

32624

NON-EXCLUSIVE FRANCHISE AGREEMENT

BETWEEN THE CITY OF LONG BEACH

AND

SIGNAL HILL DISPOSAL,

FOR COLLECTION, RECYCLING AND DISPOSAL OF SOLID WASTE

FROM COMMERCIAL CUSTOMERS

**ACTION BY WRITTEN CONSENT
OF THE BOARD OF DIRECTORS
OF EDCO DISPOSAL CORPORATION**

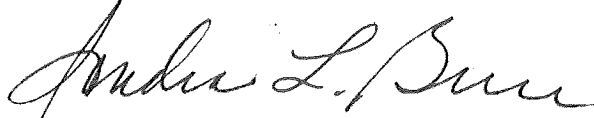
We, being all of the members of the Board of Directors of EDCO Disposal Corporation, a California corporation (the "corporation"), hereby adopt the following resolution by written consent, with the same force and effect as though such resolution was adopted at a meeting duly noticed and held in accordance with the corporation's Bylaws and with Section 307(b) of the California Corporations Code (the "Code"), effective 3-1, 2012:

Blanket Authorization.

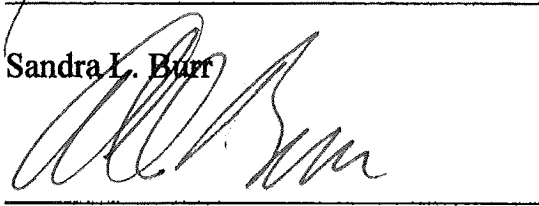
RESOLVED, that Steve South, President of this corporation, is hereby authorized to execute documents for all Long Beach permits, contracts and/or franchises relating to any one or more of Signal Hill Disposal, Pete's Rubbish, Lieb, Long Beach Rubbish, BZ Disposal Service and Litterbox Containers, that this corporation has with or submits to governmental entities, and that all such documents upon being so executed by Steve South shall be binding upon this corporation.



—
Edward G. Burr



—
Sandra L. Burr



—
Cole Burr

TABLE OF CONTENTS

1

2

3 1. DEFINITIONS AND CONTRACT INTERPRETATION..... 2

4 1.1 Definitions..... 2

5 1.2 Interpretation and Construction 2

6 1.3 Integration 3

7 1.4 Severability..... 3

8 1.5 Interpretation 4

9 2. FRANCHISEE'S REPRESENTATIONS AND WARRANTIES 4

10 3. TERM OF AGREEMENT 4

11 3.1 Term 4

12 3.2 Survival of Certain Provisions..... 5

13 4. COLLECTION 5

14 4.1 Scope of Basic Franchise Services 5

15 4.2 Pickup of Excess and Bulky Waste 11

16 4.3 Service Standards 11

17 4.4 Service Exceptions 13

18 4.5 Customer Service 14

19 4.6 Franchisee Billing 15

20 4.7 Enforcement of Permit..... 15

21 5. OPERATIONS..... 15

22 5.1 Vehicles, Service Assets, and Drivers 15

23 5.2 Public Resource Code Requirements..... 16

24 5.3 Personnel 17

25 5.4 Contingency Plan 17

26 6. DIVERSION..... 18

27 6.1 Minimum Diversion Rate 18

28 6.2 Diversion Reporting 18

1	7.	MISCELLANEOUS SERVICE PROVISIONS.....	19
2	7.1	Emergency Services.....	19
3	7.2	Title to Solid Waste.....	19
4	7.3	Compliance with Applicable Law.....	20
5	7.4	Cooperation with Waste Studies.....	22
6	7.5	Service Materials Belong to City.....	22
7	8.	RECORDS AND REPORTING.....	22
8	8.1	Records.....	22
9	8.2	Reporting.....	24
10	8.3	Financial Records and Reports.....	24
11	9.	INSURANCE, INDEMNIFICATION, AND PERFORMANCE ASSURANCES.....	26
12	9.1	Insurance.....	26
13	9.2	Franchisee Defense and Indemnification.....	27
14	10.	SERVICE FEES.....	28
15	10.1	Service Fees.....	28
16	10.2	Fees Payable by Franchisee.....	29
17	10.3	Payment of Monies Due City.....	31
18	10.4	Fee Disputes.....	31
19	11.	BREACHES, DEFAULTS, DAMAGES AND OTHER REMEDIES.....	32
20	11.1	Certain Breaches and Damages.....	32
21	11.2	Remedies Upon Default.....	35
22	11.3	Remedies Not Exclusive.....	36
23	11.4	Waivers.....	36
24	11.5	Jurisdiction, Venue.....	37
25	11.6	Costs.....	37
26	11.7	Assurance of Performance.....	37
27	11.8	City Right to Perform Franchise Services.....	38
28	12.	FRANCHISEE'S OBLIGATIONS UPON EXPIRATION OR TERMINATION.....	38

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1	12.1	Pay Outstanding Amounts.....	38
2	12.2	Cooperation During Transition.....	38
3	13.	THE PARTIES.....	39
4	13.1	Franchisee is Independent Contractor.....	39
5	13.2	Parties in Interest.....	40
6	13.3	Binding on Successors.....	40
7	13.4	Further Assurances.....	40
8	13.5	Actions of the City in Its Governmental Capacity.....	40
9	13.6	Franchisee's Obligations Performed at Its Sole Expense.....	40
10	13.7	Parties' Representatives.....	40
11	13.8	Due Diligence.....	41
12	13.9	Subcontracting.....	41
13	13.10	No Use of City Name.....	42
14	14.	ASSIGNMENT AND AMENDMENTS.....	42
15	14.1	Assignment.....	42
16	14.2	Amendments.....	44
17	15.	NOTICES, CONSENTS, APPROVALS, ETC.....	44
18	15.1	Notices.....	44
19	15.2	Consents and Approvals.....	45
20	15.3	Exercise of Discretion by City.....	46
21	16.	EXECUTION OF AGREEMENT.....	46
22			
23			
24			
25			
26			
27			
28			

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBITS

- EXHIBIT 1: DEFINITIONS
- EXHIBIT 2: FRANCHISEE'S REPRESENTATIONS AND WARRANTIES
- EXHIBIT 3: SERVICE AREA
- EXHIBIT 4: RECORDS
- EXHIBIT 5: MONTHLY REPORTS
- EXHIBIT 6: INSURANCE
- EXHIBIT 7: COMPENSATORY AND LIQUIDATED DAMAGES
- EXHIBIT 8: ANNUAL REPORT/ANNUAL REPORT FORM

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 This Non-Exclusive Franchise Agreement ("Agreement") is made and
2 entered into this 19th day of August, 2010 ("Effective Date"), by and between the CITY
3 OF LONG BEACH, a municipal corporation, with its principal place of business located at
4 333 West Ocean Blvd., Long Beach, California 90802 ("City"), and Signal Hill Disposal
5 LLC, with its principal place of business located at 6670 Federal Blvd., Lemon Grove,
6 California 91945 ("Franchisee"). City and Franchisee may be referred to herein
7 individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement".
8
9

10 RECITALS

11 WHEREAS, the City is responsible for the protection of public health and
12 safety of its citizens, including the collection and transportation of municipal solid waste,
13 the diversion of municipal solid waste from landfills and conservation of natural resources
14 and energy, and may provide and regulate private solid waste handling, as defined by
15 Public Resources Code section 40195, and solid waste disposal, as defined by Public
16 Resources Code section 40192, by private refuse haulers for commercial and multi-family
17 residential buildings in the City in order to fulfill those obligations; and

18 WHEREAS, the City is responsible for encouraging compliance with clean-
19 air standards, including the mandates of the Environmental Protection Agency, the
20 Southern California Air Quality Management District and other regulatory agencies
21 concerning air pollution and traffic congestion management and, where possible, desires
22 to reduce the contaminants from solid waste collection vehicles that create air pollution;
23 and

24 WHEREAS, the City is authorized by its Charter to grant franchises to
25 persons, firms or corporations for the privilege of operating in the City of Long Beach for
26 adequate compensation upon such terms and conditions as may be prescribed by the
27 City Council; and

28 WHEREAS, the City currently regulates private refuse haulers through the

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 issuance of permits according to Long Beach Municipal Code Chapter 8.60; and

2 WHEREAS, all the provisions of Long Beach City Charter and Municipal
3 Code and the provisions of any other applicable federal, state or local law or ordinance,
4 are hereby referred to and made a part of this Agreement, as if the same were herein
5 specifically set forth; and

6 WHEREAS, Franchisee is willing, able, and competent to provide integrated
7 waste management services for commercial and multi-family establishments in the City of
8 Long Beach; and

9 WHEREAS, it is deemed to be to the mutual advantage of City and the
10 Franchisee to provide these services for the Long Beach community, and promote the
11 health, safety, and welfare of all City residents and businesses;

12 NOW, THEREFORE, in consideration of the mutual promises, covenants,
13 guaranties and conditions contained in this Agreement and for other good and valuable
14 consideration, the City and Franchisee agree as follows:

15 1. DEFINITIONS AND CONTRACT INTERPRETATION.

16 1.1 Definitions. In this Agreement words have the meanings
17 defined in Exhibit 1 which controls in the event of any conflict with the definitions
18 used in the preamble and recitals above.

19 1.2 Interpretation and Construction.

20 1.2.1 Gender and Plurality. Words of the masculine gender
21 include correlative words of the feminine and neuter genders(for example,
22 "his" also includes "her"), and vice versa. Words importing the singular
23 number include the plural number (for example, reference to a "Disposal
24 Facility" could refer to more than one facility), and vice versa, unless the
25 context demands otherwise.

26 1.2.2 Headings, Font. Any captions or headings following
27 the Article, Exhibit, Section, subsection, and paragraph numbers and
28 preceding the operative text of this Agreement are for convenience of

1 reference only and do not control or affect the scope, intent, meaning,
2 construction, interpretation or effect of this Agreement. Any underlined,
3 italicized, bold-faced, upper captioned or other font style is for ease of
4 reading and contract administration only and does not imply relative
5 importance or unimportance of any provision of this Agreement.

6 1.2.3 References to Parts. References to Sections and
7 Articles refer to Sections and Articles of this Agreement, unless specified
8 otherwise. References to Exhibits refer to Exhibits attached to this
9 Agreement. Reference to "subsections" refers to the subsection contained
10 in the same Section in which the reference occurs, unless otherwise
11 provided.

12 1.2.4 Examples. Examples are for purpose of illustration
13 only. If any example is ambiguous or is inconsistent or conflicts with the text
14 that it illustrates, the text governs.

15 1.2.5 Specifics No Limitation on Generalities. The mention
16 of any specific duty or liability imposed upon the Franchisee may not be
17 construed as a limitation or restriction of any general liability or duty
18 imposed upon the Franchisee by this Agreement or Applicable Law.

19 1.2.6 Exhibits. The Exhibits to this Agreement are part of
20 this Agreement to the same extent and effect as if included in the text of
21 Articles 1 through 16.

22 1.3 Integration. This Agreement contains the entire agreement
23 between the Parties with respect to the rights and responsibilities of the Parties
24 under this Agreement, including the enforcement and administration of this
25 Agreement. This Agreement completely and fully supersedes all prior
26 understandings and agreements between the Parties with respect to their rights
27 and responsibilities, including those contained in Procurement Proceedings.

28 1.4 Severability. If any clause, sentence, provision, subsection,

1 Section or Article of this Agreement is ruled unconstitutional, illegal, invalid, non-
2 binding or unenforceable by any court of competent jurisdiction, the
3 unconstitutionality, illegality, invalidity, non-binding nature or unenforceability of
4 any Agreement Provision will not affect any of the remaining provisions of this
5 Agreement.

6 1.5 Interpretation. This Agreement must be interpreted and
7 construed reasonably and neither for nor against either Party, regardless of the
8 degree to which either Party participated in its drafting. Franchisee acknowledges
9 that it determined to participate in the procurement of this Agreement upon its own
10 choice and initiative and during the course of that procurement City met and
11 conferred with Franchisee and solicited Franchisee's comments, exceptions and
12 proposals with respect to provisions in the Agreement. The Parties have
13 negotiated this Agreement at arms length and with advice of their respective
14 attorneys, and no provision herein is construed against the City solely because it
15 prepared this Agreement in its executed form.

16 2. FRANCHISEE'S REPRESENTATIONS AND WARRANTIES.

17 Franchisee represents and warrants as contained in Exhibit 2.

18 3. TERM OF AGREEMENT.

19 3.1 Term. Unless this paragraph is subsequently modified by a
20 written amendment to this Agreement, the term of this Agreement will begin on the
21 Effective Date and terminate at the end of day on the seventh anniversary of the
22 Effective Date, unless extended as provided for in Section 3.1.1 or 3.1.2 or
23 terminated pursuant to subsection 3.1.3.

24 3.1.1 Option to Extend for Three Years. If Franchisee is not
25 in default of any provision of this Agreement, including payment of any
26 moneys due City, and provides proof satisfactory to City in its sole
27 discretion by October 1, 2012 that one hundred percent (100%) of the
28 vehicles used by Franchisee to haul refuse in Long Beach are Alternative

1 Fuel Vehicles, the term of this Agreement will be extended by three (3)
2 years, until September 30, 2019.

3 3.1.2 Option to Extend for Two Years. If Franchisee is not in
4 default of any provision of this Agreement, including payment of any
5 moneys due City, and provides proof satisfactory to City in its sole
6 discretion by October 1, 2013 that one hundred percent (100%) of the
7 vehicles used by Franchisee to haul refuse in Long Beach are Alternative
8 Fuel Vehicles, the term of this Agreement will be extended by two (2) years,
9 until September 30, 2018.

10 3.1.3 City Right to Terminate. If one hundred percent
11 (100%) of the vehicles used by Franchisee to haul, collect and transport
12 refuse in Long Beach are not Alternative Fuel Vehicles by October 1, 2015,
13 Franchisee will be considered in breach of the terms of this Agreement, and
14 Franchisee will be required to cease operating in Long Beach within a one
15 (1) year period after Notice by the City. Once the term has been extended
16 pursuant to section 3.1.1 or 3.1.2, prior written approval must be granted by
17 the Director of Public Works for Franchisee to utilize a non-Alternative Fuel
18 Vehicle. Failure to obtain such prior written approval will result in
19 elimination of the extended term.

20 3.2 Survival of Certain Provisions. The following provisions
21 survive the Term:

22 3.2.1 all representations and warranties;

23 3.2.2 all Indemnities;

24 3.2.3 obligations to pay any City Payment Obligations;

25 3.2.4 obligations to submit Records and reports; and

26 3.2.5 any other rights and obligations of the Parties stated to
27 survive the Term.

28 4. COLLECTION.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4.1 Scope of Basic Franchise Services.

4.1.1 Service Area and Franchised Services. City grants Franchisee the non-exclusive franchise, right and privilege to arrange to provide Franchise Services to Customers within the Franchise Area, so long as Franchisee is at all times ready, willing and able to provide Franchise Services and is fully and timely satisfying its Performance Obligations. Franchisee accepts that non-exclusive franchise, right and privilege in accordance with this Agreement.

4.1.2 Limitations on Right to Provide Franchise Services. Franchisee's franchise, right and privilege to provide Franchise Services is non-exclusive and limited by the Long Beach Municipal Code. Pursuant to the Long Beach Municipal Code, Franchisee acknowledges the following: (1) City may authorize multiple haulers, in addition to Franchisee, to provide Solid Waste services substantially similar to Franchise Services within the Franchise Area in its sole discretion; (2) Persons, including both the owners or occupants of premises and persons performing services at premises, may themselves transport and dispose of Solid Waste that they generate in the use and occupancy of those premises or as a by-product of services performed at those premises themselves. For example, landscapers, gardeners, or construction contractors or demolition contractors may collect and transport Yard Waste and Building Construction Refuse they generate in the course of performing their services in dump trucks, end dumps, flatbed trucks, or similar vehicles or they may contract with another Permitted Hauler to do so; (3) Owners and occupants of a premises may transport and dispose of solid waste that they generate on their own premises using their own vehicles; (4) City may contract with Franchisee or with someone other than Franchisee for Solid Waste Handling Services. City is not liable to Franchisee for actions of anyone who provides Solid

1 Waste Handling Services without a permit or franchise required by law, and
2 Franchisee releases City from any liability in connection with any of those
3 acts.

4 4.1.3 Regularly-Scheduled Franchise Services.

5 (a) Commercial Solid Waste.

6 (i) Collection. Franchisee will Collect as
7 required by this Agreement all Solid Waste placed in Bins,
8 Roll-Offs ("Commercial Containers") or other Containers by
9 existing Commercial Customers of Franchisee at the location
10 agreed to between Franchisee and the Customer
11 ("Commercial Set-out Site").

12 (ii) Recycling Services. Franchisee will
13 provide each Commercial account they service in the Service
14 Area with Recycling services. Within one week of a
15 customer's request, Franchisee shall provide that customer
16 with an additional container of the type and in the capacity
17 requested by the customer and collect it at the frequency
18 requested by the customer.

19 (iii) Solid Waste Handling Services for
20 Special Events may only be provided by Permitted Haulers. If
21 Franchisee provides Solid Waste Handling Services for a
22 Special Event in the Service Area, Franchisee must provide
23 Recycling services for that Special Event. Franchisee must
24 provide a Recycling Plan at least 30 days prior to the Special
25 Event. Within 30 days following the Special Event,
26 Franchisee must provide a report as required by the Director
27 of Public Works.

28 (b) No Evergreen. Franchisee shall not include in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the terms of customer subscription orders or other service contract with its customers any automatic renewals or extensions, colloquially referred to as "evergreen" clauses, which obligate a customer to take affirmative, prescribed action in order to terminate the subscription order (such as giving written notice within a specified time period before the stated expiration of the subscription order).

(c) Term Limitation. Franchisee shall limit the terms of customer subscription orders to no longer than the remaining term of this Agreement.

(d) Containers. Franchisee will provide all Commercial Customers with Containers of sufficient capacity and quantity so as to contain all refuse generated by the Commercial Customer. Franchisee will clean and maintain those Containers and keep them in a sanitary condition, free from putrescible residue, and in a manner so as not to promote the harborage, or attraction of vectors or birds, or the creation of nuisances. Franchisee will clean and maintain Containers in accordance with 14 Cal. Code Regs. 17314. Franchisee will provide Commercial Containers that:

- (i) are durable,
- (ii) are constructed from structural steel plate with all welded seams,
- (iii) are leak-proof,
- (iv) are equipped with a lid, uniformly colored, approved by the City as providing adequate protection against hazard, rodents, flies and other vectors, and
- (v) display Franchisee's name and telephone number in legible lettering no less than two inches (2") in height as well as language warning against illegal dumping

1 and Unpermitted Waste (including Hazardous Waste) or
2 special waste disposal, as required by 14 Cal. Code Regs.
3 17317.

4 (vi) At the time of Customer request for
5 Franchise Service, Franchisee will provide written notice to
6 each Commercial Customer utilizing Bin service of the types
7 of wastes which require special handling and may not be
8 discarded in the debris box and informing the Customer of the
9 proper methods for disposing of such wastes.

10 (vii) Frequency. Franchisee will Collect Solid
11 Waste set out at the Commercial Set-out Site at least once
12 each week, or more frequently as directed by the Commercial
13 Customer, on the day or days written in the Customer's
14 Subscription Order ("Regularly-Scheduled Commercial
15 Collection Day") or on such other day as mutually agreed to
16 by Commercial Customer and Franchisee. If Franchisee is
17 unable, for any reason, to Collect Solid Waste from a
18 Customer on the Regularly-Scheduled Commercial Collection
19 Day or other day agreed to by Customer, then it will Collect
20 that Solid Waste (1) on the next Service Day following the
21 date of the missed pick up, or (2) other day arranged with the
22 Customer, but in no event later than seventy-two (72) hours
23 after the time of the missed pick-up, and will provide the
24 Customer with a verbal or written Non-Collection Notice.

25 4.1.4 Collection Schedules.

26 (a) Hours. Franchisee shall Collect all Solid Waste
27 only between 7:00 a.m. and 7:00 p.m., Monday through Friday, and
28 between 8:00 a.m. and 7:00 p.m. Saturday and Sunday, or as

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

specified in the Long Beach Municipal Code, as it may be amended from time to time. Franchisee shall make collections as quietly as possible, without unnecessary noise, disturbance or commotion.

(b) Changes in Service Levels; Container Exchanges.

(i) Repair and Replacement. Franchisee will repair or replace Containers or provide locks for Bins within seventy-two (72) hours of a request therefore from a Customer or the City. If Franchisee cannot complete a repair within 72 hours, Franchisee will provide the Customer with a replacement Container without surcharge within those seventy-two (72) hours.

(ii) Cleaning Bins. Franchisee will steam clean and paint, or replace, Commercial Containers as needed, but no less than once each Contract Year for Customers that generate large amounts of putrescible Solid Wastes, including residential premises, restaurants, grocery stores, cafeterias, and other Containers as directed by the City. Franchisee will steam clean and paint all Commercial Containers prior to providing them to the Customer, whether as new Franchise Service subscription or replacement Container for existing Franchise Service. Franchisee will remove graffiti from Containers within seventy-two (72) hours of identification by Franchisee or oral or written notice by City or Customer. Franchisee will remove graffiti comprised of pictures or verbal obscenities within forty-eight (48) hours (weekends excepted). Promptly upon City's request, Franchisee will give City a list of dates that Franchisee

1 cleaned, painted or otherwise repaired Containers.

2 4.2 Pickup of Excess Waste.

3 4.2.1 Excess or Overflow Waste. Upon request of a
4 Commercial Customer, Franchisee will Collect excess Solid Waste at the
5 Commercial Set-out Site on that Customer's next Regularly-Scheduled
6 Collection Day or other date agreed to between the Customer and
7 Franchisee, but in no event later than forty-eight (48) hours of receipt of the
8 request for collection from the Commercial Customer or from the City,
9 unless otherwise directed by the City. Franchisee shall maintain a log of
10 such requests for excess Solid Waste pickup and make such log available
11 for inspection by the Director of Public Works upon reasonable advance
12 notice.

13 4.2.2 Bulky Waste. Upon request of a Commercial
14 Customer, Franchisee will Collect Bulky Waste at the Commercial Set-out
15 Site on that Customer's next Regularly-Scheduled Collection Day or other
16 date agreed to between the Customer and Franchisee, but in no event later
17 than seven (7) days of receipt of the request for collection from the
18 Commercial Customer or from the City, unless otherwise directed by the
19 City. Franchisee shall maintain a log of such requests for Bulky Waste
20 pickup and make such log available for inspection by the Director of Public
21 Works upon reasonable advance notice.

22 4.3 Service Standards.

23 4.3.1 General. Franchisee will perform all Franchise
24 Services in a prompt, thorough, comprehensive, reliable, courteous and
25 professional manner so that Customers receive high-quality service at all
26 times. Franchisee must perform Franchise Services regardless of weather
27 conditions and regardless of difficulty of collection, subject to the exceptions
28 set forth in Section 4.4. More detailed specifications for particular aspects

1 of Franchise Services enumerated elsewhere in this Agreement do not
2 relieve Franchisee of its duty and obligation to accomplish all other aspects
3 of Franchise Services in the manner provided in this subsection.

4 4.3.2 Litter. Franchisee will clean up litter caused by
5 Franchisee's employees. Franchisee will also clean up all litter within a 10-
6 foot radius (10') of the Set-out Site when collecting any Bulky Waste and
7 excess Solid Waste. Franchisee will ensure that each Collection Vehicle
8 carries appropriate tools at all times for this purpose.

9 4.3.3 Spills and Leaks.

10 (a) Solid Waste Spills. Franchisee will transport
11 Solid Waste only in covered vehicles. Franchisee will prevent Solid
12 Waste from escaping, dropping, spilling, blowing or scattering from
13 Vehicles during Collection and transportation. Franchisee will not
14 transfer loads from one vehicle to another on any public street,
15 unless necessitated by mechanical failure or accidental damage to a
16 vehicle, or unless otherwise approved by the Director. Franchisee
17 will immediately clean up any Solid Waste that is dropped, blown,
18 spilled, scattered or leaked from any Vehicle and/or tracked by any
19 Vehicle onto any alley, street or public place.

20 (b) Liquid Leaks. During Collection and
21 transportation, Franchisee will also prevent oil, hydraulic fluid, paint
22 or other liquid from leaking out of Vehicles. Franchisee will ensure
23 that each Collection Vehicle carries petroleum-absorbent materials.
24 Franchisee will immediately cover leaked fluids with absorptive
25 materials, remove those materials from the ground, and apply a
26 cleaning agent to cleanse the soiled spot.

27 (c) Reimbursement. If Franchisee fails to clean up
28 Solid Waste or leaked liquids within two (2) hours' telephonic or other

1 notice by the City, the City may clean up or cause to be cleaned up
2 the Solid Waste or leaked liquids and Franchisee will reimburse the
3 City for the City's Reimbursement Costs thereof. Franchisee is
4 responsible for paying any fines, civil penalties or other charges that
5 may be assessed for improperly covering loads or leaking liquids.

6 4.3.4 Pavement and Utilities.

7 (a) Franchisee is responsible for damage to
8 pavement and driving surfaces whether Containers are located on
9 public or private property, other than ordinary wear and tear, if the
10 damage is the result of vehicles exceeding the maximum weight
11 limits allowed by Applicable Law or Franchisee's negligent operation
12 of vehicles, unless with respect to private property, Customer has
13 executed a damage waiver or indemnity on that Customer's
14 Subscription Order.

15 (b) Franchisee is responsible for damage to public
16 and private utilities, whether located on public streets or property or
17 private property, if damage is the result of the inattention,
18 carelessness or negligence of Franchisee.

19 (c) The City or the Customer may direct Franchisee
20 to promptly repair or replace damaged driving surfaces or utilities or
21 repair and replace them itself or through a third party, to satisfaction
22 of the Customer or the City, as the case may be. Franchisee will
23 reimburse the Customer for his or her Direct Costs of repair or
24 replacement and the City its City's Reimbursement Costs of repair or
25 replacement.

26 4.4 Service Exceptions.

27 4.4.1 Customer Delinquency or Nonpayment. Franchisee is
28 not obligated to provide Franchise Services to any Customer who is

1 habitually delinquent in the payment of fees for Franchise Services or who
2 fails or refuses to pay fees for Franchise Services.

3 4.4.2 Franchisee will provide notice to City of account shut-
4 off forty-eight (48) hours prior to shut-off.

5 4.5 Customer Service. Franchisee acknowledges that the City
6 determined to procure and enter into this Agreement with Franchisee, among
7 other reasons, in order to provide improved Customer service, relations and
8 satisfaction.

9 4.5.1 Phone Number. Franchisee will maintain a toll-free
10 telephone number at least during Office Hours and, if Franchisee provides
11 Collection on Saturday, from 8:00 a.m. to noon on Saturdays ("Phone
12 Hours"). Franchisee will list the telephone number under Franchisee's
13 name in the City telephone directories (white pages and yellow pages).
14 Franchisee will provide an answering machine or answering service to take
15 reports of missed pick-ups and other complaints that are received outside of
16 Phone Hours.

17 4.5.2 Emergency Number. Franchisee will also maintain an
18 emergency telephone number disclosed to the City for use outside Phone
19 Hours. Franchisee will make a representative in a position of authority
20 available at the emergency number outside Phone Hours who will return
21 any emergency call as soon as possible, and in any event within one hour.

22 4.5.3 Complaint Records. Franchisee agrees to maintain a
23 log of complaints, including date, time, complainant's name and address if
24 the complainant is willing to give this information, and nature, date and
25 manner of complaint resolution. Franchisee will provide logs to City
26 promptly upon request.

27 4.5.4 Description of Customers' Rights. Franchisee will
28 provide Customers with a written Subscription Order setting forth

1 Franchisee's terms and conditions.

2 4.6 Franchisee Billing. Franchisee will bill and collect Service
3 Fees. Franchisee is prohibited from itemizing the Franchise Fee and any other
4 City-imposed fee as part of the Customer's bill. Franchisee will provide City with
5 an opportunity to review wording on bills. Failure to do so will result in the
6 imposition of liquidated damages

7 4.7 Enforcement of Permit. The City may, in its sole discretion,
8 enforce the permit requirement set forth in Section 8.60 et seq. of the Long Beach
9 Municipal Code against third party violators, taking into account the cost of doing
10 so and other factors. Franchisee may independently enforce the semi-exclusive
11 rights granted by this Agreement against third party violators (excluding the other
12 franchisee operating pursuant to a franchise agreement with City), including
13 seeking injunctive relief, and the City will use good faith efforts to cooperate in
14 such enforcement actions brought by Franchisee. The City will not be liable to
15 Franchisee in any manner, including for any costs or damages such as lost
16 revenues or lost profits, should any Person refuse to subscribe to Franchise
17 Services from Franchisee and/or perform Franchise Services under a franchise
18 agreement with the City in competition with Franchisee, and in doing so violate the
19 semi-exclusive grant of franchise given to Franchisee in this Agreement. In that
20 event, Franchisee's sole and exclusive remedy will be to seek an injunction,
21 damages or other available judicial relief against any such third person or entity
22 that engages in any conduct or activity that violates Franchisee's semi-exclusive
23 rights under this Agreement. If Franchisee becomes aware of any activity by a
24 third party that violates or may violate the provisions of Section 8.60 et seq. of the
25 Long Beach Municipal Code, Franchisee will notify City of such activity.

26 5. OPERATIONS.

27 5.1 Vehicles, Service Assets, and Drivers.

28 5.1.1 Vehicle Appearance. Bodies of Vehicles used in

1 Collection or transportation of Solid Waste must have watertight beds of
2 metal or impervious material that can be cleaned. Franchisee will utilize
3 packer-type, completely enclosed Vehicles unless another type of Vehicle is
4 required by terrain or type of Solid Waste to be hauled. Franchisee will
5 paint and label all Vehicles in a consistent, uniform, and professional
6 manner.

7 5.1.2 Compliance with Applicable Law.

8 (a) Franchisee will ensure that all Vehicles it uses to
9 provide the Franchise Services comply with all Applicable Law.
10 Franchisee will document, through its maintenance log or otherwise,
11 compliance under Applicable Law applying to each Vehicle and will
12 provide the City with copies of inspection reports within 10 days of
13 the City's request. The City may conduct inspections of Vehicles in
14 connection with any Permits issued by the City or otherwise.

15 (b) Franchisee will maintain copies of registration
16 certificates and reports and make them available for inspection at its
17 Office during Office Hours upon request by the City.

18 5.1.3 Vehicle Identification. Franchisee will paint its name,
19 telephone number and the Vehicle number on all Vehicles and Roll-Off bins
20 in letters and figures not less than 6 inches high for all Vehicles.

21 5.1.4 Drivers. Franchisee will ensure that all drivers of
22 Vehicles have in full force and effect a valid license of the appropriate class
23 issued by the California Department of Motor Vehicles, and comply with all
24 applicable federal, state and local laws. Franchisee will implement drug
25 and alcohol testing in accordance with Applicable Law.

26 5.2 Public Resources Code Requirements. In accordance with
27 Public Resource Code Section 49523, the City and Franchisee hereby contract,
28 based upon the mutually satisfactory terms of providing Franchise Services set

1 forth in this Agreement and receipt of compensation therefore, that Franchisee will
2 terminate providing Franchise Services upon expiration or termination of this
3 Agreement even if that expiration or termination occurs prior to the expiration of
4 the 5-year period described in Public Resources Code Section 49520. Franchisee
5 acknowledges that it does not have the right to make any claim under or pursuant
6 to Public Resources Code Section 49520 but only pursuant to the terms of this
7 Agreement. Franchisee's contracting and acknowledgments in this Agreement do
8 not foreclose the City from re-procuring agreements for Franchise Services or
9 Solid Waste Handling Services, including from Franchisee, following termination of
10 this Agreement by exclusive, partially-exclusive or wholly-exclusive franchise,
11 contract, license, permit or otherwise, with or without competitive bidding.

12 5.3 Personnel.

13 5.3.1 Nondiscrimination. Franchisee will comply with all
14 Applicable Laws regarding nondiscrimination, including those prohibiting
15 discrimination in employment.

16 5.3.2 Conduct. Franchisee will employ only competent,
17 qualified, conscientious, and sober personnel to ensure Franchise Services
18 satisfactory to the City. Franchisee will ensure that its employees serve the
19 public in a courteous, professional and reliable manner.

20 5.4 Contingency Plan. Franchisee will prepare a contingency
21 plan to provide Vehicles and personnel necessary and sufficient to maintain
22 uninterrupted Franchise Service during:

23 5.4.1 mechanical breakdowns,

24 5.4.2 extreme weather conditions,

25 5.4.3 road closures,

26 5.4.4 strikes, work stoppages and other concerted job
27 actions or similar events, and

28 5.4.5 emergencies, including natural disasters,

1 including procedures for replacing Vehicles disabled on routes. Franchisee will
2 provide City with a copy of the plan upon request.

3 6. DIVERSION.

4 6.1 Minimum Diversion Rate. Franchisee is required to maintain
5 a minimum diversion rate as required by the Director of Public Works.

6 6.2 Diversion Reporting.

7 6.2.1 Reporting and Substantiation of Diverted Materials.

8 Franchisee will report the amount of Diverted Recyclables to the City in its
9 Monthly Report or when required by the Act. Franchisee will include:

10 (a) the quantity (by each type) of Diverted
11 Recyclables expressed in pounds, or tons, the community or project
12 where the Diverted Recyclables originated, and

13 (b) the name and telephone number of the
14 Diversion Facility to which Franchisee delivered the Diverted
15 Recyclables and a receipt or invoice from that Diversion Facility.

16 6.2.2 "Diversion Facility" means any materials recovery
17 facility, processing facility or materials end user. "Diverted Recyclables"
18 means the net quantity of Recyclables that Franchisee has Collected at
19 Customers' premises and at construction or demolition projects and
20 Diverted, including Recyclables in Bulky Waste. The net quantity will be the
21 gross amount of material Collected and delivered to the Diversion Facility,
22 less any quantity of Solid Waste that was contained therein and deducted
23 from payment and/or Diversion and disposed by said Facility. "Divert,"
24 "Diverted," "Diversion" or other form thereof means to divert from disposal
25 so that the disposal tonnage is not reported as disposed under the State's
26 disposal reporting system and qualifies as diversion under the Act.

27 6.2.3 Franchisee will additionally report to the City on a
28 monthly basis the amount of Solid Waste contained within Diverted

1 Recyclables that was separated therefrom. Franchisee's report will include
2 the date of Collection, the quantity of Solid Waste expressed in pounds or
3 tons. This Solid Waste shall not be considered Diverted Recyclables.

4 6.2.4 Additional Information. If the City questions reports,
5 Records or other documentation that serves as the basis of measuring the
6 quantity or types of Diverted Recyclables (and associated Solid Waste),
7 Franchisee will respond to the City's questions and provide additional
8 clarifying documentation as soon as possible, but in all events within 30
9 days from the date the City submits questions to Franchisee.

10 7. MISCELLANEOUS SERVICE PROVISIONS.

11 7.1 Emergency Services. Within twenty-four (24) hours of Notice
12 from the City, Franchisee will provide emergency services beyond the scope of
13 Franchise Services at the times and to the extent directed by the City, including
14 unscheduled gathering, pick up, collection and disposal of C&D Debris, Bulky
15 Waste and other debris resulting from natural disasters such as earthquakes and
16 floods. The City will compensate Franchisee its Reimbursement Costs for those
17 services. For emergency services within the scope of Franchise Services,
18 Franchisee will charge City no more than what Franchisee charges is Customers
19 for the same frequency and capacity of service (such as Roll-off), unless the
20 Director authorizes different charges upon request of and cost-substantiation by
21 Franchisee. Franchisee will provide City priority in providing Franchise Services,
22 including delivering containers and reserving disposal capacity.

23 7.2 Title to Solid Waste. This Agreement does not purport to
24 grant Franchisee or City ownership of material that Franchisee's Customers
25 discard for pickup by Franchisee or that Franchisee handles under this
26 Agreement. The right to possession or ownership of those materials shall be
27 determined in accordance with law and any agreement between Franchisee and
28 its customers, and not as a result of this Agreement. Parties acknowledge that

1 City has no ownership rights in municipal Solid Waste.

2 7.3 Compliance with Applicable Law.

3 7.3.1 Compliance.

4 (a) Franchisee will perform all Franchise Services,
5 and will cause its Subcontractors to provide goods or services, in
6 accordance and compliance with Applicable Law and with this
7 Agreement, whether or not referenced specifically in the text of this
8 Agreement and regardless of whether Performance Obligations are
9 stated less stringently than Applicable Law. If any Performance
10 Obligation is more stringent than Applicable Law, Franchisee and its
11 Subcontractors must satisfy that Performance Obligation. Nothing in
12 this Agreement is construed to relieve the Franchisee of any
13 obligations imposed by Applicable Law.

14 (b) Franchisee acknowledges that the City is
15 authorized to make all necessary and reasonable rules and
16 regulations regarding all aspects of Solid Waste Handling Services,
17 including Franchise Services. Franchisee will comply with any and
18 all of those rules and regulations.

19 (c) Provisions of Applicable Law are incorporated in
20 this Agreement by reference as if set forth fully in this Agreement as
21 contractual obligations of Franchisee to City. In addition to or in lieu
22 of prosecuting violations of Applicable Law as misdemeanors,
23 infractions or otherwise in the manner provided under Applicable
24 Law, the City may enforce Applicable Law in the same manner as it
25 may enforce Franchisee's other contractual obligations under this
26 Agreement, including specific performance. Provisions of law are
27 incorporated into this Agreement by reference as Franchisee's
28 contractual obligations. City may enforce those provisions not as

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 violations of law (subject to fines or penalties) but as breaches of this
2 Agreement (subject to remedies under this Agreement). However,
3 the City has no obligation to enforce those obligations.

4 7.3.2 Referenced Provisions. Reference in this Agreement
5 to particular provisions or requirements of Applicable Law may not be
6 construed to limit Franchisee's obligation to comply with all provisions of
7 Applicable Law. Reference to statutory provisions of Applicable Law are
8 deemed to include reference to implementing rules and regulations. These
9 references are intended to facilitate Franchisee's satisfaction of its
10 Performance Obligations and the City's administration and specific
11 enforcement of this Agreement, and may not be construed to imply lack of
12 obligation to comply with other provisions or requirements of Applicable
13 Law not referred to or cited in this Agreement. If any Applicable Law
14 specifically referenced or cited in this Agreement is amended,
15 supplemented, restated, re-codified, modified or repealed, that reference or
16 citation will be deemed to refer to that amendment, supplement,
17 restatement, re-codification or modification.

18 7.3.3 Permits. Franchisee will obtain and maintain
19 throughout the Term all necessary approvals, authorizations, and Permits
20 (including Permits required under Title 8 of the Long Beach Municipal
21 Code). Franchisee will show proof of approvals, authorizations, and
22 Permits and will demonstrate compliance with the terms and conditions of
23 said approvals, authorizations, and Permits promptly upon the request of
24 the City. In particular, Franchisee warrants and represents that it is fully
25 acquainted with the provisions of the Long Beach Municipal Code.

26 7.3.4 Fines and Penalties. Franchisee is responsible for
27 payment of any and all fines and penalties imposed on Franchisee.
28 Franchisee will not seek reimbursement from the City or Customers for any

1 fines or penalties.

2 7.4 Cooperation with Waste Studies. Franchisee will cooperate
3 with the City on any and all waste composition studies, including modification of
4 routes, separate collection of individual Customer's Solid Waste, and/or delivering
5 targeted loads of Solid Waste to a City-designated location or locations.
6 Franchisee will also cooperate with the City on any and all Customer waste
7 assessments, including providing information in its Records on volume and
8 characterization of wastes generated by Customers.

9 7.5 Service Materials Belong to City. Reports prepared by
10 Franchisee in accordance with Section 10, public education and community
11 relations materials prepared in accordance with Section 4, and all other work
12 products (whether computerized, written, printed or photographic) developed by
13 the City or Franchisee in connection with Franchise Services, whether developed
14 directly or indirectly by the City or Franchisee, may be used by the City without
15 limitation or restriction. Franchisee may also continue to use public education and
16 community relations materials and other work product in connection with any
17 project not connected with this Agreement without the prior written consent of the
18 City.

19 8. RECORDS AND REPORTING. Franchisee acknowledges that the
20 City entered into this Agreement, among other reasons, to provide Customers and the
21 City with improved Collection Services. Franchisee further acknowledges that, in order
22 that the City may better evaluate Franchisee's performance under this Agreement,
23 Franchisee has obligated itself to maintain Records and timely provide reports in
24 accordance with this Section.

25 8.1 Records.

26 8.1.1 Maintenance. Unless otherwise directed by City,
27 Franchisee will accurately maintain at its Office any and all ledgers, books
28 of account, invoices, Customer lists, billing records, route maps, Customer

OFFICE OF THE CITY ATTORNEY.
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 complaints, canceled checks, logs, correspondence, Customer receipts,
2 and other records or documents evidencing or relating to rates, Franchise
3 Fee, Customers' Franchise Services subscriptions, satisfaction of
4 Performance Obligations, events subject to damages payable under Exhibit
5 7, documentation as City may reasonably require to ascertain the extent of
6 compliance with the Long Beach Municipal Code, and items listed in Exhibit
7 4 ("Records"). Specific Record requirements are listed on Exhibit 4.
8 Franchisee will maintain Records for the Term plus three (3) years, or any
9 longer period required by Applicable Law. Franchisee will use Reasonable
10 Business Efforts to promptly provide the City any additional information
11 relevant to this Agreement that is not specified in this subsection.

12 8.1.2 City Inspection and Audit.

13 (a) Upon Notice by the City, Franchisee will use
14 Reasonable Business Efforts to provide copies of Records to the City
15 or City's designee(s) for inspection or audit at the City Administrative
16 Office or City Auditor-Controller Office. Otherwise, Franchisee will
17 make Records available to the City or City's designee(s) for
18 inspection or audit at Franchisee's Office during Office Hours.

19 (b) Where the City has reason to believe that
20 Records may be lost or discarded due to dissolution, disbandment or
21 termination of Franchisee's business or other reason, the City may
22 require that Franchisee give the City custody of any or all Records
23 and that those Records and documents be maintained in the City
24 Office of the Department of Public Works. In that event, access to
25 said Records will be granted to any Person duly authorized by
26 Franchisee. If an audit discloses a discrepancy of five thousand
27 dollars (\$5,000) or two percent (2%), whichever is less, Franchisee
28 agrees to pay the cost of the audit.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8.2 Reporting.

8.2.1 Monthly. Franchisee will submit Monthly Reports to the City no later than thirty days from the end of the month for which collection service was provided. Monthly Reports must be in the form directed or approved by the City and contain, at a minimum, the information listed in Exhibit 5, including information needed for the City to prepare reports required under Applicable Law with respect to recycling and Diversion of Solid Waste in the City, the City's compliance with its solid waste facility permits.

8.2.2 Annual. Franchisee will submit Annual Reports as of September 30 to the City on or before November 15 of each Contract Year in the form directed or approved by the City, totaling the information contained in the Monthly Reports for the previous Contract Year and containing, at a minimum, the information listed in Exhibit 8.

8.2.3 Additional Information. Franchisee will use Reasonable Business Efforts to incorporate into reports additional information from Records promptly upon Notice from the City.

8.3 Financial Records and Reports.

8.3.1 Maintenance of Accounting Records.

(a) Form and Content. Franchisee will maintain in its Office accurate and complete accounting records containing financial and operational data relating to all costs associated with providing Franchise Services, whether by Franchisee or Subcontractor or Affiliate providing goods or services related to the provision of Franchise Services, prepared on an accrual basis. Franchisee will maintain its accounting records on a basis showing (1) the results of Franchisee's operations under this Agreement separately from operations in other locations, as if Franchisee were

1 an independent entity providing service only to the City, as well as
2 (2) the results of Franchisee's operations in all locations, as a
3 corporate entity. With respect to costs associated with goods or
4 services provided by an Affiliate that is a Subcontractor, Franchisee
5 may maintain those records in the office of the Affiliate but will
6 provide the City with a copy thereof within ten (10) days of City's
7 request therefore.

8 (b) City Audit. The City and its auditors and other
9 agents selected by the City may conduct on-site audits, reviews and
10 inspections of Records at Franchisee's Office during Office Hours
11 and make copies of any Records or supporting documentation
12 relevant to this Agreement, including Customer account and billing
13 information, Customer receipts, and Franchise Fee payments.
14 Franchisee will retain said records for the term plus three (3) years
15 and any additional time directed by the City to enable the City to
16 complete any review or audit.

17 8.3.2 Financial Statements. Promptly upon City direction,
18 Franchisee will make available for review by the City Franchisee's most
19 recent financial statements, including any accompanying statement or
20 opinion by the accountant who prepared them respecting that accountant's
21 compilation, review or audit, as the case may be.

22 8.3.3 Affiliated Companies. If Franchisee enters into any
23 Subcontracts with Affiliates, Franchisee will thereafter disclose said
24 arrangements in Franchisee's financial reports. The City's inspection rights
25 extends to said Affiliate or Affiliates.

26 8.3.4 City Review of Financial Statements. City and/or its
27 agents and consultants may review the audit plan and work papers of any
28 of the accountants whose opinions on the financial statements Franchisee

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 is obligated to deliver to City. If that review gives rise to any questions or
2 differences of opinion regarding Franchisee's compliance with this
3 Agreement, Franchisee and its accountant(s) will meet with the City and its
4 consultant, if any, to discuss the issues involved within fourteen (14) days of
5 City's direction.

6 9. INSURANCE, INDEMNIFICATION AND PERFORMANCE
7 ASSURANCES.

8 9.1 Insurance

9 9.1.1 Policies.

10 (a) Types and Amounts. Franchisee, at
11 Franchisee's sole cost and expense, will procure from an insurance
12 company or companies admitted to do business in the State of
13 California and subject to the regulation of the California Insurance
14 Commissioner and will maintain in force at all times during the Term
15 the types and amounts of insurance listed in Exhibit 6.

16 (b) Endorsements. The policies of insurance
17 required pursuant to Section 11 must contain the endorsements
18 listed in Exhibit 6.

19 9.1.2 Delivery of Proof of Coverage.

20 (a) As of the Commencement Date, Franchisee will
21 furnish the City a certificate for each policy of insurance required
22 under this Section in a form and substance satisfactory to the City.
23 Each such certificate must show the type and amount of coverage,
24 effective dates and dates of expiration of policies and will have all
25 required endorsements. If the City requests, Franchisee will promptly
26 deliver copies of each policy together with all endorsements to the
27 City.

28 (b) Franchisee will furnish renewal certificates to the

1 City to demonstrate maintenance of the required coverages
2 throughout the Term.

3 9.1.3 Other Insurance Requirements.

4 (a) Subcontractors. If Franchisee subcontracts to a
5 Subcontractor to provide goods or services related to the provision of
6 Franchise Services, Franchisee will require all such Subcontractors
7 to provide statutory workers' compensation insurance and
8 employer's liability insurance for all of the Subcontractor's employees
9 engaged in the work. The general liability insurance required by this
10 Section must cover Franchisee's liability for acts of its
11 Subcontractors or each Subcontractor must furnish evidence of
12 insurance provided by it meeting all of the requirements of this
13 Section.

14 (b) Compliance with Policies. Franchisee will
15 comply with all requirements of the insurers issuing policies and will
16 require its Subcontractors to do so. Carrying insurance does not
17 relieve Franchisee from any Performance Obligation, including those
18 imposed by this Section. If any third Person makes a claim against
19 Franchisee or any Subcontractor on account of any occurrence
20 related to this Agreement, Franchisee will promptly report the facts in
21 writing to the insurance carrier and to the City.

22 9.2 Franchisee Defense and Indemnification.

23 9.2.1 Permit. Franchisee will defend with counsel approved
24 by the City and indemnify City for actions arising out of its permit in
25 accordance with Chapter 8 of the Long Beach Municipal Code.

26 9.2.2 Agreement.

27 (a) Defense and Indemnification. Franchisee will
28 further indemnify, defend with counsel approved by the City, protect,

1 release and hold harmless the City, its boards, commissions, officers
2 and employees from and against all Liabilities paid, incurred or
3 suffered by, or asserted against, the City that result or are claimed to
4 have resulted directly or indirectly by Franchisee's actions or
5 inactions, including the following:

6 (i) Franchisee Negligence or Misconduct:
7 the wrongful, willful or negligent act, error or omission, or the
8 misconduct of the Franchisee and the Persons described in
9 the definition of "Franchisee" ;

10 (ii) Challenges to Agreement: legal
11 challenge with respect to the procurement of this Agreement
12 or Parties' execution of this Agreement, the City's authority to
13 contract out Franchise Services, or any provision contained
14 within the Agreement regardless of the legal theory advanced
15 or relied upon by any interested third party, including any
16 appeals necessary to validate that authority or the Agreement;
17 or

18 (iii) Enforcement of Agreement or Applicable
19 Law: any Liabilities that may be assessed against Franchisee
20 or the City in connection with any alleged failure of the City to
21 enforce provisions of this Agreement or of Applicable Law as
22 permitted under Section 8.

23 9.2.3 Certain City Negligence Excluded. Franchisee will not,
24 however, be required to reimburse or indemnify the City to the extent any
25 Liabilities are due to the sole negligence or willful misconduct of the City
26 and the Persons described in the definition of "City" in Exhibit 1.

27 10. SERVICE FEES.

28 10.1 Service Fees. Franchisee understands and acknowledges, as

1 follows:

2 10.1.1 Pursuant to Long Beach City Charter, multiple solid
3 waste enterprises will be granted a non-exclusive franchise in the form of
4 this Agreement to provide Franchise Services within the City of Long
5 Beach.

6 10.1.2 In authorizing multiple Franchisees within the same
7 Service Area, it is City's intention to allow for competition and thereby avoid
8 the need to set Service Fees, for the provision of Franchise Services
9 pursuant to this Agreement.

10 10.2 Fees Payable by Franchisee.

11 10.2.1 AB 939 Fee. Franchisee will pay the City an annual
12 fee as established by resolution of the Long Beach City Council, and
13 amended from time to time, currently equal to eight percent (8%) of Gross
14 Revenues received from providing Franchise Services, in compliance with
15 AB 939, commencing with revenues billed for and received after December
16 1, 2009.

17 10.2.2 Franchise Fee. In consideration for City's granting
18 Franchisee the franchise described in Section 4, Franchisee will pay the
19 City a Franchise Fee as established by resolution of the Long Beach City
20 Council, and amended from time to time, the Franchise Fee equal to eight
21 percent (8%) of the Gross Revenues received from providing the Franchise
22 Services, commencing with Service Fees received after December 1, 2009.

23 10.2.3 Community Clean-Up Fee. Franchisee must maintain
24 its current community clean-up fee amount, which the City may draw upon
25 in the event Franchisee fails to collect Waste as requires by this
26 Agreement.

27 10.2.4 Payment. Franchisee will pay the AB 939 Fee, the
28 Franchise Fee and the Community Clean-Up Fee (collectively, "Fees")

1 monthly, no later than sixty (60) days after the first day of the month for
2 which Franchisee rendered Franchise Services. With payment, Franchisee
3 will additionally provide:

4 (a) documentation in form and detail satisfactory to
5 the Director showing the basis for calculating the franchise fee,
6 together with additional information to calculate or verify the
7 franchise fee that the Director may determine to be necessary; and

8 (b) a representation and warranty as follows: "I
9 represent and warrant, under penalty of perjury of the laws of the
10 State of California, that I am familiar with the financial transactions of
11 Signal Hill Disposal LLC and am responsible for keeping and
12 maintaining its financial records, including gross receipts thereof, and
13 I have reviewed the accompanying franchise payment accounting
14 statement. To the best of my knowledge and belief, the statement is
15 true, correct and complete."

16 Documentation and representations and warranties filed by
17 Franchisee are not deemed conclusive as to the information presented or
18 statements made therein. Franchisee's submission of documentation and
19 representations and warranties does not preclude the City from taking
20 additional measures and actions to collect franchise fees actually due and
21 payable.

22 10.2.5 Late Payment Charges. If Franchisee does not fully
23 and timely pay its Fees, then Franchisee shall pay a basic penalty of ten
24 percent (10%) of the amount of the unpaid Franchise Fee plus interest
25 equal to one and one half percent (1½ %) of the total of (1) the unpaid
26 monthly charges and (2) the basic penalty, for each month, or part of a
27 month, that the monthly franchise fee has not been paid.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10.2.6 City Audit. The City may, at its own expense and using City staff or a consultant of its choosing, audit the records of Franchisee and Franchisee must provide the City with copies of records within two (2) weeks of the City's request. If the City's audit demonstrates to the satisfaction of the City that the Fees paid by Franchisee to the City was understated, then Franchisee will pay the City

(a) the amount of the understated Fees plus the late payment charges within thirty (30) days following the City's submission of the results of the audit to Franchisee, and

(b) if the City's audit demonstrates that the Fees paid by Franchisee was understated by more than five thousand dollars (\$5,000) or two percent (2%), whichever is less, the City's Reimbursement Cost to conduct the audit.

10.2.7 Other Permit Fees. Franchisee will pay the City any fee for Permits issued by the City in the time, manner and amount required by the Long Beach Municipal Code, as it may be amended from time to time.

10.3 Payment of Monies Due City. Franchisee will pay all City Payment Obligations (1) on the date they are due pursuant to this Agreement or, (2) if no date is provided in this Agreement, within twenty (20) days of City demand. If Franchisee has not fully and timely paid a City Payment Obligation within twenty (20) days of its due date, Franchisee must pay the amount of (1) the Payment Obligation, plus (2) the Overdue Rate or, with respect to Franchise Fees, the late-payment charge set forth in Section 10.2.

10.4 Fee Disputes.

10.4.1 City's Notice of Dispute. If the City disputes any amount calculated by Franchisee in accordance with Section 11, the City

1 will give Franchisee Notice of its dispute together with any request for
2 additional information, identified with reasonable specificity, with respect
3 thereto.

4 10.4.2 Franchisee's Response. Within seven (7) days of
5 receiving the City's Notice, Franchisee will respond to the City's dispute and
6 supply any requested information. If Franchisee does not respond within
7 said time, it will be deemed to concur with the City. If Franchisee concurs
8 or is deemed to concur, it will promptly amend the disputed invoice.

9 11. BREACHES, DEFAULTS, DAMAGES AND OTHER REMEDIES.

10 11.1 Certain Breaches and Damages.

11 11.1.1 Notice and opportunity to correct. The City entered into
12 this Agreement with Franchisee in part based on Franchisee's
13 demonstrated abilities, service quality, and responsiveness to Customers'
14 and the City's needs. It is the City's hope to avoid exercising remedies set
15 forth in this Agreement whenever possible by working with Franchisee
16 informally to resolve Events of Default or other failures to satisfy the
17 obligations set forth in this Agreement. Thus, the City may, in its sole
18 discretion, provide verbal notice to Franchisee of any Event of Default or
19 failure by Franchisee to satisfy the obligations set forth in this Agreement of
20 which the City becomes aware prior to pursuing other remedies set forth in
21 this Agreement. If Franchisee corrects said Event of Default or failure to the
22 satisfaction of the Director within the number of days provided, then the City
23 shall not pursue additional remedies for that occurrence.

24 11.1.2 Franchisee Reports. In each Monthly Report,
25 Franchisee will certify to the City that it has fully and timely met its
26 Performance Obligations during the preceding Month. If Franchisee cannot
27 so certify, then Franchisee will note those failures in its Monthly Report and
28 within thirty (30) days of submitting its Monthly Report, pay damages listed

1 in Exhibit for each failure occurring after the first 6 weeks following the
2 Commencement Date.

3 11.1.3 City Notice. If the City becomes aware at any time that
4 Franchisee has not fully and timely met its Performance Obligations then
5 the City may provide Franchisee with a Notice thereof specifying any
6 damages that Franchisee must pay the City in accordance with Exhibit 7
7 within ten (10) days of Notice, unless Franchisee contests payment of
8 damages as provided in section 10.4.

9 11.1.4 Procedure for Review of Damage Obligations. Within
10 ten (10) days of the date of the Notice by City, Franchisee may contest
11 imposition of damages by submitting documentary evidence to the City
12 demonstrating why Franchisee does not owe damages. The City will use
13 Reasonable Business Efforts to review Franchisee's evidence and render a
14 written decision to Franchisee confirming or reversing the imposition of
15 damages as soon as reasonably possible after receipt of the evidence. The
16 City's decision is final and binding.

17 11.1.5 Damages Reasonable.

18 (a) The Parties acknowledge that the City has
19 incurred considerable time and expense procuring this Agreement in
20 order to secure an improved level of Collection service quality,
21 accountability, and increased Customer satisfaction. Therefore
22 consistent and reliable Franchise Service and accountability is of
23 utmost importance to the City. The City has considered and relied
24 on Franchisee's representations as to its quality of service
25 commitment in entering into this Agreement, and Franchisee's
26 breach of its Performance Obligations represents a loss of bargain to
27 the City and Customers.

28 (b) The Parties further recognize that quantified

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

standards of performance and regular reporting to the City regarding that performance are necessary and appropriate to ensure consistent and reliable Service, and if Franchisee fails to meet its Performance Obligations then the City will suffer damages (including its Customers' inconvenience; anxiety, and frustration, criticism and complaint by Customers; potential political pressure; lost City staff time; and loss of bargain secured through time-consuming and expensive procurement) and that it is and will be impracticable and extremely difficult to ascertain and determine the value thereof. In addition, if Franchisee fails to fully and timely satisfy its Performance Obligations or in the Event of Default, the urgency of protecting public health and safety may necessitate that the City enter into emergency or short term arrangements for services without competitive procurement at prices substantially greater than hereunder, and the monetary loss resulting therefrom is impossible to precisely quantify. Lastly, termination of this Agreement for Franchisee Default and other remedies provided hereunder are, at best, a means of future correction and not remedies that make the City whole for past Franchisee Defaults. Therefore, the Parties agree that the liquidated damages listed in Exhibit 7 represent a reasonable estimate of the amount of said damages, considering all of the circumstances existing on the Commencement Date, including the relationship of the sums to the range of harm to the City 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

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 damage provision at the time that this Agreement was made.

2 11.2 Remedies Upon Default.

3 11.2.1 Remedy. Upon the occurrence of an Event of Default,
4 the City has the following remedies:

5 (a) Termination. The City may terminate this
6 Agreement or any portion of Franchisee's Performance Obligations.
7 Prior to termination, the City must give Franchisee a Notice stating
8 the reason for the termination. Franchisee acknowledges that the
9 City may terminate the Agreement and revoke the permit issued
10 pursuant to Long Beach Municipal Code Section 8.60 et seq.

11 (i) 30 days following the date of the Notice,

12 or

13 (ii) immediately following the date of the

14 Notice if

15 1) City determines that protection of
16 public health and safety requires immediate termination
17 or

18 2) Franchisee fails to maintain
19 insurance, bonds, or other assurances of performance
20 required under this Agreement or

21 3) Franchisee Violates federal, state
22 or local law.

23 (b) Damages. The City may exercise its remedies
24 of damages (including damages in accordance with Section 12).

25 (c) Equitable Relief. The City may exercise any
26 other available remedies at law or in equity (including specific
27 performance and injunctive relief). Franchisee acknowledges that
28 the City's remedy of damages for a breach of this Agreement by

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Franchisee may be inadequate for reasons including: the urgency of timely, continuous and high-quality Solid Waste management service under this Agreement, including collection, transportation and/or transfer for disposal of putrescible wastes which constitute a threat to public health; and for all of the reasons set forth in Section 12. Therefore, the City is entitled to all available equitable remedies, including specific performance or injunctive relief.

11.3 Remedies Not Exclusive. The City's rights and remedies in the Event of Default are not exclusive. Exercise of one remedy, including seeking damages, is not an election of remedies but is cumulative with any other remedies under this Agreement.

11.4 Waivers.

11.4.1 City Waiver of Breach. The City's waiver of any breach or Event of Default will not be deemed to be a waiver of any other breach or Event of Default including those with respect to the same obligations under this Agreement. The City's decision not to demand payment of damages will not be deemed a waiver of any Franchisee failure to satisfy any Performance Obligations. The City's subsequent acceptance of any damages or other money paid by Franchisee, including damages, will not be deemed to be a waiver by the City of any pre-existing or concurrent breach or Event of Default.

11.4.2 Franchisee Waiver of Certain Defenses. Franchisee acknowledges that it is solely responsible for providing Franchise Services and by this Agreement irrevocably and unconditionally waives defenses to the payment and satisfaction of its Performance Obligations under this Agreement based upon failure of consideration; contract of adhesion; impossibility or impracticability of performance; commercial frustration of purpose; or the existence, non-existence, occurrence or non-occurrence of

1 any foreseen or unforeseen fact, event or contingency that may be a basic
2 assumption of Franchisee with regard to any provision of this Agreement.
3 However, Franchisee does not waive any defense of Uncontrollable
4 Circumstances.

5 11.5 Jurisdiction, Venue.

6 11.5.1 Jurisdiction. The Parties will bring any lawsuits arising
7 out of this Agreement in California, which will have exclusive jurisdiction
8 over said lawsuits.

9 11.5.2 Venue. Franchisee will accept service of process at
10 the address provided for notices from City under this Agreement.

11 11.5.3 Other. The site of any other hearing or action, whether
12 arbitration or non-judicial, of whatever nature or kind regarding this
13 Agreement, will be conducted in the City.

14 11.6 Costs. Franchisee agrees to pay to the City the City's
15 Reimbursement Costs reasonably incurred by or on behalf of the City enforcing
16 timely payment or performance of Franchisee's obligations under this Agreement.

17 11.7 Assurance of Performance. If Franchisee (1) is the subject of
18 any labor unrest (including work stoppage or slowdown, sick-out, picketing or other
19 concerted job action); (2) appears in the judgment of the City to be unable to
20 regularly pay its bills as they become due; or (3) is the subject of a civil or criminal
21 judgment or order entered by a federal, state, regional or local agency for violation
22 of an environmental or tax law, and the City believes in good faith that
23 Franchisee's ability to timely and fully perform Franchise Services has been
24 placed in substantial jeopardy, the City may, at its option and in addition to all
25 other remedies it may have, demand from Franchisee reasonable assurances of
26 timely and full performance under this Agreement. If Franchisee fails or refuses to
27 provide reasonable assurances by the date required by the City, that failure or
28 refusal will constitute an Event of Default.

1 11.8 City Right to Perform Franchise Services.

2 11.8.1 Events. The City may perform, or contract for the
3 performance of, any or all of Franchisee's Performance Obligations,
4 including the collection of Solid Waste or any portion thereof and
5 transportation and delivery to a Solid Waste facility, upon the occurrence of
6 either of the following events, determined by City in its sole discretion:

7 (a) Franchisee, due to Uncontrollable
8 Circumstances or for any reason whatsoever, fails, refuses or is
9 unable for a period not to exceed forty-eight (48) hours to Collect
10 and/or to transport, Solid Waste to a Solid Waste facility or the City
11 determines there is danger to the public health, safety or welfare; or

12 (b) The City suspends any portion of Franchisee's
13 Performance Obligations or terminates this Agreement in
14 accordance with Section 12.

15 11.8.2 The City has no obligation to continue providing
16 Franchise Services and may at any time, in its sole discretion, cease to
17 provide Franchise Services. However, the City's right to provide Franchise
18 Services including contracting with another Person, will continue until
19 Franchisee can demonstrate to the City's satisfaction that Franchisee is
20 ready, willing and able to resume timely and full Franchise Services.

21 12. FRANCHISEE'S OBLIGATIONS UPON EXPIRATION OR
22 TERMINATION.

23 12.1 Pay Outstanding Amounts. Franchisee will pay the City any
24 City Payment Obligations or other amounts then accrued and payable.

25 12.2 Cooperation During Transition. If Franchisee is not awarded
26 an agreement to continue to provide Franchise Services following the expiration or
27 termination of this Agreement, Franchisee will cooperate fully with the City and the
28 succeeding Franchisee(s), contractor(s), licensee(s), permittee(s), or other

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 Person(s) providing Solid Waste Handling Services to assure a smooth, efficient,
2 orderly, timely and effective transition from Franchise Services to those Solid
3 Waste Handling Services, including transfer of Records; complete routing
4 information, route maps, vehicle fleet information, and Customer billing lists, upon
5 request of the City; providing other Records and reports required by this
6 Agreement; and coordinating with the City and any subsequent Franchisee(s),
7 contractor(s), licensee(s), permittee(s), or other Person(s) with respect to
8 exchanging Containers. Franchisee will not remove a Container from any
9 Customer's premises until the earlier of: (1) the date replacement containers are
10 provided to the Customer, or (2) three (3) weeks after the expiration or termination
11 of this Agreement. THIS OBLIGATION OF FRANCHISEE WILL SURVIVE THE
12 TERMINATION OF THIS AGREEMENT.

13 13. THE PARTIES.

14 13.1 Franchisee is Independent Contractor. Franchisee will
15 perform Franchise Services as an independent contractor engaged by the City and
16 not as officer, agent, servant, employee or partner of the City nor as a joint venture
17 with the City. No employee or agent of Franchisee is deemed to be an employee
18 or agent of the City. Franchisee will have the exclusive control over the manner
19 and means of performing Franchise Services and meeting its Performance
20 Obligations and over all Persons performing Franchise Services. Use of the word
21 "direct" in this Agreement signifies City's right to require Franchisee's compliance
22 with City directions, but will not be construed to signify City control over the
23 manner and means of performing Franchise Services. Franchisee is solely
24 responsible for the acts and omissions of its officers, employees, contractors,
25 subcontractors and agents, none of which is deemed to be an officer, agent,
26 servant or employee of the City. Neither Franchisee nor its officers, employees,
27 contractors, subcontractors and agents will obtain any rights to retirement benefits,
28 workers compensation benefits, or any other benefits which accrue to City

1 employees and Franchisee expressly waives any claim it may have or acquire to
2 said benefits.

3 13.2 Parties in Interest. Nothing in this Agreement, whether
4 express or implied, is intended to confer any rights on any Persons other than the
5 Parties and their representatives, successors and permitted assigns.

6 13.3 Binding on Successors. The provisions of this Agreement will
7 inure to the benefit of and be binding on the successors and permitted assigns of
8 the Parties.

9 13.4 Further Assurances. Each Party agrees to execute and
10 deliver any instruments and to perform any acts as may be necessary or
11 reasonably requested by the other in order to give full effect to this Agreement.

12 13.5 Actions of the City in Its Governmental Capacity. Nothing in
13 this Agreement is interpreted as limiting the rights and obligations of the City in its
14 governmental or regulatory capacity.

15 13.6 Franchisee's Obligations Performed at Its Sole Expense.
16 Franchisee will perform Franchise Services solely for the compensation expressly
17 provided for in this Agreement. Franchisee acknowledges that it will not receive
18 any form of payment or other consideration from the City for its performance under
19 this Agreement except for the grant of the franchise under this Agreement.
20 Franchisee will instead look solely to its Customers to compensate Franchisee for
21 providing all Franchise Services and satisfying its Performance Obligations.

22 13.7 Parties' Representatives.

23 13.7.1 City Representative. The City Representative is the
24 Director of Public Works or designee unless otherwise named by the City
25 Manager from time to time upon Notice of City Representative to
26 Franchisee. The City Representative is authorized to act on behalf of the
27 City in the administration of this Agreement and, unless otherwise specified,
28 may take all actions set forth in this Agreement except termination,

1 extension, amendment, and assignment consent, without Board action.

2 13.7.2 Franchisee Representative. The Franchisee
3 Representative is Steve South, as may be changed from time to time upon
4 Notice of Franchisee Representative to the City. The Franchisee
5 Representative is authorized to act on behalf of Franchisee in the
6 performance under this Agreement.

7 13.8 Due Diligence. Franchisee acknowledges that the City may
8 be subject to statutory fines or penalties for failure to achieve mandated waste
9 diversion levels and that waste management is a public health and safety concern.
10 It agrees that it will exercise due diligence in performing Franchise Services and
11 agrees that it will modify this Agreement to ensure continued compliance with any
12 new or revised state laws.

13 13.9 Subcontracting.

14 13.9.1 Franchisee may not Subcontract any portion of the
15 Franchise Services, including the provision of Bins and Containers, set forth
16 in this Agreement. Franchisee may engage any number of Subcontractors
17 providing goods or services that do not comprise Franchise Services or the
18 provision of Bins and Containers (e.g., billing services, equipment
19 maintenance). Franchisee will not subcontract in a manner that effectuates
20 an assignment of this Agreement, unless it has obtained advance written
21 approval from the City.

22 13.9.2 Franchisee must direct the work of Franchisee's
23 Subcontractors. Franchisee is solely responsible for paying any
24 compensation due or payable to Franchisee's Subcontractors. The City
25 may require Franchisee to remove any Subcontractor for good cause.
26 Subcontractors' failure to satisfy its subcontracted obligations (including
27 violation of Applicable Law) is a failure by Franchisee and the City may
28 exercise any or all of the rights and remedies available to the City under this

1 Agreement with respect to Franchisee.

2 13.9.3 "Subcontractor" includes any Person, including
3 Affiliates, that provides goods or services that do not comprise Franchise
4 Services or the provision of Bins and Containers but are related to the
5 provision of Franchise Services, whether pursuant to formal, written
6 agreement or merely in fact. "Subcontract" means any arrangement, formal
7 or informal, written or otherwise, between Franchisee and a Subcontractor
8 for providing goods or services related to the provision of Franchise
9 Services.

10 13.9.4 In its Annual Report, Franchisee will disclose to the
11 City the name of all Subcontractors, the amount goods or services related
12 to the provision of Franchise Services that each Subcontractor provides to
13 Franchisee, and a description of Franchisee's relationships to each
14 Subcontractor (including ownership interests).

15 13.10 No Use of City Name. Franchisee will not do business as or
16 use a corporate, partnership, venture or other formal name, containing the words
17 "Long Beach" or "City" or implying City ownership although upon City direction,
18 Franchisee will use the City's name in its public relations signage.

19 14. ASSIGNMENT AND AMENDMENTS.

20 14.1 Assignment

21 14.1.1 City Assignment. The City may assign this Agreement
22 to a joint powers authority, a sanitation district or other public entity
23 succeeding to the major portion of the City's solid waste management rights
24 and obligations. The City may also assign this Agreement to any other
25 Person, with Franchisee's consent, upon the City's determination that the
26 assignee is financially capable of meeting the City's obligations under this
27 Agreement.

28 14.1.2 Franchisee Assignment. Franchisee acknowledges

1 that the experience and expertise of Franchisee are material considerations
2 of the City in entering into this Agreement with Franchisee. Franchisee may
3 not transfer this Agreement, the franchise granted under it, in whole or in
4 part, whether voluntarily or involuntarily, without the Director's prior written
5 consent, exercised in the Director's sole discretion. "Transfer" means an
6 action (or inaction) which has any of the following direct (or indirect) effects:

7 (a) changing either of the following: the control; or
8 more than 10% ownership interest (actual or constructive) of
9 Franchisee (including buyout, merger, acquisition, consolidation,
10 recapitalization, stock (re)issuance, voting trust pooling agreement,
11 escrow arrangement, dissolution or liquidation except to parents,
12 grandparents, siblings, children and grandchildren of individuals
13 having a shareholder or other equity interest in Franchisee (as of
14 the date of this Agreement ("Immediate Family") or trust created
15 primarily to benefit members of the Immediate Family. Franchisee
16 shall prove to the satisfaction of Director that 10% or less ownership
17 interest has not changed;

18 (b) changing the control or ownership (actual or
19 constructive) of more than fifty percent (50%) of the value of assets
20 used to provide franchise services except for sales or transfers to the
21 Immediate Family or trust created primarily to benefit the Immediate
22 Family. Franchisee shall prove to the satisfaction of Director that
23 ownership or control of 50% or less value of assets has not changed;

24 (c) resulting in someone other than Franchisee
25 performing franchise services or assuming the obligation to provide
26 franchise services (including substitution of someone else by a
27 surety company providing a performance bond and contract
28 assignment, transfer, conveyance or sublease or licensing.) For

1 purposes of this definition, an action (or inaction) includes
2 assignment by operation of law, such as insolvency or bankruptcy,
3 making assignment for the benefit of creditors, writ of attachment of
4 an execution, or appointment of a receiver taking possession of any
5 of Franchisee's tangible or intangible property. Franchisee may not
6 circumvent the City's Assignment consent rights in practical effect by
7 securing goods or services from a Subcontractor that would be itself
8 subject to "assignment," where "Subcontractor" is substituted for
9 "Franchisee" in the definition of "Assign".

10 14.2 Amendments. The Parties may change, modify, supplement
11 or amend this Agreement only upon written agreement duly authorized and
12 executed by both Parties. However, wherever reports, forms, protocols, or other
13 documents are attached to this Agreement as attachments to an Exhibit, the City
14 Representative and Franchisee Representative may edit and revise them upon
15 their agreement or otherwise provided in the related Sections of this Agreement,
16 evidenced in writing unless this Agreement specifically requires approval by the
17 City.

18 15. NOTICES, CONSENTS, APPROVALS, ETC.

19 15.1 Notices.

20 15.1.1 Written. The Parties must present and express all
21 reports, demands, requests, directions, selections, option exercises, orders,
22 requests, proposals, reviews, comments, acknowledgments, approvals,
23 consents, waivers, certifications and other communications made to each
24 other under this Agreement in writing. Notice by the City to Franchisee of a
25 missed pick-up (i.e., non-collection) or a Customer problem or complaint
26 may be given to Franchisee orally by telephone at Franchisee's local office
27 with written confirmation sent to Franchisee within twenty-four (24) hours of
28 the oral notification.

1 15.1.2 Manner. The Parties must provide Notices at the
2 address provided in subsection 15.1.3, in any of the following manners:

3 (a) by e-mail or facsimile promptly followed by
4 delivery described in following items (2), (3) or (4),

5 (b) personal delivery to a representative of the
6 Parties, with signed receipt,

7 (c) deposit in the United States mail, first class
8 postage prepaid (certified mail, return receipt requested), or

9 (d) deposit with a commercial delivery service
10 providing delivery verification.

11 15.1.3 Address.

12 If to City: Michael P. Conway, Public Works Director
13 Long Beach Department of Public Works
14 333 West Ocean Blvd., 9th Floor
15 Long Beach, California 90802
16 Telephone: (562) 570-5282
17 e-mail: michael.conway@longbeach.gov

18 With a copy to: James Kuhl, Manager, Environmental Services
19 2929 East Willow Street
20 Long Beach, CA 90808

21 If to Franchisee: Steve South
22 Signal Hill Disposal LLC
23 Telephone: ()
24 Facsimile: ()
25 e-mail:

26 Parties may change their contact information above upon
27 Notice to the other Party.

28 15.2 Consents and Approvals. The City Representative is

1 authorized to act on behalf of the City in the administration of this Agreement and,
2 unless otherwise specified, may take all actions set forth in this Agreement except
3 termination, amendment, extension, and assignment consent, without City Council
4 action.

5 15.3 Exercise of Discretion by City. Recognizing the essential
6 public health and safety protections this Agreement serves, where this Agreement
7 specifically provides that the exercise of any discretionary action is in the City's,
8 sole, exclusive or absolute discretion, control or judgment, that exercise of
9 discretion is deemed reasonable and the Franchisee will not question or challenge
10 City's exercise thereof.

11 16. EXECUTION OF AGREEMENT. Authority to Execute. The City

12 warrants that the officers listed below have been duly authorized by the City to execute
13 this Agreement on behalf of the City. Franchisee warrants that the individuals listed
14 below have been duly authorized by the Franchisee to execute this Agreement on behalf
15 of the Franchisee.

16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and entered as of the last date indicated below:

August 19, 2010

FRANCHISEE
By SS

STEVE SOUTH
Type or Print Name

August 19, 2010

By ERAIN RAMIREZ

ERAIN RAMIREZ
Type or Print Name

"Franchisee"

CITY OF LONG BEACH, a municipal corporation

4.11, 2012

By [Signature] **Assistant City Manager**
City Manager

"City"

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Agreement is approved as to form on 3-15, 2012

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

EXHIBIT 1
DEFINITIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Act means the California Integrated Waste Management Act set forth in California Public Resources Code at Sections 40000 et seq.

Affiliate or Affiliates means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Franchisee by virtue of direct or indirect Ownership interests or common management, including a business in which Franchisee has a direct or indirect Ownership interest, a business which has a direct or indirect Ownership interest in Franchisee and/or a business which is also Owned, controlled or managed by any business or individual which has a direct or indirect Ownership interest in Franchisee.

Agreement means this Agreement, including all exhibits and attachments which are incorporated herein by reference, as this Agreement may be amended and supplemented pursuant to Section 15.

Alternative Fuel Vehicle means a vehicle compliant with the standards set forth in the Fleet Rules of the Southern California Air Quality Management District, as they may be amended from time to time.

Alternative Fuel means, as defined pursuant to the EPACT, methanol, denatured ethanol and other alcohols, separately or in mixtures of 85% by volume or more with gasoline or other fuels, CNG, LNG, LPG, hydrogen, "coal-derived liquid fuels," fuels "other than alcohols" derived from "biological materials," electricity, neat biodiesel, or any other fuel determined to be "substantially not petroleum" and yielding "substantial energy security benefits and substantial environmental benefits."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Annual Report means the report described in Section 10.

Applicable Law means all laws, statutes, rules, regulations, guidelines, Permits, actions, determinations, orders, or requirements of the United States, State of California, City (including its City Code together with rules and regulations promulgated thereunder and the City's Integrated Waste Management Plan), the Local Enforcement Agency, California Highway Patrol, applicable Air Quality Management District, and other regional or local government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, that from time to time apply to or govern Franchise Services or the performance of the Parties' respective obligations under this Agreement, including any of the foregoing which concern health, safety, fire, mitigation monitoring plans, building codes, zoning, and further including:

1. Vehicles:
 - (i) Section 43000 et seq. the California Health and Safety Code with respect to air emissions (smog checks);
 - (ii) Section 27456b of the California Vehicle Code with respect to tires;
 - (iii) Section 34500 et seq. of the California Vehicle Code with respect to documentation through its maintenance log or otherwise of a safety compliance report issued pursuant to Division 14.8 of the California Vehicle Code as applicable to each Vehicle, including bi annual "BIT" inspections conducted by the California Highway Patrol;
 - (iv) rules and regulations promulgated under the California Vehicle Code with respect to Vehicle highway lighting, flashing and warning lights, clearance lights, and warning flags;
 - (v) rules and regulations of the California Department of Motor Vehicles with respect to Vehicle registration;
 - (vi) Vehicle weight limits;

- 1 (vii) the appropriate class of drivers' licenses issued by the California
2 Department of Motor Vehicles;
- 3 (viii) Control Measure for Diesel Particulate Matter from On Road Heavy Duty
4 Residential and Commercial Solid Waste Collection Vehicles, 13 CCR 2020
5 et seq.;
- 6 (ix) 14 CCR 17341, 17342, 17343 and 17344, with respect to equipment
7 construction, safety and parking and identification of operating equipment.
- 8 2. Containers:
- 9 (i) 14 CCR 17314 with respect to maintenance and placement of containers;
- 10 (ii) 14 CCR 17317 with respect to placing identifying name and telephone
11 number on containers.
- 12 3. Labor:
- 13 (i) drug and alcohol testing;
- 14 (ii) the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.),
15 including the Solid Waste Disposal Facility Criteria promulgated by the U.S.
16 EPA on October 9, 1991 (40 CFR, Parts 257 and 258); and the California
17 Occupational Safety and Health Act (California Labor Code, Division 5,
18 Parts 1 10, Section 6300 et seq.), and rules and regulations of California
19 Division of Occupational Safety and Health;
- 20 (iii) the Immigration Reform and Control Act of 1986 (PL.99 603);
- 21 4. Environmental protection:
- 22 (i) CERCLA;
- 23 (ii) RCRA;
- 24 (iii) Clean Air Act (42 U.S.C. Section 1351 et seq., 42 U.S.C. Section 7401
25 7642); and the California Clean Air Act (Health & Safety Code Sections
26 1251 et seq. and Health and Safety Code Sections 39000 et seq.);
- 27 (iv) California Hazardous Waste Control Act (California Health & Safety Code,
28 Section 25100 et seq.);

- 1 (v) California Hazardous Materials Release Response Plan and Inventory Act
2 (California Health & Safety Code, Division 20, Chapter 6.95, Section 25500
3 et seq.);
4 (vi) Carpenter Presley Tanner Hazardous Substance Account Act (California
5 Health & Safety Code Section 25300 et seq.);
6 (vii) Emergency Planning and Community Right to Know Act (42 U.S.C. Section
7 11001 et seq.); and
8 (viii) Energy Policy Act of 1992 (EPACT): (P.L. 102-486) A broad-ranging act
9 signed into law on Oct. 24, 1992. Titles III, IV, V, XV and XIX of EPACT
10 deal with alternative transportation fuels.
11 5. Miscellaneous:
12 (i) Civil Rights Act of 1964 (Subchapter VI or Chapter 21 of Title 42);
13 (ii) California Integrated Waste Management Act; and
14 (iii) Long Beach Municipal Code.

15
16 Bin means a metal container supplied for Collection of Customers' Solid Waste or any
17 container for storage of Solid Waste that is picked up with front loading vehicles, such as
18 those having a 3- to 8-yard capacity, commonly referred to as dumpsters.

19
20 Building Construction Refuse means waste material resulting from the construction,
21 remodeling, repair and demolition operations on houses, commercial buildings, other
22 structures, and any surrounding grounds.

23
24 Bulky Waste means Solid Waste that cannot be contained within a Customer's Cart, such
25 as
26 1. furniture (including chairs, sofas, mattresses and rugs);
27
28

- 1 2. appliances (including refrigerators, ranges, washers, dryers, water heaters,
- 2 dishwashers, small household appliances and other similar items commonly
- 3 known as "white goods");
- 4 3. large Yard Wastes (including wood waste, tree branches, scrap wood); and
- 5 4. tires.

6
7 Carts means a refuse receptacle of one hundred one (101) gallons or less supplied by
8 Franchisee for Collection of Customers' Solid Waste.

9
10 CERCLA means the Comprehensive Environmental Response, Compensation and
11 Liability Act of 1982 (42 U.S.C. § 9601 et seq.).

12
13 Collect, Collection or other form thereof refers to Solid Waste pickups made by
14 Franchisee as required by and in compliance with the provisions of this Agreement.

15
16 Commencement Date means the later date of execution by the Parties indicated on the
17 execution page of this Agreement.

18
19 Commercial or Commercial Premises means a premise that is not Residential, including
20 premises where business activity is conducted, including offices, retail sales, services,
21 institutions, wholesale operations, food service, manufacturing and industrial operations,
22 public property and facilities, as well as mixed-use buildings and Residential multi-family
23 dwellings having over ten (10) units but excluding businesses conducted upon residential
24 premises that are permitted under applicable zoning regulations and are not the primary
25 use of the property. Commercial Collection Services are described in Section 4.

26
27 Commercial Set-out Site is defined in Section 4.

1 Containers means the toters, carts, cans, bins, vessels, receptacles or other containers
2 from which Franchisee must Collect Solid Waste, including Bins and Roll-Offs approved
3 by City.

4
5 Contract Year means the calendar year, commencing January 1 and ending December
6 31.

7
8 City means the City of Long Beach, a municipal corporation, or any governmental entity
9 which may hereinafter assume waste management obligations of the City, including any
10 joint exercise of powers authority or other similar public entity with which the City
11 participates or contracts with, established to provide solid waste management services or
12 meet Solid Waste diversion requirements under Applicable Law. For the purposes of
13 Indemnities, "City" also means its officers, employees, agents, attorneys, administrators,
14 affiliates, representatives, servants, insurers, heirs, assigns and any successor or
15 successors to the City's interest.

16
17 Code means the Long Beach Municipal Code, including Title 8.

18
19 City Office Hours means 7:30 a.m. to 4:30 p.m. on City Working Days.

20
21 City Payment Obligations means monetary amounts due and payable to City, or claims
22 by City for those amounts, including those listed under Sections 13 and 14, any City
23 Reimbursement Costs, and any amounts accrued and payable upon termination of the
24 Agreement in accordance with Section 15.

25
26 City Working Days means days on which the City administrative offices are open to the
27 public.

28

1 Customer(s) means the generators (including owners, tenants, occupants and/or persons
2 having the care or control of any premises within the City) of Solid Waste to which
3 Franchisee has arranged to provide Franchise Services

4
5 Day or Days means calendar days.

6
7 Director means the Director of City Department of Public Works or his or her designee.

8
9 Diversion Facility is defined in Section 6.

10
11 Divert, Diverted, Diversion or other form thereof is defined in Section 6.

12
13 Diverted Recyclables is defined in Section 6.

14
15 Event of Default means an Event of Default listed in Section 8.60.088 of the Long Beach
16 Municipal Code, or failure by the Franchisee to comply with a Performance Obligation
17 under this Agreement, including but not limited to the following: failure to implement the
18 Alternative Fuel Vehicle requirements described in Section of this Agreement; failure to
19 pay in a timely manner any of the fees or charges imposed by the City; failure to
20 accurately report or comply with any order lawfully issued pursuant to California Public
21 resources Code section 41821; and intentional misstatement of tonnage and origins of
22 refuse collected or transported.

23
24 Franchise Fee means the fee described in Section 13.

25
26 Franchise Services means all Performance Obligations of Franchisee to Customer under
27 Section 4.

28

1 Franchise Area means the City of Long Beach, described in Exhibit 4.

2

3 Franchisee means [name of company], and any assignee thereof consented to by the
4 City in accordance with Section 17. For purposes of Indemnities, Franchisee also means
5 Franchisee's employees, officers, agents, subcontractors and consultants performing or
6 responsible for performing Franchise Services; provided that only signatory, is obligated
7 to provide indemnities and those employees, officers, agents, subcontractors and
8 consultants will not be liable therefore as individuals.

9

10 Gross Revenues means any and all compensation received by Franchisee in connection
11 with the collection, transportation, and/or disposal of solid waste produced, kept or
12 accumulated in the City plus any and all such compensation received by Franchisee's
13 subcontractor(s) , without any deduction for local agency fees, fuel surcharges, disposal,
14 AB 939 fees, or any other items.

15

16 Hazardous Waste means "hazardous waste" as defined in Section 25117 of the
17 California Health and Safety Code.

18

19 Holidays means those days of each year designated by Franchisee as Holidays, with the
20 approval of the City.

21

22 Household Hazardous Waste means any waste generated incidental to owning or
23 maintaining a place of residence, excluding any Unpermitted Waste generated in the
24 course of operation of a business concern at a residence, in accordance with Section
25 25218.1 of the California Health and Safety Code.

26

27 Indemnities mean all defenses and indemnities under this Agreement.

28

1 Liabilities includes: losses, liabilities, lawsuits, claims, complaints, causes of action,
2 citations, investigations, judgments, demands, clean-up orders, damages (whether in
3 contract or tort, including:

- 4 1. personal injury to or death of, at any time, Franchisee's employees,
5 Subcontractors, the City or the public; and
- 6 2. property damage of Franchisee, Subcontractors, the City or the public),
- 7 3. costs and expenses, (including all costs and expenses of litigation, mediation or
8 arbitration, attorneys fees, whether City's or Franchisee's staff attorneys or outside
9 attorneys, and court costs),
- 10 4. losses,
- 11 5. fines,
- 12 6. penalties, and
- 13 7. other detriments of every nature and description whatsoever,

14 whether under State of California or federal Applicable Law; and Liabilities arising from or
15 attributable to any operations, repair, clean-up or detoxification, or preparation and
16 implementation of any removal, remedial, response, closure, post-closure or other plan,
17 regardless of whether undertaken due to government directive or action, such as
18 remediation of surface or ground water contamination and replacement or restoration of
19 natural resources.

20
21 Permitted Hauler means someone permitted by the City to provide Solid Waste Handling
22 Services, such as Franchisee.

23
24 Non-Collection Notice means either:

- 25 1. Verbal notice by Franchisee to Customer given within twenty-four (24) hours of the
26 non-collection of Solid Waste from a Customer's Set-out Site on the Regularly-
27 Scheduled Collection Day notifying the Customer of the reason for the non-
28 collection and notifying the Customer of how the non-collection will be remedied

1 (e.g., the manner in which materials should be prepared by the Customer for
2 collection or the date of rescheduled Collection);

3 or, if directed by City

4 2. A 3-part (no carbon required) form with a cardstock backing (or other form
5 approved by City) left by Franchisee for Customers at the times, in the events and
6 in the manner described in Section 4 which contains, at a minimum:

7 a. the date and time it is given,

8 b. the complete address of the premises,

9 c. the reason for the non-collection,

10 d. the name of Franchisee's employee who prepared the notice, and

11 e. the manner in which materials should be prepared for collection,

12 f. printed in English and Spanish. Franchisee will leave a hard (cardstock)
13 copy with the Customer, will retain one copy, and will transmit one copy to
14 the Director on the next weekday which is not a Holiday.

15
16 Notice (or Notify or other variation thereof) means notice given in accordance with
17 Section 15.

18
19 Office or Franchisee's Office means the administrative office of Franchisee located in Los
20 Angeles County and identified by Franchisee to City.

21
22 Office Hours or Franchisee's Office Hours means 8 a.m. to 5 p.m., Monday through
23 Friday, or as otherwise designated by Franchisee.

24
25 Overdue Rate means ten percent (10%) per annum.

26
27 Own or Ownership or other forms thereof means constructive ownership under the
28 provisions of Section 318(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section

1 318), as in effect on the date here, except that (1) 10% is substituted for fifty (50%) in
2 Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (2) Section 318(a)(5)(C) is
3 disregarded. Where the Ownership interest is less than 10%, that interest is disregarded
4 and percentage interests is determined on the basis of the percentage of voting interest
5 or value which the Ownership interest represents, whichever is greater.

6
7 Party and Parties refers to the City and the Franchisee, individually and together.

8
9 Payment Obligation means the amount franchisee is obligated to pay to City.

10
11 Performance Obligations means Franchisee's liabilities and obligations under this
12 Agreement.

13
14 Permits means all federal, State, City, other local and any other governmental unit
15 permits, orders, licenses, approvals, authorizations, consents and entitlements that are
16 required under Applicable Law to be obtained or maintained by any Person with respect
17 to Franchise Services.

18
19 Person includes any individual, firm, limited liability company, association, organization,
20 partnership, industry, public or private corporation, trust, joint venture, the United States,
21 the State, a City (excluding Long Beach), a municipality or special purpose district or any
22 other entity whatsoever.

23
24 Procurement Proceedings means any memorandums, meetings, correspondence,
25 telephone calls, field trips, draft documents, and City Council sessions with respect to the
26 planning, development, drafting negotiation and execution of this Agreement.

1 Prompt, promptly and variations thereof mean as soon as possible, but not less than 2
2 days, unless otherwise specified.

3
4 Records are defined in Section 10.

5
6 Recyclables means materials designated by the Director of Public Works for source
7 separation, collection and recycling pursuant to the California Integrated Waste
8 Management Act of 1989 (AB 939).

9
10 Recycle or Recycling means the process of collecting, sorting, cleansing, treating, and
11 reconstituting materials that would otherwise become Solid Waste and returning them for
12 use or reuse in the form of raw materials for new, used or reconstituted products which
13 meet the quality standard necessary to be used in the market place as defined in Public
14 Resources Code 40180. Recycling does not include burning, incinerating, or thermally
15 destroying solid waste, as defined in Public Resources Code Section 40201.

16
17 Reasonable Business Efforts means those efforts a reasonably prudent business Person
18 would expend under the same or similar circumstances in the exercise of that Person's
19 business judgment, intending in good faith to take steps calculated to satisfy the
20 obligation which that Person has undertaken to satisfy.

21
22 Refuse means Solid Waste comprised of rubbish, trash and garbage.

23
24 Regularly-Scheduled Collection Day means Regularly-Scheduled Collection Day and
25 Regularly-Scheduled Commercial Collection Day.

26
27 Regularly-Scheduled Commercial Collection Day is defined in Section 4.

28

1 Regularly-Scheduled Residential Collection Day is defined in Section 4.

2

3 Residential means any residential premises in the City such as single family, duplex,
4 triplex, mobile home, multi-family, apartment, (excluding multi-family and apartment
5 buildings having over 10 dwelling units) stock cooperative and condominium residences
6 in the City of Long Beach, excluding hotels, motels, and automobile courts, that subscribe
7 to Residential Collection Service. Residential Collection Services are described in
8 Section 4.

9

10 Residential Set-out Site is defined in Long Beach Municipal Code Section 8.60.060.

11

12 Roll-offs means Containers designed for disposal of Solid Waste loaded onto and
13 discharged from tilt-frame trucks or trailers at the Solid Waste generation site by winch or
14 similar means. Such Containers are also commonly referred to as "debris boxes."

15

16 Service Asset Documents are defined in Section 14.

17

18 Service Assets means all property of Franchisee used directly or indirectly in performing
19 Franchise Services, including Vehicles, Containers, maintenance equipment and
20 facilities, administrative equipment and offices and related supplies.

21

22 Service Day means weekdays and Saturday, other than Holidays.

23

24 Service Fee(s) means those fees charged to Customers by Franchisee for Franchise
25 Services.

26

27 Set-out Site means Commercial Set-out Site, as defined in Long Beach Municipal Code
28 Section 8.60.060.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Solid Waste means solid waste as defined in this Agreement that Franchisee is obligated to collect pursuant to this Agreement, including Refuse and Bulky Waste.

Solid Waste Handling Services means the Collection services contemplated by this Agreement.

Special Event means a "large event" as defined in California Public Resources Code section 42486(b).

Subcontractor means any Person that provides goods or services related to Collection, transportation or storage of Solid Wastes or related to Service Assets, including their operation, maintenance and repair, to or on behalf of Franchisee whether pursuant to any arrangement, formal or informal, written or merely in practice. Subcontractor does not include a Person that provides goods or services related to Processing, Diversion or Disposal.

Subscription Orders are described in Section 4.

Term is the period beginning on the Commencement Date and ending on the earlier of the expiration of the Agreement in accordance with Section 3 or termination of the Agreement in accordance with Section 14.

Uncontrollable Circumstance(s) means any cause beyond the reasonable control of a Party, including but not limited to, failure or threat of failure of facilities, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, act of terrorism, civil disturbance, strike, work stoppage caused by jurisdictional and similar disputes, major equipment

1 breakdown, restraint by court order or public authority, or action or nonaction by or
2 inability to obtain authorization or approval from any governmental agency or authority, or
3 any combination of these causes, which by the exercise of due diligence and foresight
4 such Party could not reasonably have been expected to avoid and which by the exercise
5 of due diligence is unable to overcome.

6
7 Unpermitted Waste is as defined as material including but not limited to: infectious waste,
8 hazardous waste, noncombustible construction/demolition debris, large metal items, lead
9 acid batteries, other noncombustible materials, materials from industrial and
10 manufacturing processes, food processing wastes or large quantities of condemned food
11 products, explosives, liquids, offal and any substances such that exposure to them may
12 pose a threat to human health or the environment.

13
14 Vehicles means all trucks (including trucks providing Collection of Solid Waste, Bulky
15 Waste, and litter pickup; and field supervisors' and administrators' vehicles), rolling stock
16 and other vehicles used to provide Franchise Services (including Collection as well as
17 repair and maintenance), whether owned or leased by Franchisee.

18
19 Yard Waste is defined as tree limbs, shrubs, trimmings, grass clippings and other items
20 of a similar nature.

21
22
23
24
25
26
27
28

EXHIBIT 2

FRANCHISEE'S REPRESENTATIONS AND WARRANTIES

STATUS. Franchisee is a corporation duly organized, validly existing and in good standing under the laws of the State of California and is qualified to do business in the State of California.

AUTHORITY AND AUTHORIZATION. Franchisee has full legal right, power and authority to execute and deliver this Agreement and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by Franchisee and constitutes a legal, valid and binding obligation of the Franchisee enforceable against the Franchisee in accordance with its terms.

NO CONFLICTS. Neither the execution nor delivery by the Franchisee of this Agreement, the performance by the Franchisee of its Performance Obligations, nor the fulfillment by the Franchisee of the terms and conditions of this Agreement: (1) conflicts with, violates or results in a breach of any Applicable Law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the Franchisee or any of its Affiliates is a party or by which the Franchisee or any of its Affiliates' properties or assets are bound, or constitutes a default thereunder.

NO APPROVALS REQUIRED. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by the Franchisee, except as has been duly obtained from its Board of Directors or other governing body or Person.

1 NO LITIGATION. As of the Commencement Date, there is no action, suit, proceeding or
2 investigation, at law or in equity, before or by any court or governmental authority,
3 commission, board, agency or instrumentality pending or, to the best of the Franchisee's
4 knowledge, threatened, against the Franchisee wherein an unfavorable decision, ruling or
5 finding, in any single case or in the aggregate, would materially adversely affect the
6 performance by the Franchisee of its Performance Obligations or in connection with the
7 transactions contemplated by this Agreement, or which, in any way, would adversely
8 affect the validity or enforceability of this Agreement or any other agreement or
9 instrument entered into by the Franchisee in connection with the transactions
10 contemplated by this Agreement.

11
12 DUE DILIGENCE. Franchisee has made an independent investigation, examination and
13 research satisfactory to it of the conditions and circumstances surrounding the
14 Agreement and best and proper method of providing Franchise Services (including
15 Franchise Service types) and labor, equipment and materials for the volume of Franchise
16 Services to be provided. Franchisee agrees that it will make no claim against the City
17 based on any estimates, statements or interpretations made by any officer, employee,
18 agent or consultant of the City in connection with the procurement of this Agreement that
19 proves to be in any respect erroneous.

20
21 COMPLIANCE WITH APPLICABLE LAW. Franchisee has fully complied with all
22 Applicable Law, including without limitation law relating to conflicts of interest, in the
23 course of procuring this Agreement.

24
25
26
27
28

EXHIBIT 3

SERVICE AREA

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

[SEE MAP OR LEGAL DESCRIPTION OF THE SERVICE AREA ATTACHED TO THIS EXHIBIT.]

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

CITY OF LONG BEACH

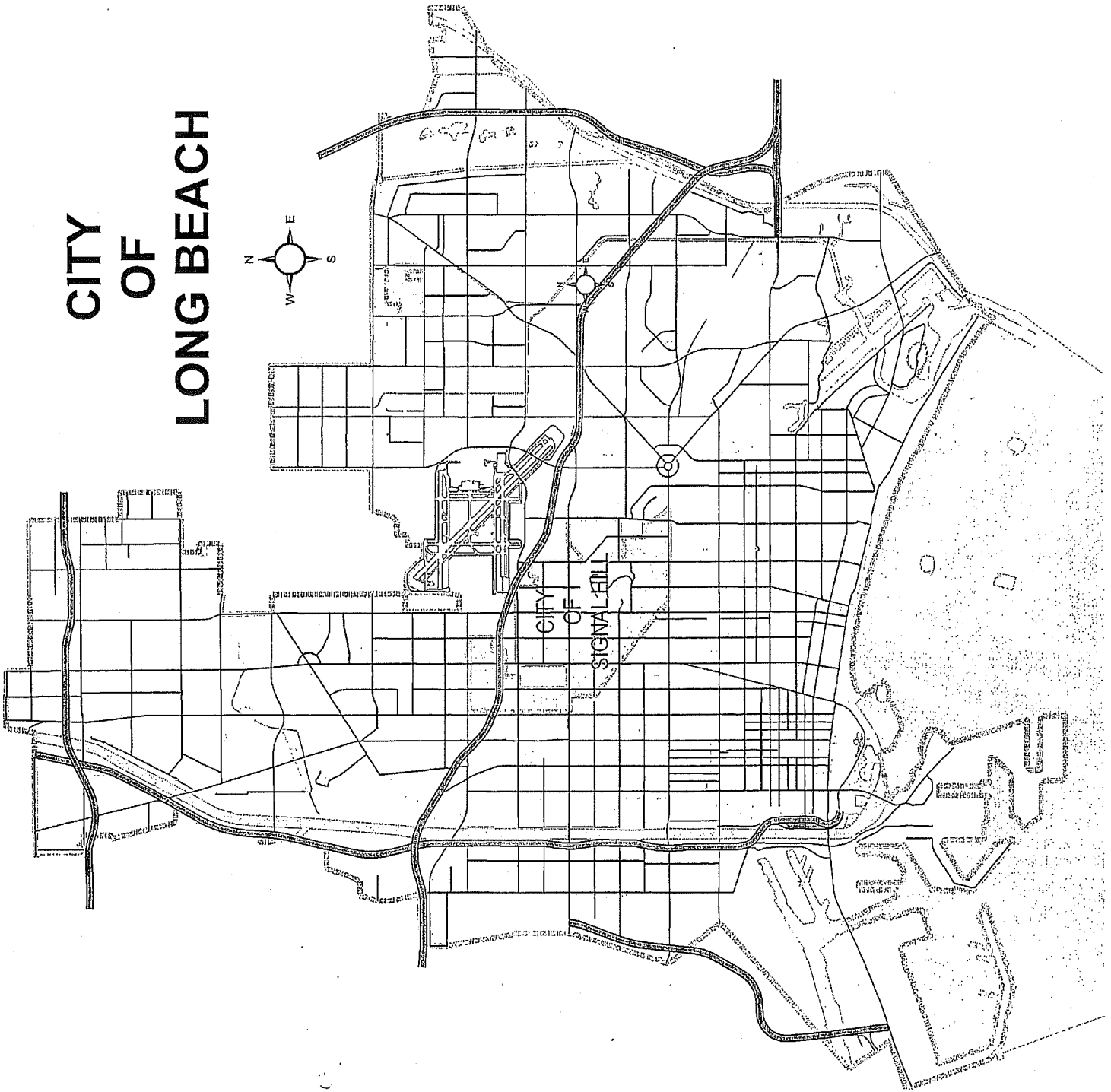
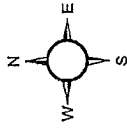


EXHIBIT 4
RECORDS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Franchisee will collect, record, and maintain, at a minimum, the following information, indicating the date and the day of the week of the event reported. Franchisee will provide the following information to the City promptly upon written request by the City.

1. TONNAGE. Tons of:

- Commercial Solid Waste,
- Recyclables,
- Bulky Waste, and
- Building Construction Refuse.

Collected and delivered to the Designated Disposal Facility, including:

- route numbers,
- truck numbers,
- Designated Disposal Facility's certified weight ticket number for each load,
- weight of each load (gross, tare, and net), and
- source-jurisdiction allocation or ratio

2. MONETARY AMOUNTS.

Service Fees. Service fees charged to and collected from Customers.

Subscription Orders. Each Customer's Subscription Order and account service information (4.10).

Customer Billing. Billing records required by Section 4, including Customers' special Service requests for on-call pickup of excess and Bulky Waste.

Franchisee's Reimbursement Costs for emergency clean up.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Fees payable to City.

- (1) Financial records, books, accounts, and warranties corroborating the Franchise Fee owed to City and
- (2) financial records, books, and accounts corroborating any other City Payment Obligations.

3. CUSTOMER SERVICE.

- A. Complaint Records including logged complaints for alleged missed collections; failure to properly replace Containers, failure to clean up litter, discourtesy, damaged property, collecting outside permitted hours , all including time, date, and manner of resolving complaint.
- B. Requests for Franchise Services, including record of Customers' telephonic, mailed, faxed or e-mailed requests to commence Franchise Services; discontinue Franchise Services; deliver, repair or replace, or pick up Containers; change size or number of Containers; or supply locks; and any failure to timely commence or provide any of those Services.
- C. Copies of Notices to Customers, including notice of Holiday or changed schedules enclosed in Customers' bills and public education and community relations materials.

4. OPERATIONS.

- A. Compliance with Applicable Law, including copies of all violations, tire invoices and specifications; Vehicle registration, certifications, reports and maintenance logs; drivers' licenses, training records (including Unpermitted Waste identification and handling), and drug and alcohol testing; records showing compliance with Federal Immigration and Control Act of 1986; and approvals, authorizations, and Permits.
- B. Records of Vehicle inspections, including Vehicles' fire extinguisher service records, and warranty and maintenance recommendations.
- C. Container maintenance.

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. INSURANCE AND OTHER PERFORMANCE ASSURANCES. Insurance,
performance bonds, letter of credit etc.

EXHIBIT 5

MONTHLY REPORTS

[ATTACH ESB FORM]

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

**AB939 FEE PAYMENT
FOR THE MONTH OF June 2010**

«Hauler_Name»
 «Contact_First_Name» «Contact_Last_Name»
 «Address»
 «City», CA «Zip_Code»

GROSS RECEIPTS

Refuse Routes: \$ _____
 Recycling Routes: + \$ _____
 Roll-Off Routes: + \$ _____
 Total Gross Receipts: = \$ _____

AB939 Fee (16% Gross Receipts): = \$ _____
 AB939 Fee (8%)
 Refuse Hauler Business Fee (8%)

Late Penalty (1.5% per month): + \$ _____

Total Amount Due: = \$ _____

Remit to:	City of Long Beach	Payment due: July 31, 2010
	For: Environmental Services Bureau	
	2929 East Willow Street	
	Long Beach, CA 90806	
Billing questions – Amy Zeidler (562) 570-2850		

MONTHLY AB 939 RECYCLING FEE REPORT

August 2007

COMPANY NAME _____

Recycling Incentive Charges:

<u>Total Diversion Rate</u>	<u>Gross Receipts Charge</u>
0% to 15%	4%
16% to 25%	3%
26% to 35%	2%
36% to 45%	1%
46% +	0%

SECTION E
DIVERSION RATE

Total diverted tons <input style="width: 100%; height: 20px;" type="text"/> <small>Total of Sections C & D</small>	Divide by	Total tons <input style="width: 100%; height: 20px;" type="text"/> <small>Total of Section A</small>	=	Diversion Rate <input style="width: 100%; height: 20px;" type="text"/> %
Total tons disposed at SERRF <input style="width: 100%; height: 20px;" type="text"/> <small>Total of Box B1</small>	Divide by	Total tons SERRF Credit <input style="width: 100%; height: 20px;" type="text"/> <small>Total of Section A</small>	=	<input style="width: 100%; height: 20px;" type="text"/> % * <small>*SERRF credit totals over 30%</small>
Total of Diversion Rate and 10% SERRF credit, if applicable =				Add 10% ONLY if: <input style="width: 100%; height: 20px;" type="text"/> % <small>Total Diversion Rate</small>
Note: Total Diversion Rate is the percentage amount you will use to determine your Recycling Incentive Charge.				(See above table for % be paid)

Mail Report to:
 Environmental Services Bureau
 2929 E. Willow Street
 Long Beach, CA 90806
 (562) 570-4694

Report due: 9/30/07

MONTHLY AB 939 REPORT - CITY OF LONG BEACH

August 2007

Company Name (DBA): _____

Refuse Transportation Permit #: _____

SECTION A SUMMARY	Total Tons		
	Disposed	Diverted	Total
Construction and Demolition Waste			
Residential/Multi-family Waste			
Business/Commercial/Institutional Waste			
Others (specify): _____			

TOTAL			

(Total of Section B)
(Total of Sections C & D)
Section A Total

SECTION B DISPOSAL SITES	Total Tons
SERRF	
Landfills	
Puente Hills Landfill	
Others (specify): _____	

Transfer Stations	
Bel-Art Disposal	
Falcon/BFI	
Others (specify): _____	

TOTAL	

B1

Report due: September 30, 2007

Mail Report to:
 Environmental Services Bureau
 2929 E. Willow Street
 Long Beach, CA 90806
 (562) 570-4694

MONTHLY AB 939 REPORT - CITY OF LONG BEACH

August 2007

All diversion claimed is subject to verification.

SECTION C

DIVERSION LOCATIONS (list each)

Total Tons

TOTAL	

List sites that your company used to process material collected by your company.

SECTION D

OTHER DIVERSION ACTIVITY - NOT PERFORMED BY HAULER

Provider of each activity

Total Tons

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
TOTAL	

Use this opportunity to take credit for diversion activities that took place at businesses that you serviced this month, where you **did not collect or process** the material. For example an office that takes their own office paper and aluminum cans to a recycling center or a company who hires an independent recycling company. You may not take credit for material that was collected by another Refuse Transportation Permit Holder.

Use this amount to calculate your annual diversion rate on the Annual AB 939 Report.

Report Prepared By (Company Contact):	Phone #:
---------------------------------------	----------

MONTHLY AB 939 REPORT - CITY OF LONG BEACH

August 2007

LIST THE ADDRESSES OF ACCOUNTS WHERE YOU ESTABLISHED NEW RECYCLING SERVICE DURING THIS REPORTING PERIOD.

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

Report due: September 30, 2007

Mail Report to:
Environmental Services Bureau
2929 E. Willow Street
Long Beach, CA 90806
(562) 570-4694

EXHIBIT 6

INSURANCE REQUIREMENTS

The Certificate of Insurance for Vehicular and Liability Insurance shall include the following:

1. **Certificate of Insurance.** A certificate of insurance, showing the City of Long Beach as the certificate holder at the address given below, must be filed with the City before the permit can be issued. The certificate must evidence the following insurance placed with an insurer admitted to write insurance in California or with a California-authorized surplus lines insurer having a rating of or equivalent to A:VIII by A.M. Best Company:

- a. **Commercial General Liability** (equivalent in coverage to ISO form CG 00 01 11 85 or 88), including cross-liability protection and broad form contractual liability, in an amount not less than \$1,000,000 combined single limit for each occurrence. If the policy has a general aggregate limit, the general aggregate limit must be in an amount not less than \$2,000,000. The "City of Long Beach, its officials, employees, and agents" must be name as additional insured and such coverage must not be limited to the vicarious liability or supervisory role of the additional insured.
- b. **Automobile Liability** (equivalent in coverage to ISO form CA 00 01 06 92) in an amount not less than \$1,000,000 combined single limit per accident for bodily injury and property damage covering Auto Symbol 1 (Any Auto).

2. **Endorsements.** All applicable original endorsements must also be filed with the City of Long Beach before the permit is issued, including but not limited to:

- a. An additional insured endorsement (equivalent in coverage scope to either an ISO form CG 20 26 11 85 or ISO CG 20 12 11 85) naming "The City of Long Beach, its officials, employees and agents" as additional insured under the general liability policy. Failure to comply with this requirement will prevent us from issuing a Refuse Transportation Permit.
- b. An endorsement to each policy stating that such policy shall not be cancelled by either party or reduced in coverage except that after thirty (30) days prior written notice to City and that the policy shall apply on a primary non-contributing basis in relation to any insurance or self-insurance, primary or excess, maintained by or available to City or any employee or agent of City. A separate endorsement is needed if the City's endorsement form is not used.

Any waiver or modification of the insurance requirements can only be made by the City's Risk Manager or designee at City's discretion.

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The original certificate and any applicable endorsements should be mailed to the following address:

City of Long Beach
Environmental Services Bureau
2929 E. Willow St.
Long Beach, CA 90806

Please have your agent fax a copy of the certificate and applicable endorsements to (562) 570-2861.

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 EXHIBIT 7

2 COMPENSATORY AND LIQUIDATED DAMAGES

3
4 References in the chart below to "per breach per day" refer to the first occurrence and
5 continuation on successive days. For example, failure to correct a missed pickup would
6 result in liquidated damages on the day of the scheduled pickup and each following day
7 until corrected.

8
9 Compensatory Damages. If the City in its sole discretion chooses not to exercise its
10 right to terminate this Agreement in the event of a default under this Agreement, then the
11 Franchisee will pay the City:

- 12 1. The City Reimbursement Costs to provide necessary persons for monitoring of
13 Franchisee's compliance with said delivery requirements, including following
14 Franchisee's vehicles on Service routes; and
15 2. The City's Reimbursement Cost of enforcing or securing specific performance of
16 Franchisee's delivery obligation.

17 Liquidated Damages. The following is a schedule of liquidated damages for additional
18 breaches.

19 DESCRIPTION OF BREACH	DAMAGES
20 Failure to correct a missed pick-up.	Up to \$100 per failure per day.
21 Failure to return emptied container to its proper location.	Up to \$100 per failure per day.
22 Failure to provide Customers with written notice of the availability of cart or can service.	Up to \$100 per failure per day.
23 Failure to commence or discontinue Franchise Services; or to deliver, repair or replace, or pick up Containers; change size or number of Containers; supply locks, or clean, paint, and maintain Containers.	Up to \$100 per failure per day.
24 Failure to comply with authorized collection hours.	Up to \$100 per failure per day.
25 Failure to provide any Customer with timely notice of change in Collection schedule.	Up to \$100 per failure.
26	
27	
28	

OFFICE OF THE CITY ATTORNEY
 ROBERT E. SHANNON, City Attorney
 333 West Ocean Boulevard, 11th Floor
 Long Beach, CA 90802-4664

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Discourteous behavior by Franchisee's employees reported by or complained of by customers to Franchisee or City.	Up to \$100 per incident.
Failure to compensate, repair or replace damaged pavements, utilities and/or customer property caused by Franchisee or its personnel.	Up to \$250 per failure.
Failure to clean up spillage or litter caused by Franchisee. Failure to properly cover materials in Collection Vehicles or to maintain or identify Vehicles.	Up to \$100 per failure per location.
Failure to maintain a toll-free telephone number or required office hours.	Up to \$100 per failure per day.
Failure to timely respond and resolve each complaint in accordance with the complaint resolution protocol.	Up to \$250 per failure.
Failure to record a complaint. Failure to provide City access to records of complaints or to provide copies of complaint logs in Quarterly Reports.	Up to \$250 per failure.
Failure to timely submit general Customer correspondence and promotional materials, news releases, public education or community relations materials to City for City review.	Up to \$100 per occurrence and additionally up to \$100 per day for each day prior to retraction or correction of misinformation.
Failure to provide Customers with a written Subscription Order.	Up to \$100 per failure per day.
Failure to meet with City. Failure to return City phone calls, e-mails, or other correspondence from City.	Up to \$100 per failure per day.
Failure to maintain or timely submit complete Reports and/or documents to the City (such as Quarterly and Annual Reports, Financial Reports, Route Maps and Route Changes, Service Asset Inventory, Contingency Plan, Hazardous Waste Screening Protocol, or Insurance certificates or policies.	Up to \$100 per failure or per day that a Report or document is late.
Failure to perform any other Performance Obligation set forth in this Agreement.	Up to \$100 per failure per day.
Failure to comply with requirement not to itemize Franchise Fees on Customer bills prior to issuance	Up to \$100 per failure per day.

EXHIBIT 8

ANNUAL REPORT

In the Annual Report, Franchisee will include, at a minimum, a collated summary of the information contained in Monthly Reports, including reconciliation of any adjustments from prior Monthly, and the following information and statements:

1. Financial Status Statement. A statement by Franchisee's Chief Executive Officer either: (i) that in the prior Contract Year there have been no material changes in Franchisee's financial status or condition, or (ii) describing any material changes in Franchisee's financial status or condition during that Contract Year.
2. Pending litigation Statement. A declaration describing the current status of any criminal or civil litigation pending against Franchisee, Franchisee's parent company, or any subsidiaries of the parent company, if any, which relates to solid waste handling, collection, recycling or disposal.
3. Subcontractors. The names of all subcontractors, the scope and amount of services or goods subcontractors provide to Franchisee, and a description of Franchisee's relationships to each Subcontractor (including Ownership interests).

Annual Reports may be made on attached Form.

FRANCHISEE ANNUAL REPORT FOR 20_____

Submitted by: _____ (Franchisee)

(Due by November 15)

OFFICE OF THE CITY ATTORNEY
 ROBERT E. SHANNON, City Attorney
 333 West Ocean Boulevard, 11th Floor
 Long Beach, CA 90802-4664

<p>1. Total information contained in Quarterly Reports for the year</p>		<p><input type="checkbox"/> See Attached</p>
<p>2. Financial Status Statement</p>	<p>I represent and warrant, under penalty of perjury, that in the prior Contract Year there have been no material changes in [FRANCHISEE]'s financial status or condition.</p> <p>_____ Name</p> <p>_____ Title (CEO or Principal)</p> <p>_____ Signature</p>	<p>I represent and warrant, under penalty of perjury, that in the prior Contract Year, those changes to [FRANCHISEE]'s financial status or condition listed on the attached sheet which is labeled "Material Changes to [Franchisee's] Financial Status or Condition" have occurred.</p> <p>_____ Name</p> <p>_____ Title (CEO or Principal)</p> <p>_____ Signature</p>
<p>3. Pending Litigation Statement</p>	<p>A declaration describing the current status of any criminal or civil litigation pending against Franchisee, Franchisee's parent company, or any subsidiaries of the parent company which relates to solid waste handling.</p>	<p><input type="checkbox"/> None <input type="checkbox"/> See Attached</p>
<p>4. Subcontractors</p>	<p>Names of Subcontractors, the scope and amount of Franchise Services, other services, or goods. Subcontractors provide to Franchisee, and a description of Franchisee's relationships to each subcontractor (including ownership interests).</p>	<p><input type="checkbox"/> None <input type="checkbox"/> See Attached</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28