

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

DEPT: Environmental Resources

BOARD AGENDA # B-14

Urgent Routine

AGENDA DATE August 11, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Award the Contract for Stanislaus County Refuse Removal in Franchise Area #3 to Turlock Scavenger Company and Related Actions

STAFF RECOMMENDATIONS:

1. Award the contract for Stanislaus County Refuse Removal in Franchise Area #3 to Turlock Scavenger Company.
2. Authorize the Chief Executive Officer to execute the contract for Stanislaus County Refuse Removal in Franchise Area #3 with Turlock Scavenger Company.
3. Approve the Base Service as the selected refuse collection system for the residential sector for Franchise Area #3.
4. Approve incorporating the five- to seven-day commercial bin rental "specials" into the annual refuse rate-setting process.

(Continued Page 2)

FISCAL IMPACT:

If this recommendation is approved, staff will return to the Board of Supervisors during the September-October 2009 timeframe to request that the Board set and hold a public hearing to consider the proposed rates for solid waste collection service charges in Franchise Area #3 within the unincorporated area of Stanislaus County. New rates would become effective on either October 31, 2009, or November 5, 2009, as determined by the Board.

(Continued Page 2)

BOARD ACTION AS FOLLOWS:

No. 2009-544

On motion of Supervisor Chiesa, Seconded by Supervisor Monteith

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

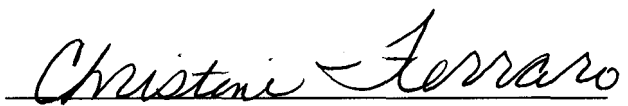
1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

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STAFF RECOMMENDATIONS: (Continued)

5. Approve the concept of Waste Management, Inc., voluntarily terminating their Franchise Agreement after October 31, 2009, vs. November 5, 2009.

FISCAL IMPACT: (Continued)

Subscribers to residential basic service, that is, 1-90 gallon cart, curbside recycling, and bulky item collection, commercial bin service, and drop-box hauling would see fairly significant decreases in their rates across the board.

DISCUSSION:

The Process

On November 25, 2008, the Board of Supervisors directed staff to prepare a Request for Proposals (RFP) for Franchise Area #3 which is currently served by USA Waste of California, Inc., which operates under the umbrella of the parent company Waste Management, Inc. The current agreement for Area #3 was established in 1997 for a fixed term of 10 years and was set to expire on November 5, 2007. Since that time, the Board has approved two one-year extensions to this Agreement; the most recent on June 24, 2008, extending the Agreement through November 5, 2009. Area #3 consists of unincorporated areas west of Modesto between Shoemake and California Avenues, and generally, the unincorporated areas of the County east of Modesto and south of Dry Creek, excluding the adjacent Franchise Area #4 already served by Turlock Scavenger.

The Board approved the issuance of an RFP for Franchise Area #3 on February 10, 2009, and it was posted by GSA-Purchasing on February 13, 2009. A mandatory pre-proposal meeting was held on March 16, 2009, and representatives of Bertolotti Disposal, Gilton Solid Waste Management, Modesto Disposal/Waste Management, Inc., and Turlock Scavenger Company attended the meeting. Companies attending the meeting were invited to submit responses to the RFP no later than 2:30 p.m., on April 29, 2009.

The RFP required interested companies to submit technical proposals and cost forms for: (1) Base Service, which is the collection services as they are offered today with the addition of used oil filters to the residential curbside recycling program; and (2) Alternate Service, where commercial and drop box services would be unchanged but residential service would be a three-cart system for refuse, commingled recyclables, and yard waste, with recyclables and yard waste being collected on alternating weeks. Additionally, companies were invited to submit technical proposals and cost forms for any Optional Service that they thought might suit the needs of the County.

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On April 29, 2009, GSA-Purchasing received proposals from Gilton Solid Waste Management and Turlock Scavenger Company. Both companies submitted the required technical proposals and cost forms, and Turlock Scavenger submitted an Optional Service proposal as well.

Following the April 29 receipt of the two proposals, GSA-Purchasing staff evaluated them and determined that both met all of the required components, but advised that Turlock Scavenger's proposal presented the lowest cost option for both the Base and Alternate Services. On May 12, the contract specialist for the Department of Environmental Resources (DER) presided over the evaluation of the technical proposals by DER staff together with the Public Works Director from the City of Patterson. On the basis of the technical scores together with the pricing, GSA-Purchasing recommended that the contract be awarded to Turlock Scavenger Company. Subsequent to the initial review of the technical proposals, DER staff performed additional review of the proposals and determined that staff concurred with the recommendation by GSA-Purchasing. On that basis, GSA-Purchasing issued a Notice of Intent to Award to Turlock Scavenger Company on June 16, 2009.

The Proposal

Proposers were asked to bid a fixed rate for the initial 31.8 months of the contract period. The odd number of months for this initial period was to synchronize the timing of future rate changes in Franchise Area #3 with that of the other County franchise areas, beyond an initial fixed rate period. Turlock Scavenger's proposal provided compensation requirements for three residential collection alternatives and a brief discussion of each is as follows:

Base Service:

Residential service would be almost identical to that provided by the current Franchisee, which would consist of one 90-gallon automated cart for refuse including yard waste, curbside recycling in customer-provided containers, and bulky-item collection twice each year. The only change in collection would be the addition of used oil filters to the curbside recycling program. Commercial and drop box services would be unchanged.

Turlock Scavenger has proposed to provide the Base residential, commercial bin, and drop box services for the initial 31.8 months of the Agreement for the following total compensations:

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Residential - \$4,059,367 Commercial - \$1,768,617 Drop Boxes - \$1,063,152

From these total compensations, refuse rates are determined based upon the total number of customers and the service level for those customers.

Alternate Service:

Residential service would consist of three automated carts, one for refuse, one for commingled recyclables, and one for green waste. The refuse cart would be collected every week, while the recycling and green waste carts would be collected on alternating weeks. Commercial and drop box services would be unchanged.

Turlock Scavenger has proposed to provide the Alternate residential, commercial bin, and drop box services for the initial 31.8 months of the Agreement for the following total compensations:

Residential - \$5,083,772 Commercial - \$1,768,617 Drop Boxes - \$1,063,152

Optional Service:

Turlock Scavenger also proposed an innovative option that nearly eliminates residential waste disposal. The company proposed two automated carts for each residence, one for the green or "wet" (organic) fraction, and another for the "dry" or inorganic fraction of household waste, with both carts to be collected weekly.

The "wet" waste stream would be directed to a local facility producing compost, and the "dry" waste stream would go to a materials recovery facility, most likely in San Joaquin County. The result would be that a large portion of the residential waste stream would be recycled. Perhaps as little as 15-25% of the approximately 15,000 tons of residential waste collected annually in Area # 3 would go to transformation or disposal. Because this is a fairly cutting edge approach to waste handling, however, it's difficult to predict the exact diversion and disposal numbers, but a significant effort would be undertaken by Turlock Scavenger to educate residents on this new collection system in order to maximize its diversion potential while minimizing cost. Commercial and drop box collection would be unchanged.

Turlock Scavenger has proposed to provide the Optional residential, commercial bin, and drop box services for the initial 31.8 months of the Agreement for the following total compensations:

Residential - \$4,407,224 Commercial - \$1,768,617 Drop Boxes - \$1,063,152

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Existing Franchisee: Waste Management, Inc. (WMI):

While total compensation to WMI., the current Area #3 Franchise holder, has varied each year depending on approved expenses, Consumer Price Index, customer count and other factors, for comparison purposes it has been within the following ranges since August 1, 2004:

Residential – a low of \$3,985,351 ('04-'05) to a high of \$5,249,200 ('07-'08)

Commercial – a low of \$1,346,070 ('04-'05) to a high of \$2,032,818 ('06-'07)

Drop Boxes – a low of \$877,548 ('07-'08) to a high of \$1,482,519 ('06-'07)

Staff Recommendations

Because of its lower cost, staff is recommending that the Base Service be selected for the residential sector, rather than either the Alternate or Optional Service. Specifically, the revenue requirement for the Base Service translates to an approximate 10% savings to residential customers. Commercial and drop box service would continue to be provided as it is currently, and under the Turlock Scavenger proposal rates would decrease across the board approximately 11% for commercial bin customers and 30% for drop box haul charges. It should be noted that staff has recommended establishing a "flat," rather than a 3-tiered, haul charge regardless of box size, because the size of the container really impacts the haul charge little if at all. The remainder of drop box haul charges are negotiated directly with the hauler and are based on the weight of the material in the container.

Given the total compensation price proposals submitted by Turlock Scavenger, attached in Exhibit "C" of the Franchise Agreement are the proposed refuse rates for the Base (residential), commercial, and drop box haul services. Adopting these rates must be done following a public hearing, therefore, staff will return to the Board in the September-October 2009 timeframe to recommend setting and holding the hearing for these collection rates that would be implemented on either October 31, 2009, or November 5, 2009, as determined by the Board.

The Contract

Staff from the Chief Executive Office, together with County Counsel and DER, developed a draft Franchise Agreement that was included in the RFP package that was approved by the Board on February, 10, 2009. Turlock Scavenger did not take any exceptions or request changes to the Agreement so no modifications to it have been made. The contract term would be for a fixed period of seven (7) years, with the Board

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having the option to extend the term an additional three (3) years. Overall, the Agreement is much more comprehensive than its predecessor and will provide the County with a much greater number of controls with which to guarantee that quality service is provided to its residents. The Agreement has been signed by Turlock Scavenger Company and is included as Attachment "A."

Other Considerations

1. The RFP package requested that proposers identify the amount they intend to charge for special services which includes things such as walk-in service for residences. Turlock Scavenger proposed maintaining the current rate structure for special services with one exception. Specifically, they proposed to increase the charge for tires in bins from \$3 to \$4, which is so noted on the attached proposed rates which will be considered by the Board along with the complete rate package during the September-October 2009 time frame.

2. One area of refuse rates that the Board has not established in the past has been five-to-seven day "specials" that the franchise companies charge bin rentals for customers that are doing short-term clean-up projects. Staff proposed to change this practice in the RFP package and instead include these charges among those that the Board establishes. These rates, therefore, are also included in the attached Exhibit "C" of the Franchise Agreement which will be considered by the Board along with the complete rate package during the September-October 2009 time frame.

3. As noted above, the existing Franchise Agreement with WMI expires after November 5, 2009. Because this represents a partial month, this would mean that two different companies would be billing customers for a portion of the month of November. This would be not only costly to WMI, it is likely to be confusing to customers. Given this, staff inquired of WMI as to whether they were interested in voluntarily terminating their Agreement after October 31, 2009, and they indicated they were. Representatives of Turlock Scavenger have indicated that they could begin providing service on November 1, 2009, if that was the County's wish, and County Counsel recommended that an Agreement for the parties be drawn up to reflect the necessary terms and conditions. If the Board conceptually approves of this approach, staff will work with County Counsel as well as WMI and Turlock Scavenger to implement this and make the transition between companies more transparent.

4. The final consideration for the Board is that of franchise area boundaries and their possible realignment(s). Specifically, Turlock Scavenger has expressed a desire to propose franchise area boundary realignments that would allow each of the companies to operate more efficiently and keep costs down. Stanislaus County Ordinance Code Section 9.08.120, Collection Area Assignment, allows the Board to modify a franchise

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area, "...at any time should the Board find such modification necessary for the efficient administration," of the Ordinance. Turlock Scavenger has begun discussions with the other local franchise collectors to evaluate the possibilities for making equal exchanges of areas/customers so as to make the area boundaries more contiguous, and therefore, more efficient. If a formal proposal is submitted, staff will bring the matter forward for the Board's consideration.

POLICY ISSUE:

The Board of Supervisors should determine if awarding the contract for Stanislaus County Refuse Removal in Franchise Area #3 to Turlock Scavenger Company and taking related actions is consistent with the Board's priorities of a safe community, a healthy community, a well-planned infrastructure, and the efficient delivery of public services.

STAFFING IMPACTS:

A change in the service provider for Franchise Area #3 will likely prompt an unusual number of phone calls for information and Department staff may be called upon to assist Turlock Scavenger and residents with the conversion. Existing staff can absorb this additional (temporary) workload and no other staffing impacts are anticipated.

CONTACT PERSON:

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

FRANCHISE AGREEMENT
BETWEEN
STANISLAUS COUNTY
AND
TURLOCK SCAVENGER COMPANY
FOR
COLLECTION AREA NO. 3
FOR THE PERIOD OF NOVEMBER 5, 2009 THROUGH NOVEMBER 5, 2016

ATTACHMENT

A

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REFUSE FRANCHISE AGREEMENT
FOR
COLLECTION AREA NO. 3

This Franchise Agreement (Agreement) is by and between the COUNTY OF STANISLAUS ("County") and TURLOCK SCAVENGER COMPANY, ("Franchisee")(collectively the "Parties") for the collection of Refuse, Recyclables, Garden Refuse and Bulky-Items within Collection Area No. 3 of the Unincorporated Area of Stanislaus County.

RECITALS

WHEREAS, the public welfare of the inhabitants of the unincorporated areas within Collection Area No. 3 requires that adequate provisions be made for the regulated collection, removal and disposal of refuse and rubbish;

WHEREAS, the County has determined that the public welfare benefits from the majority of urban residents having regular weekly removal of refuse;

WHEREAS, the County, pursuant to Stanislaus County Code (hereinafter "County Code") sections 9.04.040 and 9.02.150 and 9.02.250, require residential and commercial property owners to subscribe to weekly refuse collection service ("Mandatory Refuse Service") in general plan land use designations: urban transition, estate, low, medium or medium-high density residential, historical, planned development, highway commercial/planned development, commercial, industrial transition, industrial or planned industrial. Currently, the general plan land use designation of agriculture is exempt from Mandatory Refuse Services;

WHEREAS, the public welfare also requires that curbside recycling programs be made available to allow residents to recycle materials which would otherwise be collected and disposed of as refuse or rubbish thus depleting valuable landfill space;

WHEREAS, pursuant to Public Resources Code sections 40057 and 40059, the County is authorized to enter into exclusive and/or nonexclusive franchises for the right to collect and remove all refuse and rubbish;

WHEREAS, pursuant to Public Resources Code section 40057, the County shall provide for source reduction, recycling, and composting activities;

WHEREAS, the County has declared its intention and has determined that it is in the best interest of the County to enter into a new franchise agreement for the collection of refuse and rubbish and for curbside recycling and to provide for a simplified annual rate review process; and

WHEREAS, the Board of Supervisors of the County of Stanislaus, State of California, does hereby find, resolve, and determine that in accordance with the California Environmental Quality Act (CEQA) and section 15308 of the CEQA Guidelines, execution of this Franchise Agreement and approval of the refuse collection and recycling programs contained herein, is a Class 8 categorical exemption because the County's action is authorized by state or local ordinance to assure the maintenance, restoration, enhancement or protection of the environment; and

WHEREAS, the County is providing private, not public Refuse, Recycling and Garden Refuse collection and transportation services. By entering into this Agreement, County meets its obligations under the California Integrated Waste Management Act (the "Act" or "AB 939") in part by requiring Franchisee to provide collection, transportation, recycling, processing and disposal of materials as required by AB 939. Franchisee provides those services and charges its customers for those services and must charge all customers that receive the same capacity and frequency of collection service the same uniform rates. The County is not providing collection and transportation services, nor is it billing customers and collecting charges for those services. Those services are not "public services" within the meaning of CA Constitution Article XIID, section 2(h); and

WHEREAS, in response to the County's Request for Proposals, Franchisee has submitted its plan to provide the services required herein; and

WHEREAS, the County has selected the Franchisee's plan over all other submittals based on the Franchisee's statements of its qualifications and ability to provide quality services at reasonable rates.

NOW, THEREFORE, for and in consideration of the mutual covenants and provisions hereof, it is mutually agreed as follows:

ARTICLE 1. GRANT OF FRANCHISE AND TERM OF AGREEMENT

1.1. Term of Agreement:

A. Initial Term: The term of this Agreement shall commence at 12:01 a.m., November 5, 2009, and shall end at 11:59 p.m., on November 5, 2016, unless terminated earlier or extended as provided in this Agreement.

B. Extensions: Upon notice to the Franchisee on or before November 5, 2015, the County, at its sole discretion, may extend the Term for up to three additional years. No Extension of the Term will include a change in rates, except as provided in Article 3 of this Agreement.

1.2. Grant of Franchise: Except as stated in section 1.3 below and where otherwise precluded by Federal, State or local laws and regulations, the County hereby grants to Franchisee, its successors and assigns the exclusive right and privilege to collect, handle, transport, use, process and deliver to the County-designated disposal facility, all commercial and residential Refuse, commercial and residential Recyclable Materials separated for collection, and commercial and residential Garden Refuse accumulated and offered for collection by a Customer within Collection Area No. 3, (the "Franchise Area") which area is more particularly described and depicted in the map attached hereto as Exhibit D, "Collection Area No 3 Description and Map".

A. As used herein, the terms, "Refuse", "Recycle" or "Recycling", "Recyclables" or "Recyclable Materials", and "Garden Refuse" have the same meaning specified in Title 9, Chapter 9.02 of the Stanislaus County Code.

B. "Customer" means any residence or business located in the Franchise Area that subscribes to Refuse collection services from Franchisee.

1.3. Exceptions to Franchise: The franchise granted herein shall not be exclusive and shall not prevent others from providing the following services:

A. The collection of "Rubbish", "Hazardous Materials", and "Industrial Refuse", as those terms are defined in Chapter 9.02 of the County Code.

B. "Solid Waste", as defined in section 5.3.E below, generated by public schools and other State institutions.

C. Collection of recyclable materials from residential premises on days other than the normal day of collection service, provided that the collector and hauler thereof:

(1) Has been permitted to engage in Recycling activities within the unincorporated area by the Director of the Department of Environmental Resources (hereinafter "Director") or his/her designee;

(2) Receives no consideration from the person or entity who discarded such recyclable materials other than the value of such materials; and

(3) Is a not-for-profit organization as defined in section 501(c)(3) of the Internal Revenue Code of 1986.

D. Non-container hauling services incidental to other services to be performed at the premises of a Customer by businesses such as gardeners, landscapers or tree services.

E. Non-container grease and liquid waste hauling services to be performed at the premises of a Customer by businesses such as septic tank pumpers.

F. Non-container hauling services provided by persons permitted under County Code Chapter 9.10.

G. Hauling of "Industrial Refuse", as defined by County Code section 9.02.230, by persons having permits to do so under County Code Chapter 9.09.

H. Self-hauling by residents of their Refuse, Recyclables, and Garden Refuse.

I. Self-hauling of Refuse created, produced, processed, or accumulated at Solid Waste Facilities, as defined in County Code section 9.02.410, permitted pursuant to California Code of Regulations Title 27 or Title 14, and/or any recycling operations/facilities, as defined by the California Public Resources Code or California Code of Regulations Title 14.

J. Any collection services not specifically identified as exclusive to the Franchisee by the Board of Supervisors.

1.4. Franchise Fees: Franchisee will pay to the County franchise fees ("Franchise Fees") in accordance with County Code sections 9.04.230 and 9.08.180.

A. Each quarterly remittance to County shall be accompanied by the Department's reporting form identifying Gross Revenues from the Franchisee's services pursuant to this Agreement, and the individual Franchise Fee remitted and late payment fee, if any. All calculations and payment amounts shall be truncated at 2 decimal places.

B. As used herein, the term "Gross Revenues" means all billed revenue, adjusted for bad debt write-offs and bad debt recovery, for services provided by Franchisee under this Agreement.

1.5. Late Payment Charge: Pursuant to County Code section 9.04.230, Franchise Fees are delinquent if any amount is unpaid within thirty days after the due date. If the Franchise Fees are not received on the due date, a late payment charge equal to one and one-half percent (1.5%) of the amount shall accrue and shall be added to the total amount of fees due beginning on the first day that the fee is delinquent and on each month thereafter until the delinquent amount is paid in full. In addition to late payment charges, the Franchisee shall be subject to the additional penalties provided for by section 9.04.230(d).

1.6. Fees and Surcharges: At the County's option, Franchisee shall bill, collect and remit fees and surcharges on behalf of the County for services associated with Refuse collection and disposal including, but not limited to, franchise administration, waste diversion, and vehicle impact fees. The Board of Supervisors shall determine the amount of the fees and surcharges and Franchisee shall submit these fees and surcharges to the County in accordance with instructions from the Director. Upon implementation, Franchisee may adjust service rates accordingly for the amount of the County fees and surcharges.

A. Administrative Fee: Franchisee shall pay to the County an administrative fee each month in the amount set by the Board of Supervisors to offset the cost to administer this Agreement.

B. Waste Diversion (AB 939) Fee: Franchisee shall pay to the County a Waste Diversion Fee each month in the amount set by the Board of Supervisors to offset the cost of compliance with the Integrated Waste Management Act and amendments to the Act.

C. Vehicle Impact Fee: Franchisee shall pay to the County a Vehicle Impact Fee each month in the amount set by the Board of Supervisors to offset the costs of street maintenance attributed to the services provided under this agreement.

D. Other Fees: Franchisee shall pay to the County other fees as designated by the Director in the amount set by the Board of Supervisors.

ARTICLE 2. SERVICES

2.1. General: Franchisee shall provide all services required herein in accordance with County Code Chapters 9.02, 9.04, 9.08, 9.09, 9.10, and 9.12; and the Stanislaus County Regulations for the Franchise Collection of Refuse in the Unincorporated Areas ("Regulations for Collection"). Revenues for all services provided pursuant to this section must be reported as Gross Revenues, which are subject to Franchise Fees. "Franchise Services" means all of Franchisee's obligations to provide services to the County and Franchisee's Customers as described in this Agreement.

2.2. Refuse Collection Services: Franchisee shall provide the following refuse collection services under this Agreement:

A. Residential Refuse Collection:

(1) Generally: Franchisee will furnish the personnel, labor and equipment required to collect and remove to the appropriate disposal

facility, as specified under Article 5, all Refuse discarded by a Residential Customer in the Franchise Area.

(a) "Residential Customer" means someone who receives collection services and who owns or occupies a Residence.

(b) "Residence" means a tract of land located in the Franchise Area that contains a residential dwelling unit, including single and two-family dwelling units and multiple-family dwelling units.

(2) Automated Refuse Collection in Carts: Franchisee will collect residential Refuse discarded in the Franchise Area.

(a) New Customers: Franchisee shall commence service to a new Customer within 10 days of a Customer's request for service.

(b) Carts: Unless the Customer requests additional carts and is billed accordingly, Franchisee will provide carts as specified in County Code section 9.04.080.

(c) Reduced Service: For Customers eligible for Reduced Service (see section 3.6), the Franchisee shall collect the "90-gallon cart" and deliver not more than one "60-gallon cart" and bill the Customer at the Reduced Rate.

(3) 5 to 7-Day Bin Rental: Franchisee will provide 3, 4, or 6 yard Bins as defined in County Code section 9.02.020, to Residential Customers for short-term, up to 7 days, minor remodeling or clean-up projects performed by the resident at the rates set forth in Franchisee's proposal, which rate schedule is attached hereto as Exhibit C, or as subsequently approved by the Board of Supervisors.

(4) Residential Refuse Collection Frequency: Franchisee will provide residential Refuse collection service in the Franchise Area at least once each week.

B. Commercial Refuse Collection:

(1) Franchisee will furnish the personnel, labor and equipment required to collect and remove to the appropriate disposal facility as specified in Article 5, all Refuse discarded by Commercial Customers in the Franchise Area.

(a) "Commercial Customer" means a Customer who receives collection service on property zoned or used for commercial purposes.

(2) Franchisee will provide commercial refuse services at least once per week or more often, as mutually agreed upon between the Franchisee and the Customer or as required by the Director.

2.3. Recyclable Materials Collection Services:

A. Residential Recycling Collection: Franchisee will provide all the recycling services as described in Exhibit A, "Recycling Services". As used in this Agreement, "Recycling Services" means those services as described in Exhibit A.

B. Multiple Family Dwelling Recycling Collection:

(1) Multiple family dwelling units of four or fewer units that receive residential refuse collection services in carts will also receive standard residential recycling collection services as listed in Exhibit A, "Recycling Services."

(2) Franchisee will establish recycling programs in cooperation with the complex owners or managers at the Franchisee's sole option for multiple family dwelling units of five or more units.

C. Handling of Recyclable Materials: County has the right to review and approve the recycling of recyclable materials collected under this Agreement. Franchisee may provide processing as defined in section 9.02.300 of the Code of those recyclables into a marketable form, or deliver recyclables to recycling facilities licensed and permitted to process said recyclables into marketable form. Franchisee will calculate tonnages of recyclables to be allocated to County based on the total number of setouts for the County, in a manner satisfactory to County and substantiated to the satisfaction of the County. Franchisee will not dispose of recyclables in any landfill or knowingly contract with a transfer station or processing facility that so disposes of recyclables, without the prior consent of the County.

2.4. Motor Oil And Used Oil Filter Collection Services:

A. Franchisee will provide curbside collection of used motor oil and used oil filters generated at residences once each week. Franchisee will collect no more than two 1-gallon, screw-top, filled containers per collection. Oil and oil filter containers will be picked up on the same day as scheduled

refuse collection, and should be placed by Customer next to recycling containers.

B. If used oil is spilled at a setout before Franchisee arrives, Franchisee will immediately notify the County's Solid Waste Division Manager of the spill and notify the Customer. If Franchisee's employee inadvertently spills used oil during collection, Franchisee is required to contain the spill immediately, thoroughly clean the area so that no liquid is left on the ground, immediately notify County's Solid Waste Division Manager of the spill and clean-up and leave notice of the action for the Customer. Franchisee will equip all vehicles with absorbent material for this purpose. All used oil spills shall be listed on the monthly Customer Service Report.

2.5. Bulky-Item Collection Services: Franchisee will provide curbside collection of Bulky-items, (Refuse that cannot be collected in standard collection vehicles because of size or characteristics that can damage the vehicles, including, but not limited to, appliances and furniture) on an appointment basis, twice during a 12 month period to every residential Customer. Residential customers will be required to call Franchisee to schedule a Bulky-Item collection appointment. Franchisee shall collect bulky items within two weeks of request. The guidelines for the Franchisee's service and the Customer's participation are attached as Exhibit B, "Bulky Item Services"

2.6. Drop Box Refuse Collection: Franchisee will furnish the personnel, labor and equipment required to collect and transport to the appropriate disposal facility as specified in Article 5, all Refuse other than Industrial Refuse as that term is defined in Code section 9.02.230 and Inert Waste as defined in Code section 9.02.240, discarded by Customer(s) in a Drop Box provided in the capacity and for the length of time mutually agreed to between Customer and Franchisee.

A. As used herein the term "Drop Box" means a container with a minimum capacity of 10 cubic yards and generally from 20 to 50 cubic yards in capacity, designed to be loaded on a specialized truck for transportation.

2.7. Special Services: Franchisee will perform the special services listed in Exhibit C, "Special Services Charges", when requested by a Customer at no more than the maximum rate set forth in Franchisee's Rate Schedule attached hereto as Exhibit C.

2.8. Public Awareness Program:

A. Collection and Recycling Information: Franchisee will comply with section 9.08.400 of the County Code, as may be amended, regarding Customer Information.

B. Residential Customers: The distributions required by section 9.08.400 of the County Code shall be designed to also introduce all services offered, including a description of residential services, what to place curbside/street-side, a graphic illustrating correct set-out procedures, and a description of special services provided by Franchisee and County. In addition, Franchisee will promote curbside recycling services in all mailings to Customers, including a brief reminder 4 times per year in billing statements.

C. Commercial Customers: The distributions required by section 9.08.400 of the County Code shall be designed to also introduce recycling opportunities for commercial generators and explain how recycling may reduce their volume of waste and thereby their service rates. In addition, Franchisee will include a similar reminder 4 times per year in billing statements.

D. Other Informational Material: In addition to the above, Franchisee will provide, at no additional cost, 2 distributions per year of informational materials provided by County. Materials provided by County will be in a form and size to fit into Franchisee's regular billing envelopes. Distribution includes either mail or on-site delivery. Information distribution may be included with other materials, if desired by Franchisee.

E. Standards and Right of Review: All information materials will be provided in both English and Spanish, as appropriate, and must be professional in appearance. Informational materials must be printed double-sided, if format of material permits, and on recycled and recyclable paper. County shall have the right to review and approve all public information materials prepared for distribution by Franchisee.

2.9. Community Service: At the County's sole discretion, Franchisee shall participate with County staff in up to 4 special events to inform and educate residents of the County.

2.10. Christmas Trees: Franchisee will provide for annual curbside collection and recycling of Christmas trees, which have been cut into lengths not to exceed 4 feet, for a 3 week period following December 25.

2.11. Roll-out Services: Franchisee will provide roll-out services at no additional charge to residential Customers who are incapable, due to serious illness, disability or handicap, of placing containers curbside, provided there are no other residents capable of placing the containers curbside.

2.12. Emergency Services: Within 24 hours of notice by the County, Franchisee shall provide, or begin providing, emergency services beyond the scope of

services required herein at the times and to the extent directed by the County, including unscheduled collection and disposal of debris, bulky-items and other materials resulting from natural disasters such as earthquakes and floods. County shall compensate Franchisee at the hourly rate for emergency services set forth in Franchisee's proposal, which rate schedule is attached hereto as Exhibit C.

2.13. Non-Franchise Services: Nothing in this Agreement will be construed to limit or preclude Franchisee from engaging in any lawful activity or business not otherwise granted exclusively herein to Franchisee; however, if it is the intention of the Franchisee to utilize any personnel or equipment covered under this Agreement in that activity or business, those facts must be disclosed to the County at least 90 days prior to engaging in the proposed activity or business.

2.14. County's Right to Modify Services: County may direct Franchisee to perform additional services (including new diversion programs, billing services, buy-back and drop-off, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services that may entail new collection methods, different kinds of materials and services and/or new requirements for Generators are included among the kinds of changes that County may direct. Franchisee may be entitled to an adjustment in Compensation for such additional or modified services as described below in section 2.14.B. Alternatively, County may permit other persons besides Franchisee to perform additional or expanded services not specifically assigned or granted in this Agreement. County reserves the right, after discussions with the Franchisee, to modify the Agreement in the event of a Change in Law (see subsection E below) that either places greater burdens on the County or offers additional benefits.

A. Procedure for Making Changes: Franchisee shall present, within 60 days of a request to do so by County, a proposal, at Franchisee's sole cost, to provide additional or expanded services not specifically assigned or granted in this Agreement. The County shall review the Franchisee's proposal for the change in scope of Franchise Services. The County may either negotiate with the Franchisee to amend the Agreement to reflect the change in scope or the County may choose to negotiate with another person. The proposal shall contain a complete description of the following, as applicable:

- (1) Collection methodology to be employed (equipment, manpower, etc.);
- (2) Equipment to be utilized (vehicle number, types, capacity, age, etc.);
- (3) Labor requirements (number of employees by classification);

- (4) Type of containers to be utilized;
- (5) Provision for public education and marketing;
- (6) A projection of the financial results of the program's operations in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions for the remaining term of the Agreement; and,
- (7) Schedule for implementation of new services.

B. Adjusting Compensation Due to County-Directed Change: The Franchisee and/or County may request an adjustment of the then-current Compensation if Franchisee can document that the impact of the County-directed change in scope has impacted its cost to provide the services required under this Agreement. The Franchisee and the County shall attempt in good faith to negotiate an adjustment to the then-current Compensation to reflect the change in scope, in accordance with the Regulations for Collection, Exhibit 1, "Rate Adjustment Process". If no agreement can be reached, Franchisee's Compensation shall remain unadjusted and the Franchisee will not be required to perform the additional services. Franchisee shall not be compensated for proposal preparation costs or costs incurred during the negotiation of its proposal.

C. County's Right to Acquire Services: If Franchisee and County cannot agree on terms and conditions of such services within 90 days from the date when County first request for a proposal from Franchisee, Franchisee acknowledges and agrees that County may solicit proposals from and permit persons other than Franchisee to provide such services.

D. Monitoring and Evaluation of Changes in Scope: At the County's request, the Franchisee shall meet with the County to describe the progress of implementing the change in scope. If applicable, the Franchisee shall document the results of the new or modified services on a monthly basis with information requested by the County that is necessary to evaluate the performance of each program change.

- (1) At each status meeting, the County and Franchisee shall have the opportunity to revise the program or services based on mutually agreed upon terms in accordance with provisions of this section. The County shall have the right to terminate a program and reduce the Franchisee's Compensation accordingly if, in its sole discretion, the Franchisee is not cost effectively achieving the program's goals and objectives. Before such termination, the County shall meet and confer with the Franchisee for a period not to exceed 90 calendar days to

resolve the County's concerns. Thereafter, the County may utilize a third party to perform these services if the County reasonably believes the third party can improve on Franchisee's performance and/or cost. Notwithstanding these changes, Franchisee shall continue the program during the meet and confer period and, thereafter, until the third party takes over the program.

E. Change in Law: "Change in Law" means any of the following events or conditions which have a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

(1) The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any applicable law on or after the effective date of the Agreement ("Effective Date"); or

(2) The order or judgment of any governmental body, on or after the Effective Date, to the extent that such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the County or of the Franchisee, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

ARTICLE 3. SERVICE RATES

3.1. Complete Compensation: The Franchisee's revenue from the proper collection of the rates provided for herein shall be the complete compensation ("Compensation") due Franchisee for the Franchise Services required by this Agreement, including but not limited to, labor, equipment, materials, supplies, taxes, insurance, bonds, overhead, profit, and all other expenses, costs, or charges required to perform such services. Neither the County, nor any of its officers or employees will be liable for the non-payment of any service rates or charges due Franchisee for performing the Franchise Services required herein.

3.2. Initial Rates: Franchisee's maximum rates for the initial period effective until June 30, 2012, shall be as set forth in Franchisee's Rate Schedule, which rate schedule is attached hereto as Exhibit C, "Rate Schedule".

3.3. Rate Adjustments: Following the period ending June 30, 2012, the maximum rates will be adjusted in accordance with the "Rate Adjustment Process for Unincorporated Areas of Stanislaus County", attached as Exhibit 1 to

the Regulations for Collection, except that the Franchisee's rates will be subject to the index-based adjustment for the remaining Term and will not be subject to a cost-based adjustment.

3.4. Maximum Rates: Franchisee may charge the maximum rates and charges approved by the Board of Supervisors; however, Franchisee is free to vary its rates and charges for customer classes, but not within customer classes, so long as they remain less than or equal to the then approved current maximum rate or charge.

A. Franchisee shall not impose, offer, collect, or attempt to collect any rate or any other fee, charge, or benefit that is in excess of the maximum rates and charges approved by the Board of Supervisors.

3.5. Billing Guidelines: Franchisee shall be responsible for all billing and collections for Franchise Services and shall do so consistent with County Code section 9.08.410.

3.6. Reduced Service/Reduced Charge: Franchisee will provide residential refuse collection services to residents eligible under this section at a rate no more than the maximum rates approved by the Board of Supervisors for reduced services.

A. In the Mandatory Collection Service Areas, the Department will determine the eligibility for reduced service at the reduced charge and transmit the application to the Franchisee.

B. In the Exempt Collection Service Areas, the Franchisee shall determine the eligibility for reduced service at the reduced charge.

ARTICLE 4. COLLECTIONS

4.1. Collection Hours and Days: Franchisee may not alter or adjust collection schedules or routes without prior written approval of County and without providing prior notice to all affected service addresses.

A. Residential: Franchisee shall collect Refuse and Recycling source separated, commingled, or Garden Refuse from Residential Customers on the same day (at least once each week, on a Monday through Friday basis, except recognized holidays.) Residential collections may not start before 5:00 a.m. or continue after 6:00 p.m.

B. Commercial: Franchisee shall collect commercial Refuse in carts or bins at least once each week, on a Sunday through Saturday (7 days/week) basis. Commercial collections may not start before 5:00 a.m.

or continue after 9:00 p.m. No commercial collections shall be made in areas immediately adjacent to Residential areas after 6:00 p.m.

C. Drop Box Services: Franchisee may collect Drop Boxes 24 hours a day, seven days a week. No Drop Box collections shall be made in Residential areas, or areas immediately adjacent to Residential areas before 5:00 a.m. or continue after 6:00 p.m.

4.2. Holidays: The following are legal holidays for purposes of this Agreement: New Year's Day, Independence Day, Thanksgiving Day, and Christmas Day. Any other legal holidays must have prior written approval from the County. When a regularly scheduled residential collection falls on a legal holiday, or later during the holiday week, the collection for that day may be rescheduled for one day later (except Sunday). Holiday disruptions of commercial collections shall be handled in a manner mutually agreeable to the Franchisee and individual Customers.

4.3. Customer Service: Franchisee will maintain office hours from 8:00 a.m. to 5:00 p.m. daily, except Saturdays, Sundays and holidays. Franchisee will maintain an office within Stanislaus County and a local (non-toll) telephone number for use by Customers during normal office hours. Franchisee will have adequate representatives available to initially respond to a Customer complaint within one business day, and respond to all Customers inquiries in a timely manner during the specified office hours.

A. Complaints: Office and on-route staff shall be knowledgeable and courteous in answering Customer information requests and resolving Customer complaints regarding collection services.

B. Emergency Calls: Franchisee will maintain an emergency telephone number at all times, and have a representative available to respond to emergency calls. The emergency telephone number shall be made available to the Director, the Solid Waste Division Manager, and emergency services providers, such as the Sheriff and Fire Department.

C. Disputes: The Director shall resolve disputes with regard to billing or service that Franchisee cannot resolve directly with Customers. The Director has the right to issue orders, directions and instructions to Franchisee with respect to the collection and removal of Refuse, rubbish, and recyclable materials, the performance of Franchisee's services hereunder, and Franchisee's compliance with the provisions of County ordinances and Regulations for Collection as they now exist or may from time to time be amended. Franchisee agrees to comply therewith, provided, however, that the orders, directions and instructions of the Director shall be reasonably related to carrying out the purposes and intent of this Agreement.

4.4. Mandatory Collection Service Areas – Unoccupied Premises:

A. Notice: Franchisee shall, within 7 days after receiving information (Franchisee's drivers' observations, contact by County, or otherwise) that a formerly unoccupied premises within any mandatory service area becomes occupied or occupants therein have changed, simultaneously give written notice to the County and the owner or occupant of such premises that weekly collection services are required.

B. Remove Containers: Franchisee shall pick up and remove a customer's container(s) on the next scheduled collection day after receiving confirmation (based on Franchisee's drivers' observations, contact by County, contact by the Customer, or otherwise) that a formerly occupied premise within any area subject to mandatory service in accordance with the County Code becomes unoccupied.

4.5. Collection Standards:

A. Performance: Notwithstanding sections V.E.4. and V.E.4c. of the Regulations for Collection, the Franchisee shall comply with the following performance standards:

(1) Upon a request for new refuse collection service, the Franchisee will deliver the appropriate cart and perform the initial collection within 10 days of the request.

(2) Franchisee will collect all cans, carts or set-outs (Refuse, recyclables, and garden Refuse) on the scheduled collection day, where the Customer has properly prepared and located their containers for collection.

(3) Franchisee will, on the next working day after notice or request, collect and remove any and all missed pick-ups which Franchisee failed to collect and remove as required on the regularly scheduled day.

(4) Franchisee will record and maintain a record in accordance with section 4.9.C.(1) below of each Customer complaint reported to the Franchisee.

(5) Franchisee shall use its best efforts and establish operating procedures to avoid damage to property.

(6) The collection and removal of Refuse, rubbish, and recyclable materials by Franchisee will at all times during the term of this

Agreement, be performed to the reasonable satisfaction of the Solid Waste Division Manager. The collection and removal of Refuse, rubbish, and recyclable materials, will be done in a prompt, thorough, lawful and workmanlike manner.

(7) Discourteous behavior by the Franchisee's representatives and employees toward a Customer or County employee or representative is unacceptable under any circumstances.

B. Non-Collection Notices: Franchisee is not required to collect any Refuse, Recyclables, Garden Refuse, Bulky-Items, or other materials that are not properly prepared by the Customer, nor is the Franchisee required to collect Hazardous Waste, as defined in County Code section 9.02.220, or Universal Wastes, as defined in California Code of Regulations, title 22, division 4.5, chapter 23. In the event of non-collection, Franchisee must leave a "Non-Collection Notice" that provides the time and date that the notice was made, and provides the reason for non-collection, and the manner in which the materials should be prepared for collection, and/or instructions for the proper disposal of any hazardous or universal collection.wastes. Franchisee shall leave a hard copy attached to the container not collected, or attached to the doorknob of the house from which the material was not collected. Franchisee shall retain a record of each collection notice for use in response to Customer inquiries. If materials are not collected, and a Non-Collection Notice is not left at the residence or attached to the container, the materials shall be considered a missed pickup.

C. Refuse Collection at Schools: Collection vehicles shall be operated safely at all times so as not to pose any hazard to school children going to or coming from school. Franchisee shall not perform collection from any location within 200 feet of a public or private elementary, junior high, or high school, during the 45 minutes before the commencement of the regular school day and 45 minutes following the conclusion of the regular school day, where such locations are accessible to and used by children as routes to or from school. Notwithstanding the above restrictions, if, following an investigation, the Director may impose and the Franchisee shall comply with any additional restrictions the Director imposes on the collections near a particular school based on the circumstances and as determined necessary by the Director.

4.6. Carts:

A. Wheeled Carts: As used herein, the term "90-gallon" cart means an automated wheeled cart with a volume of between 94 to 101 gallons, and "60-gallon" cart means an automated wheeled cart with a volume of

between 60 to 65 gallons. The County shall approve cart specifications, design and color. Carts shall be of "universal" design, suitable for collection by most types of semi-automated and automated equipment. Carts shall be imprinted with the Franchisee's name and phone number and unique identification numbers for each resident, and will not include a company logo. Carts must display an anti-scavenging notice and universal and hazardous waste disposal prohibition notice. Franchisee must maintain and replace carts as necessary. New carts must contain post-consumer recycled content and be recyclable.

B. Cart Theft or Destruction: When Franchisee is notified of the theft of a cart, or destruction of a cart through an action not the fault of the Customer, and following receipt of a Sheriff's report number from the Customer or Fire Department report in case of a burned container, where such a Fire Department report is available, Franchisee shall replace the stolen or destroyed cart no later than the Customer's next regularly scheduled collection day.

4.7. Commercial Bins and Drop Box Boxes:

A. Change of Service Level: Upon request, Commercial Bin Customers may, once each year without charge, exchange their bin(s) for a different size, add extra containers, or reduce the number of their bins. Franchisee shall exchange, deliver, or remove bins(s) in accordance with Customer's request on the Customer's next regularly scheduled collection day, unless the Customer agrees to a later date.

B. Annual Cleaning of Commercial Containers: At the request of the Customer, Franchisee shall steam clean commercial bins which hold putrescible waste, including grocery stores and restaurants, once each year at no additional charge to the Customer.

C. Bin and Drop Box Repairs: Franchisee shall repair/replace un-serviceable (mechanically damaged) bins and Drop Boxes in accordance with the Customer's request on the Customer's next regularly scheduled collection day, unless the Customer agrees to a later date.

D. Bin and Drop Box Marking: In addition to the Franchisee's company name, all bins and Drop Boxes shall display the company's phone number in letters at least two inches in height and the number must be clearly legible.

4.8. Service on County and Non-County Roads: The Franchisee shall provide service to Customers on County-maintained roads. Franchisee shall further provide service on all non-County maintained private roads, provided that such

roads are kept in a safe and good traveling condition for a one-ton vehicle. Franchisee may provide smaller collection trucks to provide collection services on non-County maintained roads in instances where such roads are not reasonably usable by Franchisee's regular collection vehicles.

A. In the event any road is, in Franchisee's reasonable judgment, unsafe or in such a state of disrepair that the road will either be hazardous or potentially cause injury to even the smaller sized vehicles of the Franchisee, Franchisee will confer with the County's Solid Waste Division Manager to determine how collections will be accomplished. The decision of the Solid Waste Division's Manager may be appealed to the Director, whose decision shall be final.

B. Pavement Damage: Franchisee shall be responsible for any damage in excess of normal wear and tear to County-maintained driving surfaces, whether paved or not, resulting from the illegal weight of, or any leakage or spillage of oil, fluids, litter or other solids by vehicles providing services under this agreement. Franchisee will clean up or collect any spillage as soon as it comes to the attention of the Franchisee, or within 72 hours of County notification.

4.9. Reporting Requirements: Franchisee will compile and submit to County the following required reports. Reports must be provided in the form prescribed by the County in the Approved Data File Format as determined by the Director and printed on double-sided, recycled and recyclable white paper with no binding other than staples, and must contain the following information and any additional information requested by the County relevant to this Agreement:

A. Daily Reports: Franchisee will compile and submit to the County each business day the following reports:

(1) Indiscriminate Dumping: Franchisee will require its drivers to record locations where seemingly indiscriminate or illegal dumping has occurred. Information on such locations shall be conveyed to the Solid Waste Division Manager within 24 hours of observation. If there are no occurrences observed, then report "No Dumping Observed" for that particular day.

B. Weekly Reports: Franchisee will compile and submit to the County on Monday of each week, the following reports:

(1) Bulky-Item Collection Report: Includes the address and city of each collection, a brief description of the items collected, total tons collected, the estimated percent of collections diverted from disposal, and notations describing any incomplete or failed collections.

C. Monthly Reports: Franchisee will compile and submit to County within 30 days after the reporting month the following reports:

(1) Customer Service Report: Franchisee will compile and submit to County a report detailing each service inquiry, all complaints and instances of damage to private property. At a minimum, the report shall include a description of the service request or complaint, the name, telephone number, and address of the Customer or complainant, the service type, the actions taken by the Franchisee to resolve the service request or complaint, and the date the action(s) were taken.

(2) Disposal Based Reporting: Franchisee shall compile and submit to County a Transfer and Disposal Report verifying the total number of tons of solid waste, the tons disposed of at the Stanislaus Resource Recovery Facility, the Fink Road Landfill or other alternate disposal facility, whether or not such facility is or has been approved by the County, the tons delivered to transfer stations for the prior month, and the origins of the waste collected and/or received. Upon request of the County, documentation shall be provided substantiating the monthly statement, including weight slips or tickets.

(3) Recyclables Report: Franchisee will compile and submit a monthly Recyclables Statistical Report, reporting the quantities of recyclables diverted from County waste. The report shall include monthly units/tons diverted for CRTs, paper, glass, metals, inerts, plastics, sheetrock, wood, green waste, and tires. Such report may be subject to field audits and reviews as deemed necessary by the County.

D. Quarterly Reports: Franchisee will compile and submit to County, within 30 days following the end of each quarter, the following quarterly reports with information summarized by month for that quarter. Reporting quarters are July 1-Sept. 30, Oct. 1-Dec. 31, Jan. 1-Mar. 31, April 1, June 30:

(1) Mandatory Collection Areas Report: Franchisee will compile and submit a list of all occupied addresses in their specific mandatory service areas not having subscribed for weekly Refuse collection service during any portion of the calendar quarter.

(2) Quarterly Transfer Station Notification Report: Franchisee will compile and submit this report to the County quarterly in the format specified by the California Integrated Waste Management Board.

(3) Franchise Fee Request Report: Franchisee will compile and submit to County this report identifying gross revenues for the reporting quarter and the franchise fees due and payable to the County.

E. Annual Reports: Franchisee will compile and report to County the following annual information:

(1) Annual Transfer Station Methods Report: Due no later than January 31 for the preceding calendar year, in the format specified by the California Integrated Waste Management Board.

(2) Waste Oil Report: The number of gallons of waste oil and oil filters collected in the 12 months ending June 30, no later than July 20 of each year.

(3) Vehicle Inventory: Franchisee will furnish the Solid Waste Division Manager, on July 1 of each year, an inventory of vehicles used by Franchisee for Refuse collection, recycling collection, waste transfer, and bulky-item collection under this Agreement and shall keep such inventory current. The inventory shall indicate the type, make, capacity, vehicle identification number, license number of each vehicle, route assignment, and if any collection vehicle is utilized in multiple jurisdictions, the allocation of the contents to each jurisdiction.

F. Designated Reports: Franchisee will provide the following designated reports. Franchisee will also compile and submit to the County any other reports that the Director or the Solid Waste Division Manager may designate provided the Franchisee is given at least 30 days notice of any such requirement.

(1) Route Information:

(a) Franchisee will keep records of all Refuse, rubbish, and recyclable materials collected and removed and will maintain these records separately from other Franchisee operations.

(b) Franchisee will maintain route status sheets for each collection route indicating the address of each Customer, type and frequency of service, and other pertinent information as may be reasonably required by the County.

(c) Franchisee will prepare and maintain route maps showing each collection route and will indicate which, if any, routes are served by vehicles that are also used to serve other jurisdictions or Customers other than Customers located in the Unincorporated

Area. Route maps will be coded to be consistent with the route status sheet. Route status sheets and route maps will be provided to County within 30 days notice of any such requirement.

4.10. Other Requirements:

A. Advanced Emission Control Devices for Collection Vehicles:

Franchisee's fleet shall be in compliance the California Air Resource Board (CARB) heavy-duty diesel engine (HDDE) emission requirements for refuse collection vehicle fleets.

B. Hazardous Wastes: Franchisee will establish and maintain an educational program to train Franchisee's employees in the identification of Hazardous and Universal Wastes, and will provide employees with appropriate literature to leave behind at premises which present Hazardous or Universal Wastes for collection along with Refuse, Rubbish, or Recyclable Materials. Franchisee's employees will not knowingly place such Hazardous or Universal Wastes into collection vehicles, nor will they knowingly dispose of same at disposal sites.

C. Data Input Standards: At such time as the County adopts and implements standards for data input, ("Approved Data Format") Franchisee shall implement those same standards within 90 days of the Board's action. No more than 6 months after the Board's action, the Franchisee shall have completed the conversion of non-standard data files to be consistent with the approved data input standards.

ARTICLE 5. DISPOSAL

5.1. Waste to Energy Service Agreement: Franchisee acknowledges the "Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste", and Amendments, (the "Service Agreement") by and among Covanta Energy, Inc., (formerly known as Ogden Martin Systems, Inc., and Stanislaus Waste Energy Company) the City of Modesto and the County of Stanislaus (the "Contracting Communities.") Under the Service Agreement, Covanta Energy operates the Stanislaus Resource Recovery Facility and electric generating facility on a site adjacent to the County's Fink Road Landfill. Pursuant to the Service Agreement, the County has made certain commitments with respect to the delivery of wastes to the facility for conversion.

5.2. Disposal of Refuse: Franchisee shall deliver to the Designated Disposal Facilities, as described in sections 5.3 and 5.4 below, all Refuse that is generated from within the Franchise Area that is collected, hauled or transferred by the Franchisee prior to final disposal or delivery to a transformation facility. This provision applies to and includes all Refuse collected, hauled or transferred

by the Franchisee, whether by agreement, permit, ordinance, law or other authority of any kind, in the unincorporated area of the County, and, except as otherwise provided by permit, license, contract or agreement between the Franchisee and another municipality, all Refuse generated by and collected in the unincorporated municipalities of the County. Failure to dispose of Refuse at the designated disposal facility, or Alternate Disposal Facility, shall constitute an Event of Default under this Agreement.

5.3. Designated Disposal Facilities: The Franchisee shall deliver to the Stanislaus Resource Recovery Facility ("SRRF"), 4040 Fink Road, Crows Landing, California all Acceptable Waste, and all Unacceptable Waste to the Fink Road Landfill Facility ("FRLF"), 4000 Fink Road, Crows Landing, California.

A. Except as provided in section 5.3.B. below, the Franchisee's failure to deliver all Acceptable Waste to the SRRF is a "Delivery Default" and subject to the remedies stated in this Article 5 and shall also constitute an Event of Default subject to the remedies stated in Article 6. The Franchisee acknowledges that the SRRF generates less electric revenue if the projected level of tonnage is not delivered to the SRRF and that the County is deprived of such revenue.

B. The County acknowledges that there will be periods of time when the SRRF, due to scheduled or unscheduled maintenance, permit limits, availability of the tipping floor, or similar reasons, may not be able to accept deliveries of "Acceptable Waste." The County will provide the Franchisee notice of these circumstances. Only during these periods is it acceptable for the Franchisee to deliver "Acceptable Waste" to the Fink Road Landfill.

C. "Acceptable Waste" means that portion of Solid Waste which has characteristics such as that collected and disposed of as part of normal collection of Solid Waste in the Contracting Communities, such as, but not limited to: garbage, trash, rubbish, refuse, offal, beds, mattresses, sofas, bicycles, baby carriages, automobile or small vehicle tires, as well as processible portions of commercial (including cannery) and industrial Solid Waste, and logs if no more than 4 feet long and 6 inches in diameter, branches, leaves, twigs, grass and plant cuttings, excepting, however, Unacceptable Waste and Hazardous Waste.

D. "Unacceptable Waste" means that portion of Solid Waste, exclusive of Hazardous Waste, such as, but not limited to: explosives, pathological and biological waste (unless sterilized and otherwise processed to permit incineration in the Facility in accordance with all applicable health and environmental requirements), radioactive material, ashes, wet cannery waste, foundry sand, sewage sludge unless processed to permit

incineration, cesspool and other human waste, human and animal remains, motor vehicles, including such major motor vehicle parts as automobile transmissions, rear ends, springs and fenders, agricultural and farm machinery and equipment, marine vessels and major parts thereof, any other large type of machinery or equipment, liquid wastes, nonburnable construction materials and/or demolition debris, or any other material which (a) may represent a substantial endangerment to public health or safety, as confirmed by an appropriate public health or safety official, or (b) which could cause applicable air quality or water effluent standards to be violated by virtue of a change in the composition of waste which prevents the SRRF from operating at the design standards specified in Schedule 4 and in applicable environmental and other permits, or (c) material not normally collected as part of residential and commercial collections and which has a reasonable possibility of adversely affecting the operation of the SRRF, unless such Unacceptable Waste is delivered in minimal quantities and concentrations as part of normal collections in which case it shall constitute Acceptable Waste.

E. "Solid Waste" means all materials or substances discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous materials, incinerator residue, demolition and construction debris and offal, but not including sewage and other highly diluted water-carried materials or substances and those in gaseous form, or special nuclear or by-product materials within the meaning of the Atomic Energy Act of 1954, as amended.

5.4. Alternative Disposal Facilities: The County, at its sole discretion, may designate an Alternative Disposal Facility. Such designation of an Alternate Disposal Facility shall only be effective if made in writing and approved by the Board of Supervisors.

5.5. Compensatory Damages For Delivery Default: Except as provided in section 5.3.B. above, for each ton of Acceptable Waste collected by the Franchisee under the Agreement that Franchisee delivers to a facility other than SRRF ("Diverted Tons"), as demonstrated by weigh bills at such other facility or other evidence satisfactory to the County, including reports of any such monitoring party described below ("Diversion Documentation"), the Franchisee shall pay the County within thirty days following receipt of an invoice therefor from the County, compensatory damages equal to all damages or other payment obligations the County consequently directly or indirectly incurs under the Service Agreement, including, without limitation:

- A. An amount equal to payments for lost electricity revenues related to such tonnage shortfall, as provided in section 8.11(a) of the Service Agreement; and
- B. An amount equal to the lost Energy Credit, as defined in section 8.11(c) of the Service Agreement; and
- C. An amount equal to the lost tipping fee for the total tonnage of Diverted Tons not delivered by the Franchisee as required under and in accordance with this Agreement.

5.6. Liquidated Damages For Delivery Default:

A. The Franchisee recognizes that in the event of a Delivery Default, the County and its residents may suffer damages in addition to those compensatory damages described above and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the Franchisee and the County agree that in addition to compensatory damages, the following liquidated damages represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date hereto, including the relationship of the sums to the range of harm that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement the Franchisee and the County each specifically warrants and represents that it has received independent legal advice from its attorneys or the opportunity to seek such advice and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

B. Within thirty days from delivery of written notice to the Franchisee from the County of a Delivery Default, Franchisee shall pay as liquidated damages and not as a penalty, the sum of \$500.00 for each day that the Franchisee fails to deliver materials to the SRRF under the terms of this Agreement.

Franchisee
Initial here AM

County
Initial here RE

5.7. Monitoring Deliveries: In the event of a Delivery Default, as demonstrated by Diversion Documentation, in addition to or in lieu of terminating the Agreement, assessing compensatory damages or exercising any of its other remedies at law or equity, including specific performance, the County, in its sole discretion, may retain a third party to monitor the Franchisee's subsequent disposal services and the Franchisee shall reimburse the County for its Direct

Costs thereof, plus fifteen percent for overhead and administrative costs, within thirty days of the County submitting an invoice to the Franchisee for such costs.

A. For the purposes of this section, "Direct Costs" means the sum of (1) weighted payroll costs directly related to the performance, or management or supervision of any obligation pursuant to the provisions hereof, comprised of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, workers compensation insurance, deferred compensation, federal and state unemployment taxes and all medical and health insurance benefits; plus (2) the costs of materials, services, direct rental costs and supplies; plus (3) the reasonable costs of any payments to subcontractors necessary to and in connection with the performance hereunder; plus (4) any other cost or expense which is directly or normally associated with the task performed.

B. Direct Costs shall be substantiated by (1) a certificate signed by an authorized representative of the County or his or her designee, as the case may be, setting forth the amount of such cost and the reason why such cost is properly chargeable to the County and stating that such cost is an arm's length transaction and a competitive price, if there are competitive prices, for the service or materials supplied, and (2) if the Franchisee requests, such additional backup documentation as may be available to reasonably substantiate any such Direct Cost, including invoices from suppliers and subcontractors.

5.8. Specific Performance: The Franchisee acknowledges that the County's remedy of damages for a breach of this Agreement by the Franchisee may be inadequate and, consequently, the County shall be entitled to all available equitable remedies, including injunctive relief, for the following reasons:

A. The urgency of timely, continuous and high-quality waste management services hereunder, including collection and disposal of materials which may be putrescible and constitute a threat to public health, as well as the County's obligation to deliver guaranteed tonnage to the SRRF pursuant to the terms of the Service Agreement;

B. The long-time and significant investment of money and personnel (both County staff and private consultants, including engineers, underwriters, bond counsel, financial advisors and contract procurement counsel) required to procure, finance and re-finance the SRRF and the Service Agreement, as the case may be; and

C. The County's reliance on the Franchisee's waste management experience, references and reputation for complying with the terms and provisions of its agreements.

5.9. Cumulative Remedies: The remedies of the County provided for herein are cumulative and no action taken by the County constitutes an election by the County to pursue any remedy to the exclusion of any other remedy available to the County at law or in equity. In addition to a claim for damages, the County reserves any and all remedies available at law and in equity, including, without limitation, the right to terminate the Agreement and to make a claim against and collect from a performance bond or other substituted security.

THE FRANCHISEE'S LIABILITY TO PAY THE COUNTY ANY DAMAGES OF ANY KIND OR FORM UNDER THIS AGREEMENT SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

5.10. Non-Severable:

A. Franchisee agrees not to challenge the constitutionality, legality, validity, enforceability, or binding nature of its obligations under this Article.

B. Notwithstanding any other provision of this Agreement, if any clause, sentence or provision of this Article or subdivision thereof is determined to be invalid by any court of competent jurisdiction, such clause, sentence or provision shall not be severed from the Agreement, but either party, in its sole discretion, shall have the right to terminate the Agreement upon 60 days written notice thereof to the other party.

5.11. Unacceptable Waste Deliveries to SRRF: The delivery of Unacceptable Wastes to the Stanislaus Resource Recovery Facility ("SRRF") can result in air emissions violations and/or damage to the physical facility. On each occasion that the SRRF or the County determines that the Franchisee, or others providing services to the Franchisee, has delivered Unacceptable Wastes to the SRRF, the County shall provide written Notice to the Franchisee.

5.12. Timing of Waste Deliveries to SRRF: Franchisee acknowledges that repeated deliveries of Refuse to the SRRF over short periods of time can result in overloading of the receiving pit or the tipping floor. This overloading can increase operating costs at the SRRF and can delay deliveries by others. The Franchisee shall deliver Acceptable Waste to the SRRF in a manner that does not contribute to overloading of the receiving pit or the tipping floor; this may include, but is not limited to, beginning deliveries later in the day and/or rescheduling work hours for some personnel. The County's Solid Waste Division Manager shall make the determination as to whether the Franchisee's delivery schedule is acceptable.

5.13. Self-Diversion of Waste from SRRF: Franchisee's employees, or sub-contractors, making deliveries of Refuse designated for the SRRF shall not self-

divert to the Fink Road Landfill without returning to the Scale House before making the delivery so that data input used for billing disposal fees can be corrected.

5.14. Rules and Regulations for SRRF and FRLF: Franchisee shall comply with the Rules and Regulations for SRRF and FRLF, "Hauler Rules and Regulations; in addition, Franchisee will comply with the rules and policies for conduct and operations on the Fink Road Landfill (FRLF) site. While operating on the grounds of the SRRF or the FRLF, the Franchisee's employees or subcontractors will comply with the verbal instructions from SRRF and FRLF staff. The County may deny access to the Franchisee's employee(s) or subcontractor(s) to either site for multiple violations of the written rules or verbal instructions.

5.15. Refuse Disposal Fees: In accordance with County Code section 9.04.225, Franchisee shall pay refuse disposal fees or other charges incurred for such disposal within the period of time set forth in subsection B of County Code section 9.04.230.

A. Refuse disposal fees are due and payable on or before the thirtieth day after the date an invoice is issued for the refuse disposal fees and, thereafter, are deemed to be delinquent until paid.

B. A late payment charge on the unpaid amount shall accrue as set forth in County Code section 9.04.230 (C).

C. In addition to late payment charges, Franchisee shall be subject to any or all of the additional penalties set forth in County Code section 9.04.230 (D), including:

(1) The temporary suspension or permanent revocation of privileges to dispose of Refuse at County owned or operated disposal sites or facilities; and

(2) The posting of security in an amount determined by the department to be necessary and reasonable to offset additional delinquencies plus estimated collection costs, including reasonable attorney fees. The security may be in the form of a cash deposit, an irrevocable letter of credit, or a corporate surety bond. The issuer of a letter of credit or bond shall be admitted to do business in California and shall be acceptable to the department; and

(3) The revocation of the Franchisee's franchise.

ARTICLE 6. DEFAULT AND REMEDIES

6.1. Events of Default: All of Franchisee's obligations to perform under this Agreement are material. Each of the following events shall constitute an "Event of Default":

- A. Fraud or Deceit: Franchisee commits or attempts a fraud or deceit upon the County.
- B. Insolvency: Franchisee becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of the Franchisee in a bankruptcy proceeding.
- C. Insurance: Franchisee fails to provide or maintain in full force and effect any insurance required by this Agreement.
- D. Failure to Perform: Franchisee fails to perform Franchise Services, including 100% of all regularly scheduled collection or disposal services, for more than 72 hours for any reason including but not limited to labor disputes, strike, work stoppage or slowdown, sick-out, picketing, or other concerted labor action. The Director will determine whether the Franchisee has ceased to provide Franchise Services based upon any relevant information available at the time.
- E. Unauthorized Diversion: Franchisee fails to dispose of Refuse at the designated disposal facility, or alternate disposal facility, without the effective written consent of the County.
- F. SRRF Delivery Default: Franchisee fails to deliver all Acceptable Waste to the SRRF.
- G. Failure to Pay: Franchisee fails to make any payments required under this Agreement within the time specified.
- H. Uncured Breach: Franchisee has breached the Agreement and the County has notified the Franchisee of the breach and the Franchisee has failed to cure the breach within 20 days of mailing of the notice.

6.2. Cure of Default: Franchisee shall cure any Event of Default within 20 business days after written notification by the County. Notice by the County and opportunity to cure are not required, however, if the Franchisee has committed the same or similar breach within a 24 month period, or the default threatens the public health or safety.

6.3. Uncontrollable Circumstance: To the extent that the Event of Default is due to an Uncontrollable Circumstance, Franchisee will not be deemed in default under section 6.1.D (Failure to Perform) and section 6.1.F (SRRF Delivery Default) only, and only if the Franchisee exerted its best effort to prevent the breach and to mitigate the effects of the uncontrollable circumstances.

A. Notice of Uncontrollable Circumstances: Franchisee is required to give immediate notice of an Uncontrollable Circumstance to the County that includes:

- (1) A description of the breach for which the Franchisee seeks to be excused;
- (2) The expected duration of the circumstance;
- (3) The extent to which services may be curtailed; and
- (4) The steps the Franchisee will take to mitigate the adverse effects of the Uncontrollable Circumstances.

B. Notwithstanding the above, where an Uncontrolled Circumstance continues for 72 hours, the County at its sole discretion may perform the Services required herein as set forth in Article 7.

C. Uncontrollable Circumstances means any of the following events:

- (1) Riots, war or emergency affecting the County declared by the President of the United States or Congress of the United States, the Governor of California, or the Board of Supervisors;
- (2) Sabotage, civil disturbance, insurrection, explosion;
- (3) Natural disasters such as floods, earthquakes, landslides, avalanches, and fires; or
- (4) Other catastrophic events which are beyond the reasonable control of Franchisee despite Franchisee's exercise of due diligence.

D. Uncontrollable Circumstances exclude, without limitation:

- (1) The financial inability of Franchisee to satisfy its obligations under the Agreement;
- (2) The failure of a Franchisee to obtain any necessary permits or the right to use the facilities of any public entity;

- (3) Reasonably anticipated weather conditions for the geographic area of the county;
- (4) A Change In Law other than with respect to the County, any Change In Law adopted by the County, unless the Change In Law is mandated by state or federal applicable law;
- (5) Franchisee's or County's breach of obligations under this Agreement;
- (6) A Franchisee's inability to hire adequate numbers of personnel who are competent and skilled in the work to which they are assigned;
- (7) The failure of Franchisee to secure patents, licenses, trademarks, and the like necessary to provide the services;
- (8) As to Franchisee, the failure of any vehicles, equipment, or other Service Assets to perform in accordance with any warranties, unless caused by uncontrollable circumstances; and
- (9) Any strikes, lockouts, or other labor disturbances.

6.4. Termination upon Default: Subject to Franchisee's right to cure, if any, in an Event of Default the County may, at its option, immediately terminate this Agreement.

A. Performance of Services: If the County suspends or terminates this Agreement, or revokes this Franchise, the County may, at its option, either directly undertake performance of the Franchise Services or arrange with other persons or entities to perform the Franchise Services with or without a written agreement.

(1) In accordance with County Code section 9.08.280 and Regulations for Collection V (F)(4), the County may immediately take possession of, or assume the contractual rights to all Service Assets, including trucks and other equipment of the franchise holder for the purpose of collecting and disposing of, or causing to be collected and disposed, all Refuse, Recycling, Garden Refuse and Bulky Items and performing all other duties and Franchise Services which the franchise holder is obligated to perform. The County has the right to retain possession of such trucks and equipment until other suitable trucks and equipment can be purchased or otherwise acquired by the County for such purpose. The County shall pay the franchise holder a reasonable rental for the use of such trucks and equipment.

B. Not an Election of Remedies: The County's rights to terminate this Agreement and to take possession of Franchisee's facility and Service Assets are not exclusive, and the County's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies, which the County may have. By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality service, the time required to effect alternative service, and the rights granted by the County to Franchisee, the remedy of damages for a breach hereof by Franchisee may be inadequate and the County may seek injunctive relief.

6.5. Suspension: Subject to Franchisee's right to cure, if any, in an Event of Default the County may, at its option, may suspend all or a portion of this Agreement for up to 30 days. During that 30-day period the Franchisee may demonstrate to the sole satisfaction of the County that Franchisee can once again fully perform the Franchise Services. If Franchisee so demonstrates, then the County's right to suspend or terminate the Agreement will cease and Franchisee may resume providing Franchise Services. If Franchisee does not so demonstrate, then the County may terminate the Agreement and exercise any other rights and remedies under this Agreement. Prior to suspending all or a portion of this Agreement, the County must give Franchisee a Notice stating the reasons for the suspension. The County may suspend the Agreement, effective 15 days after the date of the Notice. If the County determines that the suspension is necessary for the protection public health and safety, the County need not give Franchisee Notice but may give Franchisee oral notice stating the reasons for the suspension, effective immediately. The County will provide Franchisee with Notice confirming oral notice.

6.6. Transition to Next Franchisee: Following expiration or termination of this Agreement, Franchisee will cooperate fully with County and subsequent Franchisee(s) to assure a smooth transition of services.

A. Records: Franchisee shall cooperate and coordinate with the County and any subsequent Franchisee to facilitate the transfer of Franchisee's records pertaining to this Agreement including complete routing information, route maps, vehicle fleet information, Customer lists, and all reports required by this Agreement. Three months prior to the end of the franchise term, Franchisee will furnish County with a detailed Customer list showing name, address, type and frequency of service, and such pertinent information as may be reasonably required by County. Franchisee will provide a final updated list at the end of the franchise term. These lists shall be provided both as printed reports and electronically in the Approved Data File Format;

B. Containers: Upon County's request, Franchisee shall coordinate with the County and subsequent Franchisee to exchange carts and/or containers. Franchisee will remove each cart from a Customer's premises on the date directed by the County. If Franchisee fails to remove the carts on the date and as directed by the County, Franchisee shall have abandoned the carts to the County and the carts will then become the property of the County.

THIS OBLIGATION OF FRANCHISEE WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.7. Liquidated Damages:

A. The County finds, and Franchisee acknowledges, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages the County will incur as a result of a breach by Franchisee of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that:

(1) Substantial damage results to members of the public who are denied services or denied quality or reliable service; such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms;

(2) That Franchisee's services are available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and

(3) The termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

B. The parties further acknowledge that consistent and reliable service is of utmost importance to the County and its residents and that the County has considered and relied on Franchisee's representations as to its quality of service commitment in awarding the Agreement to it.

C. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance.

D. The parties further recognize that if Franchisee fails to fully and timely meet its performance obligations in accordance with the performance standards in this Agreement, the County and County's residents and businesses will suffer damages, including customer inconvenience, anxiety, frustration, political pressure, criticism, loss of staff time, and deprivation of the benefits of the agreement and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages that the County will suffer.

E. Therefore, without prejudice to the County's right to treat Franchisee's non-performance as an Event of Default, the parties agree that the following liquidated damages amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the County that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Franchisee
Initial here AM

County
Initial here [Signature]

F. Notwithstanding the foregoing, the Parties recognize that for a short time after the commencement of services under this Agreement, the Franchisee's employees may not be familiar with the routes and collection mistakes may occur. Therefore, the County shall not assess liquidated damages under section 6.8.A. only, for collection events occurring during the 60 days after the commencement of the Term of this Agreement.

6.8. Liquidated Damages Amounts: Franchisee will pay (as liquidated damages and not as a penalty) the following amounts:

A. Collection Reliability and Quality:

(1) For each failure to deliver a cart(s) and commence service to a new Customer within 10 days of request (Agreement section 4.5.A.(1)): \$75.00;

(2) For each failure to collect 99.90% of Customer's Refuse, Recyclables or Garden Refuse on the scheduled collection day, where the Customer has properly set out its container for collection, in any given month of the year (Agreement section 4.5.A.(2)): \$150.00;

(3) For each failure to collect a missed set out of Refuse, Recyclables or Garden Refuse within 1 business day after notice or request, which exceeds 3 such failures in any given month of the year (Agreement section 4.5.A.(3)); \$75.00;

(4) For each time Franchisee performs collections outside of authorized hours (Agreement section 4.1): \$150.00;

(5) For each failure to correct spillage, including motor or hydraulic fluids, or litter caused by the Franchisee within 72 hours of notification by the County (Agreement section 4.8.B): \$150.00;

(6) For each failure to record a complaint reported to the Franchisee by a Customer (Agreement sections 4.5.A.4 and 4.9.C.(1)): \$150.00;

(7) For each failure to initially respond to a Customer complaint within 1 business day after receipt of notice of the complaint (Agreement section 4.3): \$75.00;

(8) For each occurrence of damage to property, which exceeds seven such occurrences within a 12 month period (Agreement section 4.5.A.(5)): \$150.00; and

(9) For each report of discourteous behavior by the Franchisee's employees that is confirmed to the satisfaction of the County (Agreement section 4.5.A.(7)): \$150.00.

B. Submission of Reports: For each failure to timely submit to County any documents or reports required under this Agreement, and Franchisee fails to cure said failure within 5 days of notification from the County (Agreement section 4.9): \$100.00 each calendar day until such document or report is submitted.

C. Delivery Damages:

(1) Self Diversion: For each instance Franchisee's employees, or sub-contractors, self-divert deliveries of Refuse designated for the SRRF to the FRLF without first providing accurate information to the Scale House operator about the final disposition of waste designated for the SRRF or FRLF (Article 5): \$500.00.

(2) Delivery of Unacceptable Waste: For each delivery of Unacceptable Waste to the SRRF exceeding 3 such deliveries in a 12 month period (Article 5): \$500.00.

(3) Air Emission Violation: For each delivery of Unacceptable Wastes to the SRRF that result in an air emission violation (Article 5):
\$5,000.00

(4) SRRF Damage: For each delivery of Unacceptable Wastes to the SRRF that causes damage to, or boiler shutdown at, the SRRF (Article 5): \$5,000.00.

6.9. Assessment: Liquidated damages shall be assessed by the Director only.

6.10. Appeal: Within 10 days of notification by County, Franchisee may submit a written appeal of the assessment of liquidated damages to County, with a detailed explanation of why the damages should not be assessed.

6.11. Payment of Liquidated Damages: Franchisee will pay any liquidated damages within 30 calendar days after they are assessed, or the date the appeal is denied. If Franchisee fails to pay within this time, the County may proceed against the Franchisee's performance bond, or other substituted security. Payment of liquidated damages will in no way be a waiver of any of County's other rights under this Agreement.

6.12. County's Breach: For any "Claim," including a matter of right, payment of money, adjustment or interpretation of the contract documents, or any other relief, the Franchisee may have arising out of or related to the this Agreement, the following administrative claim procedure shall apply and exclusively governs the Claim and is a prerequisite to suit thereon. The Franchisee shall bear all costs incurred in the preparation and submission of a Claim pursuant to this section:

A. Written Notice: Within 10 days of the accrual of the Claim, the Franchisee shall provide the County with written notification of the Claim. Such notice shall contain a full and complete description of the Claim, including a detailed narrative of the nature of the Claim, reference to the specific provisions of the Agreement involved, any documents pertaining to the Claim including photographs, and the names of all persons with knowledge of the Claim.

B. Director's Review: Within 90 days of the receipt of the Franchisee's notice the County will either (1) deliver the Director's determination of the Franchisee's Claim, or (2) provide the Franchisee with notice of the date the Director will conduct a hearing regarding the Claim, in which case the Franchisee shall appear, answer questions and present any further documentation or analysis requested by the Director. Within 30 days of the conclusion of the Director's hearing the Director will provide the Franchisee with the Director's determination of the Claim;

C. Board of Supervisor's Review: The Franchisee may request a hearing on its Claim before the Board of Supervisors within 10 days after Franchisee's receipt of the Director's determination. The County shall hold the hearing within 30 days of receipt of the request, unless otherwise mutually agreed by the parties. The Board of Supervisors shall consider the Franchisee's Claim and issue its decision.

D. Waiver: Franchisee acknowledges that it waives its Claim in its entirety if Franchisee fails to strictly comply with this section. The requirements of this section 6.12 shall not be waived or modified except by a written amendment to the Agreement approved by the Board of Supervisors.

ARTICLE 7. COUNTY'S RIGHT TO PERFORM FRANCHISE SERVICES

7.1. Temporary Possession of Franchisee's Equipment: Notwithstanding County Code sections 9.08.290 through 9.08.310, if the Franchise Services are interrupted for any reason, including Uncontrollable Circumstances or a labor dispute, such that Franchisee fails to perform 100% of all scheduled collection or disposal services for more than 72 hours, the County, to preserve and protect the public health and safety, has the right, but not the obligation, following 24 hours oral or written notice to Franchisee, to take temporary possession of all Franchisee's Service Assets for the purpose of providing (or providing for) all or a portion of the Franchise Services itself or through third parties.

7.2. Notice: County may give notice prior to the expiration of the 72 hours referenced above, and may take possession immediately upon expiration of those 72 hours, and thereafter. If the Director determines that an immediate danger to the public health, safety or welfare exists, the County is not required to provide Franchisee notice prior to taking temporary possession of Franchisee's service assets. The County may give Franchisee oral notice that the County is exercising its right to perform Franchise Services, which notice is effective immediately, but the County must confirm oral notice with written notice within 24 hours.

7.3. Service Assets: "Service Assets" means all property of Franchisee used directly or indirectly in performing Franchise Services, including vehicles, containers, maintenance equipment and facilities, administrative equipment and offices and related supplies. Upon giving Franchisee notice, the County may take possession of any or all of the Service Assets necessary or convenient in providing Franchise Services, and Franchisee will fully cooperate with the County to transfer possession of Service Assets to the County. The County may use Service Assets to provide all or a portion of Franchise Services. The County will have absolute and exclusive control over Service Assets as though the County were the absolute owner thereof. However, upon County request, Franchisee

will keep Service Assets in good repair and condition, including providing vehicles with fuel, oil and other maintenance. The County will assume complete responsibility for use of Service Assets while they are in its possession and will maintain Service Assets in the same condition as they were in when Franchisee transferred possession thereof to the County (unless Franchisee maintains them as provided in the preceding sentence), and will return Service Assets to Franchisee in the same condition as received, normal wear and tear excepted.

A. Any document, including a lease, financing contract, acquisition over time, mortgage or other instrument establishing a security interest to or by the Franchisee, that encumbers or limits the Franchisee's interest in Service Assets, including any replacement or substitute equipment, will:

(1) Allow Franchisee's surety to assume the Franchisee's obligations and to continue use of Service Assets in performing Franchise Services during the remaining term of surety's bond; and

(2) Allow the County to assume the Franchisee's obligations and to continue use of Service Assets in performing Franchise Services.

7.4. Franchisee's Insurance: During the County's temporary possession of Service Assets, Franchisee will maintain in full force and effect all insurance and any Financial Assurances related to self-insured retention or increased deductibles required in accordance with section 8.2. By granting the County the right to possession and use of Service Assets Franchisee hereby declares as follows:

A. The County is a permitted user for purposes of all liability insurance policies that Franchisee must procure and maintain under this Agreement, and

B. The County's use and possession of Service Assets is not intended to be and is not a transfer of ownership for purposes of any liability policies.

C. Furthermore, if the County takes possession and use of Service Assets, Franchisee will execute whatever documentation its liability insurers require in order to ensure that the County is protected and covered by Franchisee's general and automobile policies, including requesting and executing endorsements to those policies. However, Franchisee is not obligated to pay any additional cost of those endorsements unless the County reimburses Franchisee for those additional costs. The County may pay for any endorsements, additional premiums or other costs. If the County takes use and possession of Service Assets, the County may call and confer with Franchisee's insurance broker to determine what, if any, documentation or actions are

necessary to achieve protection satisfactory to the County. By executing this Agreement, Franchisee directs its insurance broker to cooperate with and take direction from the County under those circumstances, which authorization Franchisee may not rescind without the County consent.

7.5. Employees: Upon notice as provided above, the County may immediately engage personnel necessary or convenient for providing all or a portion of Franchise Services, including employees previously or then employed by Franchisee. However, the County will not be obligated to hire Franchisee's employees and may use County employees or other persons to provide all or a portion of Franchise Services, including driving vehicles. Promptly upon County request, Franchisee will make available to the County all Franchisee's management and office personnel necessary or convenient for providing Franchise Services, including Customer services and billing

A. The rate of compensation to be paid the Franchisee's employees will be the rate or rates in effect at the time the Franchisee's service was interrupted.

7.6. Records: Promptly upon County taking temporary possession and/or use of Service Assets, Franchisee will provide the County with access and/or possession of Franchisee's records, including those related to routing and billing.

7.7. Indemnity: Franchisee agrees and stipulates that the County's exercise of rights under this section does not constitute a taking of private property for which the County must compensate Franchisee and does not exempt Franchisee from any Indemnities, which Parties acknowledge are intended to extend to circumstances arising under this section. However, Franchisee is not required to indemnify the County against claims and damages arising from the negligence of County officers and employees (other than employees of Franchisee at the time the County commenced performing said Franchise Services) and agents driving vehicles.

7.8. Terminating Temporary Possession: The County has no obligation to continue possession and/or use of Service Assets and may at any time, in its sole discretion, cease possession and/or use. County has the right to retain possession of Franchisee's Service Assets and to provide the Franchise Services until the earlier of 120 days or when Franchisee demonstrates to the satisfaction of the County that Franchisee can resume providing those services

A. If Franchisee does not demonstrate to the satisfaction of County that Franchisee can resume services under this Agreement prior to the expiration of those 120 days, County may terminate this Agreement and Franchisee's rights and privileges under this Agreement (but not obligations stated to survive termination of this Agreement).

7.9. Revenues During County's Performance: During any period in which the County has temporarily assumed possession, County is entitled to collect the gross revenue due and payable to Franchisee and (1) apply that gross revenue to pay the costs and expenses of providing the Franchise Services, and (2) deposit in the treasury of County to the credit of the General Fund the excess, if any, of gross revenue over those costs and expenses. Franchisee will pay to County upon County demand losses, if any, equal to the amount that those costs and expenses exceed those gross revenues. Upon termination of County's possession of Franchisee's service assets, a certified public accountant chosen by the County will audit the net revenues (whether losses or gains) and attach a report to Franchisee and County of its determination. County will repay any revenue excess to Franchisee and Franchisee will reimburse County any revenue deficit within 30 days of the issuance of the auditor's report.

ARTICLE 8. INDEMNITIES, INSURANCE AND BONDS

8.1. Indemnity: To the fullest extent allowed by law, Franchisee shall indemnify, defend with counsel approved by County, release and hold 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 Franchisee or its sub-contractors 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 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.

A. Duty to Defend: The duty of Franchisee to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in section 2778 of the California Civil Code. Franchisee shall, upon demand of the County and at its sole cost and expense, defend and provide attorneys acceptable to the County to defend County, its officers, agents and employees against any and all claims, actions or suits brought against the County, its officers, agents and employees, arising or resulting from or in any way connected with the above mentioned operations of Franchisee or its sub-contractors or its sub-contractor's failure to comply with the contract and with the ordinances and laws hereinabove mentioned. The Franchisee shall reimburse the County for all costs, attorneys' fees, expenses and liabilities of any kind or description incurred with respect to any claim of loss of which the Franchisee is obligated to indemnify, defend and hold harmless the County under this Agreement.

B. Duty to Cooperate: Each party shall notify the other party immediately in writing of any third party claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the

investigation and disposition of any third party claim arising out of the activities under this Agreement.

C. Certain County Negligence Excluded: Franchisee will not, however, be required to indemnify the County to the extent any claim of loss due to the sole negligence or willful misconduct of the County, its officers, agents and employees.

8.2. Insurance Requirements: Franchisee shall obtain and maintain during the life of this Agreement all of the following insurance coverage:

A. General Liability: Comprehensive general liability, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence and aggregate. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Franchisee under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

B. Pollution Liability Coverage: Pollution Liability Coverage with a limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence covering loss (including cleanup costs) that Contractor becomes legally obligated to pay as a result of claims for bodily injury, property damage, and clean up costs (including expenses required by environmental laws or incurred by federal, state, or local governments or third parties) resulting from pollution conditions caused by transported cargo (including waste). For the purpose of this paragraph, "pollution conditions" includes the dispersal, discharge, release, or escape of any solid, liquid, gaseous or thermal irritant or contaminant (such as smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, and waster materials) into or upon the land, any structure on land, the atmosphere, or any watercourse or body of water (including groundwater), provided the conditions are not naturally present in the environment in the amounts or concentrations discovered.

C. Automobile Liability: Automobile liability for all owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Automobile insurance shall be endorsed to delete any pollution and asbestos exclusion and include pollution liability for accidental spills and discharges while transporting and/or processing materials.

D. Worker's Compensation: Workers' compensation insurance as required by the State of California.

E. Endorsements: The Franchisee shall provide copies the following endorsements satisfactory to the County:

(1) Additional Insureds: A specific endorsement to all required insurance policies, except Workers' Compensation insurance, naming the County and its officers, officials and employees as additional insureds regarding:

- (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Franchisee, including the insured's general supervision of its subcontractors;
- (b) Services, products and completed operations of the Franchisee;
- (c) Premises owned, occupied or used by the Franchisee; and
- (d) Automobiles owned, leased, hired or borrowed by the Franchisee.

(2) Waiver of Subrogation: The Franchisee's Workers' Compensation insurance carrier shall agree to waive all rights of subrogation against the County, its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Franchisee.

(3) Pollution Coverage Waiver: Franchisee's insurance policies shall waive any exclusion for coverage of pollution or asbestos.

F. Deductibles: Franchisee agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Franchisee's defense and indemnification obligations as set forth in this Agreement. Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Franchisee shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses.

G. Certificates of Insurance: At least 10 days prior to the date the Franchisee begins performance of its obligations under this Agreement, Franchisee shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

H. Non-limiting: Nothing in this section or the insurance described herein shall be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the liability of Franchisee and Franchisee's officers, employees, agents, representatives or subcontractors for payments of damages to persons or property.

I. Primary Insurance: The Franchisee 's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Franchisee 's insurance and shall not contribute with Franchisee 's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials and employees. The Franchisee 's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

J. Cancellation of Insurance: Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, or canceled by either party except after 30 days' prior written notice has been given to County. The Franchisee shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

K. California Admitted Insurer: Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating acceptably to the County (a Best's Key Rating Guide of A- or above and a size category of at least VII will be considered acceptable); provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the

required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance.

L. Subcontractors: Franchisee shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

8.3. Performance Bond: The Franchisee shall perform no services pursuant to this Agreement, nor be entitled to compensation therefore, unless and until the Franchisee submits a bond or other acceptable security to County for use of County, such bond executed by the Franchisee and a surety company licensed to do business as such in the State of California, such bond in the amount of \$100,000.00, and which shall at all times be kept in full force and effect; provided, however, the Department of Environmental Resources, under County Code section 9.04.240 and section VII (G.) of the Regulations for Collection, may require the amount of security or bond to be increased in an amount the Department determines to be necessary and reasonable to secure all of the Franchisee's financial obligations to the County. The condition of such bond shall be that the Franchisee shall fully and faithfully perform all conditions and covenants of this Agreement or that the face amount of such bond shall be forfeited to County. The bond may be a renewable one-year bond, and shall be renewed annually before its expiration date; provided, however, that such bond must remain in full force and effect from and after the date County makes any demands for payment on the bond until the County releases such claim. Provision of such bond or its equivalent, approved by the County, is a material covenant of this Agreement. The County shall not approve any security that is not unconditionally payable to County upon County demand. THIS SECTION WILL SURVIVE THE TERMINATION OF THE AGREEMENT.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1. Criminal or Unfair Business Activity: The Franchisee shall immediately notify the County upon the occurrence of any of the following events or circumstances:

A. The Franchisee or any of its administrative or management employees, officers or directors have a criminal conviction, permanent mandatory or prohibitory injunction, or a judgment, order or fine from a court, public entity, municipality or regulatory agency of competent jurisdiction with respect to:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement, including this Agreement; or

(2) Bribery or attempting to bribe a public officer or employee of a local, state, or federal agency in that officer or director's or Franchisee's employee's official capacity;

(3) Embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, receiving stolen property, theft, or misprision (failure to disclose) of a felony; or

(4) Any other crime or business practice indicating a lack of business integrity or business honesty; or

(5) Unlawful disposal of hazardous or designated waste the occurrence of which the Franchisee knew or should have known; or

(6) Violation of antitrust laws or unfair trade practices, or conspiracy to eliminate competition or to inflate waste collection, hauling or disposal fees.

B. The Franchisee or any of its administrative or management employees, officers or directors have made an admission of guilt or pled *nolo contendere* to the conduct described herein.

C. Upon the occurrence of the events or circumstances described above, the Franchisee immediately shall do or cause to be done all of the following: (1) terminate from employment or remove from office the offending employee, officer or director, and (2) eliminate the participation by such employee, officer or director in any management, supervision or decision activity that affects or could affect, directly or indirectly, the Franchisee, and (3) avoid and eliminate the ability of such employee, officer or director to influence, directly or indirectly, the decision or actions of the Franchisee or any parent company of the Franchisee. If the Franchisee fails to comply with the foregoing obligation of this Agreement, or if the wrongdoing concerns and is related to the Agreement, the County, in its sole discretion, may terminate the Agreement upon thirty days written notice to the Franchisee, or may impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper.

D. The Franchisee shall not allow or cause to be allowed the hire, retention or transfer of any employee, officer or director from any parent or subsidiary company or business entity of the Franchisee who has been convicted of or has made an admission of guilt or pled *nolo contendere* to the conduct described in this section 9.2, to a position as an administrative or management employee, officer or director who is or may be directly or indirectly responsible for administration, management, supervision or control of Franchisee under this Agreement.

E. For purposes of this section, "Franchisee or any of its administrative or management employees, officers or directors" shall mean any or all of the following:

(1) TURLOCK SCAVENGER COMPANY, its subsidiary companies or business entities, or any of their administrative or management employees, officers or directors;

(2) Any person or company of any form having an ownership interest in the Franchisee, including, without limitation, any parent or regional holding company or any of its administrative or management employees, officers or directors who are directly or indirectly responsible for administration, management, supervision or control of the Franchisee;

(3) TURLOCK SCAVENGER COMPANY or any of its administrative or management employees, officers or directors who are directly or indirectly responsible for administration, management, supervision or control of the Franchisee.

9.2. Documents and Records:

A. General: Franchisee shall maintain accurate, detailed financial and operational records in a consistent format and shall timely make such information available to the County during normal business hours and upon reasonable oral or written notice. In addition to any other records required to be maintained pursuant to this Agreement or by law, Franchisee shall maintain the records required to conduct its operations, to support any requests it may make to County, and to respond to requests from the County. Franchisee shall ensure its records are reasonably protected from destruction from fire, theft, etc. Franchisee shall maintain a back up of all electronic data and records. Franchisee shall maintain all records pertaining to this Agreement, including electronic data, for a period of 5 years after the expiration of this Agreement and any extension thereof.

B. Financial Records: Franchisee must maintain current, accurate and complete financial records, including accounting records, relating to services provided under this Agreement. All records will be maintained in accordance with Generally Accepted Accounting Principles (GAAP), and shall contain the underlying financial and operational data relating to and showing the basis for computation of all costs associated with providing the services under this Agreement. The Director, or his/her designated representative, has the right to audit and inspect all financial records and any other records of Franchisee reasonably and directly necessary for County's review, approval or enforcement of this Agreement at any time.

C. Financial Report Costs: Financial reports and operating data required by the County for the purpose of any service rate review will be furnished by the Franchisee at no expense to the County and will be prepared in the manner and form reasonably prescribed by County.

D. Right to Inspect Records: The County shall have the right to inspect, audit and review all records in Franchisee's custody or control that the County shall deem, in its sole discretion, necessary to evaluate the Franchisees performance of this Agreement.

9.3. Subcontracting: Franchisee will not subcontract all or any portion of the work or business of this Agreement without the written consent of the County.

9.4. Privacy: Franchisee will use all reasonable efforts to observe and protect the rights of privacy of its employees and customers. Information identifying individual customers, or the composition or contents of a customer's Refuse or recyclables will not be revealed to any person, private agency or company, unless upon the request of law enforcement personnel, the authority of a court, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude the Franchisee from preparing, participating in, or assisting in the preparation of waste characterization studies or waste-stream analysis which may be required by AB 939, or any other reports requested by the County under this Agreement or required or requested by any governmental agency. Franchisee will not market or distribute outside the normal course of its business, mailing lists with the names and addresses of customers.

9.5. Amendment of Agreement: Except as provided herein, the parties may change, modify, supplement or amend this Agreement only upon mutual written agreement duly authorized and executed by both parties.

9.6. Compliance with Laws: Franchisee will comply with all laws, ordinances and regulations of the State of California and the County of Stanislaus and any amendments, restatements and replacements thereto enacted after the execution date of this Agreement, or other legal requirements that might affect

the collection or disposal of Refuse or provision of recycling services in the County. Franchisee acknowledges that said laws, ordinances, and regulations are intended to be minimum standards and that higher standards may be required under the Franchise.

9.7. Assignment: Franchisee must not assign this Agreement, or any interest herein, or any privilege or right granted herein, without the written consent of the Board of Supervisors of the County and then only to a person or persons approved by County on such terms and conditions as County may require. A consent to one assignment will not be deemed to be a consent to any subsequent assignment. Any assignment without such consent is void and may terminate this Agreement.

A. The term "assignment" includes, but is not limited to:

B. A sale, exchange or other transfer to a third party of substantially all of Franchisee's assets dedicated to service under this Agreement; or

C. The issuance of new stock to or the sale, exchange, or other transfer of thirty percent (30%) or more of the then outstanding common stock of Franchisee to a Person other than the shareholders owning said stock at the date of this Agreement.

9.8. Independent Franchisee: Franchisee will perform all work and services described herein as an independent Franchisee and not as an officer, agent, servant, or employee of County. Franchisee is solely responsible for the acts and omissions of its officers, agents, employees, Franchisees, and sub-Franchisees, if any. Nothing herein shall be considered as creating a partnership or joint venture between the County and Franchisee. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant, or employee of County, nor will any such person be entitled to any benefits available or granted to employees of the County.

9.9. Nondiscrimination: Franchisee shall comply with all applicable Federal, State, and local laws and regulations including Stanislaus County's policy concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Rehabilitation Act of 1973 (sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, and 1102. Franchisee shall not discriminate against any sub-Franchisee, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship,

hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Franchisee discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

9.10. Severability: Should any part of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that the remainder of the Agreement can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the parties.

9.11. Entire Agreement: This document embodies the entire Agreement between the parties with respect to the subject matter hereof. All prior negotiations, written agreements and oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Agreement.

9.12. Controlling Law: This Agreement is governed and construed in accordance with the laws of the State of California and proper venue for legal action regarding this Agreement is the County of Stanislaus.

9.13. Notice: Any notices required herein must be in writing and be given personally or by certified mail, return receipt requested, addressed to the respective parties as follows or to such other address as either party may from time to time designate in writing:

FRANCHISEE: TURLOCK SCAVENGER COMPANY
1020 S. Walnut Road
Turlock, CA 95381

COUNTY: Director of Environmental Resources & Parks and Recreation
3800 Cornucopia Way, Suite C
Modesto, CA 95358

and Solid Waste Division Manager
3800 Cornucopia Way, Suite C
Modesto, CA 95358

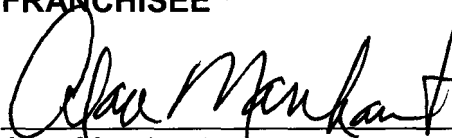
In WITNESS WHEREOF, the parties have executed this Agreement on the date and year first written above.

COUNTY OF STANISLAUS

FRANCHISEE



Richard W. Robinson
Chief Executive Officer



Alan Marchant
President

APPROVED AS TO CONTENT:
Dept. of Environmental Resources



Lee Marchant
Treasurer/Secretary

Sonya K. Harrigfeld, Director

APPROVED AS TO FORM:
JOHN P. DOERING
County Counsel

By: 

Thomas E. Boze
Deputy County Counsel

EXHIBIT A

CURBSIDE RECYCLING PROGRAM

The curbside Bulky-Item Collection Program is only available to residential can or cart customers living in the unincorporated areas of Stanislaus County that currently subscribe for weekly garbage collection. Recyclable materials generated by a home business or other commercial establishments are not eligible for residential curbside pickup. For multi-family recycling, refer to Section 2.3 (B).

Collection shall be weekly and on the same day as refuse collection. Customers may place items for collection in bags, boxes, or 5-gallon buckets; or, in the case of used motor oil and filters, placed alongside other containers. If, in the judgment of the Franchisee, the container is not strong enough to bear the weight of the contents and/or it has been saturated by moisture, the containers may be left not collected as long as the Franchisee attaches a Notice of Non-Collection (Section 4.5 B.) to the containers. There is no limit to the number of containers that may be placed for collection as long as the weight of any individual container does not exceed 25 lbs., and the items placed in those containers are listed below.

The County has the right to review the handling of curbside materials. Franchisee will not dispose of curbside recyclables in any landfill or transfer facility, or knowingly contract with a recycling facility which so disposes of recyclables, without the prior written consent of the County.

Materials to be Collected for Recycling:

Newspaper

Corrugated cardboard (broken down and bundled) 24" X 24" X 6" maximum

Mixed paper, including junk mail, paperboard, magazines, and envelopes

Grocery bags (brown kraft paper)

Phone books

Glass jars and bottles (all colors)

Aseptic containers (milk and juice cartons)

Plastic bottles, jars, tubs and containers, all types and colors (Plastics 1-7)

Aluminum, steel, and bi-metal cans

Used motor oil (1-gal. screw-top containers) Two gallon maximum per collection

Used oil filters (in plastic zip-lock bags)

Christmas Trees (seasonally)

EXHIBIT B

CURBSIDE BULKY-ITEM COLLECTION PROGRAM

The curbside Bulky-Item Collection Program is only available to residential can or cart customers living in the unincorporated areas of Stanislaus County that currently subscribe for weekly garbage collection.

Residential customers will contact your office to set up an appointment date for collection. Franchisee will collect the bulky-items on the designated date. Resident information and estimated weight of items collected will be compiled and forwarded to the Department of Environmental Resources (DER).

Procedures:

1. Verify that the residential customer is currently signed up for garbage service in your franchise area. A maximum of 2 collections per year is allowed.
2. Schedule a pickup date within two weeks of the request date.
3. Inform the customer what items are acceptable (see attached list).
4. Inform the customer of the size limitation for collection.

Approximately 6 ft high by 6 ft. long by 6ft wide.

5. Inform the customer when to put out bulky item for collection.

No earlier than 6 p.m. the evening prior to scheduled date.

6. Inform the customer where to place the items for collection.

In front of their homes at the edge of the nearest County/State maintained road.

7. Records and Reporting:

Record the name, address and community (if possible) for each collection, a brief description of the items collected, total tons collected, the estimated percent of collections diverted from disposal, and notations describing any incomplete or failed collections.

Franchisee is to compile and submit to the County the report described above on Monday of each week for the previous week's activity. Fax or e-mail to Bryan Kumimoto at 525-6774 or bkumimoto@envres.org.

Curbside Bulky Item Collection Program

Acceptable Items	
Items	Notes
Refrigerators, Freezers, Ovens, Microwaves, Dishwashers, Washers and Dryers.	For safety reasons, remove refrigerator and freezer doors (anything large enough that a child could enter).
Water heaters, Water softeners, Sinks, Toilets and Bathtubs	No glass shower door enclosures.
Air Conditioners, Heaters	Do <u>not</u> drain freon or coolant.
Mattresses, Box springs, Desks, Couches, Sofas, Tables, Chairs and Dressers	No glass tables.
Carpets and Rugs	Carpeting must be rolled up.
Exercise equipment, Bicycles and Large toys	
Doors, Ladders, Patio furniture, Lawnmowers, Hot tubs and BBQ's	No glass doors or tables. Gas, oil, and/or propane must be removed from equipment or BBQ's.

Unacceptable Items	
Items	Notes
<u>NO</u> Tires, auto parts, batteries, household garbage/commercial waste.	Take to transfer station or landfill.
<u>NO</u> computers, monitors, laptops, televisions, electronic waste, fluorescent light tubes, glass or hazardous wastes, chemicals, liquids, paints or solvents	Take to the Household Hazardous Waste Collection Facility, 1716 Morgan Road, Modesto, 525-4123. Open Fridays and Saturdays, 9:00 a.m. to 1:00 p.m., except holidays.
<u>NO</u> construction debris, demolition debris, concrete, bricks, rocks, ceramic roof tiles, asphalt, sheetrock, fencing, wood, garden refuse, tree stumps, sod, dirt, glass, mirrors, dead animals	Take to a transfer station or landfill. Concrete can be taken to a concrete recycler.

EXHIBIT C

STANISLAUS COUNTY

FRANCHISE MAXIMUM REFUSE COLLECTION RATES

Effective Until June 30, 2012

FRANCHISE AREA # 3 - Turlock Scavenger

Residential Can Rate (per month)		
1 Can	2 Cans	Additional Can
\$12.12	\$18.65	\$8.61

Commercial Can/Cart Rates (per month)
Commercial can/cart customers are to be charged same rate as residential accounts.

Residential Cart Rate (per month)		
60 gal. Cart	90 gal. Cart	Additional 90 gal. Cart
\$12.12	\$18.65	\$12.12

Commercial Bin Rates (per month)					
Collections Per Week	Bin Size / Cubic Yards				
	1	2	3	4	6
1	\$46.45	\$59.55	\$67.07	\$73.65	\$79.42
2	\$92.89	\$119.06	\$134.10	\$147.31	\$158.84
3	\$139.33	\$178.60	\$201.16	\$220.95	\$238.25
4	\$185.76	\$238.13	\$268.20	\$294.37	\$317.65
5	\$232.21	\$297.67	\$335.29	\$368.25	\$397.07
6	\$278.66	\$357.20	\$402.33	\$441.90	\$476.48
7	\$325.10	\$416.73	\$469.39	\$515.55	\$555.91

Note: 1 cubic yard bins subject to availability.

Drop Box Haul Rate (per haul)
\$176.42 plus disposal cost*.

Rates above, as approved by the Board of Supervisors, are the maximum allowable charges.

EXHIBIT C

STANISLAUS COUNTY

FRANCHISE MAXIMUM REFUSE COLLECTION RATES

Effective Until June 30, 2012

FRANCHISE AREA # 3 - Turlock Scavenger

Special Services-Cans or Carts

Go-back or extra; same scheduled collection day	\$10.00	
Go-back or extra; not scheduled collection day	\$15.00	
Gate rate	\$2.70	
Walk-in, base rate	\$1.25	
Walk-in, cents per foot	\$0.02	
Drive-in rate		Negotiable with Generator
Clean / exchange cart	\$25.00	
Replace cart; unrepairable	\$75.00	

Special Services-Commercial Bins & Residential "Specials"

Go-back charge	\$25.00	
Extra collection	\$14.42	plus \$2.76 per yrd.
Clean / exchange container	\$35.00	
Installation / maintenance of locking bar	\$3.00	per month
Lock replacement (other than normal wear)	\$10.00	
Charge for tires in container	\$4.00	each plus current landfill charges

Residential "Specials" 7 day rental charges:

3 yrd. bin	\$66.00	drop & return only
4 yrd. bin	\$72.00	drop & return only
6 yrd. bin	\$78.00	drop & return only

Special Services-Drop Boxes

Charge per mile	\$2.50	per mile, one-way over ten miles from office
Rental charge / per day	\$3.00	per day; maximum charge is \$78.00 in a thirty day period
Steam clean / exchange drop box	\$75.00	maximum charge
Charge for tires in drop box	\$4.00	each plus current landfill charges

*Disposal Cost:

Option A: Actual disposal fee, plus \$15.98 per/ton for transfer, plus 8%** of the total.

or

Option B: Actual disposal fee, plus \$0.47 per mile from site, plus 8%** of the total.

** Franchise fees

Commercial Compactor Rates
Negotiable with Generator

Rates above, as approved by the Board of Supervisors, are the maximum allowable charges.

EXHIBIT D

COLLECTION AREA NO. 3 DESCRIPTION AND MAP

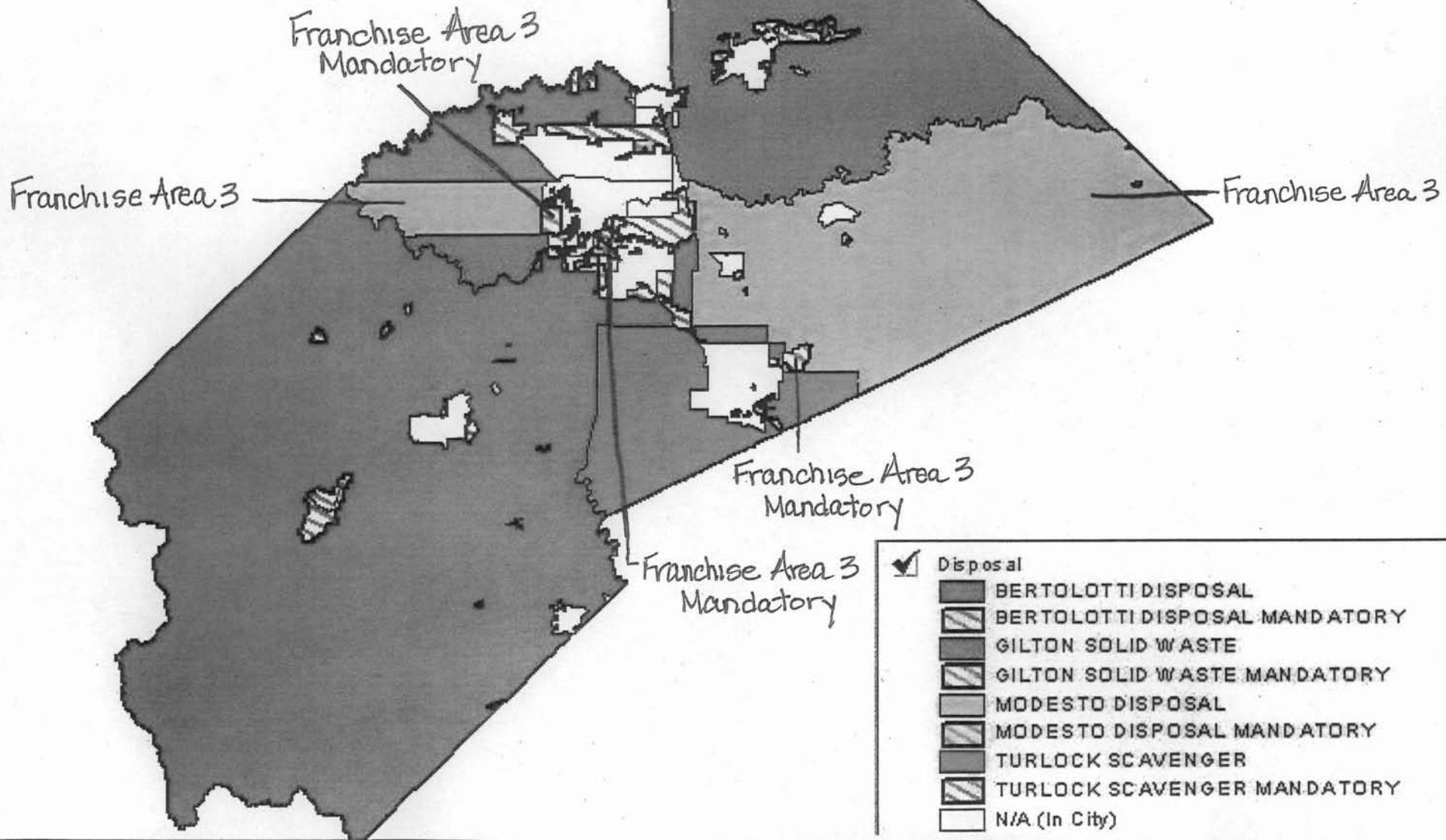
FRANCHISE AREA DESCRIPTION:

1. BEGINNING at the intersection of the centerlines of Claus Road and Briggsmore Avenue in section 19, T. 3 S. – R. 10 E., M.D.M.; thence South on the centerline of Claus Road to the centerline of Dry Creek; thence Westerly and downstream on said centerline to the northerly extension of the centerline of Conejo Avenue; thence South on said northerly extension and the centerline of Conejo Avenue to the centerline of Yosemite Boulevard; thence West on said centerline to the east quarter-quarter line of section 33, T. 3 S. – R. 9 E., M.D.M.; thence South on said east quarter-quarter line to the Tuolumne River; thence Easterly and upstream on said river to the centerline of Mitchell Road; thence South on said centerline to the centerline of Hatch Road; thence West on said centerline to the centerline of the Southern Pacific Railroad right-of-way thence Northwesterly on said centerline right-of-way to the Tuolumne River; thence Southwesterly on said river to the southerly extension of the centerline of Sutter Avenue; thence North on said extension and the centerline of Sutter Avenue to the centerline of Western Way; thence westerly on said centerline and the centerline of Chicago Avenue to the easterly extension of the centerline of California Avenue; thence West on said extension and the centerline of California Avenue and its westerly extension to the San Joaquin River; thence Northwesterly and downstream on said river to its junction with the Stanislaus River; thence Northeasterly and upstream on said river to the westerly extension of the centerline of Shoemake Avenue; thence East on said extension and the centerline of Shoemake Avenue; and its easterly extension, to the centerline of Briggsmore Avenue; thence North, Northeasterly and Easterly on said centerline to the point of beginning.

2. BEGINNING at the intersection of the centerline of Hall Road and the Southeasterly boundary line of Stanislaus County, said point being on the section line between sections 14 and 15, T. 5 S. – R. 11 E; M.D.M.; thence North on the centerline of Hall Road to the easterly extension of Tuolumne Road; thence West on said extensions and the centerline of Tuolumne Road to the centerline of Waring Road; thence North on said centerline to the easterly extension of the centerline of Taylor Road; thence West on said extension and centerline of Taylor Road, to the centerline of Berkeley Avenue; thence North on said centerline to the centerline of Keyes Road; thence West on said centerline to the centerline of Nunes Road; thence West on said centerline of Washington Road; thence North on said centerline to the centerline of Whitmore Avenue; thence East on said centerline to the centerline of Clinton Road; thence North on said centerline and its northerly extension to the centerline of Santa Fe Avenue; thence Northwesterly on said centerline to the Tuolumne River; thence Westerly and downstream on said river to the east quarter-quarter line in Section 6, T. 4 S.

– R. 10 E., M.D.M.; thence North on said quarter-quarter line through said section 6 and through section 31 and 30, T. 3 S. – R. 10 E. M.D.M.; to the centerline of the A.T. And S.F. Railroad; thence Northwesterly on said centerline to the centerline of Dry Creek; thence Northeasterly and upstream on said centerline to the northeastern boundary line of Stanislaus County; thence Southeasterly on said boundary line to the most easterly point of Stanislaus County; thence Southwesterly on the southeastern boundary line of Stanislaus County to the point of beginning.

EXHIBIT D



Contract Award for Franchise Refuse Collection Area #3

Sonya K. Harrigfeld, Director

Jami Aggers, Assistant Director

Department of Environmental Resources

August 11, 2009

The Process

- November 25, 2008: Board directed staff to prepare an RFP for Area 3
- That Agreement, currently with WMI, expires on November 5, 2009
- Area 3 consists of portions of west Modesto and areas east of Modesto and south of Dry Creek

The Process (cont'd.)

- The Board approved the issuance of an RFP on February 10, 2009 (posted 2/13/09)
- Mandatory pre-proposal meeting was held March 16, 2009
- All four local franchise companies attended
- Proposals were due on April 29, 2009
- GSA advised that two proposals were received: Gilton Solid Waste and Turlock Scavenger Company

The Process (cont'd.)

- (1) In addition to commercial and drop box service, we asked for proposals of Base Residential Service,
- (2) Alternate Service, and
- (3) Any Optional Service they felt might suit the needs of the County.

The Process (cont'd.)

- GSA advised that both proposals were complete, and Turlock Scavenger included an Optional proposal as well
- GSA evaluated the pricing and advised that Turlock Scavenger's proposal presented the lowest cost option for both the Base and Alternative Service

The Process (cont'd.)

- On May 12, 2009, DER staff, including our contract specialist and the PW Director from the City of Patterson, conducted the technical evaluation of the proposals
- On the basis of the combined pricing and technical proposal scores, GSA recommended a contract to Turlock Scavenger
- Notice of Intent to Award issued 6/16/09

The Proposal

- Proposers were asked to bid a fixed rate for the initial 31.8 months of the contract
- The odd number of months corresponds to desiring a fixed price up front + synchronizing this time frame with our regular, annual rate review process

The Proposal (cont'd.)

- **Base Residential Service:** Nearly identical to current service (1-90 gallon refuse container + curbside recycling + twice/year bulky item pick-up. New addition: Used oil filters
- **Alternate Service:** 3 automated containers (1- refuse, 1 –green, 1- recycling, latter 2 collected bi-weekly)

The Proposal (cont'd.)

- The Optional Proposal was as follows: 2 – automated containers, 1 for “wet” (green) waste and 1 for “dry” waste (everything else)
- Both collected weekly, but both going directly to facilities for sorting
- Diversion rates as high as 75-85%

The Proposal (cont'd.)

Base Service	\$4,059,367
Alternate Service	\$5,083,772
Optional Service	\$4,407,224
Commercial Bin Service	\$1,768,617
Drop-box Haul Charges	\$1,063,152

The Proposal (cont'd.)

Base Residential Service	Approx. 10% rate decrease
Alternate Residential Service	Percent not calculated because of the high cost of service
Optional Residential Service	Approx. 8% rate increase

The Proposal (cont'd.)

Current Rate	Proposed Rate
90-gal Residential Service: \$20.92/month	\$18.65/month
2-yd Bin collected once/week: \$67.40	\$59.55/month
Drop Box Haul Charge: \$261.25 (average)	Single haul charge rate = \$176.42

Staff Recommendation for Service Type

- Approve the Base Residential Service, because of its lower cost
- Commercial Bin Service and Drop Box Haul charges would also be lower (approximately 11% and 30% respectively) with Drop Box Haul charges being a single haul charge rate vs. a 3-tiered structure

The Contract

- Staff from CEO, County Counsel and DER developed a new, draft Franchise Agreement, included in RFP package
- Fixed term of 7 years with optional 3-year extension
- More comprehensive
- Signed by Turlock Scavenger w/o exceptions, pending the Board's decision

Other Considerations

- The RFP required proposers to identify charges for special services
- Turlock Scavenger proposed the same amounts being charged currently with 1 exception: Tires in bins - \$4 vs. \$3
- This charge was built into the projected rates and could be adopted following the Public Hearing

Other Considerations (cont'd.)

- One area of rates the Board has not historically set, has been 5-7 day bin rentals
- Staff proposed to change this practice by including it in the RFP package
- Charges for these services was also included in the proposal and could be adopted following a Public Hearing

Other Considerations (cont'd.)

- Because the contract end date is Nov. 5, a partial month, staff approached WMI about voluntarily terminating after Oct. 31 to streamline billing and minimize confusion for customers
- WMI conceptually agreed and staff is working out the details with both companies
- If successful, Turlock Scavenger would begin collections November 1, 2009

Summary of Recommendations

- Award the contract for Area #3 to Turlock Scavenger Company
- Authorize the Chief Executive Officer to execute the contract
- Approve the Base Service as the selected refuse collection system for the residential sector

Summary of Recommendations (cont'd.)

- Approve incorporating the 5-7 day bin rental “specials” into the annual rate setting process
- Approve the concept of WMI voluntarily terminating their contract after 10/31/09 vs. 11/5/09

Summary of Recommendations (cont'd.)

- Adopting the rates must be done following a Public Hearing
- If Board adopts these recommendations, staff will return during the Sept-October time frame to request setting and holding a Public Hearing

Questions?