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**NON-EXCLUSIVE  
FRANCHISE AGREEMENT**

**between**

**the County of Orange, California**

**and**

**Robert's Waste & Recycling**

**County of Orange  
OC Waste & Recycling  
July 1, 2021**

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This Non-exclusive Franchise Agreement for Temporary Discarded Material Collection (this “Franchise”) is entered into on the 1<sup>st</sup> day of July, 2021, between the County of Orange, a political subdivision of the State of California (hereinafter “County”), and Robert’s Waste & Recycling, (hereinafter “Franchisee”) (together, the “Parties”).

## RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (“AB 939”) established a solid waste management process which requires cities and other local jurisdictions to implement source reduction, reuse and recycling as integrated waste management practices; and

WHEREAS, AB 939 authorizes and requires local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

WHEREAS, Section 40059 of the California Public Resources Code provides that the County may determine aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees and nature, location and extent of providing solid waste handling services and whether the services are to be provided by means of partially exclusive or wholly exclusive franchise, contract, license, permit or otherwise, either with or without competitive bidding; and

WHEREAS, the County is obligated to protect the public health and safety of the residents of the County Unincorporated Areas and arrangements by waste haulers for the collection of Discarded Materials should be made in a manner consistent with the protection of public health and safety; and

WHEREAS, the Short-Lived Climate Pollutants Bill of 2016, (SB 1383) establishes, regulatory requirements for jurisdictions, Generators, haulers, Solid Waste facilities, and other entities to support achievement of State-wide Organic Waste Disposal reduction targets; and

WHEREAS, SB 1383 Regulations require jurisdictions to implement Collection programs, meet Processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, the County has chosen to delegate some of its responsibilities to the Franchisee, acting as the County’s designee, through this agreement; and

WHEREAS, the County and the Franchisee are mindful of the provisions of the laws governing the safe Collection, Transport, Recycling and Disposal of Solid Waste, including, without limitation, AB 341, AB 939, AB 1826, AB 1594, SB 1383 and the Resource Conservation and Recovery Act (“RCRA”) 42 U.S.C. 9601 *et seq.*; and

WHEREAS, the Franchisee represents and warrants to the County that it has the experience, responsibility, and qualifications to conduct the services detailed herein, and to arrange with residents and other entities in the County Unincorporated Areas for the collection, safe transport and disposal of Temporary Wastes; and

WHEREAS, the Board of Supervisors of the County of Orange determines and finds that the public interest, health, safety and well-being would be served if the Franchisee performs

collection services of Temporary Waste; and

WHEREAS, in accordance with Section 40059 of the State Public Resources Code, the Board of Supervisors is empowered to enter into agreements with any person or corporation and to prescribe the terms and conditions of such agreements; and

WHEREAS, the Board of Supervisors authorized the execution of this Agreement.

Now, therefore, the County and Franchisee agree as follows:

## DEFINITIONS

**“AB 341”** means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as “AB 341”, as it may be amended, supplemented, superseded, or replaced from time to time.

**“AB 876”** means the Assembly Bill approved by the Governor of the State of California on October 8, 2015, which added Section 41821.4 to the Public Resources Code, relating to Solid Waste as amended, supplemented, superseded, or replaced from time to time.

**“AB 901”** means the Assembly Bill approved by the Governor of the State of California on October 10, 2015, which amended Section 41821.5 of, amended, renumbered and added Section 41821.6 of, and added Sections 41821.7 and 4.821.8 to, the Public Resources Code, relating to Solid Waste as amended, supplemented, superseded, or replaced from time to time.

**“AB 939”** or the **“Act”** means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), also commonly referred to as “AB 939,” as amended, supplemented, superseded, or replaced from time to time.

**“AB 1594”** means the Assembly Bill approved by the Governor of the State of California on September 28, 2014, which amended Section 40507 and 41781 of the Public Resources Code, relating to Solid Waste as amended, supplemented, superseded, or replaced from time to time.

**“AB 1826”** means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as “AB 1826”, as amended, supplemented, superseded, or replaced from time to time.

**“Affiliate”** means any person, corporation or other entity directly or indirectly controlling or controlled by another person, corporation or other entity, or under direct or indirect common management or control with such person, corporation or other entity. As between any two or more persons or entities, when 10% of one is owned, managed, or controlled by another, they are hereunder Affiliates of one another.

**“Agreement”** means this Nonexclusive Franchise Agreement for Temporary Solid Waste Collection.

**“Annual Fee”** means Franchisee’s share of the annual costs of franchise administration incurred or projected to be incurred by the County.

**“Applicable Law”** means AB 341, AB 876 AB 901, AB 939, AB 1594, AB 1826, and SB 1383, and corresponding regulations, the Orange County Code, CERCLA, RCRA, CEQA, the Occupational Safety and Health Act, 29 U.S.C. §.651 et seq.; The California Occupational Safety and Health Act of 1973, any Legal Entitlement and any federal or state rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the siting, design, permitting, acquisition, construction, equipping,

financing, ownership, possession, operation or maintenance of the County Disposal System, the transfer, handling, transportation, Processing, and Disposal of Acceptable Waste, Unacceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, mitigation monitoring plans and building codes) and any law, rule, regulation, requirement, guideline, permit, action, determination, or order of any Governmental Body having jurisdiction, applicable from time to time to the Franchise Services; the Operating Assets; the siting, design, acquisition, permitting, construction, equipping, financing, ownership, possession, shakedown, testing, operation, or maintenance of any of the Operating Assets; or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, governmental protection, accommodation of the disabled, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages, and further including the Orange County Code and the County Integrated Waste Management Plan).

**“Bin”** means a container or bin having a capacity of one (1) or more cubic yards.

**“Board of Supervisors”** means the Board of Supervisors of the County of Orange.

**“Bulky Items”** or **“Bulky Waste”** means Discarded Materials that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); yard debris, Greenwaste and small pieces of wood limited to one cubic yard of contained material; electronic equipment (including stereos, televisions, computers and monitors, VCRs, microwaves and other similar items commonly known as “brown goods” and “e-waste”); fluorescent bulbs, household batteries; and clothing. Bulky Items do not include car bodies, tires, Construction and Demolition Debris or items requiring more than two persons to remove. Other items not specifically included or excluded above will be collected provided that they are not more than eight feet in length, four feet in width, or more than 150 pounds. In the event that a question ever arises as to whether a specific item or category of items meets the definition of Bulky Items, County shall be responsible to determine whether said definition shall apply, which determination shall be final.

**“California Code of Regulations”** or **“CCR”** means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR, Division 7, Chapter 12” refers to Title 14, Division 7, Chapter 12 of the California Code of Regulations.)

**“CalRecycle”** means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board or CIWMB, as well as any successor agency to CalRecycle.

**“Cart”** means a plastic Container with a hinged lid and wheels with a capacity of no less than 30 and no greater than 101 gallons, serviced by an automated or semi-automated truck.

**“CEQA”** means the California Environmental Quality Act, codified at California Public Resources Code Section 21000 *et seq.*, as amended or superseded, and the regulations promulgated thereunder.

**“Change in Law”** means any of the following events or conditions which has a material and adverse effect on the performance by the Franchisee of the Franchise Services (except for payment obligations):

- (1) The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation thereof on or after the Franchise Date of any Applicable Law, including but not limited to new or increased fees and charges imposed by the State of California, the U.S. Federal government, or a local government related to the collection, handling, transportation, processing, recycling or disposal of Solid Waste;
- (2) The order or judgment of any Governmental Body, on or after the Franchise 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.

**“Collect” or “Collection”** means the act of taking physical possession of Discarded Materials at Single-Family, Multi-Family, or Commercial Premises within the County, and Transporting the Discarded Materials to an Approved or Designated Facility for Processing, Transfer, or Disposal.

**“Construction and Demolition Debris” or “C&D Debris”** means County Discarded Materials generated, produced, or discarded in connection with construction, demolition, landscaping, or general clean-up activities within the Franchise Areas, including (without limitation) concrete, plaster, drywall, greenwaste, wood scraps, metals, dirt, rock and rubble.

**“Container”** means any temporary bin or Container used by a Generator in connection with the Franchise Services.

**“Contract Administrator”** has the meaning set forth in Section 4.1(J).

**“County”** means the County of Orange, California, a political subdivision of the State of California and all the unincorporated area within the boundaries of the County as presently existing, or as such unincorporated area may be modified during the Term of this Agreement.

**“County Code” or “OCCO”** means the Orange County Codified Ordinances, as the same may be amended, supplemented, or modified from time to time.

**“County Disposal System”** means the Orange County Waste Disposal System which, at the time of execution of this Franchise Agreement, includes solid waste disposal operations at three active landfills (Olinda Alpha, Frank R. Bowerman and Prima Deshecha); four regional Household Hazardous Waste Collection Centers; as well as services, such as monitoring and other activities, at closed former solid waste stations formerly operated by the County, as appropriate under Applicable Law. Individual elements of the County Disposal System may be expanded or reduced over the course of this Franchise Agreement.

**“Customer”** means the Person or Persons initiating construction, remodeling, repair or demolition operations on any house, residential property, commercial building, pavement or other structure who has arranged for Collection services under this Agreement. The definition of Customer also includes any agent, contractor, or other Persons working on Customer’s behalf.

**“Director”** means the Director of OC Waste & Recycling, or designated representative, or any employee of the County who succeeds to the duties and responsibilities of the Director.

**“Discarded Materials”** means Bulky Items, Source Separated Recyclable Materials, Source Separated Organic Waste, Food Waste, Gray Container Waste, and Mixed Waste that have been discarded by Generator or Customer. For the purposes of this Agreement, Discarded Materials shall only include the Discarded Materials placed by Generator or Customer for the purpose of Collection by Collector.

**“Disposal” or “Dispose”** means the ultimate disposition of Solid Waste collected by Franchisee or residue from Franchisee’s Processing activities at a permitted Landfill or other permitted Solid Waste Facility.

**“Divert” or “Diversion”** means to prevent Recyclables and Organic Waste from Disposal at landfill through Source Reduction, Reuse, Recycling, composting, and anaerobic digestion, as provided in Section 41780-41786 of AB 939, as AB 939 may be hereafter amended or superseded.

**“Excluded Waste”** means Hazardous Substance, Hazardous Waste, infectious waste, , volatile, corrosive, Medical Waste, regulated radioactive waste, and toxic substances or material that Approved/Designated Facility operator(s) reasonably believe would, as a result of or upon acceptance, Transfer, Processing, or Disposal, would be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills or accepted at the Facility by permit conditions, waste that in Franchisee’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Franchisee or County to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe Collection, Processing, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public resources Code.

**“Facility”** means any plant or site, owned or leased and maintained, operated or used by Franchisee for purposes of performing under this Agreement.

**“Franchise Area”** consists of all County Unincorporated Areas.

**“Franchisee”** refers to any entity that enters into this Agreement for temporary collection services granted by the County.

**“Franchise Date”** means date of approval of this between the County and the Franchisee.

**“Franchise Services”** are all of the duties and obligations of the Franchisee hereunder.

**“Generator”** means any Person whose act first causes Discarded Materials to become subject to regulations under Orange County Code of Ordinances Title 4 Division 3 Article 2 or under federal, State or local regulations, or other Applicable Law.

**“Hazardous Waste”** means (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do any of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos, under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in Title 40 of the Code of Federal Regulations (CFR) Parts 260-281; (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 *et seq.*) and the regulations contained in 40 CFR Parts 761-766; (3) the California Health and Safety Code, Section 25117 (West 1992 & Supp. 1996); (4) the California Public Resources Code, Section 40141 (West 1996); and (5) future additional or substitute Applicable Law pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; or (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 *et seq.*) and the regulations contained in Title 10 CFR Part 40.

**“Insurance Requirement”** means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or any body having similar functions or by any insurance company which has issued a policy with respect to the Operating Assets or the Franchise Services.

**“Landfill”** means a “Solid Waste Landfill” defined by Public Resources Code Section 40195.1.

**“Legal Proceeding”** means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

**“Organic Waste”** means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, yard trimmings, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

**“Process”, “Processed” or “Processing”** means the controlled separation, recovery, volume reduction, conversion, or Recycling of Solid Waste, Source Separated Recyclable Materials, and Source Separated Organic Waste, including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20).

**“Processing Facility”** means any facility, including, but not limited to a Materials Recovery Facility (MRF), that removes Recyclable Materials from County Discarded Materials prior to the delivery of County Acceptable Solid Waste to the County Disposal System.

**“Recyclable Materials”** means paper, plastic, glass, metals or other materials having economic



value contained within Discarded Materials or Source-Separated Recyclable Materials and may also include any other type of recyclable waste material agreed on by the Parties.

**“Recycle”, “Recycled”, or “Recycling”** means the process of collecting, sorting, cleansing, treating, reconstituting, or otherwise processing materials that are or would be disposed of in the Disposal System and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

**“Reuse”** or any variation thereof, means the use, in the same, or similar, form as it was produced, of a material which might otherwise be discarded, or as otherwise defined in 14 CCR Section 17402.5(b)(2).

**“SB 1383”** means Senate Bill 1383, the Short-Lived Climate Pollutants Act of 2016 (Chapter 395, Statutes of 2016), which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emission of short-lived climate pollutants as it may be amended, supplemented, superseded, or replaced from time to time.

**“SB 1383 Regulations”** or **“SB 1383 Regulatory”** refers to the Short-Live Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted in 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of Regulations of 14 CCR and 27 CCR.

**“Solid Waste”** means all garbage, solid waste, rubbish, and other materials and substances discarded or rejected as being spent, useless, worthless, or in excess to the Generator thereof at the time of such discard or rejection and which are normally Discarded by or Collected from Residential (Single-Family and Multi-Family), Commercial, industrial, governmental, and institutional establishments, which are acceptable at Class III landfills under Applicable Law, and which are originally discarded by the first Generator thereof and have not been previously processed. Materials shall be deemed “Solid Waste” consistent with the meaning of California Public Resources Code Section 40191, and for purposes of this Agreement shall be regulated as such. Solid Waste includes Organic Waste and Recyclable Materials when they are not source separated, but does not include Source-Separated Organics Waste, Source-Separated Recyclable Materials, Hazardous Waste, Medical Waste, Liquid Waste, Scrap Materials, Construction and Demolition Debris, or Self-Hauled Waste.

**“Solid Waste Ordinance”** means the Orange County codified ordinances, Section 4, Division 3, Article 2 as it exists or may be amended from time to time.

**“State”** means the State of California.

**“Subcontractor”** means every person (other than employees of the Franchisee) employed or engaged by the Franchisee or any person directly or indirectly in privity with the Franchisee (including every Subcontractor of whatever tier) for any portion of the Franchise Services, whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise.

**“Temporary Drop-off Box”** means a Container rented by a customer for a temporary period or for a specific project such as yard clean up, remodeling or construction.

**“Temporary Waste”** means County Solid Waste and/or Construction Demolition Debris collected from a Generator for a temporary period or for a specific project such as yard clean-up, remodeling, or construction, and shall not include Discarded Materials collected as part of on-going Discarded Materials collection services.

**“Vehicle”** means any truck, or other Vehicle used by the Franchisee in connection with the Franchise Services.

**“Waste Disposal Agreement”** means an agreement between the County and certain haulers and some or all of the cities within the County regarding the delivery of Solid Waste to the County disposal system.

## **SECTION 1**

### **REPRESENTATIONS AND WARRANTIES**

The Franchisee, by acceptance of this Franchise Agreement, represents and warrants that:

- A. Existence and Powers.** The Franchisee is duly organized and validly existing as a corporation under the laws of the State of California, with full legal right, power, and authority to enter into and perform its obligations under this Franchise Agreement.
- B. Due Authorization and Binding Obligation.** The Franchisee has duly authorized the execution and delivery of this Franchise Agreement. This Franchise Agreement has been duly executed and delivered by the Franchisee and constitutes the legal, valid, and binding obligation of the Franchisee, enforceable against the Franchisee in accordance with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium, and other laws affecting creditors' rights generally.
- C. No Conflict.** Neither the execution, nor the performance by the Franchisee of its obligations under this Franchise Agreement (1) conflicts with, violates, or results in a breach of any law or governmental regulations applicable to the Franchisee; or (2) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, franchise, agreement (including without limitation the certificate of incorporation of the Franchisee), or instrument to which the Franchisee or any Affiliate is a Party or by which the Franchisee or any Affiliate or any of their properties or assets are bound, or constitutes a default under any such judgment, decree, agreement, or instrument.
- D. No Litigation.** There is no action, suit, or other proceeding as of the Franchise Date, at law or in equity, before or by any court or governmental authority, pending, or to the Franchisee's best knowledge, threatened against the Franchisee which is likely to result in an unfavorable decision, ruling, or finding which would materially and adversely affect the validity or enforceability of this Franchise or any such agreement or instrument entered into by the Franchisee in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the Franchisee of its obligations hereunder or by the

Franchisee under any such other agreement or instrument.

E. No Legal Prohibition. The Franchisee has no knowledge of any law, regulation or ruling from any jurisdiction in effect on the Franchise Date which would prohibit the performance by the Franchisee of this Franchise Agreement and the transactions contemplated hereby.

F. Information Supplied by the Franchisee. The information supplied by the Franchisee in all submittals made in connection with negotiation and award of this Franchise is correct and complete in all material respects.

## **SECTION 2**

### **SCOPE OF SERVICES**

A. The franchise granted in this Agreement shall be non-exclusive. No provision of this Agreement shall be deemed to require or allow the number of franchises to be restricted to one or to any particular number.

B. Services under the Agreement shall be limited to collection, processing, and disposal of Temporary Waste. All Temporary Waste handled under the Agreement shall be collected in Containers and/or Temporary Drop-off Boxes. Temporary services under the Agreement may be generated from single-family, multi-family, commercial or industrial sites in the County Unincorporated Area.

C. Franchisee may perform Franchise Services in the Franchise Area.

D. Franchisees shall comply with all of the requirements of the Solid Waste Ordinance.

E. Franchisee shall not perform County Discarded Material Management services that encroach on rights granted under any County Exclusive Franchise Agreement.

## **SECTION 3**

### **APPLICATION FOR FRANCHISE**

A. The Franchisee shall pay an application fee of one thousand dollars (\$1,000).

B. County shall use the Application Fee to offset expenses.

C. The Franchisee shall pay the Application Fee to:

COUNTY OF ORANGE/OC Waste & Recycling  
Attention: Contract Administrator  
601 N. Ross Street, 5<sup>th</sup> Floor  
Santa Ana, California 92701

D. The application fee shall be paid to the County within thirty (30) days of the Franchise Date.

## **SECTION 4**

### **TERM**

- A. The term of the Agreement shall be for one year, from July 1, 2021 to June 30, 2022.
- B. This Agreement will automatically renew for an additional one year if not terminated by either party at least 90 days prior to the contract end date.
- C. This Agreement can be renewed annually until June 30, 2031.
- D. Nothing in this Agreement shall require the County to extend the term.

## **SECTION 5**

### **RATES FOR SERVICES**

- A. The Franchisee agrees to provide County with a copy of its rate structure for services on an annual basis and upon request.
- B. Rates for services may be established by the Franchisee.
- C. The County shall have the authority but not the obligation to review and set maximum rates. If County exercises this authority, the Board of Supervisors will set the maximum rates.

## **SECTION 6**

### **RECOVERY OF ADMINISTRATIVE COSTS**

- A. All costs incurred by the County associated with administering this Agreement shall be recoverable.
- B. During the term of the Agreement, the Franchisee agrees to pay an Annual Fee. The Annual Fee shall be equal to five-hundred dollars (\$500)
- C. County shall use the Annual Fee to offset expenses including staffing costs related to contract management, compliance, and monitoring, and to enforce the Agreement with respect to any violations by third parties, including imitating and/or assisting in prosecuting enforcement actions.

The Franchisee shall pay the Annual Fee to:  
COUNTY OF ORANGE/OC Waste & Recycling  
Attention: Contract Administrator  
601 N. Ross Street, 5<sup>th</sup> Floor  
Santa Ana, California 92701

- D. The Annual Fee shall be due and payable on the thirtieth (30<sup>th</sup>) calendar day following the Contract end date. If the Annual Fee is not paid when due, Franchisee shall pay an additional late payment fee in an amount equal to fifty dollars (\$50) per month that the invoice is overdue.

E. If the Annual Fee payment is over 90 days in arrears, the Director may authorize payment of Annual Fee plus a late payment fee to be paid from the money deposited pursuant to Section 7.E.

## **SECTION 7**

### **OPERATING PROCEDURES**

- A. The Franchisee agrees to maintain an office location, which fully complies with Section 4-3-87 of the County Code of Ordinances.
- B. The Franchisee agrees to maintain an active toll-free telephone or local telephone number.
- C. The Franchisee agrees to maintain during office hours, a complaint response service and a messaging system satisfactory to the Director. All service complaints and billing complaints will be directed to the Franchisee. Copies of all complaints shall be given to the Director upon request. The Franchisee shall record all complaints in a log, including date, complaint name and address, and nature and resolution of complaint. This log shall be available for inspection by the Director upon request.
- D. The Franchisee shall respond to service complaints within 24 hours. The Franchisee shall use reasonable best efforts to remedy complaints in a timely fashion, but in no case longer than seven (7) calendar days from receipt of any complaint.
- E. The Franchisee agrees to provide the County a deposit or other form of security acceptable to the County, in the sum of three thousand dollars (\$3,000.00) to ensure compliance with the duties and obligations imposed by the provisions of this Agreement and the Solid Waste Ordinance. Franchisee shall make the security deposit within thirty (30) days from the Franchise Date.
- F. Franchisee shall include as a condition to its contractual agreement with its Customers a provision prohibiting disposal of Hazardous Waste in any of Franchisee's Vehicles, Containers or Temporary Drop-off Boxes, and other equipment.
- G. Franchisee shall implement a load check program that includes, at a minimum, a visual check of all Containers to be emptied to protect against inclusion of Hazardous Waste. Franchisee shall prepare a written record of all Hazardous Waste discovered during load checks. The records shall comply with all Applicable Law, shall be maintained for the length of the term of the Franchise, and shall be made available to the County upon request.
- H. Franchisee shall Reuse, Recycle or Divert from landfill disposal 65% of all Discarded Materials collected pursuant to this Agreement. Solid Waste Collected shall only be considered to have been recycled or diverted as required under this Agreement if it is deemed to be diversion by CalRecycle in connection with efforts to meet County's AB 939 diversion goals.

Diversion from other sources other than Franchisee's collection and diversion efforts (such as source reduction, reuse, or recyclables diverted by solid waste enterprises, collection of materials

that are not the subject of this Agreement, or the efforts of self-haulers) shall not be counted as diversion achieved by Franchisee.

Failure to achieve the required 65% diversion may result in termination of the Non-exclusive franchise agreement.

**I.** The Franchisee shall process all Collected Materials at a Processing Facility prior to landfilling. Franchisee shall deliver 100% of all Discarded Materials collected to an Orange County Processing Facility for processing in order to recover Recyclable Materials. All residual waste shall be delivered to County Disposal System landfills. Franchisee shall report (1) the total tonnage of collected (2) the tonnage sent for processing, and (3) the tonnage of Recyclable Materials recovered as a result of such processing in its annual reports to the County.

**J.** Except as expressly authorized by the Director or County Contract manager, Franchisee shall not Collect or deliver Containers between 7:00p.m. and 7:00a.m. on weekdays, and between 6:00p.m. and 10:00a.m. on weekends. Failure to comply with the Collection hours the Franchisee shall pay County Liquidated Damages as described in Section 17.

**K.** Flow Control Covenant. The Franchisee hereby waives any right which it may possess under Applicable Law to contest on any ground, constitutional, statutory, case law, administrative or otherwise,

(a) the right, power, or authority of the County to engage in the practice of legal Solid Waste "flow control," or (b) the right, power, or authority of the County to deliver or cause the delivery of all Solid Waste collected within the Franchise Area to the County Disposal System in accordance with this Agreement and the "flow control" covenant.

**L.** Waste Flow Enforcement. (1) The Franchisee shall cooperate with any waste flow enforcement program implemented by the County in order to assure the delivery of all Solid Waste to the Disposal System pursuant to and in accordance with this Agreement for disposal at the times and in the manner provided herein.

**M.** Legal Challenges to Franchise System. The Franchisee shall use its best efforts to preserve, protect and defend its right to exercise and comply with this Agreement against any challenge thereto, legal or otherwise (including any lawsuits against the Franchisee or the County, whether as plaintiff or defendant), by any person, based upon breach of contract, violation of law or any other legal theory. The Franchisee shall bear the cost and expense of any such legal proceeding or other challenge.

## **SECTION 8**

### **REPORTING REQUIREMENTS**

**A.** Franchisee agrees to provide an annual report no later than each January 31<sup>st</sup>. This report will include monthly amounts of tonnages of all Recyclable Materials recovered by material type. It will also disclose the Franchisee's Recycling diversion plan for the ensuing year.

## **SECTION 9**

### **INSURANCE REQUIREMENTS**

Prior to the provision of services under this Franchise Agreement, the Franchisee agrees to purchase all required insurance at Franchisee's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Franchise Agreement have been complied with. Franchisee agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Franchise Agreement. In addition, all subcontractors performing work on behalf of Franchisee pursuant to this Franchise Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Franchisee.

Franchisee shall ensure that all subcontractors performing work on behalf of Franchisee pursuant to this Franchise Agreement shall be covered under Franchisee's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Franchisee. Franchisee shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Franchisee under this Franchise Agreement. It is the obligation of Franchisee to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Franchisee through the entirety of this Franchise Agreement for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Franchisee's current audited financial report. If Franchisee's SIR is approved, Franchisee, in addition to, and without limitation of, any other indemnity provision(s) in this Franchise Agreement, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Franchisee's, its agents, employee's or subcontractor's performance of this Franchise Agreement, Franchisee shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Franchisee's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Franchisee's SIR provision shall be interpreted as though the Franchisee was an insurer and the County was the insured.

If the Franchisee fails to maintain insurance acceptable to the County for the full term of this Franchise Agreement, the County may terminate this Franchise Agreement.

#### **Qualified Insurer**

The policy or policies of insurance must be issued by an insurer with a minimum rating of A-  
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(Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Franchisee shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$5,000,000 per occurrence \$5,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$10,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence

**Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

**Required Endorsements**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN AGREEMENT.***
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Franchisee's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents and employees*** or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN FRANCHISE AGREEMENT.***



All insurance policies required by this Franchise Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Franchisee shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Franchise Agreement, upon which the County may suspend or terminate this Franchise Agreement.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Franchisee fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Franchisee to increase or decrease insurance of any of the above insurance types throughout the term of this Franchise Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Franchisee in writing of changes in the insurance requirements. If Franchisee does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Franchise Agreement may be in breach without further notice to Franchisee, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Franchisee's liability hereunder nor to fulfill the indemnification provisions and requirements of this Franchise Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

## **SECTION 10**

### **PERSONNEL AND SUBCONTRACTORS**

**A.** The Franchisee shall at all times maintain and follow employment practices in accordance with Applicable Law and shall indemnify the County for any Legal Proceeding relating to its noncompliance with such laws or regulations.

**B.** In the performance of the terms of this Agreement, the Franchisee agrees that it will not engage in nor permit such Subcontractors as it may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as a qualified individual with a disability. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including

apprenticeship; and any other action or inaction pertaining to employment matters.

C. The Franchisee shall employ personnel sufficient in number, training, experience, and capability to ensure that the Franchise Services are properly carried out.

D. The Franchisee shall not utilize any Affiliates or Subcontractors for the performance of the Franchise Services except with the consent of the Director.

## **SECTION 11**

### **INDEMNIFICATION**

(A) Generally. The Franchisee shall defend with counsel approved in writing by County, indemnify, and hold harmless the County, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, judgments, or liabilities arising out of this Franchise or connected with the performance, failure to perform or attempted performance of provisions hereof, including, but not limited to (1) any act or omission to act on the part of the Franchisee or its agents, employees, or Subcontractors, except to the extent such liabilities are due to the negligence or willful act of the indemnified parties, (2) the collection, transportation, handling, storage, or disposal (by the Franchisee or its agents, employees, or subcontractors) of Discarded Materials, (3) any claim for any finders or brokerage fee or other commission resulting from any services alleged to have been rendered to or performed on behalf of the Franchisee with respect to this Franchise or any of the transactions contemplated hereby, (4) any action taken by the County pursuant to its rights under Section 11.5 hereof upon a failure to collect, transport or dispose of Discarded Materials, (5) the performance or non-performance of the Franchisee's obligations under this Franchise, except to the extent such liabilities are due to the negligence or willful act of the indemnified parties, and (6) Franchisee's failure to comply with Applicable Law.

(B) CERCLA Indemnification. The Franchisee shall indemnify and defend with counsel approved by the County, and hold harmless the County, its officers, employees, agents, assigns and any successor or successors to the County's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resource damage, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever (collectively "Liabilities") paid, incurred or suffered by, or asserted against, the County or its officers, employees, agents or contractors arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure of other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place where Franchisee stores or disposes of municipal Solid Waste pursuant to this Franchise to the extent that such claims, damages, costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses are caused by any of the following: (1) the negligence or willful misconduct of the Franchisee; (2) the collection, handling, processing, or disposal by the Franchisee of any materials or waste, including hazardous substances or materials, which are generated by, or collected from, waste Generators other than those Generators to which the Franchisee provides services pursuant to this Franchise; (3) the

failure of the Franchisee to undertake hazardous waste and materials training procedures required by law with respect to its employees or Subcontractors; or (4) the improper or negligent handling, processing or disposal by the Franchisee of hazardous waste or materials which (i) the Franchisee inadvertently collects from waste Generators to which the Franchisee provides services pursuant to this Franchise and (ii) which the Franchisee identifies as Hazardous Waste prior to its disposal. The Franchisee shall not, however, be required to reimburse or indemnify the County and its officers, agents, employees, attorneys, administrators, affiliates, representatives, servants, insurers, successors, and heirs to the extent any such claims, damages, costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses are due to the negligence or other wrongful conduct of such Party. The County acknowledges that the mere presence of household hazardous waste in the waste which is collected by the Franchisee pursuant to this Franchise shall not constitute negligence nor in and of itself create any liability on the part of the Franchisee absent any of the circumstances described in clauses (1) through (4) of the preceding sentence.

The indemnification by the Franchisee in Section 12.1(B) shall be limited to Liabilities resulting from services rendered by the Franchisee from and after the Franchise Date and throughout the Term of this Franchise, it being specifically understood that any liabilities attributable to the Franchisee's actions prior to the Franchise Date are excluded from the indemnification in Section 12.1(B).

The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e), 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify the County from liability in accordance with this section. The provisions of this subsection shall survive termination of this Franchise.

(C) AB 939, AB 341, AB 1826, and SB 1383 Indemnification.

1. To the extent authorized by law, Franchisee agrees to indemnify and hold harmless County from and against all fines and/or penalties imposed by CalRecycle in the event the source reduction and recycling goals or any other requirement of AB 939, AB 341, AB 1826, and SB 1383 are not met by County with respect to the Discarded Materials collected under this Franchise.

2. Franchisee warrants and represents that it is familiar with County's waste characterization study as set forth in County's SRRE, and that it has the ability to and shall provide sufficient programs and services to ensure County shall meet or exceed the diversion and reporting requirements (including without limitation amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in AB 939; and requirements such as Collection service standards, programmatic activities, and reporting set forth in AB 341, AB 1826, and SB 1383, with respect to that portion of the Solid Waste generated in-County that is the subject of this Franchise Agreement.

3. Franchisee agrees that it shall at its sole cost and expense:

(1) Assist County in responding to inquiries from CalRecycle;

- (2) Assist County in preparing for, and participating in, CalRecycle's biannual review of the County's Annual Report;
- (3) Assist County in any hearing conducted by CalRecycle related to County's compliance with AB 939, AB 341, AB 1826, and SB 1383;
- (4) Assist County with the development of, and implement, a public awareness and education program that is consistent with the County's SRRE and Household Hazardous Waste Element, as well as any related requirements of AB 939, AB 341, AB 1826, and SB 1383, for the Franchise Area; and,
- (5) Provide County with source reduction, waste prevention, Recycling, Organic Waste recovery, and other technical assistance related to AB 939, AB 341, AB 1826, and SB 1383.

(D) Third Parties. These indemnification provisions are for the protection of the County (and County Indemnitees) only and shall not create, of themselves, any liability to third parties, unless otherwise specified therein. The provisions of this subsection shall survive termination of this Franchise.

## **SECTION 12**

### **VEHICLES AND EQUIPMENT**

**A.** Any and all Containers provided to customers of Franchisee for storage, collection or transportation of Temporary Waste shall meet the requirements of the State of California minimum standards for Solid Waste handling established under Public Resources Code Section 43020 and Applicable Law.

**B.** All Containers and all Vehicles used by Franchisee in the performance Franchise Services shall be marked with Franchisee's name and telephone number in letters, which are easily read by the general public.

**C.** Equipment.

- (1) Vehicle Specifications, Maintenance and Appearance. All Vehicles shall be properly registered with the Department of Motor Vehicles of the State of California, shall be properly insured, shall be of a type approved by the Director, shall be kept clean and in good repair, and shall be continuously maintained in a watertight condition, pursuant to industry standards. Vehicles used to collect, or transport Temporary Waste shall be kept covered at all times except when such material is actually being loaded or unloaded. All Vehicles shall carry a broom, shovel, and operable fire extinguisher. Vehicles shall be washed at least once every seven (7) days and cleaned and painted as required to maintain a like-new appearance. All Vehicles must be made available for inspection upon reasonable notice by the Director. In addition, the Franchisee shall meet all requirements of the Biannual Inspection Terminal (BIT) Program and shall provide the results of the BIT Program to the Director within ten (10) days of receipt of the request.

- (2) Each Vehicle shall be so constructed and used that no rubbish, garbage, debris, oil, grease or other material will blow, fall, or leak out of the Vehicle. All Solid Waste shall be transported by means of Vehicles, which are covered in such a manner as to securely contain all Solid Waste and to prevent such Solid Waste from projecting, blowing, falling or leaking out of the Vehicles. Any Solid Waste dropped or spilled in collection, transfer or transportation shall be immediately cleaned up by Franchisee. The broom and a shovel carried at all times on each Vehicle shall be used for this purpose. In addition, each collection Vehicle shall be equipped with trash bags, masking tape and notice of non-collection tags for the purpose of separating Hazardous Waste for return to the Generator. A communications device such as a two-way radio or a cellular telephone shall also be maintained on each Vehicle.
- (3) Franchisee shall not store any Vehicle or equipment on any public street or other public property in the County without all the required permits by any entity regulating placement of such equipment.
- (4) Should the Director at any time give written notification to Franchisee that any Vehicle does not comply with the standards hereunder, the Vehicle shall be promptly removed from service by Franchisee and not again be so used until inspected and passed by the California Department of Motor Vehicles, or any entity regulating the condition of such Vehicles.

### **SECTION 13**

#### **ABANDONED CONTAINERS**

- A. Franchisee shall comply with the regulations adopted by the County or the Director for placement of Containers on public property.
- B. If Franchisee abandons any Container within the County Unincorporated Areas, the County may remove the Container and/or dispose of the contents of the Container.
- C. If the County is required to remove a Container abandoned by Franchisee and/or to dispose of its contents, County may charge Franchisee for County's costs incurred in such removal/disposal and for County's costs of storage of the Container. The \$3,000 or security acceptable to the County, specified in Section 7. E. may be used to reimburse the County for such costs if not paid within ten (10) days of the date of County's invoice for such costs.
- D. For the purposes of this Section, "abandoned" includes:
  - (1) Franchisee's failure to remove the Container within the time period pursuant to the termination clause of this Agreement.
  - (2) Franchisee's failure to remove the Container within ten (10) working days after the expiration of the Agreement, except in the case where Franchisee has been granted an extension of the term of said Agreement or Franchisee has been granted a subsequent Agreement authorizing Franchisee to perform Franchise Services or if otherwise

lawfully operating.

- (3) Franchisee's failure to collect the Container and dispose of the contents of the Container within five (5) days after the Director issues written notice to Franchisee to dispose of the contents.

## **SECTION 14**

### **COMPLIANCE WITH LAW**

**A.** Franchisee shall perform all Solid Waste handling services in accordance with Applicable Law, and in accordance with the terms and conditions of this Agreement.

**B.** Over the term of this Agreement, Franchisee and County agree that the County's ordinances may be amended from time to time, which may affect or alter County's Solid Waste handling obligations or requirements for Solid Waste management. Franchisee agrees to comply with any such amendment of the County's ordinances.

## **SECTION 15**

### **PERMITS AND LICENSES**

**A.** Franchisee shall obtain and maintain, at Franchisee's sole cost and expense, all permits and licenses applicable to Franchisee's operations under this Agreement, which are required of Franchisee under Applicable Law.

## **SECTION 16**

### **TERMINATION**

**A.** The Board of Supervisors may terminate this Agreement granted to Franchisee if Franchisee violates any of the terms and conditions of this Agreement.

**B.** In the event this Agreement is terminated pursuant to Subsection A above or the term of this Agreement expires:

- (1) Franchisee shall have no right or authority to engage in Temporary Waste service and/or Construction and Demolition Debris handling in County Unincorporated Areas.
- (2) Franchisee shall, however, remain liable to the County for any and all fees that would otherwise be payable by Franchisee for any and all fees and interest assessed pursuant to this Agreement.
- (3) Franchisee shall allow the Generators served by Franchisee to arrange for Temporary Waste handling services with a solid waste enterprise authorized to perform such services, without penalty or liability for breach of contract on the part of the Generators, for such period of time as Franchisee is not authorized to perform such services because of termination.

- (4) Franchisee agrees to continue to provide the indemnifications required in this Agreement after its termination in connection with activities performed by the Franchisee. Such indemnifications include, but are not limited to, the Hazardous Materials indemnification and AB939 indemnification.

C. In the event this Agreement is terminated, Franchisee shall remove all of Franchisee's Containers, and all of such Containers used by Franchisee's Subcontractors in performance of Franchise Services, from all Franchisee's collection locations and shall properly dispose of all Temporary Waste in such Containers within the time period specified by the Director.

D. In the event the Agreement is terminated or expires without an extension of the term, then within ten (10) days of such termination or expiration Franchisee shall either:

- (1) Submit to the Director a list of the names and addresses of Generators in the County Unincorporated Area for which Franchisee provided services as of the date of termination or expiration (i.e. Franchisee's customer list); or
- (2) Send written notification to each Generator on Franchisee's customer list that Franchisee is no longer authorized to perform Franchise Services. Such notification shall be in the form provided by the Director and shall be personally delivered or shall be sent by first class mail, postage prepaid, to the customers' billing addresses. Franchisee shall submit to the Director a declaration, signed under penalty of perjury, stating that the required notification has been provided by Franchisee to all of Franchisee's customers in County Unincorporated Areas.

## **SECTION 17**

### **LIQUIDATED DAMAGES**

A. In addition to other remedies elsewhere in the Agreement, the Director may levy a charge in the amounts listed below for the Franchisee's failure to meet the requirements enumerated throughout the Agreement. The Director's decision to levy any such charge shall not be deemed an election of remedies but shall be cumulative with any other remedies provided for in this Agreement. The Director's decision to levy any such charge shall not be deemed a waiver of any breach by the Franchisee under this Agreement. The parties agree that the following liquidated damages represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date of the Agreement, including the relationship of the sums to the range of harm to the County that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was entered into.

- (1) Excessive Complaints: When Franchisee or County receives 25 or more verified complaints in six (6) months, Franchisee will be assessed [\$250.00] per complaint per occurrence; and an additional [\$250.00] each 24 hours until the complaint is addressed. For purposes of this section "complaints" shall mean Customer notifications to the Franchisee or the County of missed pick-ups, property damage, missed commitments, employee misconduct or poor quality of service (e.g. litter on property or public right-

of-way or misplacement of Containers).

- (2) Failure to remit the County fees or file the required reports in an accurate and complete manner by the fifth working day following the due date: [\$250.00] per occurrence.
- (3) Franchise operating during hours not authorized by the County: [\$250.00] per occurrence.
- (4) Failure to maintain records required by the Franchise: [\$1,000.00] per occurrence.
- (5) Failure to have Vehicles inspected by the California Highway Patrol to meet the Biannual Inspection Terminal (BIT) Program, or failure to provide results of such inspection to the Director within ten (10) days of receipt of request: [\$100.00] per occurrence.
- (6) In addition to the termination remedies available to the County under Section 16 hereof, Franchisee shall be liable for liquidated damages for each day it operates in violation of the provisions of Section 16, regarding insurance coverage: [\$100.00] per day.
- (7) Increases in liquidated damages when Franchisee has violated requirements for a particular service indicator more than fifteen (15) times: [25%] of the original amount of liquidated damages.

**B.** The Director shall give the Franchisee written notice of charges levied pursuant to this section. Any such damage shall be paid directly to the County and may not be offset against any other fees.

## **SECTION 18**

### **ASSIGNMENT**

**A.** Franchisee shall not assign, sell, subcontract, transfer or otherwise delegate its authority to perform any portion of the Franchise Services or obligations under this Agreement without prior express written consent of the Board of Supervisors. This prohibition includes any transfer of ownership or control of Franchisee, or the conveyance of a majority of Franchisee's stock to a new controlling interest.

## **SECTION 19**

### **MISCELLANEOUS PROVISIONS**

**A.** The Parties signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

**B.** Franchisee acknowledges that the County Board of Supervisors has adopted Resolution No. 16-118 establishing a construction and demolition policy and is aware of the provisions of this policy.



C. If Franchisee has entered into a Waste Disposal Agreement with the County, nothing in this Agreement shall be construed to supersede or otherwise modify the terms of that Waste Disposal Agreement.

D. Neither Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contract obligations or liabilities assumed by the other Party hereto, whether accrued, absolute, contingent or otherwise, or whether due or to become due. The Franchisee is an independent contractor and Franchise holder and nothing in this Franchise shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create any fiduciary relationship between the Parties. Neither Franchisee, its employees nor anyone working under Franchisee, shall qualify for workers' compensation or other fringe benefits of any kind through the County.

E. Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the County in its governmental, police or regulatory capacity, or as limiting the right of the Franchisee to bring any legal action against the County, not based on this Agreement, arising out of any act or omission of the County in its governmental or regulatory capacity.

F. This Franchise shall bind and inure to the benefit of the Parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions hereof.

G. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by both Parties.

H. Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

I. To the extent enforceable under California law, each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Agreement and/or any other claim of injury or damage.

J. The table of contents of any headings preceding the text of the Articles, Sections, and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.

K. This Agreement contains the entire agreement between the Parties hereto with respect to the transactions contemplated by this Agreement, provided that nothing in this Franchise is intended to supersede the obligations of the Parties under any Waste Disposal Agreement, as defined hereunder. In the event that a provision of this Franchise is interpreted as being in conflict with a Waste Disposal Agreement, the Parties hereto agree that the provisions of the Waste Disposal Agreement will prevail. Furthermore, nothing in this Agreement is intended to

confer on any person other than the Parties hereto and their respective successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

L. All references to days herein are to calendar days, including Saturdays, Sundays, and holidays, except as otherwise specifically provided.

M. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

N. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of law's provisions. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.

O. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Franchise against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Agreement.

P. If any clause, provision, subsection, Section, or Article of this Agreement shall be determined to be invalid by any court of competent jurisdiction, then the Parties hereto shall:

- (1) Promptly meet and negotiate a substitute for such clause, provision, Section, or Article which shall, to the greatest extent legally permissible, effect the intent of the parties therein;
- (2) If necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement;
- (3) Negotiate such changes in, substitutions for or additions to, the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above, to affect the intent of the Parties in the invalid provision. The invalidity of such clause, provision, subsection, Section, or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

IN WITNESS WHEREOF, the Parties have executed this Non-Exclusive Franchise Agreement on the dates stated below:


**FRANSHISEE\***

Date: 6/9/21

By: 

Title: PRESIDENT


Date: 6/9/21

By: 

Title: VICE / TREASURER

**COUNTY OF ORANGE**

Date: 6/29/2021

By: 

Title: Tom Koutroulis, Director OCWR

**APPROVED AS TO FORM:**

COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

Date: 7/7/2021

By: 

Title: Paul M. Albarian, Senior Deputy

\*Unless otherwise demonstrated that the person(s) executing this Franchise Agreement on behalf of Franchisee has the requisite authority to legally obligate and bind Franchisee. If the Franchise is a corporation, signatures of two specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President. The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) Assistant Treasurer.