

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources

BOARD AGENDA # *B-10

Urgent Routine

AGENDA DATE June 2, 2009

CEO Concur with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Continue the Residential Bulky Item Curbside Collection Program, Revise the Regulations for Collection of Refuse in the Unincorporated Territory, and Establish Franchise Refuse Enforcement Procedures

STAFF RECOMMENDATIONS:

1. Authorize the continuation of the Residential Bulky Item Curbside Collection Program in the unincorporated areas of Stanislaus County at the current cost of \$0.55 per residence per month.
2. Approve the revised Regulations for Collection of Refuse in the Unincorporated Territory of Stanislaus County.
3. Approve staff's proposal for the enforcement of the Refuse Ordinance and the Franchise Regulations as it relates to the refuse franchise holders.

FISCAL IMPACT:

If the continuation of the Bulky Item Curbside Collection Program is approved, all residential subscribers to regular weekly refuse collection by the franchise companies would continue to be subject to the \$0.55 per residence monthly fee whether or not they choose to participate in the Bulky Item Curbside Collection Program. Revising the Regulations for Collection of Refuse in the Unincorporated Territory and incorporating an enforcement program will have no impact on refuse collection rates.

BOARD ACTION AS FOLLOWS:

No. 2009-361

On motion of Supervisor Chiesa, Seconded by Supervisor Grover

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Continue the Residential Bulky Item Curbside Collection Program, Revise the Regulations for Collection of Refuse in the Unincorporated Territory, and Establish Franchise Refuse Enforcement Procedures

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DISCUSSION:

Bulky Item Collection Program

On July 31, 2007, the Board of Supervisors authorized the addition of a Bulky Item Curbside Collection Program to the solid waste collection services available to residential customers in the unincorporated areas of Stanislaus County for a one-year trial period. This program was developed to provide residents an opportunity to place large appliances, furniture, mattresses, and other acceptable items curbside twice each year for collection by the franchise solid waste collection companies. For this one-year trial period, a charge of \$1.50 per residence per month was added to the approved refuse collection rates.

On May 20, 2008, the Board authorized the continuation of the Bulky Item Curbside Collection Program through July 31, 2009, to allow for adequate evaluation of the program. Concurrent with this re-authorization, the cost to residents was reduced from \$1.50 to \$0.55 per residence per month.

Since the inception of this program in August 2007 and through January 2009, there have been 1,485 participants within the unincorporated areas and approximately 408 tons of bulky items collected. This program is an integral component of the County's strategy to reduce illegal dumping and provides a valuable service to residents without the means to transport bulky items to a transfer station or the landfill.

The Department of Environmental Resources (Department) is recommending that this program be authorized as an ongoing component of solid waste collection services available to residential customers in the unincorporated areas.

Franchise Regulations

Stanislaus County Ordinance Code Section 9.12.090 permits the Board to establish, by resolution, regulations for the administration and implementation of the Refuse Ordinance. When adopted, such Regulations become a part of the Refuse Ordinance. In 1982, the Board adopted the Regulations for Collection of Refuse in the Unincorporated Territory of Stanislaus County (Regulations). These Regulations and the provisions of the Ordinance Code together with the Franchise Agreements comprise the contract between Stanislaus County and any one of the franchise collectors.

The Regulations have been relatively unchanged since their inception, however, on November 4, 2008, the Board approved staff's recommendation to do the following: a) incorporate the new Refuse Rate Adjustment Methodology into the Regulations; b) add a requirement that the franchise collectors maintain a complaint log; and c) establish a maximum threshold for verified complaints in any quarter of the year.

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In addition, during calendar years 2004-2005, staff and the franchise holders cooperated on a future planned revision of the Franchise Regulations. Staff met with representatives of the four franchise collectors over several months to: (1) modernize the terminology; (2) reflect changes in solid waste collection such as replacing references to standard refuse containers with automated containers; (3) eliminate some duplication; and, (4) to conform the language of the Regulations to provisions of the Stanislaus County Ordinance Code.

The revision presented today for the Board's consideration includes not only the work from calendar years 2004-2005, but formally incorporates the Curbside Recycling Program, the Reduced Service guidelines, a definition of a verified complaint, and, if approved, the permanent Bulky Item Curbside Collection Program in the Regulations. For clarification, given that Franchise Area #3 is currently out to bid, it is possible that the selected collector may be asked to provide curbside recycling services that differ from those in the remaining three Franchise Areas. If this is the case, the new Franchise Agreement would identify the specifics of that service and at that point, the Agreement would become the governing document for curbside recycling, rather than the Regulations.

The minor amendments to the Ordinance are not a project under CEQA because there is no possibility of an effect on the environment as a result of the County's proposed action. The action is also exempt from CEQA as per Guidelines Section 15308 because the County's action is authorized by the state or local ordinance to assure the maintenance, restoration, enhancement or protection of the environment.

Enforcement Process

At the November 4, 2008, meeting, the Board approved new base rates for solid waste collection, a revised rate adjustment methodology, and directed Department staff to develop an Ordinance Code change, which would incorporate an enforcement process for the failure to meet performance measures or conditions specified in the Ordinance or Regulations. In keeping with this direction, staff considered a number of alternatives, but concluded that the Ordinance Code already provides a process that should meet the needs of the Department, although this process has not been utilized to date.

Specifically, except for three sections of the Refuse Ordinance for which violations are classified as misdemeanors (9.04.150, 9.04.151, and 9.04.180), a person violating any other section of the Refuse Ordinance is guilty of an infraction. Ordinance Code Section 1.24.040 authorizes the Director of Environmental Resources, or her designees, to issue a Notice to Appear pursuant to the provisions of Penal Code sections 853.5 and 853.6, whenever such employee has reasonable cause to believe that a person has committed such infraction. Ordinance Code Section 1.36.020 enumerates the

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mandatory fines for the first (\$100), second (\$200), and each additional violation (\$400) of the same Ordinance Code section within a year. Notices to Appear and fines would be processed through the County's Traffic Court Division.

The Department proposes to utilize these existing sections of the Ordinance Code as the enforcement process when a violation of the Ordinance Code or the Regulations by one of the franchise collectors calls for corrective action, or, when the verified complaints for a particular franchise company exceed the threshold specified in Section V.E.4c. of the Regulations.

If utilized, this process would be applicable to any franchise refuse holder and, in the case of Franchise Area #3, would be in addition to the possible liquidated damages assessments described in the new draft Franchise Agreement approved as part of the Request for Proposals for Refuse Removal in Franchise Area # 3 at the Board's February 10, 2009, meeting. The imposition of fines will require the advance approval of the Director of Environmental Resources, or her designee.

POLICY ISSUE:

The Board of Supervisors should determine if continuing the Bulky Item Curbside Collection Program and approving the revised Regulations for Collection of Refuse is consistent with the Board's priorities of a safe community, a healthy community, the efficient delivery of public services, and a well-planned infrastructure system.

STAFFING IMPACTS:

There are no staffing impacts associated with this item.

CONTACT PERSON:

Sonya K. Harrigfeld, Director. Telephone: 209-525-6770

STANISLAUS COUNTY

Regulations for the Franchise
Collection
of Refuse in the
Unincorporated Areas

Prepared by
Department of
Environmental Resources

Revised May 2009

SECTION 1.00
GENERAL

Pursuant to Stanislaus County code Section 9.12.090, and in accordance with the provisions of the Stanislaus County code for the collection of refuse in the unincorporated area of the County of Stanislaus, the following regulations shall govern the franchisee's operations and shall be included in the terms of the franchise.

SECTION 2.00
DEFINITIONS AND TERMS

2.10. "FRANCHISE" means the franchise granted by the County in accordance with Section 9.04.010 of the Ordinance Code of Stanislaus County.

2.20. "CODE" means the Stanislaus County Code.

2.30. "COMPLAINT", for the purposes of section 4.120, means a customer contact that meets the following criteria:

1. The contact was not a request for information or a normal request for service;
2. The initial contact/complaint was clearly and completely reported by the complainant to the Franchisee;
3. The Franchisee was provided adequate opportunity, as determined by the Department after consultation with the Franchisee, to resolve the alleged problem and failed to take the necessary steps to correct and/or resolve the situation to the satisfaction of the Department; and,
4. The Department fully reviewed the complaint and determined the complaint was solely the result of a performance failure by the Franchisee.

2.40. "FRANCHISEE" means the person or entity to whom the County of Stanislaus grants a FRANCHISE for the collection and disposal of refuse.

2.50. "REFUSE ORDINANCE" means Chapters 9.02 through 9.12, inclusive, of the Stanislaus County CODE.

2.60. "REMOVAL" means both collection and disposal of refuse.

2.70. The definitions set forth in Chapter 9.02 of the CODE are incorporated herein by reference.

SECTION 3.00 INTERPRETATION OF REGULATIONS

In any and all respects where these regulations differ from any of the provisions of the REFUSE ORDINANCE, the terms and provisions of the REFUSE ORDINANCE shall govern. Should any discrepancy appear or any misunderstanding arise as to the meaning or interpretation of anything contained herein, or in the REFUSE ORDINANCE, the matter shall be decided by the Department and the interpretation of the Department shall be binding upon the FRANCHISEE, subject to review by the Board of Supervisors.

SECTION 4.00 SCOPE OF THE WORK

A FRANCHISEE shall furnish all labor, material and equipment necessary to provide for the collection and disposal of refuse generated on premises within the designated FRANCHISE area of the unincorporated area of Stanislaus County, without limit as to the amount and nature thereof except as hereinafter provided.

4.10 SPECIAL COLLECTIONS

In addition to, and separate from the service described in section 4.60, a FRANCHISEE shall be required to make a special pickup of large items such as rugs, carpet, couches, refrigerators, water heaters and similar items upon the request of any customer. The FRANCHISEE may collect from the customer a special service charge, as authorized by the Department, for each special pickup.

4.20 SERVICE LEVELS

Should service levels, greater than those anticipated by the FRANCHISE Refuse Rate schedules, be requested by a customer; the FRANCHISEE shall submit a proposed price which must be approved by the Department before said greater level of service shall be commenced.

4.30 REDUCED SERVICE AT REDUCED CHARGE

A. The FRANCHISEE will provide residential refuse collection services to residents eligible under this section at the reduced rates approved by the Board of Supervisors.

B. In the Mandatory Collection Service Areas, the Department will determine the initial eligibility for reduced service at a reduced charge and transmit the application to the FRANCHISEE.

C. In the Exempt Collection Service Areas, the FRANCHISEE shall determine the eligibility for reduced service at a reduced charge. The criteria for eligibility are as follows:

1. Number of Occupants. Must produce no more than one (1) 60-gallon container of refuse per week, not to exceed seventy (70) pounds for a household of up to four (4) persons. Households of more than four (4) persons will not be considered for Reduced Service.
2. Complaints. There shall have been no COMPLAINTS on record with the FRANCHISEE regarding the overfilling of cart for at least the prior 12 months.
3. Property Appearance. There can be no accumulations of garbage or rubbish on the subject property. It must be neat and clean in appearance. Department staff may inspect the property prior to initial approval.
4. Delinquent Accounts. Customer must not have an outstanding delinquent refuse collection service account.

D. A customer who has been denied reduced service at a reduced charge by the FRANCHISEE may appeal to the Director, whose decision regarding eligibility is final.

4.40 EXCEPTIONS FROM COLLECTION

A FRANCHISEE shall not be required to remove hazardous wastes, universal wastes (as defined by the State of California), drugs, poisons or dead animals from any location, nor shall the FRANCHISEE be required to remove refuse from any place where highly infectious or contagious disease is present.

4.50 RESIDENTIAL CURBSIDE RECYCLING

A FRANCHISEE shall maintain and operate a curbside recycling collection program in all mandatory collection areas of the FRANCHISE. Proposals to meet this obligation shall be submitted to the Department for review prior to implementation. The minimum guidelines are as follows:

1. Collection of recyclables shall be weekly and consistent.
2. Collection shall occur the same day that refuse collection occurs.
3. The following materials shall be collected: glass, newspapers, plastic containers, cans (aluminum and bi-metal), and used motor oil (additional materials are at the FRANCHISEE'S option).

4. Public notification shall be sent to property owners, or occupants, announcing the beginning of the program and how to participate. Notifications must be submitted to the Department for review and approval prior to mailing.

4.60 BULKY-ITEM CURBSIDE COLLECTION PROGRAM

A. FRANCHISEE shall provide curbside collection of Bulky-Items, on an appointment basis, twice each fiscal year to every residential customer who is receiving regular refuse collection service. Residential customers will be required to call the FRANCHISEE a minimum of two weeks in advance to schedule a Bulky-Item collection. The guidelines for the FRANCHISEE'S service are as follows:

1. Service is available to all residential customers paying for regular weekly refuse collection service in the Mandatory and Exempt Collection Service Areas with automated or can service. The Bulky-Item Curbside Collection Program is not available to commercial bin or roll-off customers.

2. Collections are to be completed as soon as practical, but certainly no longer than two weeks from the date the appointment is made with the FRANCHISEE.

3. The FRANCHISEE is not required to make collections of Bulky-Items from alleys, private property, or utility easements. Bulky-Items are to be placed in front of homes at the edge of the nearest County or State maintained road.

4. The FRANCHISEE will provide collection schedules, one business day in arrears, and weekly summaries of participants and tons collected to the Department on a consistent basis.

B. The FRANCHISEE shall operate the Bulky-Item Curbside Collection Program as described above through July 31, 2009, and through any period for which the program has been authorized by the Board of Supervisors.

4.70 SPECIAL COLLECTIONS BY DEPARTMENT PERMIT

The Department reserves the right to issue a permit to a private refuse collection and disposal company for providing special collection and disposal service to a customer if, upon the request of the customer, the Department determines that the said refuse generated by said customer or the proposed use or manner of disposal is of such a special nature that it cannot be collected or disposed of by the FRANCHISEE under terms of the FRANCHISE.

4.80 WEEKLY COLLECTION REQUIRED

A FRANCHISEE shall collect from residential customers at least once each calendar week, on a Monday through Friday basis, except recognized holidays. See section 9.04.170 of the REFUSE ORDINANCE for the hours of collection.

4.90 CHANGES IN COLLECTION SCHEDULES

Before any change in any route collection schedule is made by the FRANCHISEE, the FRANCHISEE shall obtain the approval of the Department, at least thirty (30) days in advance of any such change in the collection schedule, and the FRANCHISEE shall provide a new map embodying such changes in the collection schedule. The FRANCHISEE shall, at it's own expense, notify the customers affected by such change in the collection schedule, thirty (30) days before such change becomes effective, or other advance notice as approved by the Department.

4.100 FAILURE TO MAKE COLLECTIONS

Should the FRANCHISEE fail to collect refuse placed for collection at the time and in the manner required, and provided none of the exceptions on pick-ups set forth in Sections 9.08.130 and 9.08.240 apply, the County may cause the same to be collected and disposed of, and the FRANCHISEE shall be liable for the expenses incurred.

4.110 COMPLAINT LOG

FRANCHISEE shall maintain an electronic log of all COMPLAINTS received, in a form approved by the Department, of all written and oral customer COMPLAINTS received. At a minimum, the log shall include a description of the COMPLAINT, the name, telephone number, and address of the complainant, whether it is for a cart, bin, or drop box customer, the actions taken by the FRANCHISEE to resolve the COMPLAINT, and the date the action(s) were taken. Said log shall be made available to the Department at all times. FRANCHISEE shall compile a COMPLAINT log summary, in a format approved by the Department, and provide the Department with this summary at least quarterly. The FRANCHISEE shall retain the COMPLAINT log(s) for the entire term of the FRANCHISE Agreement, including extensions.

4.120 MAXIMUM THRESHOLD OF COMPLAINTS

At all times during the term of the FRANCHISE Agreement, including extensions, the number of COMPLAINTS during any quarter shall not exceed two (2) per 1,000 customers. The total number of COMPLAINTS includes the sum of those received by the FRANCHISEE directly and those received by the Department directly given that if a customer calls both the FRANCHISEE and the Department

about the same issue, it will constitute a single COMPLAINT. In the case of chronic complainants, the department will determine the validity of the COMPLAINT and if a COMPLAINT is disputed, the Department will make the final determination.

4.130 COMPLAINT RESOLUTION

The FRANCHISEE shall rectify all COMPLAINTS within twenty-four (24) hours after receipt of notice thereof. If a COMPLAINT is not corrected within twenty-four (24) hours, the FRANCHISEE shall inform the Department of such failure by telephone the next business day and, upon request made by telephone, shall deliver to the Department a full written report within three (3) business days of such request. The FRANCHISEE shall also provide the Department with such additional reports concerning settled and outstanding COMPLAINTS as may be requested by the Department for the expeditious and equitable resolution of COMPLAINTS.

4.140 LITTER AND YARD SERVICE

The FRANCHISEE shall not litter on any premises or public property in making collections of refuse, nor shall any refuse be allowed to leak, blow or fall from collection vehicles. However, if in spite of normal precautions against spillage, if litter is made on any premises or public property, the FRANCHISEE shall immediately remove the same and clean up the area of spillage. The FRANCHISEE shall close all gates after making collections and shall avoid crossing private or public planted areas and climbing or jumping hedges and fences.

4.150 RECOVERED MATERIALS

A. The FRANCHISEE shall have the full and exclusive right to all salvageable materials collected in connection with the collection of refuse under a FRANCHISE and shall have the sole right to any and all funds received from the sale of said salvageable materials. Such funds shall be accounted for as part of the revenues of the FRANCHISE, but shall not be subject to the FRANCHISE fee.

B. Salvaging or scavenging by the FRANCHISEE, or any of its employees, is prohibited on the collection routes and at the sanitary landfill. Salvaging at a suitable location is encouraged; provided however, that a permit for salvage operations conducted at a location in the unincorporated area of the County must be obtained from the Department.

4.160 RECYCLING

The FRANCHISEE shall keep the Department advised as to any current developments in recycling programs. The FRANCHISEE shall cooperate on any commercially reasonable basis with local civic organizations that desire to conduct a recycling program.

4.170 VEHICLE CONDITION

All equipment used by the FRANCHISEE for regular collection service shall be hydraulically controlled, compaction type equipment, in good and serviceable condition as determined by the Department. The bodies of the collection equipment shall be watertight and equipped with close-fitting metal covers. The FRANCHISEE shall incorporate noise control features in equipment used for collections as may be required by the Department.

4.180 SPARE VEHICLES

The FRANCHISEE shall be required to have at least one spare vehicle capable of providing collection services for all types of services required of a FRANCHISEE.

4.190 REPAIR AND MAINTENANCE

The FRANCHISEE shall have a complete and comprehensive system of preventative maintenance on all vehicles and shall keep them in good repair. Trucks shall be repainted as needed, in the judgment of the Department.

4.200 VEHICLE STANDARDS

The FRANCHISEE'S collection vehicles shall be constructed, identified, inspected, and equipped in manners consistent with sections 9.04.360, 9.04.370, 9.08.340, and 9.08.350 of the REFUSE ORDINANCE.

4.210 OWNERSHIP OF VEHICLES

All vehicles and equipment used by the FRANCHISEE for the collection and hauling of refuse shall be wholly owned by the FRANCHISEE, except as follows:

1. The FRANCHISEE may enter into conditional sales contracts, mortgages or encumbrances for the purchase of vehicles and equipment. Any such conditional sales contract, mortgage or encumbrance shall provide that in the event of a default of the FRANCHISEE or of such conditional sales contract, mortgage or encumbrance, the County, at its option, shall have the right to assume such conditional sales contract, mortgage or encumbrance and take

possession of and operate the vehicles and equipment covered by said conditional sales contract, mortgage or encumbrance.

2. The FRANCHISEE may enter into leasing or rental agreements. Any leasing or rental agreement shall provide that in the event of a default of the FRANCHISEE, or of such leasing or rental agreement, the County, at its option, shall have the right to assume such leasing or rental agreement and take possession of and operate the vehicle and equipment covered by agreement for the unexpired term of such agreement.

4.220 COUNTY LIASION

The FRANCHISEE shall employ a competent full-time supervisor or manager satisfactory to the County. The supervisor or manager shall be an agent of the FRANCHISEE to direct the work and shall be assigned and available full time to supervise or manage the employees in their work. Notices, orders, and instructions given to such supervisor or manager shall be deemed for all purposes, notice thereof to the FRANCHISEE.

SECTION 5.00 PAYMENT TO THE FRANCHISEE

5.10 BILLINGS AND COLLECTIONS

The FRANCHISEE shall be responsible for all billings and collections for refuse collection as provided in Section 9.08.410 of the CODE.

5.20 COMPENSATION AND GRATUITIES

Neither the FRANCHISEE nor any of his agents, employees or subcontractors shall request, demand or accept, either directly or indirectly, any compensation or gratuity for services authorized under the FRANCHISE from any person, firm or corporation, other than for the charges authorized by the Board.

5.30 RATE ADJUSTMENT PROCESS

Except as otherwise approved by the Board of Supervisors, FRANCHISE refuse collection rates will be adjusted in accordance with Exhibit 1, "Rate Adjustment Process for Unincorporated Areas of Stanislaus County" approved November 4, 2008 by the Board of Supervisors, and incorporated, in full, by this reference.

SECTION 6.00
LEGAL RELATIONS AND RESPONSIBILITIES

6.10 COMPLIANCE WITH LAW

The FRANCHISEE shall at all times comply with all applicable provisions of the CODE, now in effect or herein enacted, as well as any applicable State and Federal laws and regulations.

6.20 PERMITS AND LICENSES

The FRANCHISEE shall obtain, and thereafter maintain, in good standing, all permits and licenses required by the County or State for conducting any activity necessary to provide service under the FRANCHISE.

6.30 INDEMNIFICATION

The FRANCHISEE shall indemnify and save harmless the County, its officers, agents and employees, for and from any and all loss, liability, claim, demand, action or suit of any and every kind and description, arising or resulting from or in any way connected with any operations of the FRANCHISEE or its subcontractors in exercising any privilege granted to it by the FRANCHISE or by any ORDINANCE of the County, or arising or resulting from the failure of the FRANCHISEE or its subcontractors to comply in all respects with the provisions and requirements of the FRANCHISE, of all applicable ORDINANCES of the County and of all other applicable laws. The FRANCHISEE shall, upon demand of the County and at its sole cost and expense, defend and provide attorneys to defend County, its officers, agents and employees against any and all claims, actions or suits brought against the County, the officers, agents and employees, arising or resulting from or in any way connected with the above mentioned operations of the FRANCHISEE or its subcontractors or its subcontractor's failure to comply with the contract and with the ORDINANCES and laws hereinabove mentioned. If the County is required to provide its own defense against any such action or suit, the FRANCHISEE will reimburse the County for all attorneys' fees and other costs incurred by the County.

6.40 SUCCESSORS AND ASSIGNS

The terms, covenants and conditions of the FRANCHISE shall apply to and shall bind the heirs, successors, executors, administrators, assigns and subcontractors of the FRANCHISEE.

6.50 NO WAIVERS

The waiver by the County of any breach or violation of any term, covenant or condition of the FRANCHISE or of any provision, ORDINANCE or law shall not

be deemed to be a waiver of such term, covenant, condition, ORDINANCE or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, ORDINANCE or law. The subsequent acceptance by the County of any FRANCHISE fee or of any other monies, which may become due hereunder to the County, shall not be deemed to be a waiver of any preceding breach or violation by the FRANCHISEE of any term, covenant or condition of the FRANCHISE or of any applicable law or ORDINANCE.

6.60 BREACH OF AGREEMENT

Any of the following shall constitute a breach of the FRANCHISE and privileges granted therein:

1. The appointment of a receiver to take possession of all or substantially all of the assets of FRANCHISE; or
2. A general assignment by the FRANCHISEE for the benefit of creditors;
or
3. Any action taken by or suffered by the FRANCHISEE under any insolvency or bankruptcy act.

6.70 ACCOUNTING RECORDS

The accounting records of the FRANCHISEE shall be kept on the accrual basis and the operating year for financial and accounting purposes shall begin July 1 and end June 30.

6.80 SUBCONTRACTING

The FRANCHISEE shall not subcontract any portion of the work or business, which it has been franchised to perform without the written consent of the Department.

6.90 NON-DISCRIMINATION

A. During the performance of the FRANCHISE Agreement, the FRANCHISEE and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under the Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation, sex, or sexual orientation. The FRANCHISEE and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including, without

limitation, the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code Sections 12900 et seq.); California Labor Code Sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

B. The FRANCHISEE agrees to post this Section 6.90, or the equivalent in conspicuous places available to employees and applicants for employment.

**REGULATIONS
EXHIBIT 1**

**RATE ADJUSTMENT PROCESS
FOR UNINCORPORATED AREAS OF STANISLAUS COUNTY**

Effective 11/04, 2008

1.0 REQUIRED ANNUAL REPORTING

All franchise holders shall provide one (1) original and two (2) copies of an audited financial statement for each fiscal year ending June 30 for which service has been provided to Stanislaus County, due on October 31.

All franchise holders shall provide Supplemental Schedules 1-10 on Cost-Based Review Years, completed for the most recent fiscal year ending June 30 including reconciliations to the financial statement, due November 30; and, Supplemental Schedules 3, 4, 5, and 6 on Index-Based Years for the most recent fiscal year ending June 30 including reconciliations to the financial statement due November 30.

Signatures on the Management Representation and Non-Collusion Affidavits must be originals and by persons duly authorized to make these declarations on behalf of the franchise holder.

Reporting should be on recycled and recyclable white paper with no binding other than staples.

2.0 ANNUAL ADJUSTMENT PROCESS

The rates will be adjusted annually, with the Board of Supervisor's approval, commencing July 1, 20__, and until this rate adjustment policy is rescinded, amended, or replaced by the Board. The adjustment to rates will be determined using one of two methodologies: (1) an index-based adjustment; or (2) a cost-based adjustment. The index-based adjustment involves the use of various cost adjustment factors (such as the percentage change in the consumer price index and the current Disposal Site tipping fee) to calculate adjusted Rates. The cost-based adjustment involves a detailed review of the Contractor's actual costs of service and determination of adjusted Rates to reflect the Contractor's actual costs; provided however, the Rate adjustment does not exceed 5% unless the contractor can demonstrate a loss from projected operations. If such a loss can be demonstrated, the Rates will be adjusted to allow the contractor a reasonable profit. A ten percent (10%) profit on expenses is forecast; however, the actual profit realized is dependent on Contractor's management decisions. The cost-based adjustment method will be used to set rates every five years. The index-based method will be used for all other Rate Years. Below is a table that illustrates when the two Rate Adjustment Methods shall be used for the next ten years and into the future until such time that the Methods are rescinded, amended, or replaced by the Board.

Rate Year	Commencement Date of Rate Year	Adjustment Method Used to Determine Rates for the Rate Year	Rate Adjustment Application Submittal Date
Initial	July 1, 2008	Cost-Based	January 1, 2008
1	July 1, 2009	Index-Based	April, 1, 2009
2	July 1, 2010	Index-Based	April, 1, 2010
3	July 1, 2011	Index-Based	April, 1, 2011
4	July 1, 2012	Index-Based	April, 1, 2012
5	July 1, 2013	Cost-Based	January 1, 2013
6	July 1, 2014	Index-Based	April, 1, 2014
7	July 1, 2015	Index-Based	April, 1, 2015
8	July 1, 2016	Index-Based	April, 1, 2016
9	July 1, 2017	Index-Based	April, 1, 2017
10	July 1, 2018	Cost-Based	January 1, 2018

2.1 Initial Rates

The rates for the Initial Rate Year (Fiscal Year [FY] 2008-2009) will be established by the County. The rates set forth in this initial rate schedule are to be approved by the Board of Supervisors and have been calculated to generate an amount of revenue necessary to compensate the Contractor for its costs (including Disposal) and expected profit and to cover the County's Franchise Fees and other fees (Base Contractor Compensation). The rate will be composed of several components: a Collection Rate (excluding Labor and Fuel Costs), a Labor Costs rate, a Disposal Rate, a Transfer Rate, a Fuel Rate, a Franchise Fee, and other County fees if applicable.

2.2 Base Contractor Compensation

Contractor's base compensation will be calculated for the Initial Rate Year through a detailed review of expenses incurred during the most-recently completed Rate Year (FY 2006-2007), adjusting the reported expense for any expenses specifically disallowed from compensation and projecting those reported allowable expenses and revenue for the forthcoming Rate Year based on local and industry trends, most-recent quotes from third-party suppliers, management plans, and County direction. The detailed analysis would include reviewing the contractor's reported costs for reasonableness and comparing results to prior year costs and industry averages (e.g., accounts per route, labor hours per route, gallons of fuel per operating vehicle hour, workers' compensation modification rate). It's expected that the Contractor's profit would be calculated using a 0.909 operating ratio. Franchise fees would be calculated as determined by the Board of Supervisors.

2.3 Subsequent Rates (Index-based Years)

Rates will be adjusted for Index Years as described below. At least sixty (60) days prior to the Adjustment Date, the County shall notify the Contractor of the CPI adjustment to take effect on the Adjustment Date and shall provide the Contractor with its computations therefore. Overall rate adjustments may not exceed 5% per annum.

2.3.1 Collection Rate Component Adjustment

The Collection Rate component will be adjusted upward or downward to reflect the average annual percent change in the "Consumer Price Index, All Urban Consumers, All Items, West Urban Area, West - Size Class B/C, (1996 = 100, not seasonally adjusted - Series ID CUURX400SA0)" as published by the Bureau of Labor Statistics for the 12-month period ending nearest, but at least ninety (90) days prior to the Adjustment Date.

2.3.2 Labor Costs Rate Component Adjustment

The Labor Costs Rate component will be adjusted upward or downward to reflect the average annual percent change in the "Consumer Price Index, Urban Wage Earners and Clerical Workers, All Items, West - Size Class B/C, (1996 = 100, not seasonally adjusted - Series ID CWURX400SA0)" as published by the Bureau of Labor Statistics for the 12-month period ending nearest, but at least ninety (90) days prior to the Adjustment Date.

2.3.3 Fuel Costs Component Adjustment

The Fuel Costs component will be adjusted upward or downward to reflect the average annual percent change in the "California No. 2 Diesel Retail Sales by All Sellers, U.S. Energy Information Administration" for the 12-month period ending nearest, but at least ninety (90) days prior to the Adjustment Date.

2.3.4 Disposal Rate Component Adjustment.

The Disposal Rate component will be automatically adjusted by the actual change in the gate rate at the Fink Road Landfill and Stanislaus Resource Recovery Facility, such adjustment to take effect upon the effective date of any such change.

2.3.5 Transfer Rate Component Adjustment.

The Transfer Rate component may be adjusted at the discretion of the County. Any change in the Transfer Rate component will be made effective July 1.

2.3.6 Interest Costs Component Adjustment

The Interest Costs component will be adjusted upward or downward to reflect the prime rate in effect as published by the "Bank of America, NA and Bank of America NT&SA" for the period ending nearest, but at least ninety (90) days prior to, the Adjustment Date.

2.3.7 Franchise Fee Adjustment

The Franchise Fee component will be calculated by adding the Collection Rate, Labor Costs Rate, Disposal Rate, and Fuel Costs rate (as calculated above) and multiplying the result by the appropriate factor based on the current Franchise Fee percentage.

2.3.8 Other Fees Adjustment

The Other Fees component, if any, will be adjusted as determined by the County.

2.4 Subsequent Rates (Cost-based Review Years)

A comprehensive compensation adjustment will be required every fifth (5th) year during the term of this policy. The Contractor Compensation will be forecasted in the manner described below.

2.4.1 Contractor's Application

Contractor will submit an application on January 1 of Rate Year Four (e.g., FY 2012 – 2013) requesting the amount of Contractor's Compensation for Rate Year Five (e.g., FY 2013-2014). The application will be based on the Contractor's actual revenues and expenses for Rate Year Three (e.g., FY 2011-2012); audited financial statements for Rate Year Three; and actual and forecasted costs of Contractor's operations for Rate Years Four and Five; and such application will be prepared in accordance with this Section. Audited financial statements will be submitted in accordance with requirements of the final Board-approved rate adjustment policy and will continue to be required under the current policy. Contractor's application will also include Supplemental Schedules 1-10 for the most recent audited Rate Year and for the most recently completed 12 months. The County may request additional information as part of their review. Contractor will provide or make available all such additional information as required by the County upon reasonable notice during normal business hours.

The application will be submitted in the format and will calculate Contractor's Compensation in the manner described below. Contractor will assemble, provide, and submit such information that is necessary to support the assumptions made by Contractor with regard to the assumptions underlying the forecasted Contractor's Compensation for Rate Year Five.

Contractor will provide all information requested by the County during its review of the application, including, but not limited to, all information from related parties requested by

the County regarding any transactions between Contractor and any Related-Party Entity pertaining to Contractor's performance under the Agreement.

2.4.2 Determination of Contractor's Compensation.

The County, or its representative, will review Contractor's application for compliance with the proposed policy, and for accuracy and reasonableness. The application shall clearly document Contractor's calculation of Contractor's Compensation based on the methodology described below.

Contractor's Compensation will equal the sum of forecasted annual cost of operations, profit, and forecasted Pass-Through Costs, each of which will be calculated in accordance with procedures set forth below.

(1) Forecasted Annual Cost of Operations. The forecasted annual cost of operations consists of the sum of:

- (a) Forecasted labor-related costs
- (b) Forecasted vehicle-related costs (excluding fuel costs)
- (c) Forecasted fuel costs
- (d) Forecasted other direct costs
- (e) Forecasted general & administrative costs.

(2) Methodology for Forecasting Annual Cost of Operations

(a) Determine Actual Costs. Contractor's audited financial statement will be reviewed to determine Contractor's actual costs necessary to perform all the services in the manner required by the Agreement for each of the forgoing categories during Rate Year Three. The Contractor's auditor shall determine that costs have actually been incurred and have been assigned to the appropriate cost category. The appropriate cost category includes not only the proper expense designation but also the proper jurisdiction and line of business (e.g., residential, commercial, etc).

(b) Adjustment for Non-Allowable Costs. Contractor will adjust actual costs for Rate Year Three (determined in Section 6.04.B.2.a) above to ensure that non-allowable costs are not included in actual costs. Non-allowable costs shall include the following:

- i. Cash Over/Short, Community Support including political and charitable contributions, Contributions and Donations, Meals &

Entertainment, Subscriptions & Dues, Travel, Penalties & Fines, and Amortization of Goodwill.

ii. Seminars & Education-Mgmt costs (registration fees) that exceed \$5,000 per annum.

iii. Payments to repair damage to property of third parties or the County for which Contractor is legally liable that exceed 0.5% of Gross Revenues.

iv. Federal or State income taxes.

v. Attorney's fees and other expenses incurred by Contractor in any court proceeding in which the County and Contractor are adverse Parties, unless Contractor is the prevailing Party in such proceeding.

vi. Attorney's fees and other expenses incurred by Contractor arising from any act or omission in violation of this Agreement.

vii. Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or wrong doing are in issue and occasion, in whole or in part, the attorneys' fees and expenses claimed; and attorneys' fees and expenses incurred by Contractor in a court proceeding in which the legal theory or statute providing a basis of liability against Contractor also provides for separate potential liability for the County derived from the action of its citizens or rate payers (such as in a CERCLA lawsuit) unless the Contractor is found not liable in such claims and such claims arise from acts or occurrences within the Term of the Agreement.

viii. Payments to Related Party Entities or Affiliates for products or services, in excess of cost to the Related-Party Entities for those products or services.

ix. Bad Debt costs that exceed 2% of Gross Revenues.

(c) Adjust Costs to Reflect Change to Customer Base and Program Changes. The Contractor or County may propose adjustments to the actual costs for Rate Year Three for the following reasons:

i. To adjust costs that Contractor has demonstrated to the County to be necessary in order to provide service to Customers due to growth or decline in the Customer base (based on the number of Customers and subscription level).

ii. To adjust for changes in costs due to the County approved interim compensation adjustment for program changes that will carry forward into the following Rate Year.

(d) Summarize Allowed Costs. The adjusted costs for Rate Year Three determined above may be considered "Allowed Costs" for the purposes of forecasting costs for Rate Year Five following procedures described below and may be presented in cost categories which are consistent with Rate Year Three cost categories as follows:

- i. Allowed labor-related costs
- ii. Allowed vehicle-related costs (excluding fuel costs)
- iii. Allowed fuel costs
- iv. Allowed other direct costs
- v. Allowed general & administrative costs

(e) Forecast Annual Cost of Operations. Forecasted annual cost of operations for Rate Year Five will be calculated using allowed costs of operations for Rate Year Three determined above, adjusted to reflect the impact of consumer price indices, and forecasted interest and depreciation expenses. The forecasts will be performed in the following manner:

i. Forecasted labor-related costs will be calculated for Rate Year Five by multiplying (i) the Allowed labor-related costs for Rate Year Three by one plus the percentage change in the "Consumer Price Index, Urban Wage Earners and Clerical Workers, All Items, West – Size Class B/C, (1996 = 100, not seasonally adjusted – Series ID CWURX400SA0)" which is compiled and published by the U. S. Department of Labor, Bureau of Labor Statistics or its successor agency, between the most-recently-published 12 month average index at the time of the application and the corresponding average monthly index published for the 12 months earlier, and (ii) multiplying the result of step one by the same percentage change used in step one.

ii. Forecasted fuel costs will be calculated for the Rate Year Five by (i) multiplying the Allowed vehicle-related costs for Rate Year Three by one plus the percentage change in "California No. 2 Diesel Retail Sales by All Sellers, U.S. Energy Information Administration", between the most-recently-published 12 month average monthly index at the time of the application and the corresponding average monthly index published 12 months earlier, and (ii) multiplying the result of step one by the same percentage change used in step one.

iii. Forecasted other direct costs, including vehicle repair costs, will be calculated for the Rate Year Five by (i) multiplying the allowed other-related costs for Rate Year Three by one plus the percentage change in the "Consumer Price Index, All Urban Consumers, All Items, West – Size Class B/C, (1996 = 100, not seasonally adjusted - Series ID CUURX400SA0)" which is compiled and published by the U. S. Department of Labor, Bureau of Labor Statistics or its successor agency between the most-recently-published 12 month average monthly index at the time of application and the corresponding average monthly index published 12 months earlier, and (ii) multiplying the result of step one by the same percentage change used in step one.

iv. Forecasted vehicle and container maintenance costs will be calculated for the Rate Year Five by (i) multiplying the allowed other-related costs for Rate Year Three by one plus the percentage change in the "Consumer Price Index, All Urban Consumers, All Items, West – Size Class B/C, (1996 = 100, not seasonally adjusted, Series ID CUURX400SA0)" which is compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency between the most-recently-published 12 month average monthly index at the time of application and the corresponding average monthly index published 12 months earlier, and (ii) multiplying the result of step one by the same percentage change used in step one.

v. Forecasted general & administrative costs will be calculated for the Rate Year Five by (i) multiplying the allowed other-related costs for Rate Year Three by one plus the percentage change in the "Consumer Price Index, All Urban Consumers, All Items, West – Size Class B/C, (1996 = 100, not seasonally adjusted, Series ID CUURX400SA0)" which is compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency between the most-recently-published 12 month average monthly index at the time of application and the corresponding average monthly index published 12 months earlier, and (ii) multiplying the result of step one by the same percentage change used in step one.

vi. Forecasted depreciation expense will be determined based on Contractor's current fixed asset schedule and reviewed for reasonableness.

vii. Forecasted interest expense will be determined based on the Contractor's current debt schedule and reviewed for reasonableness.

viii. Forecasted annual cost of operations for Rate Year Five will equal the sum of the following costs, which will have been calculated in accordance with procedures above:

1. Forecasted labor-related costs
2. Forecasted vehicle-related costs (excluding fuel costs)
3. Forecasted fuel costs
4. Forecasted other direct costs
5. Forecasted vehicle and container maintenance costs
6. Forecasted general & administrative costs
7. Forecasted depreciation expense
8. Forecasted interest expense

(3) Calculate profit. Contractor's profit will be calculated using a 0.909 operating ratio.

(4) Forecast Pass-Through Costs. Contractor's Compensation will include Pass-Through Costs as calculated below:

i. Forecasted Disposal cost. Annual forecasted Disposal cost = (Disposal fee at Designated Landfill) x (total Tons of Solid Waste Collected for the most-recently reported twelve-month Year).

ii. Forecasted Transfer cost. Annual forecasted Transfer cost = (Total tons transferred) X (Transfer Allowance per ton)

iii. Forecasted Franchise Fees, and other fees. The forecasted Franchise Fees and other fees will be calculated using forecasted Rate Year Five values.

iv. Compensation Review Fee. An amount agreed-upon by the County and Contractor to reimburse the Contractor for payment of the County's costs, including consulting and legal fees, associated with determination of the Contractor's Compensation.

(5) Determine Contractor's Compensation for Rate Year Five. Contractor's Compensation necessary to perform all the services in the manner required by this Agreement for Rate Year Five will be equal to the sum of the following:

- i. Forecasted annual cost of operations (determined in accordance with above)
- ii. Profit (determined in accordance with Section above)
- iii. Forecasted Pass-Through Costs (determined in accordance with Section 6.04.B.4 above).

The Contractor's Compensation for Rate Year Five will be the only compensation due to Contractor for such Rate Year and will not exceed a 5% increase over the prior year rate. No adjustments for actual costs will be made at the conclusion of Rate Year Five or at any other time while this policy is in effect.

4.0 INTERIM COMPENSATION ADJUSTMENT

If the County directs the Contractor to change its operations or if an extraordinary or unanticipated event including a Change in Law, Regulation, or an adjustment in the Disposal fee due to a new or increased/decreased governmental tax, surcharge or fee, materially (5% of Gross Revenues) affects Contractor's Compensation, then the Contractor or the County may submit a request for an interim Compensation adjustment. In such case, the Contractor shall provide the County with its calculations of the impact of the change in a format approved by the County. The adjustment application shall clearly document the reason for the proposed adjustment, calculation of the proposed cost adjustments, and supporting documentation. Any proposed change in the approved Rates shall be subject to the County's review and approval. Nothing in this Section shall be construed to require the County to accept the Contractor's calculations as correct.