to conduct a cleanup coupon program as provided in Exhibit B.
  2. Franchisee will provide Christmas tree pick up upon request for residents that are unable to use the drop off at either the Groveland Transfer Station or the Pine Mountain Lake Compost Facility.
  3. Franchisee agrees to use its best effort in load checking during the collection of Solid Waste to screen out Excluded Wastes. In the event that Excluded Wastes are found, the container shall not be serviced and a notice of the correct disposal method for the waste shall be left for the Customer.
- L. Franchisee agrees to install and maintain computers and software compatible with County approved programs for basic, efficient office practices. Appropriate employee training will be included.

**V. Obligations of Franchisee**

- A. Franchisee shall comply with all federal, state, local statutes, ordinances and regulations, including Titles 7 and 8.
- B. Franchisee, prior to award of franchise, shall provide and maintain at its own expense at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the County as may be required by the Risk Manager of the County. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation in the policy, notices of same shall be given to the Risk Manager of the County or delivered in person to Risk Manager. Coverage shall be at least as broad as:
  1. Worker's Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than

\$1,000,000 per accident for bodily injury or disease.

2. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

3. Automobile Liability: ISO Form Number CA 00 20 covering any auto (Code 1), or if Franchisee has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

If the Franchisee maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Franchisee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (a) Additional Insured Status. The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Franchisee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Franchisee's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
- (b) Primary Coverage. For any claims related to this contract, the Franchisee's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Franchisee's insurance and shall not contribute with it.
- (c) Umbrella or Excess Policy. The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be

provided on a true “following form” or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the additional Insured, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor’s primary and excess liability policies are exhausted.

- (d) Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with thirty (30) days’ notice to the County.
- (e) Waiver of Subrogation. Franchisee hereby grants to County a waiver of any right to subrogation which any insurer of said Franchisee may acquire against the County by virtue of the payment of any loss under such insurance. Franchisee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
- (f) Self-Insured Retentions. Self-insured retentions must be declared to and approved by the County. The County may require the Franchisee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000, unless approved in writing by County. Any and all deductibles and SIRs shall be the sole responsibility of Franchisee or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. County may deduct from any amounts otherwise due Franchisee to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. County reserves the right to obtain a copy of any policies and endorsements for verification.
- (g) Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the County.
- (h) Verification of Coverage. Contractor shall furnish the County with original Certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this clause and a copy of the Declarations and Endorsement Page of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right

to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

- (i) Special Risks or Circumstances. County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Failure to Comply: Upon failure to comply with any of these insurance requirements, this Agreement may be forthwith declared suspended or terminated. Failure to obtain and/or maintain any required insurance shall not relieve any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the indemnification obligations.

- C. Franchisee, shall, prior to this Agreement becoming effective, deliver to the Risk Manager a Faithful Performance Surety Bond in the amount of ten thousand dollars (\$10,000.00) which shall be approved by the Risk Manager to secure the full and faithful performance of the terms, obligations and agreements on the part of Franchisee to be performed. Risk Manager shall retain the right to approve or disapprove of Franchisee's surety.

The Faithful Performance Surety Bond shall not be subject to cancellation and shall be in full force and effect for at least one year, and shall be renewed, or a new bond furnished, subject to the same approval, not less than thirty (30) days prior to the expiration of the then existing bond on file with Risk Manager. Franchisee shall, at all times during the term of this Agreement, maintain a Faithful Performance Surety Bond, in accordance with the terms of this paragraph, in full force and effect.

- D. In the event of the termination or cancellation of the insurance policies required by this Agreement, or the failure of Franchisee to obtain the insurance policy or performance bond required by this Agreement, the franchise may be terminated by County upon written notice to Franchisee. If insurance is terminated due to an unforeseeable event, not the fault of the Franchisee, the Franchisee will have sixty (60) days to have insurance policies replaced without breaching this Agreement.
- E. Franchisee shall hold harmless, defend and indemnify County and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Franchisee 's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the County.

If such indemnification becomes necessary, the County Counsel for the County shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the County. This indemnification clause shall survive the termination or expiration of this Agreement.

- F. Franchisee shall not assign, or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise, without the prior written consent of County. Any attempt to do so without that consent shall be null and void, and any assignee, or transferee shall acquire no right or interest by reason of such attempted assignment, or transfer. County shall not unreasonably withhold consent.

**VI. County Franchise Fee.**

- A. In consideration of the exclusive franchise provided by this Agreement, Franchisee agrees to pay the negotiated amount of Franchise Fees to the County each quarter equal to 1½% of the Gross Receipts for all services performed under this agreement.

Franchisee shall prepare and mail remittance each quarter not later than twenty (20) calendar days after the end of each quarter. The remittance will be accompanied by a report setting forth the basis and calculations used for computing the amount due. The figures used shall agree with the general books of account of Franchisee. Said books of account shall be made available to County upon demand for the purposes of audit, pursuant to Title 7.

- B. Franchisee shall reimburse County for County costs associated with any audit, review or required report as provided in Section 7.16.070.
- C. Franchisee agrees to provide all Solid Waste Collection Services, equipment, and containers needed by County facilities and properties as listed in Exhibit C at no charge to County. Containers shall be of the type and size the Franchisee owns or controls and shall be distributed to County property, including any other County property or property currently or in the future owned, rented or occupied by the County requiring such service. The Facilities Manager and/or County Contract Manager will provide the service level, frequency and location of the services needed. The Facilities Manager and/or County Contact Manager may, from time to time, order changes in the services described in this paragraph. The Franchisee will not be responsible for paying to the County any integrated waste management fee for the provision of these services.

**VII. Franchisee Fees, Charges and Adjustments to Fees & Charges.**

- A. Upon the Effective Date of this Agreement, Franchisee's rates and services will be as described Exhibit E. Rates for additional services not specified in Exhibit E shall be as agreed between Franchisee and a customer with written notice to the

County Contract Manager; provided, however, that in the case of a dispute, the dispute shall be submitted to the County Contract Manager for resolution.

B. Applications for rate increases will be based as follows:

1. Water, Sewer and Trash CPI Indexed Rates. The rates approved as part of this Agreement, and all rates established by the Board of Supervisors pursuant to Title 7 hereafter, shall be considered for periodic increases which are 100 percent of the percentage of change in the Consumer Price Index CUUR0000SEHG CPI-U Water Sewer and Trash Collection Services, as published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"). The CPI adjustment will be calculated using the change in the 12-month annual average of monthly CPI index values between the July 1<sup>st</sup> to June 30 period (fiscal year) of the year immediately prior to the adjustment date. Should the Bureau of Labor Statistics of the Department of Labor discontinue publication of the described index, or publish it less frequently, or alter it in any other manner, the parties shall mutually adopt a substitute index or procedure which reasonably reflects and monitors consumer prices.

The first adjustment will occur on January 1, 2024, and rates shall be adjusted in the same manner annually thereafter.

Adjustments in accordance with the CPI shall be subject to the following qualifications:

- a. Rates adjusted in accordance with the CPI shall not be greater than six percent (6%) nor less than zero percent (0%) in any one year regardless of the percentage changes in the CPI; and
- b. In the event Franchisee obtains a return on revenues that averages more than ten percent (10%) per annum, using a 3-year rolling average, then the Franchisee will not be entitled to make a CPI adjustment for the immediately succeeding year, and continually thereafter so long as the 3-year rolling average of return on revenues exceeds (10%).
- c. In the event Franchisee obtains a return on revenues that averages more than ten percent (10%) per annum, using a three year rolling average, then Franchisee shall refund full amount above ten percent (10%) to Customers through a rate reduction for the following year.
- d. Franchisee shall be entitled to a fair return on revenues. Return on revenues is hereby defined as the ratio of net

income to gross revenues. Net income is arrived at by deducting all expenses (including taxes) from gross revenues.

2. Adjustment for Extraordinary Costs. The process for effecting any rate adjustment above the annual CPI increase shall be made by application. Franchisee may apply to County for consideration of a special interim rate review as provided in Title 7. If, in any contract year, Franchisee incurs extraordinary expenses, over and above the annual CPI increase for reasons beyond Franchisee's control, Franchisee may request an adjustment in rates to compensate for the amount of such increased cost. Nothing herein shall obligate the County to grant such increase, but it shall negotiate in good faith and not withhold approval of such increase where Franchisee has provided reasonably requested documentation, as provided in this Section. If in any contract year Franchisee is subject to (i) a landfill disposal or processing increase, (ii) new or increased governmental fees, charges or other amounts, (iii) increased costs or reduced revenues due to a change in Applicable Law, (iv) a change in Collection Services (e.g., implementation of Organic Waste Collection Services), all of said increased costs or reduced revenue may be passed through by means of an Extraordinary Adjustment rate increase. In the event that Franchisee requests an Extraordinary Adjustment, the Extraordinary Adjustment shall be based on evidence or data presented by Franchisee that a singular and/or unexpected occurrence has occurred within the past 12 months that has effected and will continue to have a significant financial effect on Franchisee's revenues and/or expenses and that Franchisee's costs for the required franchise services have undergone and will continue to undergo a significant increase or decrease due to this occurrence. The Franchisee shall be responsible for both its and the County's reasonable associated costs to complete the Extraordinary Adjustment. If the increase is due to the imposition of a host fee, the County will review the fees to determine if the increase should be passed through.

At County's expense County may initiate an interim rate review at its option. Any rate review, whether initiated by County or Franchisee, will follow the format specified for in Title 7.

Franchisee shall provide written notice to Customers of proposed rate changes and annual rate pursuant to Title 7. Prior to providing said notice to Customers, Franchisee shall provide said notice to County for review and approval.

## **VIII. Performance Review**

- A. Franchisee shall maintain complete and accurate financial records with respect to gross revenue, costs, expenses, receipts, inventory, and other such information required to assess Franchisee's financial position relating to residential, commercial and industrial Solid Waste Collection and Recycling Services under County's jurisdiction. All such records shall be maintained in accordance with generally accepted accounting principles and Title 7. Franchisee considers confidential and/or trade secret shall be subject to a confidentiality agreement with the County; however Franchisee understands County must comply with the California Public Records Act and any other Applicable Law that may require disclosure.
- B. In addition to financial records, Franchisee shall maintain complete and accurate records for all aspects of Franchisee's compliance with this Agreement including, but not limited to, collection route maps, Customer lists and payment records, disposal records by truck, local enforcement agency records of inspection, truck inspection records, SRRE and HHWE compliance records, Customer complaints, and other like materials.
- C. All records required to be kept by Franchisee shall be clearly identified and readily accessible. Franchisee shall provide free access to the representatives of County (according to Title 7) or their agent during all normal business hours to such books or records, and give the County the right to examine and audit same, and to make transcripts therefrom or copies as necessary. All records will be maintained for five years after the completion of the year which they were prepared.
- D. Franchisee shall prepare, mail and collect bills (or shall issue written receipts for cash payments) for Solid Waste Collection Services provided by Franchisee under this Agreement. Bills for services shall at a minimum be mailed to Customers annually in advance of the provision of services.
- Franchisee shall maintain copies of said billings and receipts in chronological order for a period of three (3) years after the date of service for inspection by County. Franchisee may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.
- E. Franchisee agrees to indemnify County against all fines or penalties imposed by the California Integrated Waste Management Board or other regulatory agencies in the event that regulatory objectives are not met for the residential and commercial sector served by Franchisee for which Franchisee is responsible. Such indemnity shall be limited to exclude all damages or claims to the extent that they are caused by, arise from or in connection with (i) any negligent actions or omissions or willful misconduct of the County, or its employees, agents, appointed and elected officials; or (ii) the failure of the County or its employees,



agents, appointed and elected officials to comply with or enforce applicable solid waste and/or recycling statutes, ordinances, regulations, or other requirements, other than failures attributable to Franchisee's performance under this Agreement. The extent of the Franchisee's liability under this Section shall not exceed the amount of Franchisee's proportionate share of fault.

- F. Franchisee shall be responsible for the prompt, courteous and reasonable resolution of all Customer complaints.

Franchisee shall record in a separate log all complaints, noting the name and address of complainant, date and time of complaint, nature of complaint and resolution. This complaint log will be retained by the Franchisee at the office and be available for inspection by the County Contract Manager during regular business hours. The Franchisee will submit a copy of the complaint log annually to County Contract Manager.

- G. Franchisee shall, on an annual basis, file reports as required by law and provide reports to County Contract Manager pursuant to local, state and federal laws. All such reports must contain information sufficient to report its progress to the State regarding the implementation of County's SRRE and HHWE pursuant to the California. Public Resources Code. In addition to any reports required by law, the Franchisee shall provide any reports that are needed by the County Contract Manager in the execution of their duties to the County or needed for the enforcement of this Agreement.

## **IX. Liquidated Damages**

- A. County finds, and Franchisee agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which will be incurred by County as a result of a material breach by Franchisee of its obligations under this Agreement.
- B. Accordingly, the Board may, in its discretion, assess liquidated damages not to exceed the sum of five hundred dollars (\$500) per day, for each calendar day that service is not provided by Franchisee in accordance with this Agreement. Any assessment of liquidated damages must be a reasonable approximation of actual harm to the County. County will not assess liquidated damages unless and until (i) it has provided written notice of the alleged performance failure to Franchisee; (ii) the County Contract Manager and Franchisee meet to discuss the validity of alleged performance failures; and (iii) Franchisee thereafter (within 30 days) fails to correct such performance failures. In addition, the Board may order the assessment against the cash bond required by this Agreement, the termination of this Agreement, or both.
- C. County finds, and Franchisee acknowledges and agrees that the above-described liquidated damages provisions represent a reasonable sum in light of all of the circumstances. Liquidated damages shall be applicable to each calendar day

during which Franchisee has been found by the Board to be in default pursuant to this Article. Franchisee shall pay any liquidated damages assessed by the Board within ten (10) days after they are assessed. If they are not paid within the ten-day period, County may withdraw them from the security fund established by the performance bond required by this Agreement. Claims for liquidated damages must be made within 60 days of when County knew or should have known of the performance issue.

**X. Termination of Franchise.**

- A. In the event Franchisee should default in the performance of any material provisions of this Agreement, and the default is not cured within thirty (30) days after receipt of written notice of default from the County, then County may, at its option, hold a hearing to determine whether this Agreement should be terminated. In the event County decides to terminate this Agreement, County shall serve ten (10) days' written notice of its intention to terminate upon Franchisee. In the event County exercises its right to terminate this Agreement, County may, at its option, either directly undertake performance of the services or arrange with other persons to perform the services. In either event, Franchisee shall be liable to County for any expense County incurs in performing the services.
- B. In the event County exercises its option under this Article to terminate this Agreement, and directly performs the services, County shall pay to Franchisee, from revenues received by County from Customers, any amounts due Franchisee for services performed as of the date of termination, which amount remain unpaid ninety (90) days from such date. If County arranges with other persons to perform the services, County shall ensure that such other persons pay Franchisee the amounts due under this paragraph and agrees to pay such amounts in the event the other persons do not. County may take possession of Franchisee's equipment necessary to perform the services required under this Agreement, and retain it until County can purchase or otherwise acquire equipment suitable for that purpose, but in no event longer than one hundred and twenty (120) days. County shall compensate Franchisee for the reasonable rental value of its equipment during the period County retains possession of it.
- C. County further reserves the right to terminate this Agreement or impose liquidated damages in the event of any of the following, unless such event is susceptible to cure and has been cured promptly upon written notice to Franchisee by County:
  - 1. If Franchisee becomes insolvent, unable or unwilling to pay its debts, or upon listing of an order for relief in favor of Franchisee in a bankruptcy proceeding.
  - 2. If Franchisee fails to abide by County's direction as provided in Article XII.

3. If Franchisee knowingly violates any orders or rulings of any regulatory body having jurisdiction over Franchisee relative to this Agreement, provided that Franchisee may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until resolution of that proceeding.
4. If Franchisee ceases to provide Solid Waste Collection or Recycling Services as required under this Agreement over all or a substantial portion of its service area for a period of seven (7) days or more, for any reason within the control of Franchisee. (For purposes of this section, a labor strike or similar organized work stoppage, acts of nature, or inaccessibility due to acts of nature which are not encountered in the normal course of business, will not be deemed to be within the control of Franchisee.)
5. If Franchisee willfully fails to make any payments or reports required under this Agreement and fails to cure such failure promptly after written notice.
6. If Franchisee, one of its officers or managers, is found guilty of a felony relating to Solid Waste Collection or Recycling Services, or is found guilty of illegal dumping of solid or hazardous waste, and fails to implement corrective action promptly and to the County's reasonable satisfaction.
7. In the event that this Agreement is terminated by County upon the failure of Franchisee to secure and maintain the insurance policies and/or performance bond required under the terms of this Agreement, Franchisee shall be liable to County for any and all damages suffered by County arising out of failure to provide insurance under this Agreement.

D. **Franchisee's Liability to Perform Due to Uncontrollable Circumstances**

Franchisee's failure to perform under the terms of this Agreement by reason of a major disaster, epidemic, or other act of God or other event beyond Franchisee's reasonable control shall not constitute a breach of this Agreement for purposes of paragraph A, above.

XI. **Arbitration, Judicial Venue and Governing Law.**

- A. Prior to any action by the County or Franchisee in taking any item of this Agreement to arbitration or court, the item shall be reviewed by the CAO. If the Franchisee or Board of Supervisors does not concur with the decision of the CAO, either party may proceed.

- B. Arbitration. Franchisee and County may agree that any dispute arising out of this Agreement shall be decided by arbitration in accordance with California Code of Civil Procedure section 1280, et seq. or like statute. If both parties agree to arbitration, the parties shall have the right of discovery under the California discovery statutes.
- C. Attorneys' Fees. The parties shall share the cost of any arbitration. In the event suit or action or arbitration is instituted as a result of a dispute under this Agreement, the prevailing party shall be awarded its attorneys' fees and costs, including, but not limited to, expert witness fees.
- D. Standing. Only the County and the Franchisee shall have standing to bring or become a party to arbitration claims or legal actions under this Agreement.

**XII. Disposition of Solid Waste.**

- A. All Acceptable Waste collected by Franchisee shall become the property of Franchisee upon placement by the Customer for collection, and shall be forthwith removed and conveyed to the Cal Sierra/Waste Management Material Recovery Facility/Transfer Station or other County authorized facility by Franchisee, subject to the provisions of this Agreement.
- B. Notwithstanding the provisions of Paragraph A, County has the right to direct that any Acceptable Waste collected by Franchisee shall be delivered to a County-authorized facility.
- C. In the event that modifications to Franchisee's operations are necessary to comply with the terms and conditions of this Article, and the modification thereof affect Franchisee's costs of doing business, Franchisee or County may initiate a rate adjustment pursuant to Article VII and Title 7.

**XIII. Miscellaneous Provisions.**

- A. The failure of either party at any time to require performance by the other party herein shall not affect the right of such party to enforce the same thereafter, nor shall the waiver by either party of any breach of any provision or as a waiver of the provision itself.
- B. All terms used in the singular or in the masculine gender shall apply to the plural or to the feminine or neuter gender as the context thereof requires.
- C. The Article headings used in this Agreement are intended solely for convenience and reference and shall not in any way or manner amplify, limit, modify, or otherwise be used in the interpretation of this Agreement.

- D. This Agreement may be amended at any time by mutual agreement of the parties, provided such amendment shall be operative and valid only if set forth in writing and signed by all of the parties.
- E. This Agreement constitutes the entire understanding with respect to the subject matter hereof and supersedes any and all prior understandings or agreements, whether written or oral, including without limitation the Original Agreement.
- F. This Agreement shall be binding on the parties hereto and on their respective successors and assigns.
- G. If any term, provision or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- H. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party hereto, by the other party to this Agreement shall be in writing and shall be deemed duly served when personally delivered to the party to whom they are directed, or in lieu of such personal service when deposited in the United States mail, first-class certified or registered mail, postage prepaid, addressed to County at 2 South Green Street, Sonora, California 95370, with a duplicate copy to the County Counsel, 2 South Green Street; Sonora, California 95370 or to Franchisee at P.O. Box 278, Big Oak Flat, CA 95305-0278.
- I. It shall be Franchisee's and County's responsibility to enforce this franchise pursuant to Section 7.04.040. Franchisee may enforce this Agreement civilly without the consent of the County. County may enforce criminally without the consent of Franchisee.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, County has caused its name and seal to be hereunto subscribed and affixed by the Board Clerk, duly authorized, and said Franchisee has caused its corporate name and seal to be hereunto subscribed and affixed by its President and Secretary.

<p>COUNTY OF TUOLUMNE</p> <p>By _____ Kathleen K. Haff, Chair, Board of Supervisors</p>	<p>MOORE BROS. SCAVENGER, INC</p> <p>By _____ Steve Moore, President</p>
<p>ATTEST:</p> <p>By _____ Clerk of the Board of Supervisors</p>	<p>ATTEST:</p> <p>By _____ Secretary</p>
<p>APPROVED AS TO FORM:</p> <p>By _____ Cody M. Nesper, Deputy County Counsel</p>	

- A – PUBLIC INFORMATION AND EDUCATION
- B – CLEAN UP COUPON PROGRAM FOR TUOLUMNE COUNTY
- C – COUNTY FACILITIES
- D – RECYCLABLE MATERIALS
- E – RATE SHEET
- F – FRANCHISE MAP

**EXHIBITS  
&  
ATTACHMENTS**

DRAFT

## **EXHIBIT A**

### **Public Information and Education**

Franchisee's public education program shall focus on providing information to Customers to ensure that they understand: (i) the services that are provided under this Agreement, (ii) the proper method for placing materials in Containers for Collection and setting Containers out for Collection, and (iii) materials prohibited from Collection such as Hazardous Waste. Educational information may include, but not be limited to, newsletters, flyers, door hangers, notification tags, and direct contact. Franchisee shall allow the County a reasonable opportunity to review public education materials, request modifications to materials, and approve all public education materials before printing, publication, distribution, and/or release. County shall have the right to request that Franchisee include the County name, County logo, and/or community names on public education materials.

Franchisee shall prepare and distribute a "Starter Kit" to all new subscribing customers. The Starter Kit shall include a service information brochure describing how to drop off recyclable materials at Franchisee's drop-off recycling facility and list the acceptable materials that can be included. Information about materials to be excluded from collection, suggestions for proper placement of containers on collection day and information on the proper disposal of other waste streams, such as; household hazardous waste, sharps, E-waste, Universal Waste will be included.

Educational speaking engagements and facility tours will be conducted by the Franchisee or its agent upon request. The presentations and tours shall aim to educate the public on the environmental benefits of recycling and resource conservation and provide them with information on increasing waste reduction and recycling at their homes and businesses. Presentations will be available to groups, civic organizations, schools or businesses. Schedules for speaking engagements and tours will be set by the Franchisee.



## EXHIBIT B

### CLEAN UP COUPON PROGRAM FOR TUOLUMNE COUNTY

The Franchisee will provide the following program as the countywide Clean Up Program through the term of the Agreement, as mutually agreed between the Franchisee and County.

The Franchisee will make available to Collection Area 4 Residential Customers two coupons per year redeemable at the Groveland Transfer Station. These coupons will be valid from January 1 to December 31 of each year through the term of the Agreement. Customers will pick up the coupons at the Franchisee's office, currently located at 11300 Wards Ferry Road, Big Oak Flat, CA. The participants must be a Residential Customer for solid waste collection services, *in good standing*, when applying for a coupon.

The following restrictions apply:

- Only the Tuolumne County citizen who signed the coupon will be able to redeem it. (Valid ID. will be required)
- Each coupon will be valid only for the period specified on the coupon. (Freon appliances will require *the then current established* fee for Freon removal with presentation of coupon)
- Each coupon is good for up to one (1) cubic yard. Materials for disposal may include items, such as junk, bulky waste or one appliance, or one piece of furniture.
- Both coupons can be redeemed at the same time or on separate dates. No Household Garbage or Hazardous Waste is permitted.

The County will waive the per ton Integrated Waste Management Fee. The Franchisee which issues the coupon will be responsible for the remaining dollar value of the coupon. The Franchisee will pay the value of the coupon at the rate of the then current established rates.

## **EXHIBIT C**

The following facilities are identified as Tuolumne County facilities for the purposes of Section VI-C.

The Groveland Youth Center  
18950 Highway 120, Groveland

The Groveland Community Hall  
18720 Highway 120, Groveland

Tuolumne County Road Department Yard  
11240 Wards Ferry Road, Big Oak Flat

Groveland Library & Museum  
18990 Highway 120, Groveland

Groveland Community Resilience Center  
18986 Ferretti Road, Groveland

## **EXHIBIT D**

Notwithstanding the definition in Title 7 of Tuolumne County Ordinance Code, for all purposes under this Agreement “**Recyclable**” or “**Recyclable Material**” means the following materials,

1. “Non-Organic Recyclables” for this Agreement means the following non-putrescible and non-hazardous recyclable wastes: aluminum, tin, bimetal cans; plastics bottles labeled #1 and #2; glass bottles and jars.
2. “Paper Products” for this Agreement includes paper, janitorial supplies, cartons, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling.
3. “Printing and Writing Papers” for this Agreement include copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications.

Materials may be added to or deleted from this Exhibit with written approval by the Franchisee and County Contract Manager.