

PRIMARY FRANCHISE AGREEMENT

BETWEEN COUNTY OF MONO

AND

D & S WASTE REMOVAL, INC.

FOR COLLECTION OF SOLID WASTE

FROM RESIDENTIAL AND COMMERCIAL CUSTOMERS

IN UNINCORPORATED MONO COUNTY

DECEMBER 2018

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This Agreement (“**Agreement**”) is made and entered into by and between County of Mono, a political subdivision of the State of California (the “**County**”), and D & S Waste Removal, Inc., a Nevada corporation operating primarily out of Yerington, Nevada (the “**Franchisee**”), on the later date of execution by the Parties indicated on the execution page of this Agreement. Hereinafter, the Parties may be referred to individually as a “**Party**” or collectively as the “**Parties**”.

RECITALS

1. County is responsible for protection of public health and the environment. County is not only authorized but is required to provide solid waste handling services to its citizens under the provisions of the California Integrated Waste Management Act (the “**Act**”), which is set forth in the California Public Resources Code at Section 40000 *et seq.*, including source reduction, recycling, composting, and the collection, transfer and disposal of solid waste within the unincorporated County area.

2. County is liable for its solid waste. County, not any waste hauler, is liable to the State under the Act for any fines up to \$10,000 per day levied for noncompliance with the Act. Local public agencies like County have also generally been held liable under federal Superfund laws for the costs of cleaning up Hazardous and Unpermitted Waste sites that accepted solid waste generated within the jurisdiction of the local public agency. Therefore, County is prudent to provide for terms and conditions of its solid waste processing and disposal in accordance with this Agreement.

3. It is necessary to require Franchisee to deliver solid waste to a solid waste facility owned by County or pay Capacity Fees therefore. In view of the findings contained in Exhibit R-1 to this Agreement, County has determined that in order to sustain its solid waste program, minimize its risk of liability for waste generated within its borders, and continue to provide beneficial solid waste services to its residents and to visitors to the area, it is necessary to require that solid waste collected by franchisees be delivered to a solid waste facility owned and/or operated by County or, in those limited circumstances when it is not feasible to do so, to require that Capacity Fees be paid.

NOW, THEREFORE, in consideration of the mutual promises, covenants, guaranties, and conditions contained in this Agreement and for other good and valuable consideration, the Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS AND CONTRACT INTERPRETATION

1.01 Definitions.

In this Agreement words have the meanings defined in Exhibit 1.01, which controls in the event of any conflict with the definitions used in the preamble and recitals above.

1.02 Interpretation and Construction.

a. Gender and Plurality. Words of the masculine gender include correlative words of the feminine and neuter genders, and vice versa. Words importing the singular number include the plural number, and vice versa, unless the context demands otherwise.

b. Headings, Font. Any captions or headings following the Article, Exhibit, Section, subsection, and paragraph numbers and preceding the operative text of this Agreement are for convenience of reference only and do not control or affect the scope, intent, meaning, construction, interpretation or effect of this Agreement. Any underlined, italicized, bold-faced, upper captioned or other font style is for ease of reading and contract administration only and does not imply relative importance or unimportance of any provision of this Agreement.

c. References to Parts. References to Sections and Articles refer to Sections and Articles of this Agreement, unless specified otherwise. References to Exhibits refer to Exhibits attached to this Agreement. Reference to “subsections” refers to the subsection contained in the same Section in which the reference occurs, unless otherwise provided.

d. Examples. Examples are for purpose of illustration only. If any example is ambiguous or is inconsistent or conflicts with the text that it illustrates, then the text shall govern.

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

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

1.03 Integration.

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

1.04 Severability.

a. Substitute Provision. If any clause, sentence, provision, subsection, Section or Article of this Agreement (an “**Agreement Provision**”) is ruled unconstitutional, illegal, invalid, non-binding, or unenforceable by any court of competent jurisdiction, then the Parties will:

- (1) promptly meet and negotiate a substitute for the Agreement Provision and any related amendments, deletions, or additions to other provisions of this Agreement that together effect the Parties’ original intent to the greatest extent allowable under Applicable Law; and
- (2) if necessary or desirable to accomplish the purpose of Subsection (a)(1), apply to the court that declared that invalidity for a judicial construction of the substituted Agreement Provision and any amendments, deletions, or additions to this Agreement.

Franchisee will pay County half of the actual costs of any application within twenty (20) days of certified receipt of County’s request.

b. Remaining Provisions. Except as provided in Subsection (c), the unconstitutionality, illegality, invalidity, non-binding nature, or unenforceability of any Agreement Provision will not affect any of the remaining provisions of this Agreement.

c. Exception. If any Agreement Provision with respect to County’s direction of Solid Waste to a Designated Disposal Site, including Section 7.01, is ruled unconstitutional, illegal, invalid, non-binding, or unenforceable by any court of competent jurisdiction, then County may in its sole discretion either:

- (1) sever that Agreement Provision and construe and enforce this Agreement in accordance with this Section 1.04; or
- (2) sever that Agreement Provision and, unless Franchisee is complying with that Agreement Provision in actual practice, terminate this Agreement in accordance with Section 14.02(a)(1); or
- (3) accept the ruling without severing that Agreement Provision.

1.05 Interpretation.

This Agreement must be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting. Franchisee acknowledges that it determined to participate in the procurement of this Agreement upon its own choice and initiative and during the course of that procurement County met and conferred with Franchisee and solicited Franchisee’s comments, exceptions, and proposals with respect to provisions in the Agreement. The Parties have negotiated this Agreement at arms length and with

advice of their respective attorneys, and no provision herein is construed against County solely because it prepared this Agreement in its executed form.

1.06 Timely Performance

a. Specified Days on Weekdays.

- (1) **Performance.** Where this Agreement requires that an obligation be performed within a specified number of days, if the last day falls on a weekend or holiday, the obligated Party may perform that obligation on the next weekday following the weekend or holiday. *For example, if Franchisee must provide documentation to County within 2 days of County request on a Friday, Franchisee must give County the documentation by the following Monday.*
- (2) **Counting.** Each calendar day is counted when determining the last day of the specified number of days. *For example, if Franchisee must provide documentation to County within one week of County's request on a Friday, Franchisee must give County the documentation by the next Friday.*

b. Specified Hours on Any Day. Where this Agreement requires that an obligation be performed at a specified time, in any of the following events the obligated Party must perform that obligation within the specified time, *even if* the time for performance falls on a weekend or holiday:

- (1) the specified time is measured in hours;
- (2) County specifies the time (*for example, on a Saturday even though performance would otherwise occur on Monday*); or
- (3) County determines that there is a threat to public health or safety.

ARTICLE 2. FRANCHISEE'S REPRESENTATIONS AND WARRANTIES

2.01 Franchisee.

Franchisee represents and warrants as contained in Exhibit 2.01.

ARTICLE 3. TERM OF AGREEMENT

3.01 Term.

a. Term. The Term of the Agreement commences on the Commencement Date and expires on December 31, 2022, unless terminated earlier in accordance with Section 14.02(a)(1).

b. Optional County Extension Right. County may in its sole discretion extend the Term for up to two (2) additional years commencing on the expiration date provided in Subsection (a) by Notice to Franchisee no later than (i) September 30, 2022 or (ii) another date agreed to by the Parties.

3.02 Survival of Certain Provisions.

The following provisions shall survive the Term:

- (1) all representations and warranties;
- (2) all Indemnities;
- (3) obligations to pay any County Payment Obligations;
- (4) obligations to submit Records and reports, including the final Annual Report; and
- (5) any other rights and obligations of the Parties stated to survive the Term.

ARTICLE 4. COLLECTION

4.01 Scope of Basic Franchise Services.

a. Service Area and Exclusive Franchised Services. County grants Franchisee the franchise, right, and privilege to offer 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 franchise, right, and privilege in accordance with this Agreement.

b. Limitations on Right to Provide Franchise Services. Franchisee's franchise, right, and privilege to provide Franchise Services is limited. Pursuant to the Mono County Code, County may authorize up to one other Person, in addition to Franchisee, to provide Solid Waste services substantially similar to Franchise Services within the Franchise Area. Additionally, Persons, including both the owners or occupants of premises and persons performing services at premises, may themselves transport and dispose of Solid Waste and C&D 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 C&D Waste they generate in the course of performing their services in dump trucks, end dumps, flatbed trucks, or similar vehicles. Also, owners and occupants of a premises may transport and dispose of Solid Waste that they generate on their own premises. This Section 4.01(b) does not authorize owners or occupants of premises or persons performing services at premises to hire a third party (other than a Franchisee) to transport and dispose of such Solid Waste.

County may contract with Franchisee or with Persons other than Franchisee for Unpermitted Waste collection, transportation, disposal, processing and/or diversion services.

c. Regularly-Scheduled Franchise Services.

1. Residential Solid Waste.

(i) **Collection.** Franchisee will continue to collect all Solid Waste set out by Persons who are existing customers of Franchisee as of the Commencement Date at the Residential Set-out Site of Residential premises located within the Franchise Area. Franchisee will commence collecting all Solid Waste set out at the Residential Set-out Site of Residential premises located in the Franchise Area within seven (7) days of any Person's request for Collection Service at that premise.

(ii) **Cancellation of Services.** Upon oral or written direction of any existing or new Residential Customer, Franchisee will cease providing Franchise Service immediately or at any other time specified by that Person, without penalty, and refund any pre-paid Service Fees in accordance with Section 4.09(b). Franchisee will notify Customers of cancellation rights, as required by Section 4.10.

(iii) **Containers.** Franchisee will provide all Residential Customers located within the Franchise Area with one (1) or more Carts for the deposit of Solid Waste or Recyclables having nominal capacities of either 35, 64, or 95/96 gallons (or at Customer's request a Bear Cart) ("**Residential Containers**") or, at Customer's request, with a Bin. Franchisee must provide Residential Containers that are clean, water tight, constructed of a material of suitable strength and durability (such as heavy plastic), bear resistant to the satisfaction of County, and tight sealed. Franchisee will return Residential Containers to the Set-out Site after Collection upright, with can lids properly secured. Franchisee will ensure that any Bins that it provides to Residential Customers will comply with all of the requirements applicable to Commercial Containers set forth in Subsection (c)(2)(iii), Subsection (e)(3), and Subsection (e)(4).

Within one month of the Commencement Date and every twelve (12) months thereafter, Franchisee will notify all Residential Customers subscribing to Bins that they can subscribe to Carts. The notice must include a description of Cart service and list the applicable Service Fees. Franchisee will provide County with a draft of the notice for review and approval at least fifteen (15) days prior to its mailing or delivery of such notice to Residential Customers.

(iv) **Frequency.** Franchisee will Collect all Solid Waste set out at the Residential Set-out Site each week, on the same day ("**Regularly-Scheduled Residential Collection Day**"). If Franchisee is unable, for any reason, to Collect all Solid Waste from a Customer on the Regularly-Scheduled Residential Collection Day, then it will Collect that Solid Waste

(1) on the next Service Day; or

(2) on such other day arranged with the Customer, but in no event later than 72 hours after the time of the missed pick-up and will provide the Customer with a verbal or written Non-Collection Notice.

2. Commercial Solid Waste.

(i) **Collection.** Franchisee will continue to collect all Solid Waste placed in Carts, debris boxes, Roll-Offs (“**Commercial Containers**”) or other Containers by existing Commercial Customers of Franchisee at the location agreed to between Franchisee and the Customer (“**Commercial Set-out Site**”). Franchisee will commence collecting all Solid Waste placed in Commercial Containers at the Commercial Set-out Site by Persons located within the Franchise Area within seven (7) days of that Person’s request for Collection Service at that premise.

(ii) **Cancellation of Franchise Services.** Upon oral or written direction of any existing or new Commercial Customer, Franchisee will cease providing Franchise Service immediately or at any other time specified by that Customer, without penalty, and refund any pre-paid Service Fees in accordance with Section 4.09(b). Franchisee will notify Customers of cancellation rights, as required by Section 4.10.

(iii) **Containers.** Franchisee will provide all Commercial Customers with Containers of the type ordered 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 Subsection (e)(3) and Subsection (e)(4). Franchisee will provide Commercial Containers that:

- (1) are durable;
- (2) are constructed from structural steel plate with all welded seams;
- (3) are leak-proof;
- (4) are equipped with a noncombustible lid, uniformly colored, approved by County as providing adequate protection against fire hazard, rodents, and bears; and
- (5) 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 and Unpermitted Waste (including Hazardous Waste) or special waste disposal, as approved by County.

At the time of Customer request for Franchise Service, Franchisee will provide written notice to each Commercial Customer utilizing Bin service of the types of wastes which require special handling and may not be discarded in the debris box and informing the Customer of the proper methods for disposing of such wastes. Franchisee will submit this notice to County for approval prior to distribution.

(iv) **Frequency.** Franchisee will Collect Solid Waste set out at the Commercial Set-out Site at least once each week, or more frequently as directed by the Commercial Customer, on the day or days written in the Customer's Subscription Order ("**Regularly-Scheduled Commercial Collection Day**") or on such other day as mutually agreed to by Commercial Customer and Franchisee. If Franchisee is unable, for any reason, to Collect Solid Waste from a Customer on the Regularly-Scheduled Commercial Collection Day or other day agreed to by Customer, then it will Collect that Solid Waste

- (1) on the next Service Day following the date of the missed pick up; or
- (2) other day arranged with the Customer, but in no event later than 72 hours after the time of the missed pick-up and will provide the Customer with a verbal or written Non-Collection Notice.

3. **Recycling Services.**

(i) **Notice of Determination.** Within 12 months of the execution of this Agreement, Franchisee shall determine and Notify County of the demand from Residential and Commercial Customers necessary to make the collection of Recyclables at Residential Set-out Sites and at Commercial Premises within the unincorporated area of County economically feasible to Franchisee.

(ii) **Provision of Recyclable Service if Economically Feasible.** If Franchisee determines that sufficient demand exists from Residential and Commercial Customers to make the collection of Recyclables economically feasible pursuant to Subsection (c)(3)(i), then County may require Franchisee to provide as part of its Franchise Services and Franchise Obligations, the collection of Recyclables at Residential Set-out Sites and Commercial Premises within the unincorporated area of County.

(iii) **Provision of Recyclable Service if Required by State.** Notwithstanding the foregoing, Franchisee shall collect Recyclables at Residential Set-out Sites and Commercial Premises within the unincorporated area of County as part of its Franchise Services and Franchise Obligations if the State of California or any other regulatory authority requires County to provide such collection services.

(iv) **Recyclable Materials.** Notwithstanding anything contained in Exhibit 1.01, for purposes of this Subsection (c)(3), Recyclables shall be limited to glass, aluminum, plastic, cardboard, and green/yard waste.

d. Collection Schedules.

1. **Hours.** Franchisee will make its best efforts to Collect all Solid Waste only between 7:00 a.m. and 7:00 p.m., Monday through Saturday except that Franchisee may Collect Solid Waste between those hours on Sunday:

- (1) in areas of County designated for Commercial use;

(2) if road closures have prevented collection during the previous seven (7) days;
or

(3) with prior approval from the Director.

But in no event shall Franchisee operate in a manner that would constitute a violation of the Mono County Noise ordinance codified at Chapter 10.16 of the Mono County Code.

2. Changes to Collection Schedule. Prior to changing the Regularly-Scheduled Collection Day for any Customer, Franchisee will provide fifteen (15) days' oral or written Notice to that Customer.

e. Changes in Service Levels; Container Exchanges.

1. Delivery. Franchisee will provide Customers with Containers in accordance with Subsection (c)(1)(iii) and Subsection (c)(2)(iii). Within seven (7) days after receiving a request for Franchise Service (including repair or replacement of Containers) or changes in Franchise Service, Franchisee will respond to and fulfill that request.

2. Pick Up. No later than the next Regularly-Scheduled Collection Day occurring after direction of a Customer to discontinue Franchise Service, Franchisee will pick up and remove that Customer's Container(s).

3. Repair and Replacement. Franchisee will repair or replace Containers or provide locks for Bins within seventy-two (72) hours of a request therefor from a Customer or County. If Franchisee cannot complete a repair within seventy-two (72) hours, then Franchisee will provide the Customer with a replacement Container without surcharge within those 72 hours. Franchisee will offer Container locks at prices from time to time in effect, and Franchisee may charge a monthly "lock charge" for Franchisee's servicing locked Containers. Customers shall not be authorized to provide their own locks.

4. Cleaning Bins. Franchisee will steam clean and paint, or replace, Commercial Containers as needed, or upon request of County, for Customers that generate large amounts of putrescible Solid Wastes, including Residential premises, restaurants, grocery stores, cafeterias, and other Containers as directed by County. 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 14 days of identification by Franchisee or oral or written notice by County or Customer. Franchisee will remove graffiti comprised of pictures or verbal obscenities within 48 hours (weekends excepted). Promptly upon County's request, Franchisee will give County a list of dates that Franchisee cleaned, painted, or otherwise repaired Containers.

f. C&D Waste. Upon request by any Person, Franchisee will collect C&D Waste which is containerized in debris boxes, roll-offs, or other similar containers and is subject to the Franchise

requirements of Section 12.10.020 of the Mono County Code for a price and at a time which are mutually agreed-upon by Franchisee and Person.

4.02 Pickup of Excess and Bulky Waste.

Upon request of a Residential or Commercial Customer, Franchisee will Collect excess Solid Waste or Bulky Waste at the Residential or Commercial Set-out Site on that Customer's next Regularly-Scheduled Collection Day or other date agreed to between the Customer and Franchisee for a price that is mutually agreed to by Franchisee and Customer. Upon request of a Person who does not receive regular Commercial or Residential Collection from Franchisee, Franchisee will collect Bulky Waste or excess Solid Waste at a location and time and for a price that are mutually agreed to by that Person and Franchisee.

4.03 Service Standards.

a. General. Franchisee will perform all Franchise Services in a prompt, thorough, comprehensive, reliable, courteous, and professional manner so that Customers receive high-quality service at all times. Franchisee must perform Franchise Services regardless of weather conditions and regardless of difficulty of collection, subject to the exceptions set forth in Section 4.04. More detailed specifications for particular aspects of Franchise Services enumerated elsewhere in this Agreement do not relieve Franchisee of its duty and obligation to accomplish all other aspects of Franchise Services in the manner provided in this subsection.

b. Litter. Franchisee will clean up litter caused by Franchisee's employees. Franchisee will also clean up all litter within a 10-foot diameter of the Residential Set-out Site when Collecting any Bulky Waste and excess Solid Waste in accordance with Section 4.02. Franchisee will ensure that each Collection Vehicle carries a broom, rake, and shovel at all times for this purpose.

c. Spills and Leaks.

1. Solid Waste Spills. Franchisee will transport Solid Waste only in covered vehicles as required by Section 12.10.050 of the Mono County Code. Franchisee will prevent Solid Waste from escaping, dropping, spilling, blowing, or scattering from Vehicles during Collection and transportation, as further required by Section 12.10.040 of the Mono County Code. Franchisee will not transfer loads from one vehicle to another on any public street, unless necessitated by mechanical failure or accidental damage to a vehicle, or unless otherwise approved by the Director. Franchisee will immediately clean up any Solid Waste that is dropped, blown, spilled, scattered, or leaked from any Vehicle and/or tracked by any Vehicle onto any alley, street, or public place.

2. Liquid Leaks. During Collection and transportation, Franchisee will also prevent oil, hydraulic fluid, paint, or other liquid from leaking out of Vehicles. Franchisee will ensure that each Collection Vehicle carries petroleum-absorbent materials. Franchisee will immediately cover

leaked fluids with absorptive materials, remove those materials from the ground, and apply a cleaning agent to cleanse the soiled spot.

3. Reimbursement. If Franchisee fails to clean up Solid Waste or leaked liquids within two (2) hours' telephonic or other notice by County, then County may clean up or cause to be cleaned up the Solid Waste or leaked liquids and Franchisee will reimburse County for County's Reimbursement Costs thereof. Franchisee is responsible for paying any fines, civil penalties, or other charges that may be assessed for improperly covering loads or leaking liquids.

d. Pavement and Utilities. Franchisee is responsible for damage to pavement and driving surfaces whether Containers are located on public or private property, other than ordinary wear and tear, if the damage is the result of vehicles exceeding the maximum weight limits allowed by Applicable Law or Franchisee's negligent operation of vehicles, *unless* with respect to private property, Customer has executed a damage waiver or indemnity on that Customer's Subscription Order.

Franchisee is responsible for damage to public and private utilities, whether located on public streets or property or private property, if damage is the result of the inattention, carelessness or negligence of Franchisee.

County or the Customer may direct Franchisee to promptly repair or replace damaged driving surfaces or utilities or repair and replace them itself or through a third party, to the satisfaction of the Customer or County, as the case may be. Franchisee will reimburse the Customer for his or her Direct Costs of repair or replacement and County for County Reimbursement Costs of repair or replacement.

4.04 Service Exceptions.

a. Excess Weight. Franchisee is not required to collect a Cart weighing in excess of the manufacturer's recommended weight, as evidenced by warranties or other documentation acceptable to County. Franchisee will provide Customers with weight limitations on the Customer Subscription Order, marked on the Cart, or through some other written means.

b. Unsafe Condition at Set-out Site. If Franchisee determines that any condition at or near any Set-out Site presents a health or safety threat to Franchisee's employees or equipment, then Franchisee will attempt to personally provide the Customer whose Set-out Site presents the threat notice of the danger thereof. If Franchisee cannot personally provide Customer with notice, then prior to leaving Customer's premises Franchisee will provide the Customer with a Non-Collection Notice, describing the threat, and danger. Franchisee may discontinue collection for that Set-out Site until the safety hazard is eliminated.

c. Hazardous Waste or Unsafe Materials. If Franchisee determines that Containers contain Hazardous Waste (other than Household Hazardous Waste not discovered and identified by Franchisee acting in accordance with its Hazardous Waste Screening Protocol) or other materials that may present a health or safety threat to Franchisee's employees, the public, or to

Franchisee's equipment, then Franchisee may refuse to Collect that Container. Franchisee will attempt to personally provide the Customer whose Container contains Hazardous Waste or unsafe material with written information about their proper disposal. If Franchisee cannot personally provide Customer with information, then prior to leaving Customer's premises it will provide the Customer with a Non-Collection Notice. Franchisee will follow the procedures outlined in the Unpermitted Waste Screening Protocol, as it applies to Hazardous Waste, including providing notice to County Health Department and to the Director.

d. Customer Delinquency or Nonpayment. In accordance with Section 12.10.070 of the Mono County Code, Franchisee is not obligated to provide Franchise Services to any Customer who is habitually delinquent in the payment of fees for Franchise Services or who fails or refuses to pay fees for Franchise Services; *provided* that

- (1) Franchisee develops a written policy for addressing nonpayment or delinquency by its Customers that is approved in writing by County; and
- (2) Franchisee terminates or suspends that Customer's Franchise Services in accordance with the approved policy.

e. Misplaced Solid Waste. If Franchisee determines that a Customer has discarded materials into a Container not marked for such materials (i.e. – materials other than Recyclables in a Container marked "Recyclables", or materials other than Yard Waste in a Container marked "Yard Waste"), then Franchisee may refuse to Collect that Container. Prior to leaving Customer's premises, Franchisee will provide the Customer with a Non-Collection Notice, describing the proper materials to be placed in each Container. If Franchisee refuses pursuant to this Subsection (e) to Collect Solid Waste on a Regularly-Scheduled Collection Day or another day agreed to by Customer, then Franchisee shall return to that Set-out Site and attempt to Collect that Solid Waste in accordance with Section 4.01(c)(1)(iv) or Section 4.01(c)(2)(iv), as the case may be.

f. Exposure to Liability for Property Damage. If Franchisee determines that entering onto the property of a Customer will expose Franchisee to liability for damage to pavement or utilities, then Franchisee may refuse to Collect that Container. Franchisee will provide the Customer with a Non-Collection Notice, describing the risk. If Franchisee refuses pursuant to this Subsection (f) to Collect Solid Waste on a Regularly-Scheduled Collection Day or another day agreed to by Customer, then Franchisee shall return to that Set-out Site and attempt to Collect that Solid Waste in accordance with Section 4.01(c)(1)(iv) or Section 4.01(c)(2)(iv), as the case may be. Franchisee may discontinue collection for that Residential Set-out Site or Commercial Premise until the Container is placed at a location accessible by Franchisee without liability for damage to property.

g. Inaccessibility of Bin. If Franchisee is unable to Collect a Container due to inaccessibility to such Container, then Franchisee will provide the Customer with a Non-Collection Notice, describing the inaccessibility. If Franchisee refuses pursuant to this Subsection (g) to Collect Solid Waste on a Regularly-Scheduled Collection Day or another day agreed to by Customer, then Franchisee shall return to that Set-out Site and attempt to Collect that Solid Waste in accordance with Section 4.01(c)(1)(iv) or Section 4.01(c)(2)(iv), as the case may be.

4.05 Customer Service.

Franchisee acknowledges that County determined to procure and enter into this Agreement with Franchisee, among other reasons, in order to provide improved Customer service, relations, and satisfaction.

a. Phone Number. Franchisee will maintain a toll-free telephone number at least during Office Hours and, if Franchisee provides Residential Collection on Saturday, from 8:00 a.m. to noon on Saturdays (collectively “**Phone Hours**”). Franchisee will list the telephone number under Franchisee’s name in County telephone directories (white pages and yellow pages). Franchisee will provide an answering machine or answering service to take reports of missed pick-ups and other complaints that are received outside of Phone Hours.

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

c. Field Supervisor. Franchisee will provide one qualified individual as on-site supervisor of field operations who shall, at a minimum, be responsible for: (i) checking collection operations; (ii) coordinating improvements to Franchise Service; (iii) resolving field problems; and (iv) responding to complaints of Customers in person or by telephone. Franchisee will fully authorize that supervisor to resolve Customer disputes and handle all aspects of Customer service. Franchisee will provide the name and contact information for that supervisor to County upon or prior to the Commencement Date.

d. Complaint Records. Franchisee will enter into a daily log all complaints, including date, time, complainant’s name and address if the complainant is willing to give this information, and the nature, date, and manner of complaint resolution. Franchisee will include copies of daily complaint logs in each Quarterly Report furnished to the Director.

e. Dispute Resolution Protocol. Franchisee will comply with the Customer Complaint and Billing Dispute Resolution Protocol which is contained in Exhibit 4.05(e).

4.06 Public Education and Community Relations.

a. Distribution of Materials.

1. Community Relations Materials. County may, once each Contract Year, prepare community relations materials for distribution to Franchisee’s Customers as determined by County to be necessary, in order to address specific Collection needs or problems. Franchisee will provide County with a Customer list and the postage to cover the cost of that mailing or mail County’s prepared materials to its Customers within fifteen (15) days of County’s request.

2. Customer Bills. County may once each Contract Year produce and provide Franchisee with printed inserts, specified as a sheet no larger than 8½ by 11 inches and small promotional items, such as magnets, which Franchisee will include in Customers' bills or otherwise provide to Customers upon County request at no cost to County. In addition, Franchisee will print public information directed by County on Customers' bills.

b. County Review. Franchisee will submit final drafts of

- (1) community relations materials;
- (2) promotional materials; and
- (3) general Customer correspondence unrelated to individual Customer accounts (such as notice of change to Collection schedules, Unpermitted Waste advisements, etc.)

to County for review and approval at least fifteen (15) days prior to printing, distributing, or mailing the materials or correspondence.

Franchisee will additionally establish a Customer account for County without charge, using the address for Notice provided in Section 18.01, so that County will automatically receive copies of all of Franchisee's general communications with Customers.

c. News Media Relations.

Franchisee will notify the Director by telephone of all requests for news media interviews or statements related to the Franchise Services within twenty-four (24) hours of Franchisee's receipt of the request. Before responding to any inquiries involving issues other than those relating to descriptions of Collection programs and scope of Franchise Services, Franchisee will discuss Franchisee's proposed response with County. Franchisee will submit copies of Franchisee's draft news releases or proposed trade journal articles to County for prior review and approval at least five (5) County Working Days in advance of release. Franchisee will provide copies of articles resulting from media interviews or news releases to County within (7) days after publication.

4.07 Customers' Privacy.

Franchisee will strictly observe and protect Customers' rights of privacy. Franchisee will not reveal information identifying individual Customers or the composition or contents of a Customer's waste stream to any Person other than County unless upon the authority of a court of law, by Applicable Law, or by valid authorization of the Customer. This provision will not be construed to preclude Franchisee from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses that may be required by County or Applicable Law. In addition, Franchisee will not market, sell, convey, or donate to any Person any list with the name or address of Customers *except* that Franchisee will provide that list to

County or other Persons as directed by County. The rights accorded Customers pursuant to this Section are in addition to any other privacy right accorded Customers pursuant to Applicable Law.

4.08 No Discrimination.

Franchisee will not discriminate against Customers entitled to Franchise Service on account of Suspect Categories.

4.09 Franchisee Billing.

a. Billing. Franchisee will bill and collect Service Fees. Franchisee acknowledges that County is not obligated to bill or collect Service Fees. Franchisee will not hold County liable for any under-billings to Customers of Service Fees or delinquent Service Fee payments.

b. Refunds. Franchisee will refund to Customers any overcharges for Franchise Services the earlier of two (2) weeks from the time that Franchisee discovered the overcharge or Customer notified Franchisee of the overcharge. “**Overcharges**” includes: (i) Franchisee’s billing errors; and (ii) refunds for Franchise Services paid in advance by Customers who terminated Franchise Services prior to the end of the billing period.

c. Customer Disputes. Franchisee will take Customers’ calls and respond to Customers’ correspondence with respect to disputes regarding billing or otherwise, or resolving disputes. Franchisee acknowledges that County is not responsible for handling Customer disputes.

d. Records. Franchisee will maintain billing records in accordance with Section 10.01.

e. Uniformity. Franchisee will charge uniform Service Fees to all Customers, regardless of location and cost of Franchise Service. Notwithstanding the foregoing, Franchisee may discount rates as provided in Section 13.01(a).

f. Failure to Pay Service Fees. Franchisee shall contact, by phone, any Customer who has failed to pay an invoice within thirty (30) days of the date of such invoice notifying them of late payment. If a Customer fails to pay an invoice within sixty (60) days of the date of such invoice, then Franchisee may suspend services to such Customer until all outstanding Service Fees are paid, and may charge Customer a reinstatement fee up to Twenty-Five dollars (\$25.00) to reinstate services to Customer. If a Customer fails to pay an invoice within ninety (90) days of the date of such invoice, then Franchisee may terminate service to such Customer and collect all Containers from Customer, and may charge Customer a reinstatement fee up to One Hundred Seventy-Five dollars (\$175.00) to reinstate services to Customer.

4.10 Description of Customers' Rights.

Within

- (1) 30 days of the Commencement Date for existing Customers; and
- (2) prior to the provision of Franchise Services to new Customers,

Franchisee will provide Customers with a written Subscription Order. In each Subscription Order and in Customer's first bill of each Contract Year, Franchisee will include a description of the following Customers' Franchise Services and rights under this Agreement, as County may amend from time to time following dated Notice to Franchisee:

- (1) the scope of Franchise Services provided, including but not limited to day of collection and arrangements for the collection of Bulky Waste or excess Solid Waste;
- (2) the Service Fee or other fees (or, rate);
- (3) Holiday schedules;
- (4) the ability of Customers to immediately terminate their Subscription Order upon oral or written notice to Franchisee without penalty in accordance with Section 4.01(c)(1)(ii) and Section (c)(2)(ii), and describing their refund rights for pre-paid but unused Franchise Service in accordance with Section 4.09(b); and
- (5) any other provision of this Agreement or Applicable Law as directed by County.

The Subscription Order may include a waiver of damage liability and/or indemnification in connection with subscriptions for Franchise Services on private driveways, roads, easements, or pavement.

4.11 Customer Satisfaction Survey.

County may conduct a Customer satisfaction survey for implementation of Franchise Services, including a survey mailed to Customers together with Customers' bills, in the form of a post card or letter returnable to County. Alternatively, Franchisee may provide County with a Customer list and money to pay the cost of postage, within fifteen (15) days of County's request made pursuant to this section. Franchisee may review and comment upon the form and content of the survey. Franchisee will cooperate with County and its surveyor in the conduct of the survey, including distributing surveys with bills to Customers. Franchisee may obtain a copy of the results of the survey upon request to County.

4.12 Public Performance Review.

The County Board may conduct a public hearing upon sixty (60) days' Notice to Franchisee at the time that the County Board selects, not more than once during each Contract Year, to review Franchisee's performance and quality of Franchise Service. Franchisee will attend and participate in that hearing. The County Board may use Records and reports required under Article 10, including Records of Customer complaints, as a basis of its reviews. Within thirty (30) days after the conclusion of the public hearing, County will issue a report with respect to the matters raised at the hearings.

4.13 Enforcement of Franchise.

County may, in its sole discretion, enforce the franchise requirement set forth in Section 12.10.020 of the Mono County Code against third party violators, taking into account the cost of doing so and other factors. Franchisee may independently enforce the semi-exclusive rights granted by this Agreement against third party violators (excluding the other franchisee operating pursuant to a franchise agreement with County), including seeking injunctive relief, and County will use good faith efforts to cooperate in such enforcement actions brought by Franchisee. County will not be liable to Franchisee in any manner, including for any costs or damages such as lost revenues or lost profits, should any Person refuse to subscribe to Franchise Services from Franchisee and/or perform Franchise Services under a franchise agreement with County in competition with Franchisee, and in doing so violate the semi-exclusive grant of franchise given to Franchisee in this Agreement. In that event, Franchisee's sole and exclusive remedy will be to seek an injunction, damages, or other available judicial relief against any such third person or entity that engages in any conduct or activity that violates Franchisee's semi-exclusive rights under this Agreement. If Franchisee becomes aware of any activity by a third party that violates or may violate the provisions of Section 12.10.020 of the Mono County Code, Franchisee will provide Notice to County of such activity.

ARTICLE 5. OPERATIONS

5.01 Routing.

a. Route Maps and Account Information. Within thirty (30) days of the Commencement Date, Franchisee will provide to County route maps or narratives containing the following information ("**Routing Specifications**"):

- (1) a description of each individual route, including starting and end points and street-by-street course;
- (2) Collection day of the week for each individual route; and
- (3) approximate Collection times (a.m. or p.m.) marked at several points along each individual route or noted with the narrative description of the route.

b. Route Changes. Franchisee will submit to County, in writing, any proposed change in Routing Specifications not less than fifteen (15) days prior to the proposed date of implementation or as otherwise agreed to by Franchisee and the Director.

c. Route Audits. Upon no less than thirty (30) days' Notice to Franchisee, County may conduct audits of Franchisee's Collection routes. Franchisee will cooperate with County in connection therewith, including permitting County employees or other Persons designated by the Director to follow or ride in the Collection Vehicles during the audit. Franchisee will have no responsibility or liability for the salary, wages, benefits or workers compensation claims of any Person designated by the Director to conduct audits.

5.02 Vehicles, Service Assets, and Drivers.

a. Vehicle Appearance. Bodies of Vehicles used in Collection or transportation of Solid Waste must have watertight beds of metal or impervious material that can be cleaned as required by Section 12.10.050 of the Mono County Code. Franchisee will utilize packer-type, completely enclosed Vehicles unless another type of Vehicle is required by weather, terrain, or type of Solid Waste to be hauled. Franchisee will paint and label all Vehicles in a consistent, uniform, and professional manner.

b. Compliance with Applicable Law. Franchisee will ensure that all Vehicles it uses to provide the Franchise Services comply with all Applicable Law. Franchisee will document, through its maintenance log or otherwise, compliance under Applicable Law applying to each Vehicle and will provide County with copies of inspection reports within ten (10) days of County's request. County may conduct inspections of Vehicles in connection with any Permits issued by County or otherwise. Franchisee will maintain copies of registration certificates and reports and make them available for inspection at its Office during Office Hours upon request by County.

c. Vehicle Identification. Franchisee will paint its name, telephone number, and the Vehicle number on all Vehicles in letters and figures not less than twelve inches (12") high for packer trucks and not less than six inches (6") high on other Vehicles, in accordance with Section 12.10.050 of the Mono County Code.

d. Cleaning, Maintenance, and Availability. Franchisee will at all times maintain Vehicles in good, clean condition and repair so that they operate properly and safely. If a leak does occur, then Franchisee will immediately clean it up. Franchisee may not leave Vehicles loaded with Solid Waste for over twenty-four (24) consecutive hours. Franchisee will maintain in readiness at least one (1) spare Vehicle, fully fueled, and ready to dispatch and replace any Vehicle which breaks down on route within reasonable time of break down. Customers will not have to wait for Franchise Service while a disabled Vehicle is repaired.

e. Equipment. Franchisee will equip each Collection Vehicle with a fire extinguisher which must be maintained and checked in accordance with manufacturer's warranty and maintenance recommendations.

f. Re-Refined Oil. To the extent permitted by equipment warranties and/or available services, Franchisee will give serious consideration to recycling used oil from its Vehicle maintenance operations and to use re-refined oil in its Vehicles, but only to the extent Franchisee receives reasonable assurances satisfactory to Franchisee from the manufacturer of the Vehicle that such use will not damage its equipment, lessen its useful life, add to its expense or result, or be likely to result in potential environmental liability. Should Franchisee elect to adopt such a policy, Franchisee will submit copies of re-refined oil invoices and the assurances to County upon County's request.

g. Service Assets. Franchisee will prepare a Service Asset Inventory as set forth in Exhibit 5.02g.

h. Drivers. Franchisee will ensure that all drivers of Vehicles have in full force and effect a valid license of the appropriate class issued by the California Department of Motor Vehicles. Franchisee will provide suitable operational and safety training for all of its personnel, including those who drive Vehicles or operate other equipment for Collection, which training will include on-the-job-training by supervisors. Franchisee will train sufficient numbers of drivers to drive all Collection routes so as to ensure no lapse of Franchise Services and will use Reasonable Business Efforts to assign the same driver(s) to identified routes in order to encourage accountability and enhance Customer relations. Franchisee will train its drivers to identify and not to collect Unpermitted Waste. Franchisee will implement drug and alcohol testing in accordance with Applicable Law. Franchisee will maintain copies of licenses for all Vehicle operators and full and complete records of training and testing, which Franchisee will make available to County at Franchisee's Office during Office Hours.

5.03 Public Resources Code Section 49520.

Franchisee acknowledges having received a timely notice from County under Public Resources Code Section 49520 prior to entering into this Agreement, which notice precludes Franchisee from asserting the right to continue to provide Franchise Services in the Franchise Area without a franchise agreement as may be required by County, whether in the form of this Agreement or otherwise, now or in the future.

In accordance with Public Resource Code Section 49523, County and Franchisee hereby contract, based upon the mutually satisfactory terms of providing Franchise Services set forth in this Agreement and receipt of compensation therefor, that Franchisee will terminate providing Franchise Services upon expiration or termination of this Agreement even if that expiration or termination occurs prior to the expiration of the 5-year period described in Public Resources Code Section 49520. Franchisee acknowledges that it does not have the right to make any claim under or pursuant to Public Resources Code Section 49520 but only pursuant to the terms of this Agreement. Franchisee's contracting and acknowledgments in this Agreement do not foreclose County from re-procuring agreements for Franchise Services or Solid Waste Handling Services, including from Franchisee, following termination of this Agreement by exclusive, partially-

exclusive, or wholly-exclusive franchise, contract, license, permit, or otherwise, with or without competitive bidding.

5.04 Personnel.

a. Nondiscrimination. Franchisee will not discriminate against any of its personnel on the basis of Suspect Categories. Franchisee will comply with all Applicable Law regarding nondiscrimination, including those prohibiting discrimination in employment.

b. Compliance with Immigration Law. Franchisee will keep all records indicating compliance required by the Federal Immigration and Control Act of 1986 and will make those records available for inspection by County at Franchisee's Office promptly upon County direction.

c. Conduct. Franchisee will employ only competent, qualified, conscientious, and sober personnel to ensure Franchise Services satisfactory to County. Franchisee will ensure that its employees serve Customers and the public in a courteous, professional, and reliable manner.

5.05 Contingency Plan.

Franchisee will prepare a contingency plan to provide Vehicles and personnel necessary and sufficient to maintain uninterrupted Franchise Service during

- (1) mechanical breakdowns;
- (2) extreme weather conditions;
- (3) road closures;
- (4) strikes, work stoppages, and other concerted job actions or similar events; and
- (5) emergencies, including natural disasters

including procedures for replacing Vehicles disabled on routes. Franchisee will provide County with a copy of such plan upon request, and within seven (7) days of any modification.

5.06 Unpermitted Waste.

Franchisee will comply with the Unpermitted Waste screening, identification, and prevention protocol ("**Unpermitted Waste Screening Protocol**") attached to Exhibit 5.06 or may develop and follow its own Unpermitted Waste Screening Protocol which is at least as stringent as Exhibit 5.06 and which is approved by the Director. If Franchisee delivers Unpermitted Waste to the Designated Disposal Facility or a Diversion Facility, then Franchisee will arrange for proper disposal in accordance with Applicable Law and/or cooperate with the facility owner or operator

with respect thereto. Nothing herein shall limit or circumscribe any right Franchisee may have against the generator of such waste for damages incurred by Franchisee's handling and disposal of such waste.

5.07 Annual Meetings.

Franchisee will meet with County at its offices in Bridgeport

- (1) a minimum of once every two Contract Years, as directed by County; and
- (2) at any additional times as directed by County.

The purpose of the meetings may include addressing operational issues and contract compliance, reviewing Quarterly Reports, and resolving any issues or problems related to the performance of Franchise Services.

ARTICLE 6. DIVERSION

6.01 Diversion Reporting.

a. Reporting and Substantiation of Diverted Materials. Franchisee will report the amount of Diverted Recyclables to County in its Quarterly Report or when required by the Act. Franchisee will include:

- (1) the date of diversion;
- (2) the quantity (by each type) of Diverted Recyclables expressed in cubic yards, pounds, or tons;
- (3) the community or project where the Diverted Recyclables originated; and
- (4) the name and telephone number of the Diversion Facility to which Franchisee delivered the Diverted Recyclables and a receipt or invoice from that Diversion Facility.

“Diversion Facility” means any materials recovery facility, salvager, processing facility or materials end user. **“Diverted Recyclables”** means the net quantity of Recyclables that Franchisee has Collected at Residential and Commercial premises and at construction or demolition projects and Diverted, including Recyclables in Bulky Waste. The net quantity will be the gross amount of material Collected and delivered to the Diversion Facility, less any quantity of Solid Waste that was contained therein and deducted from payment and/or Diversion and disposed by said Facility. **“Divert,” “Diverted,” “Diversion”** or other form thereof means to divert from disposal so that the disposal tonnage is not reported as disposed under the State’s disposal reporting system and qualifies as diversion under the Act.

Franchisee will additionally report to County on a quarterly basis the amount of Solid Waste contained within Diverted Recyclables that was separated therefrom. Franchisee's report will include the date of Collection, the quantity of Solid Waste expressed in cubic yards, pounds or tons, and the community or project where the Solid Waste originated.

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

6.02 Additional Programs.

County may direct Franchisee to submit proposals for additional programs, including diversion programs, necessary in County's opinion to meet any required diversion goal or other goal. If necessary, the Parties will enter into good faith negotiations for at least thirty (30) days following the date County directs Franchisee to submit a program proposal. If the Parties cannot reach agreement within thirty (30) days, then either Party may refer the matter to the Independent Expert for determination in accordance with Section 9.01. County may independently implement programs itself or through a third Person.

ARTICLE 7. SOLID WASTE DISPOSAL

7.01 Transportation to Designated Disposal Facility.

a. Designated Disposal Facility. Franchisee will transport and deliver all Solid Waste, except for Recyclables that it Diverts, to the Designated Disposal Facility, including:

- (1) Solid Waste that Franchisee Collects from Residential and Commercial premises in accordance with Section 4.01(c);
- (2) Solid Waste that Franchisee Collects in performing emergency services in accordance with Section 8.01;
- (3) excess or Bulky Waste that Franchisee Collects in accordance with Section 4.02; and
- (4) C&D Waste that Franchisee Collects in accordance with Section 4.01(f).

County may change the Designated Disposal Facility upon thirty (30) days' Notice to Franchisee. Franchisee will observe and comply with all rules and regulations in effect at the Designated Disposal Facility and follow directions of the operator of the Designated Disposal Facility, including:

- (1) unloading Solid Waste in designated areas;
- (2) accommodating operations and maintenance activities;
- (3) complying with Unpermitted Waste exclusion programs; and
- (4) complying with facility hours of operation, unless otherwise agreed to by the Parties.

Franchisee will at all times operate according to safe industry practices.

b. Exceptions. Notwithstanding Subsection (a), Franchisee is *not* obligated to deliver Solid Waste to the Designated Disposal Facility in the following circumstances described in Subsection (b)(1) and Subsection (b)(2):

1. South of the Junction of Highways 395 and 182: Highway Closures. Solid Waste generated in those areas of Mono County located south of the junction of Highway 395 and Highway 182 may be diverted from the Designated Disposal Facility if Highway 395 or Benton Crossing Road is closed to all traffic at any point between the location where Franchisee Collected the Solid Waste and the Benton Crossing Landfill by the California Highway Patrol, the California Department of Transportation, the Mono County Department of Public Works, or the Mono County Sheriff's Department *and* Franchisee fully and timely satisfies the following conditions:

(i) **Notice.** Prior to diverting Solid Waste from the Designated Disposal Facility, Franchisee gives the Director (or if the Director is unavailable, another person in the Department of Public Works administrative office) oral notice, followed by Notice, of highway or road closure and Franchisee's inability to deliver Solid Waste to the Designated Disposal Facility;

(ii) **Records.** Franchisee keeps accurate Records with respect to Solid Waste that Franchisee diverts from the Designated Disposal Facility, including:

- (a) the amount and type of Solid Waste, documented by a weight ticket from County's Walker Transfer Station, County's Bridgeport Transfer Station, or issued by a certified weighmaster from another California or Nevada state-certified truck scale approved by the Director, or a gate receipt from the facility to which Franchisee transported and delivered that diverted Solid Waste;
- (b) the type of Vehicle or Container in which Franchisee transported that Solid Waste;
- (c) the date of highway or road closure and diversion;
- (d) the extent of highway closure; and

(e) County staff person to whom Franchisee gave oral notice.

(iii) Reporting. Included in its Quarterly Report submitted to County in accordance with Section 10.02, Franchisee submits a report satisfactory to County with supporting receipts or weight tickets as described above for that Solid Waste diverted during that quarter.

(iv) Capacity Fees. Together with its quarterly payment of Franchise Fees payable in accordance with Section 13.02(a), Franchisee pays County the Capacity Fee for that Solid Waste as set forth in Exhibit 7.01b.

2. North of the Junction of Highways 395 and 182: Any Time. Solid Waste generated in those areas of the county located north of the junction of Highway 395 and Highway 182 may be diverted from the Designated Disposal Facility if Franchisee fully and timely satisfies the following conditions:

(i) Records. Franchisee keeps accurate Records with respect to diverted Solid Waste, including:

(a) the amount and type of Solid Waste, documented by a weight ticket from County's Walker Transfer Station, County's Bridgeport Transfer Station, or issued by a certified weighmaster from another California or Nevada state-certified truck scale approved by the Director, or a gate receipt from the facility to which Franchisee transported and delivered that diverted Solid Waste; and

(b) the type of Vehicle or Container in which Franchisee transported that Solid Waste.

(ii) Reporting. Included in its Quarterly Report submitted to County in accordance with Section 10.02, Franchisee submits a report satisfactory to County with supporting receipts or weight tickets as described above for that Solid Waste diverted during that quarter.

(iii) Capacity Fees. Together with the payment of quarterly Franchise Fees payable in accordance with Section 13.02(a), Franchisee pays County the Capacity Fee for each load hauled out of Mono County during the quarter as set forth in Exhibit 7.01b.

7.02 Defense and Indemnification; Release.

a. Requirement. Franchisee will defend, release, indemnify and hold harmless at its sole cost and expense with counsel approved by County, County (including Persons described in the definition of "County" in Exhibit 1.01) in any actions that assert or allege Liabilities paid, incurred or suffered by, imposed upon or asserted against, County that result or are claimed to have resulted directly or indirectly from the presence, disposal, escape, migration, leakage, spillage, discharge, release or emission of Unpermitted Waste or petroleum products to, in, on, at, or under any place,

site, or facility where Franchisee delivers, stores, processes, recycles, composts, or disposes of Solid Waste to the extent that the Liabilities are caused or alleged to be caused by the following:

1. Franchisee Negligence or Misconduct: the wrongful, willful, or negligent act, error or omission, or the misconduct of Franchisee;

2. Non-Customer Materials: the collection, delivery, handling, recycling, processing, composting, or disposal by Franchisee of any materials or waste, including Unpermitted Waste, which are generated by Persons other than Customers collected from premises other than Customers' premises;

3. Failure to Comply with Unpermitted Waste Protocol: the failure of Franchisee to undertake Hazardous Waste training procedures required by Applicable Law or the Unpermitted Waste Screening Protocol, whichever is more stringent; and

4. Franchisee-Identified Unpermitted Waste: the improper or negligent collection, handling, delivery, processing, recycling, composting, or disposal by Franchisee of Unpermitted Waste that Franchisee inadvertently collects from Customers and that Franchisee identifies as Unpermitted Waste prior to its delivery, processing, recycling, composting, or disposal,

whether:

(i) in one or more instance;

(ii) threatened or transpired;

(iii) Franchisee is negligent or otherwise culpable; or

(iv) those Liabilities are litigated, settled or reduced to judgment.

b. Household Hazardous Waste. The mere presence of Household Hazardous Waste in Solid Waste that is Collected under this Agreement will not constitute negligence in and of itself nor create any liability on the part of Franchisee absent any of the circumstances described in items (1) through (4) listed in Subsection (a).

c. Cooperation with County's Counsel. County may retain counsel at its own cost and expense or utilize in-house counsel as co-counsel. Franchisee will direct Franchisee's counsel to assist and cooperate with co-counsel with respect to County's defense.

d. Waiver. The indemnity in Subsection (a) is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify County from liability in accordance with this Section 7.02.

e. Unpermitted Waste. Franchisee hereby releases and will not seek contribution or compensation of any nature from County for Liabilities relating to Unpermitted Waste, including relating to RCRA, CERCLA, or the California Health and Safety Code. Franchisee will not make any claims against or assert an interest in any account, fund or reserve that County may establish or set aside, from the proceeds of the Franchise Fee or otherwise, or maintains to cover Liabilities relating to Unpermitted Waste, which established fund or reserve County is under no obligation to establish or maintain.

7.03 Disposal Fees.

Franchisee will timely pay gate and any other fees charged by the Designated Disposal Facility in accordance with County's existing gate fee schedule and Gate Fee Administration Policy, as County may amend those fees or policy from time to time.

ARTICLE 8. MISCELLANEOUS SERVICE PROVISIONS

8.01 Emergency Services.

Within twenty-four (24) hours of Notice from County, Franchisee will provide emergency services beyond the scope of Franchise Services at the times and to the extent directed by County, including unscheduled gathering, pick up, collection, and disposal of C&D Debris, Bulky Waste, and other debris resulting from natural disasters such as earthquakes and floods. County will compensate Franchisee its Reimbursement Costs for those services.

8.02 Title to Solid Waste.

All Solid Waste, including Recyclables, becomes the property of Franchisee when Collected by the Franchisee, as provided in Section 12.10.060 of the Mono County Code. This Agreement will not affect any other agreement the Parties may reach with respect to Franchise Services, including but not limited designating the Designated Disposal Waste facility.

8.03 Compliance with Applicable Law.

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

Franchisee acknowledges that County is authorized to make all necessary and reasonable rules and regulations regarding all aspects of Solid Waste Handling Services, including Franchise Services. Franchisee agrees to comply with any and all of those rules and regulations.

Provisions of Applicable Law are incorporated in this Agreement by reference as if set forth fully in this Agreement as contractual obligations of Franchisee to County. In addition to or in lieu of prosecuting violations of Applicable Law as misdemeanors, infractions or otherwise in the manner provided under Applicable Law, County may enforce Applicable Law in the same manner as it may enforce Franchisee's other contractual obligations under this Agreement, including specific performance. However, County has no obligation to enforce any Applicable Law.

b. Referenced Provisions. Reference in this Agreement to particular provisions or requirements of Applicable Law may not be construed to limit Franchisee's obligation to comply with all provisions of Applicable Law. Reference to statutory provisions of Applicable Law are deemed to include reference to implementing rules and regulations. These references are intended to facilitate Franchisee's satisfaction of its Performance Obligations and County's administration and specific enforcement of this Agreement, and may not be construed to imply lack of obligation to comply with other provisions or requirements of Applicable Law not referred to or cited in this Agreement. If any Applicable Law specifically referenced or cited in this Agreement is amended, supplemented, restated, re-codified, modified, or repealed, then that reference or citation will be deemed to refer to that amendment, supplement, restatement, re-codification, or modification.

c. Permits. Franchisee will obtain and maintain throughout the Term all necessary approvals, authorizations, and Permits (including Permits required under Title 12 of the Mono County Code). Franchisee will show proof of approvals, authorizations, and Permits and will demonstrate compliance with the terms and conditions of said approvals, authorizations, and Permits promptly upon the request of County. In particular, Franchisee warrants and represents that it is fully acquainted with the provisions of the Mono County Code. Where County is the permitting agency, it shall cooperate in good faith with Franchisee in issuing such permits in accordance with law.

d. Fines and Penalties. Franchisee is responsible for payment of any and all fines and penalties imposed on Franchisee. Franchisee will not seek reimbursement from County or Customers for any fines or penalties. If Franchisee believes that compliance with a Franchise Obligation would violate Applicable Law thus exposing Franchisee to fines and/or penalties, then Franchisee shall immediately Notify County. If County concurs that Franchisee's compliance would violate Applicable Law, then the Parties shall meet and confer to determine how Franchisee may best comply with the Franchise Obligation and Applicable Law. If County determines in its sole discretion that Franchisee cannot comply with the Franchise Obligation without violating Applicable Law, then County may excuse Franchisee's performance of the Franchise Obligation and provide Franchisee with Notice that such performance is excused.

8.04 Cooperation with Waste Studies.

Franchisee will cooperate with County on any and all waste composition studies, including modification of routes, separate collection of individual Customer's Solid Waste, and/or delivering targeted loads of Solid Waste to a County-designated location or locations. Franchisee will also cooperate with County on any and all Customer waste assessments, including providing information in its Records on volume and characterization of wastes generated by Customers.

8.05 Service Materials Belong to County.

Reports prepared by Franchisee in accordance with Article 10, public education and community relations materials prepared in accordance with Section 4.06, and all other work products (whether computerized, written, printed, or photographic) developed by County or Franchisee in connection with Franchise Services, whether developed directly or indirectly by County or Franchisee, may be used by County without limitation or restriction. Franchisee may also continue to use public education and community relations materials and other work product in connection with any project not connected with this Agreement without the prior written consent of County.

8.06 Recycled Materials.

Franchisee will use Reasonable Business Efforts to procure supplies with post-consumer recycled content.

8.07 Responsiveness to County.

Franchisee will return telephone calls from County to the person who made that call during County Office Hours no later than the next County Working Day. Franchisee will meet with County during County Office Hours within one (1) week of County's oral or written direction at County offices or other location directed by County. Franchisee will respond to all e-mails from County within two (2) County Working Days of receipt and will respond to other written correspondence from County within seven (7) days of receipt thereof.

8.08 Commingling of Waste.

Franchisee will not commingle Solid Waste it collects from premises located outside of the unincorporated area of Mono County with Solid Waste Collected by Franchisee within the unincorporated area.

ARTICLE 9. DISPUTE RESOLUTION BY INDEPENDENT EXPERT

9.01 Independent Expert.

a. Selection. If either Party gives Notice to the other Party of request for dispute resolution by an Independent Expert as authorized by this Article, within ten (10) days after the second Party's receipt of Notice each Party will prepare a separate list of five (5) independent Persons having experience in refuse collection, in numerical order with the first preference at the top, and exchange and compare lists. The Person ranking highest on the two (2) lists by having the lowest total rank order position on the (2) lists will be the Independent Expert. In case of a tie in scores, the Person having the smallest difference between the rankings of the two (2) parties is selected; other ties will be determined by a coin toss. If no Person appears on both lists, then this procedure will be repeated. If selection is not completed after the exchange of three (3) lists or within twenty-one (21) days, whichever comes first, then each Party will select one (1) Person having experience described above and the two (2) Persons so selected will together select an Independent Expert.

b. Costs. Parties will share the Independent Expert's costs and fees equally.

c. Determination Protocol and Standard. Within ten (10) days of the selection of the Independent Expert, or within ten (10) days of Notice by either Party of request for dispute resolution by an Independent Expert if one has already been selected, both Parties will submit to the Independent Expert a detailed description of the dispute together with a written statement of each Party's position thereon. Parties will simultaneously exchange copies thereof. Both Parties will, in good faith and in writing, promptly provide the Independent Expert with any and all additional information and documentation the Independent Expert requires or requests in order to make its determination and simultaneously provide the other Party with copies thereof. Neither Party will communicate orally with the Independent Expert unless the other Party is privy thereto. Neither Party will communicate in writing with the Independent Expert unless it simultaneously sends copies of the communication to the other Party, in the same manner that it sends the communication to the Independent Expert.

The Independent Expert will make its determination based on the submissions of the Parties, the provisions of this Agreement, its experience with similar services and disputes, and other factual determinations it may make regarding the matter in dispute.

d. Binding and Non-Binding Determinations.

1. Disputes subject to binding determination by the Independent Expert include:
 - (i) fee disputes in accordance with Section 13.04(c);
 - (ii) additional programs in accordance with Section 6.02; and
 - (iii) other disputes agreed to by the Parties.

2. Disputes subject to non-binding determination by the Independent Expert include:
 - (i) the occurrence and extent of Uncontrollable Circumstances; and
 - (ii) other disputes agreed to by the Parties.

ARTICLE 10. RECORDS AND REPORTING

Franchisee acknowledges that County entered into this Agreement, among other reasons, to provide Customers and County with improved Collection Services. Franchisee further acknowledges that, in order that County may better evaluate Franchisee's performance under this Agreement, Franchisee has obligated itself to maintain Records and timely provide reports in accordance with this Article.

10.01 Records.

a. Maintenance. Unless otherwise directed by County, Franchisee will accurately maintain at its Office any and all ledgers, books of account, invoices, Customer lists, billing records, route maps, Customer complaints, canceled checks, logs, correspondence, Customer receipts, and other records or documents evidencing or relating to rates, Franchise Fee, Customers' Franchise Services subscriptions, satisfaction of Performance Obligations, events subject to damages payable under Section 14.01, documentation as County may reasonably require to ascertain the extent of compliance with the Mono County Code, and items listed in Exhibit 10.01a related to Franchise Services provided by Franchisee ("**Records**"). Specific Record requirements are listed on Exhibit 10.01a. Franchisee will maintain Records for the Term plus three (3) years, or any longer period required by Applicable Law. Franchisee will use Reasonable Business Efforts to promptly provide County any additional information relevant to this Agreement that is not specified in this subsection.

b. County Inspection and Audit. Upon Notice by County, Franchisee will use Reasonable Business Efforts to provide copies of Records to County or County's designee(s) for inspection or audit at County Administrative Office or County Auditor-Controller Office. Otherwise, Franchisee will make Records available to County or County's designee(s) for inspection or audit at Franchisee's Office during Office Hours. Notwithstanding anything contained herein to the contrary, County shall have no right to audit, inspect, copy, or otherwise review any of Franchisee's confidential, proprietary, or privileged information.

Where County has reason to believe that Records may be lost or discarded due to dissolution, disbandment or termination of Franchisee's business or other reason, County may require that Franchisee give County custody of any or all Records and that those Records and documents be maintained in County Office of the Department of Public Works. In that event, access to said Records will be granted to any Person duly authorized by Franchisee.

10.02 Reporting.

a. Quarterly. Franchisee will submit Quarterly Reports to County no later than the fifteen (15th) day of the month immediately following the end of each quarter described in Exhibit 10.02a. *For example, for the Quarter ending on March 31, the Quarterly Report is due to County no later than April 15.* Quarterly Reports must be in the form directed or approved by County and contain, at a minimum, the information listed in Exhibit 10.02a, including information needed for County to prepare Quarterly Reports required under Applicable Law with respect to recycling and Diversion of Solid Waste in County, County's compliance with its solid waste facility permits, and quarterly taxes due and payable to the California Department of Tax and Fee Administration.

b. Annual. Franchisee will submit Annual Reports to County on or before February 15 of each Contract Year in the form directed or approved by County, totaling the information contained in the Quarterly Reports for the previous Contract Year and containing, at a minimum, the information listed in Exhibit 10.02b.

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

10.03 Financial Records and Reports.

a. Maintenance of Accounting Records.

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

2. County Audit. County and its auditors and other agents selected by County may conduct on-site audits, reviews, and inspections of Records described in Subsection (a)(1) at Franchisee's Office during Office Hours and make copies of any Records or supporting documentation relevant to this Agreement, including Customer account and billing information, Customer receipts, and Franchise Fee payments. Franchisee will retain said records for the term plus three (3) years and any additional time directed by County to enable County to complete any review or audit commenced during said three (3) years. Notwithstanding anything contained herein to the contrary, County shall have no right to audit, inspect, copy, or otherwise review any of Franchisee's confidential, proprietary, or privileged information.

b. Financial Statements. Promptly upon County direction, Franchisee will deliver to County up to three (3) copies of Franchisee's most recent financial statements, including any accompanying statement or opinion by the accountant who prepared them respecting that accountant's compilation, review, or audit, as the case may be. Franchisee will cause the accountant to prepare financial statements on an accrual basis showing (1) the results of Franchisee's operations under this Agreement separately from operations in other locations, as if Franchisee were an independent entity providing service only in the unincorporated area of County, as well as (2) the results of Franchisee's operations in all locations,.

c. Affiliated Companies. If Franchisee enters into any Subcontracts with Affiliates, then Franchisee will thereafter disclose said arrangements in Franchisee's financial reports prepared and delivered in accordance with Section 10.03(b). County's inspection rights described in Subsection 10.03(a) extends to said Affiliate or Affiliates.

d. County Review of Financial Statements. County and/or its agents and consultants may review the audit plan and work papers of any of the accountants whose opinions on the financial statements Franchisee is obligated to deliver to County in accordance with Subsections 10.03(a), (b), or (c). If that review gives rise to any questions or differences of opinion regarding Franchisee's compliance with this Agreement, then Franchisee and its accountant(s) will meet with County and its consultant, if any, to discuss the issues involved within fourteen (14) days of County's direction.

10.04 Proprietary Reports and Records.

a. Notice of Request. If County receives a request from a third person to review or copy material which Franchisee has marked "confidential," then County will inform Franchisee and allow Franchisee to present arguments and facts to County in support of Franchisee's position that the material is entitled to an exemption from disclosure under the California Public Records Act, Government Code section 6250 *et seq.*, and should not be released.

b. Notice of Release. If County determines that the material is *not* entitled to an exemption and that it must be released, then County will inform Franchisee before releasing that material so that Franchisee may seek a court order enjoining that release.

c. Notice of Legal Action. If County determines that the material is entitled to an exemption, and the person who requested the information files a legal action seeking its release, then County will inform Franchisee and will not oppose a motion by Franchisee to intervene in the action. Franchisee must either intervene or accept the release of the material. County is not obligated to defend the action and may release the material sought without any liability.

d. Defense and Indemnification. Notwithstanding anything contained herein to the contrary, Franchisee shall defend with counsel acceptable to County, indemnify, and hold harmless County, its agents, officers, and employees from and against all claims, damages,

losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from or in connection with, County's release, disclosure, or withholding of any material which Franchisee has marked "confidential" under the California Public Records Act.

ARTICLE 11. INSURANCE, INDEMNIFICATION AND PERFORMANCE ASSURANCES

11.01 Insurance

a. Policies.

1. Types and Amounts. Franchisee, at Franchisee's sole cost and expense, will procure from an insurance company or companies admitted to do business in the State of California and subject to the regulation of the California Insurance Commissioner and will maintain in force at all times during the Term the types and amounts of insurance listed in Exhibit 11.01a.

2. Endorsements. The policies of insurance required pursuant to Subsection (a)(1) must contain the endorsements listed in Exhibit 11.01a.

b. Delivery of Proof of Coverage. As of the Commencement Date, Franchisee will furnish County a certificate for each policy of insurance required under this Section 11.01 in a form and substance satisfactory to County. Each such certificate must show the type and amount of coverage, effective dates and dates of expiration of policies and will have all required endorsements. If County requests, then Franchisee will promptly deliver copies of each policy together with all endorsements to County. Franchisee will furnish renewal certificates to County to demonstrate maintenance of the required coverages throughout the Term of this Agreement.

c. Other Insurance Requirements.

1. Subcontractors. If Franchisee subcontracts to a Subcontractor to provide goods or services related to the provision of Franchise Services, then Franchisee will require all such Subcontractors to provide statutory workers' compensation insurance and employer's liability insurance for all of the Subcontractor's employees engaged in the work. The general liability insurance required by this Section must cover Franchisee's liability for acts of its Subcontractors or each Subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 11.01.

2. Compliance with Policies. Franchisee will comply with all requirements of the insurers issuing policies and will require its Subcontractors to do so. Carrying insurance does not relieve Franchisee from any Performance Obligation, including those imposed by this Article 11. If any third Person makes a claim against Franchisee or any Subcontractor on account of any occurrence related to this Agreement, then Franchisee will promptly report the facts in writing to the insurance carrier and to County. If Franchisee fails to procure and maintain any insurance

required by this Agreement, then County may take out and maintain such insurance as is required hereunder and Franchisee will reimburse County for County's Reimbursement Costs thereof.

3. Amendments. If requested by County, and without charge to County, Franchisee will promptly amend the Comprehensive General Liability policy and by endorsement, add the trustee of any bonds or Certificates of Participation, which were or may be in the future, issued by County to finance County's Solid Waste facilities, including transfer stations and landfills, as an additional insured.

11.02 Franchisee Defense and Indemnification.

a. Permit. Franchisee will defend with counsel approved by County and indemnify County for actions arising out of its permit in accordance with Chapter 12.08 of the Mono County Code.

b. Agreement.

1. Defense and Indemnification. Franchisee will further indemnify, defend with counsel approved by County, protect and hold harmless County from and against all Liabilities paid, incurred or suffered by, or asserted against, County that result or are claimed to have resulted from Franchisee's performance or provision of Franchise Services pursuant to this Agreement, including the following:

- (i) **Franchisee Negligence or Misconduct:** the wrongful, willful, or negligent act, error, or omission, or the misconduct of Franchisee and Persons described in the definition of "Franchisee" in Exhibit 1.01;
- (ii) **Patents, etc.:** any allegation of infringement, violation, or conversion of any patent, licenses, proprietary right, trade secret, or other similar interest, in connection with any Service Assets, including technology, processes, Vehicles, software, machinery, or equipment;
- (iii) **Challenges to Agreement:** legal challenge with respect to the procurement of this Agreement or Parties' execution of this Agreement, County's authority to contract out Franchise Services, or any provision contained within the Agreement regardless of the legal theory advanced or relied upon by any interested third party, including any appeals necessary to validate that authority or the Agreement; or
- (iv) **Enforcement of Agreement or Applicable Law:** any Liabilities that may be assessed against Franchisee or County in connection with any alleged failure of County to enforce provisions of this Agreement or of Applicable Law as permitted under Section 8.03.

2. Certain County Negligence Excluded. Franchisee will not, however, be required to reimburse or indemnify County to the extent any Liabilities are due to the sole negligence or willful misconduct of County and Persons described in the definition of “County” in Exhibit 1.01.

11.03 Letter of Credit.

Franchisee will provide for the issuance of an irrevocable direct pay letter of credit by a bank approved by County for the benefit of County, under which County is authorized to draw, in one or more drawings, an aggregate amount of \$10,000 upon the occurrence of an Event of Default or Franchisee’s failure to timely pay any County Payment Obligation. The expiration date of the Letter of Credit must be no less than the Term or if subject to renewal, provide County with thirty (30) days advance notice of non-renewal. The Letter of Credit will expire on the date on which the Bank receives a certificate from County saying that the Term has expired or this Agreement has been terminated and Franchisee owes County no money hereunder, or that Franchisee has substituted an alternative letter of credit or other security document acceptable to County in County’s sole discretion. The form of the Letter of Credit, including the procedures for and place of demand for payment and drawing certificate attached thereto, is subject to approval of County in its sole discretion. The Letter of Credit must be transferable to any successor or assign of County.

ARTICLE 12. CRIMINAL ACTIVITY

12.01 Criminal Activity.

Franchisee will immediately provide Notice to County upon the occurrence of any of the following events or circumstances listed in Subsection (a) and Subsection (b) (“**Convictions or Pleas**”) with respect to Franchisee or any of its Contract Managers defined below in Subsection (e):

a. Convictions, etc.: Franchisee or any of its Contract Managers defined in Subsection 12.01(e), has a criminal conviction, permanent mandatory or prohibitory injunction, or a final judgment or order from a court, municipality, or regulatory agency of competent jurisdiction with respect to the following (“**Criminal Activity**”):

- (1) fraud or other criminal offense, other than offenses constituting infractions, in connection with obtaining, attempting to obtain, procuring, or performing a public or private agreement related to Recyclables or Solid Waste services of any kind (including collection, hauling, transfer, processing, composting, or disposal), including this Agreement;
- (2) bribery or attempting to bribe a public officer or employee of a local, state, or federal agency;

- (3) embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony;
- (4) unlawful disposal of hazardous, designated, or other waste; or
- (5) violation of securities laws or antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practice laws, including with respect to inflation of waste collection, hauling, or disposal fees.

b. Pleas, etc.: Franchisee or any of its Contract Managers defined in Subsection (e) has pled “guilty” or entered a plea of “*nolo contendere*” or “no contest” to Criminal Activity occurring within County or relating to this Agreement.

c. Cure. Upon the occurrence of any Convictions or Pleas, Franchisee immediately will do or cause to be done *both* of the following:

- (1) terminate from employment or remove from office the offending Contract Manager who is an individual, or, with respect to a Contract Manager that is the Franchisee or an Affiliate, the individual or individuals responsible for the Criminal Activity; and
- (2) eliminate the participation by that Contract Manager who is an individual or, with respect to a Contract Manager that is the Franchisee or an Affiliate, the individual or individuals responsible for the Criminal Activity, in any Position of Influence described in Subsection 12.01(e) below.

County in its sole discretion may terminate the Agreement upon 30 days’ Notice to the Franchisee, or may impose other sanctions (which may include financial sanctions, temporary suspensions, or any other conditions deemed appropriate short of termination) as it will deem proper, in the following events:

- (1) Franchisee or any Affiliate fails to comply with the foregoing obligation of this Subsection (c); or
- (2) the Criminal Activity concerns and is related to this Agreement.

Franchisee must be given the opportunity to present to the Director evidence in mitigation during the preceding Notice period and County must consider that evidence.

d. New Employees. Franchisee will not allow or cause to be allowed any employee, officer, or director of an Affiliate who is the subject of any Criminal Activity to be hired or transferred from any Affiliate to a position as a Contract Manager.

e. Definitions. For purposes of this Section, “**Franchisee or any of its Contract Managers**” means:

- (1) Franchisee and its officers and directors;
- (2) the officers and directors of Franchisee’s parent corporation and of each successive parent corporation’s parent corporation identified in Exhibit 12.01e(2);
- (3) the Franchisee Representative; and
- (4) any other Persons, including Affiliates and Franchisees’ or Affiliates’ employees, officers, or directors, who have the authority or responsibility to directly or indirectly administer, manage, direct, supervise, or oversee Franchise Services or this Agreement, *including* the following: (i) supplying goods or services; (ii) serving as director of the board of directors of Franchisee or an Affiliate; (iii) serving as an officer or employee of Franchisee or an Affiliate; (iv) reviewing or negotiating Franchisee’s contracts (including this Agreement); (v) providing in-house legal services; (vi) providing insurance or other performance security; and (vii) providing processing or disposal, but *excluding* the following: monitoring Franchisee’s performance, supervising Franchisee’s finance and capital budget decisions and articulating general policies and procedures not related to Criminal Activity. This authority and responsibility is defined as “**Position of Influence.**”

ARTICLE 13. SERVICE FEES

13.01 Service Fees. Franchisee understands and acknowledges, as follows:

- (1) Pursuant to Chapter 12.10 of the Mono County Code, up to two (2) solid waste enterprises will be granted exclusive franchises in the form of this Agreement to provide Franchise Services as primary franchisees within the Service Area.
- (2) In authorizing up to two (2) Franchisees within the same Service Area, it is County’s intention to allow for competition and thereby avoid the need to set Service Fees, other than Service Fee floors, for the provision of Franchise Services pursuant to this Agreement.
- (3) Notwithstanding the above, County may set Service Fee caps or specific Service Fees as provided in Subsection (b).

a. Service Fee Floors. Franchisee will not charge Service Fees for the Franchise Services provided pursuant to this Agreement that are less than those Service Fees listed in Exhibit 13.01a, except as set forth below.

1. Senior Rates. Franchisee may charge Service Fees up to twenty percent (20%) below those set forth in Exhibit 13.01a to Residential Customers over the age of 62, provided that those Service Fees are uniform as to all such Customers.

2. Multiple-service Cart. Franchisee may charge Service Fees up to twenty percent (20%) below those for Carts set forth in Exhibit 13.01a to Commercial Customers who require multiple Collections each week, provided that the reduced rates are uniform countywide and the Customer is already furnished with the largest Bin that Franchisee has in its Service Asset Inventory.

b. Service Fee Caps and Specific Service Fees. County may set Service Fees caps or set specific Service Fees for the provision of Franchise Services if either of the following events occurs:

1. Franchisee Becomes Sole Provider. If Franchisee becomes the only primary franchisee, as defined in Section 12.02.020 of the Mono County Code, then subject to subsequent Service Fee adjustment provided in Subsection 13.01(c), Franchisee will charge Service Fees no greater than the Service Fees it charged on the date that Franchisee became the sole primary franchisee, as determined by County. If, however, Franchisee's Service Fees increased by more than five percent (5%) in the 12-month period immediately preceding its becoming the only primary franchisee, then Franchisee will submit to County a written explanation of the basis for the increase(s) made during that 12-month period. Franchisee will provide County with documentation or other information related to those increases within ten (10) days of County's request. Based upon its review of that documentation and other information, the County Board may:

- (1) set Franchisee's Service Fees at the level existing as of the date Franchisee became the sole primary franchisee; or
- (2) set Franchisee's Service Fees at a level that is less than that existing on that date.

2. Unjustified Service Fee Increase Exceeding 5%. If, notwithstanding the existence of competition within the Service Area, any Service Fee or Fees charged by Franchisee increase by more than five percent (5%) in any 12-month period, then within ten (10) calendar days of County's request Franchisee will provide County with a written explanation of those increase(s), together with any financial and other records justifying the increase(s). If County determines, in its sole discretion, that the increase(s) are not justified by the information provided, then County may set Franchisee's Service Fee or Service Fees as provided in Subsection (b)(1).

c. Service Fee Adjustments. If Service Fees are set pursuant to Subsection (b)(1) or Subsection (b)(2), then those Service Fees may be adjusted as provided in Subsection (c). Upon written request by Franchisee to the County Board for a Service Fee adjustment submitted no earlier than July 1st and no later than October 1st prior to the commencement of each new Contract Year, Franchisee's Service Fees for Franchise Services will be adjusted, upward or downward, annually, effective January 1st of each Contract Year, in the manner described provided in

Subsection (c). The County Board may also (but is not obligated to) act on its own initiative in the event Franchisee declines to request an adjustment to its Service Fees, and adjust Franchisee's Service Fees in the manner described below. Franchisee will provide written notice to each Customer in a form approved by County, of annual increases, whether initiated by Franchisee or by the County Board, at least six (6) weeks prior to their implementation.

1. Annual Adjustments.

(i) **CPI Adjustment.** Seventy-five percent (75%) of Franchisee's Service Fees are subject to adjustment in accordance with the Consumer Price Index – Not Seasonally Adjusted, U.S. City Average for Garbage and Trash Collection (“CPI”), as published by the United States Department of Labor, Bureau of Labor Statistics, for the month of September during the most recent 12-month period preceding the upcoming operating year. Thus, if the CPI experienced a net increase of 3% from September, 2005, to September, 2006, then seventy-five percent (75%) of Franchisee's Service Fees would be subject to a three percent (3%) increase effective as of January 1, 2007.

(ii) **PPI Adjustment.** Five percent (5%) of Franchisee's Service Fees are subject to adjustment as described below in accordance with the Producer Price Index – Not Seasonally Adjusted, U.S. City Average for #2 Diesel all items (“PPI”), as published by the United States Department of Labor, Bureau of Labor Statistics, for the month of September during the most recent 12-month period preceding the upcoming operating year. Thus, if the PPI experienced a net increase of three percent (3%) between September, 2005, and September, 2006, then five percent (5%) of Franchisee's Service Fees would be subject to a three percent (3%) increase effective as of January 1, 2007.

(iii) **Gate Fee Adjustment.** Twenty percent (20%) of Franchisee's Service Fees are subject to adjustment to reflect increases or decreases in the gate fees charged at the Designated Disposal Site. This portion of Franchisee's Service Fees will apply either generally to the gate fees for solid waste, or for the specific category of waste for which the Franchisee has established a Service Fee, such as white goods, tires, C&D Waste, or others that may be applicable.

The total adjustment of Service Fees under this subsection, whether upward or downward, may not exceed five percent (5%) in any one Contract Year.

If either the CPI or PPI category specified above is discontinued or revised during the Term by the United States Department of Labor, Bureau of Labor Statistics, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the category had not been discontinued or revised. County will specify any replacement index to the CPI or PPI category at its sole discretion.

2. Change in Law Adjustments. In addition to the adjustments set forth in Subsection (c)(1), Franchisee may request an adjustment to Franchisee's Service Fees where a change in Applicable Law, other than a change to the gate fees charged at the Designated Disposal Facility, results in an increase in Franchisee's Direct costs. Franchisee may request Service Fee

adjustments made under this subsection at any time during the course of a Contract Year; *provided, however,* that Franchisee may not request more than one adjustment due to changes in law per Operating Year. For the purposes of this subsection “**Operating Year**” will mean the 12-month period immediately preceding or following the requested adjustment. In its application for a Service Fee adjustment based on a Change in Law, Franchisee must include a statement of the amount of the requested adjustment, the basis therefore, and all financial and other records on which Franchisee relies for its claim that Franchisee’s Direct Costs have increased. The Director will review Franchisee’s Service Fee application and notify Franchisee if it is complete or whether the Director wishes to review and/or audit any additional documents or information reasonably related to the requested increase before submitting the matter to the County Board for their consideration. The Board will review and consider the requests within a reasonable period of time after the complete submittal by Franchisee and after County has had a reasonable period of time to request, review, and audit any applicable financial records of Franchisee and/or its Affiliates. The Board may grant Franchisee’s requested Service Fee adjustment or, based on the information presented, may increase or decrease Franchisee’s Service Fees in amounts different from Franchisee’s request. The adjusted Service Fees, if approved, will go into effect thirty (30) days after such approval or at such other time as established by the Board.

d. Resolution of Issues Regarding Service Fee Adjustments. Any issue regarding Service Fee adjustments, or the computation thereof will be decided by the County Board. The Service Fees in effect at the time any issue or dispute is submitted to the Board will remain in effect pending resolution of any issue or dispute. The effective date of any dispute resolution, whether retroactive or prospective, will reasonably be determined by the Board. In the event that Franchisee and County are unable to reach agreement regarding the adjustment of Service Fees, then either party may terminate this Agreement by sending to the other party a Notice stating the basis therefor, and setting a date of termination that is at six (6) months from the date printed on the Notice, *unless* the Parties agrees to a shorter date.

13.02 Fees Payable by Franchisee.

a. Franchise Fee.

1. Amount. In consideration for County’s granting Franchisee the franchise described in Section 4.01, Franchisee will pay County the Franchise Fee equal to four percent (4%) of the Gross Revenues received from providing the Franchise Services, commencing with revenues billed for and received after October 1, 2018, but excluding Gross Revenues received from providing the Franchise Services pursuant to an Existing Agreement listed in Exhibit 13.01a.

2. Payment. Franchisee will pay the Franchise Fee quarterly, no later than the first day of the second month immediately following the Quarter in which Franchisee rendered Franchise Services, as required by Section 12.10.022 of the Mono County Code (for example, for the quarter ending on March 31, payment is due no later than May 1). With payment, Franchisee will additionally provide:

- (1) documentation in form and detail satisfactory to the Director showing the basis for calculating the Franchise Fee, together with additional information to calculate or verify the Franchise Fee that the Director may determine to be necessary; and
- (2) a representation and warranty as follows: “I represent and warrant, under penalty of perjury of the laws of the State of California, that I am familiar with the financial transactions of D & S Waste Removal, Inc. and am responsible for keeping and maintaining its financial records, including gross receipts thereof, and I have reviewed the [INSERT DATE AND DESCRIPTION OF ACCOMPANYING FRANCHISE PAYMENT ACCOUNTING STATEMENT]. To the best of my knowledge and belief, the statement is true, correct and complete.”

Documentation and representations and warranties filed by Franchisee are not deemed conclusive as to the information presented or statements made therein. Franchisee’s submission of documentation and representations and warranties does not preclude County from taking additional measures and actions to collect franchise fees actually due and payable.

3. Late Payment Charges. If Franchisee does not fully and timely pay its Franchise Fee in accordance with Subsection (a)(2), then Franchisee shall pay a basic penalty of ten percent (10%) of the amount of the unpaid Franchise Fee plus interest equal to one and one half percent (1½ %) of the total of (i) the unpaid monthly charges and (ii) the basic penalty, for each month, or part of a month, that the monthly franchise fee has not been paid.

4. County Audit. County may, at its own expense and using a consultant of its choosing, audit the records of Franchisee and Franchisee must provide County with copies of records within two (2) weeks of County’s request. If County’s audit demonstrates to the satisfaction of County that the Franchise Fee paid by Franchisee to County was understated, then Franchisee will pay County both:

- (1) the amount of the understated Franchise Fee plus the late payment charges provided in Subsection (a)(3) within thirty (30) days following County’s submission of the results of the audit to Franchisee, and
- (2) if County’s audit demonstrates that the Franchise Fee paid by Franchisee was understated by more than Five Thousand dollars (\$5,000.00) or two percent (2%), whichever is less, County’s Reimbursement Cost to conduct the audit.

5. Annual Review by CPA; Actual Payments. Within one hundred twenty (120) days following the close of each Contract Year, Franchisee will furnish County with a statement showing and substantiating the amount of the Franchise Fee, both owed and paid. Franchisee will cause that statement to be audited by an independent certified public accountant, acceptable to County, in accordance with generally accepted auditing principles, and including the accountant’s statement relative to his or her review. That statement will also be accompanied by the representation and warranty required by item (2) of Subsection (a)(2).

b. Solid Waste Permit Fee. Franchisee will pay County any fee for Permits issued by County in the time, manner, and amount required by the Mono County Code or by resolution of the County Board.

13.03 Payment of Moneys Due County.

Franchisee will pay all County Payment Obligations (i) on the date they are due pursuant to this Agreement; or (ii) if no date is provided in this Agreement, within twenty (20) days of County's demand.

If Franchisee has not fully and timely paid a County Payment Obligation within twenty (20) days of their due date, then County may draw on Franchisee's Letter of Credit in accordance with Section 11.03 for the amount of (i) the Payment Obligation, *plus* (ii) the Overdue Rate or, with respect to Franchise Fees, the late-payment charge set forth in Section 13.02.

13.04 Fee Disputes.

a. County's Notice of Dispute. If County disputes any amount calculated by Franchisee in accordance with Section 13.02(a), then County will give Franchisee Notice of its dispute together with any request for additional information, identified with reasonable specificity, with respect thereto.

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

c. Dispute Resolution. If County disagrees with Franchisee's response and County and Franchisee cannot reach agreement during an ensuing 15-day period following the Franchisee's response, then the Parties may agree to submit the matter for binding resolution by the Independent Expert in accordance with Article 9.

ARTICLE 14. BREACHES, DEFAULTS, DAMAGES, AND OTHER REMEDIES

14.01 Certain Breaches and Damages.

a. Notice and Opportunity to Correct. County entered into this Agreement with Franchisee in part based on Franchisee's demonstrated abilities, service quality, and responsiveness to Customers' and County's needs. It is County's hope to avoid exercising remedies set forth in this Agreement whenever possible by working with Franchisee informally to resolve Events of Default or other failures to satisfy the obligations set forth in this Agreement. Thus, County may, in its sole discretion, provide verbal notice to Franchisee of any Event of

Default or failure by Franchisee to satisfy the obligations set forth in this Agreement of which County becomes aware prior to pursuing other remedies set forth in this Agreement. If Franchisee corrects said Event of Default or failure to the satisfaction of the Director within the number of days provided, then County shall not pursue additional remedies for that occurrence. In addition, Franchisee shall have each of the opportunities to cure and/or correct Events of Default or other failures to satisfy the obligations of this Agreement set forth in Mono County Code section 12.10.023(E).

b. Franchisee Reports. In each Quarterly Report, Franchisee will certify to County that it has fully and timely met its Performance Obligations during the preceding Quarter. If Franchisee cannot so certify, then Franchisee will note those failures in its Quarterly Report and within thirty (30) days of submitting its Quarterly Report, pay damages listed in Exhibit 14.01 for each failure occurring after the first six (6) weeks following the Commencement Date.

c. County Notice. If County becomes aware at any time that Franchisee has not fully and timely met its Performance Obligations, then County may provide Franchisee with a Notice thereof specifying any damages that Franchisee must pay County in accordance with Exhibit 14.01 within ten (10) days of Notice, *unless* Franchisee contests payment of damages as provided in Subsection (d).

d. Procedure for Review of Damage Obligations. Within ten (10) days of the date of the Notice by County described in Subsection (c), Franchisee may contest imposition of damages by submitting documentary evidence to County demonstrating why Franchisee does not owe damages. County will use Reasonable Business Efforts to review Franchisee's evidence and render a written decision to Franchisee confirming or reversing the imposition of damages as soon as reasonably possible after receipt of the evidence. County's decision is final and binding and constitutes final Notice for the purposes of this Subsection (d).

e. Damages Reasonable. The Parties acknowledge that County has incurred considerable time and expense procuring this Agreement in order to secure an improved level of Collection service quality, accountability, and increased Customer satisfaction. Therefore, consistent and reliable Franchise Service and accountability is of utmost importance to County. County has considered and relied on Franchisee's representations as to its quality of service commitment in entering into this Agreement, and Franchisee's breach of its Performance Obligations represents a loss of bargain to County and Customers.

The Parties further recognize that quantified standards of performance and regular reporting to County regarding that performance are necessary and appropriate to ensure consistent and reliable Service, and if Franchisee fails to meet its Performance Obligations then County will suffer damages (including its Customers' inconvenience; anxiety; and frustration, criticism, and complaint by Customers; potential political pressure; lost the County Board and 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, then the urgency of protecting public health and safety may necessitate that County 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 County whole for past Breaches and Franchisee Defaults. Therefore, the Parties agree that the liquidated damages listed in Exhibit 14.01 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 County that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

14.02 Remedies Upon Default.

a. Remedy. Upon the occurrence of an Event of Default, County has the following remedies:

1. Termination. County may terminate this Agreement or any portion of Franchisee's Performance Obligations. Prior to termination, County must give Franchisee a Notice stating the reason for the termination. County may terminate the Agreement

- (1) thirty (30) days following the date of the Notice; or
- (2) immediately following the date of the Notice if
 - (i) County determines that protection of public health and safety requires immediate termination;
 - (ii) Franchisee fails to maintain insurance, bonds, or other assurances of performance required under this Agreement;
 - (iii) Franchisee Violates law, as set forth in Section 10.12.023(E)(1)(e) of the Mono County Code.

2. Suspension. County may suspend all or a portion of this Agreement for up to thirty (30) days. During that 30-day period the Franchisee may demonstrate to the sole satisfaction of County that Franchisee can once again fully perform the Franchise Services. If Franchisee so demonstrates, then County's right to suspend or terminate the Agreement will cease and Franchisee may resume providing Franchise Services. If Franchisee does not so demonstrate, then County may terminate the Agreement and exercise any other rights and remedies under this Agreement. Prior to suspending all or a portion of this Agreement, County must give Franchisee a Notice stating the reasons for the suspension. County may suspend the Agreement, effective fifteen (15) days after the date of the Notice. If County determines that the suspension is necessary for the protection public health and safety, then County need not give Franchisee Notice but may

give Franchisee oral notice stating the reasons for the suspension, effective immediately. County will provide Franchisee with Notice confirming oral notice.

3. Damages. County may exercise its remedies of damages (including damages in accordance with Section 14.01).

4. Equitable Relief. County may exercise any other available remedies at law or in equity (including specific performance and injunctive relief). Franchisee acknowledges that County's remedy of damages for a breach of this Agreement by Franchisee may be inadequate for reasons including: (i) 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 (ii) for all of the reasons set forth in Section 14.01(e). Therefore, County is entitled to all available equitable remedies, including specific performance or injunctive relief.

b. Delivery Obligations. Franchisee further acknowledges that County's remedy of damages for a breach of Section 7.01 by Franchisee (Failure to Deliver Materials to Designated Disposal Facility) may be inadequate and, consequently, that County is entitled to all available equitable remedies, including specific performance and injunctive relief for all of the reasons set forth in Exhibit R-1.

14.03 Remedies Not Exclusive.

County'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.

14.04 Waivers.

a. County Waiver of Breach. County'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. County's decision not to demand payment of damages will not be deemed a waiver of any Franchisee failure to satisfy any Performance Obligations. County's subsequent acceptance of any damages or other money paid by Franchisee, including damages, will not be deemed to be a waiver by County of any pre-existing or concurrent breach or Event of Default.

b. 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 any foreseen or unforeseen fact, event, or contingency

that may be a basic assumption of Franchisee with regard to any provision of this Agreement. However, Franchisee does not waive any defense of Uncontrollable Circumstances.

14.05 Jurisdiction; Venue.

- a. Jurisdiction.** The Parties will bring any lawsuits arising out of this Agreement in State or Federal courts within the State of California, which will have exclusive jurisdiction over said lawsuits.
- b. Venue.** Venue will be made and performed in courts sitting in Mono County.
- c. Other.** The site of any other hearing or action, whether arbitration or non-judicial, of whatever nature or kind regarding this Agreement, will be conducted in Mono County.

14.06 Costs.

Franchisee agrees to pay to County County's Reimbursement Costs reasonably incurred by or on behalf of County enforcing timely payment or performance of Franchisee's obligations under this Agreement.

14.07 Assurance of Performance.

If Franchisee

- (1) is the subject of any labor unrest (including work stoppage or slowdown, sick-out, picketing, or other concerted job action); or
- (2) appears in the judgment of County to be unable to regularly pay its bills as they become due; or
- (3) is the subject of a civil or criminal judgment or order entered by a federal, state, regional, or local agency for violation of an environmental or tax law,

and County believes in good faith that Franchisee's ability to timely and fully perform Franchise Services has been placed in substantial jeopardy, then County may, at its option and in addition to all other remedies it may have, demand from Franchisee reasonable assurances of timely and full performance under this Agreement. If Franchisee fails or refuses to provide reasonable assurances by the date required by County, then that failure or refusal will constitute an Event of Default in accordance with Section 12.10.023(E)(2)(b) of the Mono County Code.

14.08 County Right to Perform Franchise Services.

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

- (1) Franchisee, due to Uncontrollable Circumstances or for any reason whatsoever, fails, refuses, or is unable for a period of forty-eight (48) hours to Collect and/or to transport, Solid Waste to a Solid Waste facility and County determines there is danger to the public health, safety, or welfare; or
- (2) County suspends any portion of Franchisee's Performance Obligations or terminates this Agreement in accordance with Section 14.02(a)(1).

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

b. Notice. County may give Franchisee oral notice that County is exercising its right to perform Franchise Services, which notice is effective immediately, but must confirm oral notice with Notice within 24 hours thereafter to extend County performance.

c. Records and Reports. In the event that County exercises its right under Section 14.08(a) to perform any or all of Franchisee's Performance Obligations, Franchisee shall promptly provide County with immediate access and/or possession of Records, including but not limited to those related to routing and billing.

d. Stipulations. Franchisee agrees and stipulates that County's exercise of rights under this Section 14.08 does not constitute a taking of any private property interest or right for which County must compensate Franchisee; will not create any liability on the part of County to Franchisee; and does not exempt Franchisee from any Indemnities, which the Parties acknowledge are intended to extend to circumstances arising under this Section 14.08.

ARTICLE 15. FRANCHISEE'S OBLIGATIONS UPON EXPIRATION OR TERMINATION

15.01 Pay Outstanding Amounts.

Franchisee will pay County any County Payment Obligations or other amounts then accrued and payable.

15.02 Cooperation During Transition.

If Franchisee is not awarded an agreement to continue to provide Franchise Services following the expiration or termination of this Agreement, then Franchisee will reasonably cooperate with County and the succeeding Franchisee(s), contractor(s), licensee(s), permittee(s), or other Person(s) providing Solid Waste Handling Services to assure a smooth, efficient, orderly, timely, and effective transition from Franchise Services to those Solid Waste Handling Services, including transfer of Records; complete routing information, route maps, vehicle fleet information, and Customer billing lists, upon request of County; providing other Records and reports required by this Agreement; and coordinating with County and any subsequent Franchisee(s), contractor(s), licensee(s), permittee(s), or other Person(s) with respect to exchanging Containers. Franchisee will not remove a Container from any Customer's premises until the earlier of: (1) the date replacement containers are provided to the Customer, or (2) 3 weeks after the expiration or termination of this Agreement. THIS OBLIGATION OF FRANCHISEE WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE 16. THE PARTIES

16.01 Franchisee is Independent Contractor.

Franchisee will perform Franchise Services as an independent contractor engaged by County and not as officer, agent, servant, employee, or partner of County nor as a joint venture with County. No employee or agent of Franchisee is deemed to be an employee or agent of County. Franchisee will have the exclusive control over the manner and means of performing Franchise Services and meeting its Performance Obligations and over all Persons performing Franchise Services. Use of the word "direct" in this Agreement signifies County's right to require Franchisee's compliance with County directions, but will not be construed to signify County control over the manner and means of performing Franchise Services. Franchisee is solely responsible for the acts and omissions of its officers, employees, contractors, subcontractors, and agents, none of which is deemed to be an officer, agent, servant, or employee of County. Neither Franchisee nor its officers, employees, contractors, subcontractors, and agents will obtain any rights to retirement benefits, workers compensation benefits, or any other benefits which accrue to County employees and Franchisee expressly waives any claim it may have or acquire to said benefits.

16.02 Parties in Interest.

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

16.03 Binding on Successors.

The provisions of this Agreement will inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

16.04 Further Assurances.

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

16.05 Actions of County in Its Governmental Capacity.

Nothing in this Agreement is interpreted as limiting the rights and obligations of County in its governmental or regulatory capacity.

16.06 Franchisee's Obligations Performed at Its Sole Expense.

Franchisee will perform Franchise Services solely for the compensation expressly provided for in this Agreement. Franchisee acknowledges that it will not receive any form of payment or other consideration from County for its performance under this Agreement except for the grant of the franchise under this Agreement. Franchisee will instead look solely to its Customers to compensate Franchisee for providing all Franchise Services and satisfying its Performance Obligations.

16.07 Parties' Representatives.

a. County Representative. The County Representative is the Director unless otherwise named by the County Board from time to time upon Notice of County Representative to Franchisee. The County Representative is authorized to act on behalf of County in the administration of this Agreement and, unless otherwise specified, may take all actions set forth in this Agreement except termination, extension, amendment, and assignment consent, without action by the County Board.

b. Franchisee Representative. The Franchisee Representative is Roger Brown, as may be changed from time to time upon Notice of Franchisee Representative to County. The Franchisee Representative is authorized to act on behalf of Franchisee in the performance under this Agreement.

16.08 Due Diligence.

Franchisee acknowledges that County may be subject to statutory fines or penalties for failure to achieve mandated waste diversion levels and that waste management is a public health and safety concern. It agrees that it will exercise due diligence in performing Franchise Services.

16.09 Subcontracting.

Franchisee may not Subcontract any portion of the Franchise Services, including the provision of Carts and Containers, set forth in this Agreement. Franchisee may engage any number of Subcontractors providing goods or services that do not comprise Franchise Services or the provision of Carts and Containers (e.g., billing services, equipment, maintenance). Franchisee will not subcontract in a manner that effectuates an assignment of this Agreement, unless the requirements of Section 12.10.023 of the Mono County Code and the provisions of this Agreement (including Section 17.01) related to assignment are met.

Franchisee must direct the work of Franchisee's Subcontractors. Franchisee is solely responsible for paying any compensation due or payable to Franchisee's Subcontractors. County may require Franchisee to remove any Subcontractor for good cause. Subcontractors' failure to satisfy its subcontracted obligations (including violation of Applicable Law) is a failure by Franchisee and County may exercise any or all of the rights and remedies available to County under this Agreement with respect to Franchisee.

“**Subcontractor**” includes any Person, including Affiliates, that provides goods or services that do not comprise Franchise Services or the provision of Carts and Containers but are related to the provision of Franchise Services, whether pursuant to formal, written agreement or merely in fact. “**Subcontract**” means any arrangement, formal or informal, written or otherwise, between Franchisee and a Subcontractor for providing goods or services related to the provision of Franchise Services.

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

16.10 No Use of County Name.

Franchisee will not do business as or use a corporate, partnership, venture, or other formal name, containing the words “Mono” or “County” or implying County ownership *although* upon County direction, Franchisee will use County's name in its public relations signage.

ARTICLE 17. ASSIGNMENT AND AMENDMENTS

17.01 Assignment.

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

b. Franchisee Assignment. Franchisee acknowledges that the experience and expertise of Franchisee are material considerations of County in entering into this Agreement with Franchisee. Franchisee may not Assign this Agreement except in accordance with Section 12.10.23(C) of the Mono County Code. Franchisee may not circumvent County's Assignment consent rights in practical effect by securing goods or services from a Subcontractor that would be itself subject to "assignment," where "Subcontractor" is substituted for "Franchisee" in the definition of "Assign" in Subsection 17.01(c).

c. Assign. "Assign" includes:

- (1) selling, exchanging, or otherwise transferring effective control of management of the Franchisee (through sale, exchange, or other transfer of outstanding stock or otherwise);
- (2) issuing new stock or selling, exchanging, or otherwise transferring twenty percent (20%) or more of the then outstanding common stock of the Franchisee;
- (3) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance, or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction which results in a change of Ownership or control of Franchisee;
- (4) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, being levied against Franchisee, appointment of a receiver taking possession of any of Franchisee's tangible or intangible property;
- (5) substitution by a surety company providing any performance bond in accordance with Section 11.03 of another Person for Franchisee to perform Franchise Services;
- (6) sale or transfer of fifty percent (50%) or more of the value of assets of Franchisee except for sales or transfers to parents, grandparents, siblings, children, and grandchildren of persons having a shareholder or other equity interest in Franchisee as of the date of this Agreement ("Immediate Family") or trust created primarily to benefit members of the Immediate Family; and

- (7) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership or control of Franchisee.

17.02 Amendments.

The Parties may change, modify, supplement, or amend this Agreement only upon written agreement duly authorized and executed by both Parties. However, wherever reports, forms, protocols, or other documents are attached to this Agreement as attachments to an Exhibit, County Representative and Franchisee Representative may edit and revise them upon their agreement or otherwise provided in the related Sections of this Agreement, evidenced in writing *unless* this Agreement specifically requires approval by the County Board pursuant to resolution or otherwise.

ARTICLE 18. NOTICES, CONSENTS, APPROVALS, ETC.

18.01 Notices.

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

b. Manner. The Parties must provide Notices at the address provided in Subsection (c), in any of the following manners:

- (1) by e-mail or facsimile promptly followed by delivery described in following items (2), (3) or (4);
- (2) personal delivery to a representative of the Parties, with signed receipt;
- (3) deposit in the United States mail, first class postage prepaid (certified mail, return receipt requested); or
- (4) deposit with a commercial delivery service providing delivery verification.

c. Address.

<p>If to County:</p> <p>Mono County Public Works Department Attn: Solid Waste Superintendent 74 North School Street P.O. Box 457 Bridgeport, CA 93517</p> <p>Telephone: (760) 932-5440 Facsimile: (760) 932-5441</p>	<p>If to Franchisee:</p> <p>D & S Waste Removal, Inc. Attn: Darrol Brown 3 U.S. Highway 95A East P.O. Box 834 Yerington, NV 98447</p> <p>Telephone: (775) 463-3090 Facsimile: [PLACEHOLDER]</p>
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The Parties may change their contact information above upon Notice to the other Party.

18.02 Consents and Approvals.

The County Representative is authorized to act on behalf of County in the administration of this Agreement and, unless otherwise specified, may take all actions set forth in this Agreement except termination, amendment, extension, and assignment consent, without action by the County Board.

18.03 Exercise of Discretion by County.

Recognizing the essential public health and safety protections this Agreement serves, where this Agreement specifically provides that the exercise of any Discretionary Action is in County's sole, exclusive, or absolute discretion, control, or judgment, that exercise of discretion is deemed reasonable and the Franchisee will not question or challenge County's exercise thereof. County will exercise any approval, disapproval, consent, option, discretion, election, opinion, or choice under this Agreement or interpretation of this Agreement in a manner that is reasonable.

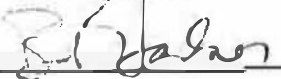
ARTICLE 19. EXECUTION OF AGREEMENT

19.01 Authority to Execute.

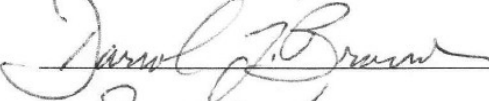
County warrants that the officers listed below have been duly authorized by County to execute this Agreement on behalf of County. Franchisee warrants that the individuals listed below have been duly authorized by the Franchisee to execute this Agreement on behalf of the Franchisee.

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

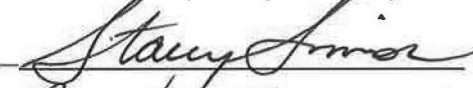
COUNTY OF MONO:

By: 
Title: Chair, Board of Supervisors
Date: December 18, 2018

D & S WASTE REMOVAL, INC.:

By: 
Title: President
Date: 12/11/18

Approved as to Form (County Counsel):

By: 
Title: County Counsel
Date: 12/18/18

Approved by Risk Management:


By: 
Title: Risk Manager
Date: 1/29/2019

EXHIBIT R-1: FINDINGS REGARDING DESIGNATED DISPOSAL FACILITY

In view of the following findings and facts, County has determined that in order to sustain its solid waste program, protect itself from liability for waste generated within its borders, and continue to provide beneficial solid waste services such as education and recycling to its residents and to visitors to the area, it is necessary to require that solid waste collected by franchisees be delivered to a solid waste facility owned by County unless specifically exempted as provided for in this agreement.

a. Local Interests.

(i) County currently operates a comprehensive Solid Waste program which includes six (6) Solid Waste transfer stations, some of which additionally serve as landfills for C&D Waste, and one regional Class III Municipal Solid Waste Landfill.

(ii) At these facilities, County offers recycling services for cardboard, beverage containers, scrap metal, white goods, wood waste, waste tires, used oil and filters, and batteries. In addition, County accepts and processes hazardous materials such as household hazardous waste and universal wastes. County provides these services for free or at a low cost (for tires and white goods) to the public in order to encourage participation and minimize illegal disposal.

(iii) Also, as a part of its solid waste program, County has implemented an aggressive load-checking system at its landfill and transfer stations in order to prevent the improper disposal of liquids and hazardous materials and to help identify and separate recyclables. As a part of this program, County provides information to the public and to waste haulers about recycling and disposal of hazardous and other special wastes.

(iv) A combination of the above services offered by County has resulted in impressive results with respect to recycling, reduction in illegal dumping and disposal, and the safe handling and proper disposal of hazardous materials. For example, in 2017, County accumulated more than 318 tons of scrap metal and white goods at its regional landfill which were then recycled. In 2017 County also collected, 3,854 tons of inert waste and 5,693 tons of wood and green organic waste which were diverted from County's regional landfill, amounting to a combined twenty-nine percent (29%) of all Solid Waste received.

(v) The diversion of recyclable materials through County's solid waste program, and its regional landfill specifically, has enabled County to meet the California Integrated Waste Management Act's mandate that local jurisdictions divert for reuse or recycling fifty percent (50%) of the waste generated within their borders annually or face penalties of up to Ten Thousand dollars (\$10,000.00) per day. Also pursuant to the Integrated Waste Management Act, County has drafted and adopted an Integrated Waste Management Plan which sets forth County's goals with respect to source reduction and recycling and the means to accomplish those goals, of which the programs described above are a critical component.

(vi) County has developed plans and taken aggressive actions to minimize the risk of environmental harm from County's landfill operations which could potentially result from the

generation and migration of landfill gases or leachate. These measures pertain not only to the current operation of the landfill but also to its proper closure and maintenance after closure. For example, County has installed groundwater monitoring wells, conducts quarterly monitoring of landfill gas to identify potential subsurface migration, and sets aside funds each year to pay for closure activities consisting of the permanent sealing of the landfill. Additionally, as required by California law, County will monitor and maintain its landfills for a minimum of thirty (30) years after closure.

(vii) All of the above programs are paid for largely through gate fees generated at County's landfill and transfer stations. The loss of gate fee revenue caused by the transport of Solid Waste to facilities other than those operated by County threatens its entire Solid Waste program and could affect County's compliance with the Integrated Waste Management Act, causing the increased landfilling of recyclable materials and the improper disposal of Unpermitted Waste as well as exposing County to significant fines and penalties.

(viii) Moreover, County has no power or authority to regulate the handling or disposal of Solid Waste outside of its borders to ensure that such waste is properly managed. Yet it remains potentially liable for contamination caused by that waste under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Again, there is no way for County to control this risk if it has no power or authority to regulate how the waste is managed. County desires to minimize this exposure to CERCLA liability to the maximum extent feasible.

(ix) County's concerns about liability resulting from the disposal of County-generated waste at facilities not operated by County are real: three (3) of the four (4) regional landfills located in the eastern Sierra within a 200-mile radius of Mono County (and the only three (3) which have accepted waste or indicated the willingness to accept waste generated in Mono County in the past) do not have any groundwater or landfill gas monitoring systems in place and lack many of the other basic regulatory and environmental controls that have been implemented at County's facilities.

(x) For all of the above reasons, County has determined that it is necessary that Solid Waste collected by Franchisees be delivered to a Solid Waste facility owned or operated by County.

b. No Viable Alternatives.

County has considered alternatives to requiring Franchisees to deliver Solid Waste to a Solid Waste facility owned by County or, alternatively, paying the Capacity Fee for limited out-of-county hauling, but has found that there are no viable alternatives.

(i) County's ability to subsidize solid waste management through additional taxes or property-based fees is constrained practically and under the State constitution.

(ii) County has the power, authority, and direction to establish diversion performance standards at its own Solid Waste facility or facilities. It cannot establish, implement, or enforce those standards at facilities it does not own, including landfills where some Solid Waste generated in Mono County is presently being disposed.

(iii) Even if County could raise the capital to take over Solid Waste collection from present privately provided services to municipal service, which would allow County to deliver waste to its own Solid Waste and Recyclable Materials management system, under State law, it would be required to give private haulers five (5) years' advance notice of its intent to do so. During those five (5) years, the private haulers would have the continued right to provide service, and the present loss of County gate fee income would continue to imperil County's Solid Waste program.

(iv) Due to its rural character and remote location, it is impractical or impossible to require mandatory collection within Mono County and many County residents continue to self-haul to County's landfill or transfer stations. If those facilities ceased operation as a result of the failure to collect sufficient gate fee revenues to maintain them, then County residents and businesses would be faced with, in many cases, more than a 100-mile drive to dispose of their waste or would be forced to subscribe to Solid Waste Collection services to haul that waste for them. This would likely increase instances of illegal dumping, as well as be impractical for the reasons described in Subsection (b)(v) below. In addition, it would deprive those residents and businesses of the recycling and Unpermitted Waste processing services which are now available at County's facilities.

(v) User generation fees are not an alternative source of County funding. County has many rural areas, resulting in routing and collection inefficiencies for commercial waste haulers that can make collection cost at many remote residences prohibitively expensive for residents of limited financial means. If County required private haulers to collect user generation fees on behalf of County from private customers/subscribers absent mandatory subscription, those customers would unfairly and inequitably bear Solid Waste management costs of all County residents, those who subscribe and those who do not. As subscription rates increased, customers might drop service, thereby triggering an increasing spiral of costs spread over fewer customers/subscribers, and an increase in illegal dumping. Therefore, County faces the practical and political inability to implement user fees in lieu of gate fees at County facilities.

EXHIBIT 1.01: DEFINITIONS

“**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 17.02.

“**Annual Report**” means the report described in Section 10.02(b).

“**Applicable Law**” means all laws, statutes, rules, regulations, guidelines, Permits, actions, determinations, orders, or requirements of the United States, State of California, County (including its County Code together with rules and regulations promulgated thereunder and County’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.* of 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;
- (vii) the appropriate class of drivers' licenses issued by the California Department of Motor Vehicles;
- (viii) Control Measure for Diesel Particulate Matter from On-Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicles, 13 CCR § 2020 *et seq.*;
- (ix) 14 CCR §§ 17341, 17342, 17343 and 17344, with respect to equipment construction, safety and parking and identification of operating equipment.

2. Containers:

- (i) 14 CCR § 17314 with respect to maintenance and placement of containers;
- (ii) 14 CCR § 17317 with respect to placing identifying name and telephone number on containers.

3. Labor:

- (i) drug and alcohol testing;
- (ii) the Occupational Safety and Health Act (29 U.S.C. Section 651 *et seq.*), including the Solid Waste Disposal Facility Criteria promulgated by the U.S. EPA on October 9, 1991 (40 CFR, Parts 257 and 258); and the California Occupational Safety and Health Act (California Labor Code, Division 5, Parts 1-10, Section 6300 *et seq.*), and rules and regulations of California Division of Occupational Safety and Health;
- (iii) the Immigration Reform and Control Act of 1986 (PL.99-603);

4. Environmental protection:

- (i) CERCLA;
- (ii) RCRA;
- (iii) Clean Air Act (42 U.S.C. Section 1351 *et seq.*, 42 U.S.C. Section 7401-7642); and the California Clean Air Act (Health & Safety Code Sections 1251 *et seq.* and Health and Safety Code Sections 39000 *et seq.*);
- (iv) California Hazardous Waste Control Act (California Health & Safety Code, Section 25100 *et seq.*);

- (v) California Hazardous Materials Release Response Plan and Inventory Act (California Health & Safety Code, Division 20, Chapter 6.95, Section 25500 *et seq.*);
- (vi) Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*);
- (vii) Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 *et seq.*); and

5. Miscellaneous:

- (i) County Lobbyist Ordinance;
- (ii) Civil Rights Act of 1964 (Subchapter VI or Chapter 21 of Title 42);
- (iii) California Integrated Waste Management Act; and
- (iv) Mono County Code.

“Bear Carts” means wheeled containers having a capacity of either 35, 64, or 95/96 gallons supplied by Franchisee for Collection of Customers’ Solid Waste that provides adequate protection against bears.

“Bins” means metal containers supplied by Franchisee for Collection of Commercial or Residential Customers’ Solid Waste (also commonly referred to as “dumpsters”).

“Board” or **“County Board”** means the Mono County Board of Supervisors.

“Bulky Waste” means Solid Waste that cannot be contained within a Residential Customer’s Cart, such as

- (1) furniture (including chairs, sofas, mattresses and rugs);
- (2) appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, small household appliances, and other similar items commonly known as **“white goods”**);
- (3) large Yard Wastes (including wood waste, tree branches, scrap wood); and
- (4) tires.

“Capacity Fee(s)” means those fees as set forth in Exhibit 7.01b.

“**Carts**” means wheeled containers having a capacity of either 35, 64, or 95/96 gallons supplied by Franchisee for Collection of Customers’ Solid Waste.

“**C&D Waste**” means used or discarded construction materials, packaging, and rubble removed from a premises during the construction or renovation of a structure resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

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

“**Collect**” or “**Collection**” or other form thereof refers to Solid Waste pickups made by Franchisee as required by and in compliance with the provisions of this Agreement.

“**Commencement Date**” means the later date of execution by the Parties indicated on the execution page of this Agreement.

“**Commercial**” or “**Commercial Premises**” means a premise that is not Residential, including premises where business activity is conducted, including offices, retail sales, services, institutions, wholesale operations, food service, manufacturing and industrial operations, public property, and facilities but excluding businesses conducted upon residential premises that are permitted under applicable zoning regulations and are not the primary use of the property. Commercial Collection Services are described in Section 4.01c(2).

“**Commercial Set-out Site**” is defined in Section 4.01(c)(2)(i).

“**Containers**” means the Carts, Bear Carts, Bins, or Roll-offs from which Franchisee must Collect Solid Waste.

“**Contract Year**” means the calendar year, commencing January 1 and ending December 31.

“**County**” means County of Mono, a political subdivision of the State of California, or any governmental entity which may hereinafter assume waste management obligations of County, including any joint exercise of powers authority or other similar public entity with which County participates or contracts with, established to provide solid waste management services or meet Solid Waste diversion requirements under Applicable Law. For the purposes of Indemnities, “**County**” also means its officers, employees, agents, franchisees, attorneys, administrators, affiliates, representatives, servants, insurers, heirs, assigns and any successor or successors to County’s interest.

“**County Code**” or “**Code**” means the Mono County Code, including Title 12.

“**County Office Hours**” means 8 a.m. to 5 p.m. on County Working Days.

“**County Payment Obligations**” means monetary amounts due and payable to County, or claims by County for those amounts, including those listed under Sections 13.02 and 14.01, any County

Reimbursement Costs, and any amounts accrued and payable upon termination of the Agreement in accordance with Section 15.01.

“County Reimbursement Costs” means Direct Costs incurred by County plus ten percent (10%).

“County Working Days” means days on which County administrative offices are open to the public.

“Customer(s)” means the generators (including owners, tenants, occupants, and/or persons having the care or control of any premises within County) of Solid Waste to which Franchisee is required to provide Franchise Services.

“Day” or **“Days”** means calendar days.

“Delivery Obligations” means Franchisee’s obligation to deliver Solid Waste to the Designated Disposal Facility as set forth in Section 7.01.

“Designated Disposal Facility” means the Benton Crossing Landfill, located at 899 Pit Road in Mono County.

“Direct Costs” are actual costs incurred, including staff, equipment, materials, overhead, and other costs reasonably expended in the performance of an activity, certified by an authorized financial officer of the Party submitting a payment demand therefor.

“Director” means the Director of County Department of Public Works or his or her designee.

“Diversion Facility” is defined in Section 6.01(a).

“Divert,” “Diverted,” “Diversion” or other form thereof is defined in Section 6.01(a).

“Diverted Recyclables” is defined in Section 6.01(a).

“Event of Default” means an Event of Default listed in Section 12.10.023(E)(1) of the Mono County Code, or failure by the Franchisee to deliver solid waste to the Designated Disposal Facility, in accordance with Section 7.01 of this Agreement.

“Franchise Fee” means the fee described in Section 13.02(a).

“Franchise Services” means all Performance Obligations of Franchisee to Customer under Article 4.

“Franchise Area” means the unincorporated area of County of Mono, excluding that portion of County known as “Oasis” and described in Exhibit 4.01a.

“Franchisee” means D & S Waste Removal, Inc. and any assignee thereof consented to by County in accordance with Section 17.01. For purposes of Indemnities, Franchisee also means

Franchisee's employees, officers, agents, subcontractors, and consultants performing or responsible for performing Franchise Services; provided that only signatory D & S Waste Removal, Inc., a Nevada corporation, is obligated to provide indemnities and those employees, officers, agents, subcontractors, and consultants will not be liable therefor as individuals.

“Franchisee’s Reimbursement Costs” means the rate listed on Franchisee’s current fee schedule or, if not listed on the fee schedule, then Franchisee’s Direct Costs plus ten percent (10%).

“Gross Revenues” means any and all revenue or compensation in any form derived directly or indirectly by Franchisee, its Affiliates, subsidiaries, parents, or any other entity in which Franchisee has a financial interest in collecting, transporting, arranging, handling, and/or disposing of franchised Solid Waste generated in the Franchise Area. Gross Revenues does not include revenue from the sale of Recyclable Materials.

“Hazardous Waste” means “hazardous waste” as defined in Section 12.02.020 of the Mono County Code defining Unpermitted Waste.

“Holidays” means those days of each year when the Designated Disposal Site is closed, plus any additional days designated by Franchisee as Holidays, with the approval of County.

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

“Indemnities” means all defenses and indemnities under this Agreement.

“Independent Expert” is the Person selected in accordance with Section 9.01(a).

“Liabilities” includes: liabilities, lawsuits, claims, complaints, causes of action, citations, investigations, judgments, demands, clean-up orders, damages (whether in contract or tort), including

- (1) personal injury to or death of, at any time, Franchisee’s employees, Subcontractors, County, or the public;
- (2) property damage of Franchisee, Subcontractors, County, or the public;
- (3) costs and expenses, (including all costs and expenses of litigation, mediation or arbitration, attorneys fees, whether County’s or Franchisee’s staff attorneys or outside attorneys, and court costs);
- (4) losses;
- (5) fines;

(6) penalties; and

(7) other detriments of every nature and description whatsoever,

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

“Non-Collection Notice” means either:

- (1) Verbal notice by Franchisee to Customer given within twenty-four (24) hours of the non-collection of Solid Waste from a Customer’s Set-out Site on the Regularly-Scheduled Collection Day notifying the Customer of the reason for the non-collection and notifying the Customer of how the non-collection will be remedied (e.g., the manner in which materials should be prepared by the Customer for collection or the date of rescheduled Collection); or
- (2) if directed by County, a 3-part (no carbon required) form with a cardstock backing (or other form approved by County) left by Franchisee for Customers at the times, in the events and in the manner described in Section 4.04 which contains, at a minimum:
 - a. the date and time it is given;
 - b. the complete address of the premises;
 - c. the reason for the non-collection;
 - d. the name of Franchisee’s employee who prepared the notice;
 - e. the manner in which materials should be prepared for collection; and
 - f. printed in English and Spanish.

Franchisee will leave a hard (cardstock) copy with the Customer, will retain one copy, and will transmit one copy to the Director on the next weekday which is not a Holiday.

“Notice” or **“Notify”** or other variation thereof means notice given in accordance with Section 18.01.

“Office” or **“Franchisee’s Office”** means the administrative office of Franchisee and identified by Franchisee to County.

“Office Hours” or **“Franchisee’s Office Hours”** means 8:00 a.m. to 5:00 p.m., Monday through Friday.

“Overdue Rate” means ten percent (10%) per annum.

“Own” or **“Ownership”** or other forms thereof means constructive ownership under the provisions of Section 318(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 318), as in effect on the date here, except that (i) ten percent (10%) is substituted for fifty percent (50%) in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) is disregarded. Where the Ownership interest is less than ten percent (10%), that interest is disregarded, and percentage interests is determined on the basis of the percentage of voting interest or value which the Ownership interest represents, whichever is greater.

“Party” and **“Parties”** refers to County and the Franchisee, individually and together.

“Performance Obligations” means Franchisee’s liabilities and obligations under this Agreement.

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

“Person” includes any individual, firm, limited liability company, association, organization, partnership, industry, public or private corporation, trust, joint venture, the United States, the State, a County (excluding Mono County), a municipality, special purpose district, or any other entity whatsoever.

“Procurement Proceedings” means any memorandums, meetings, correspondence, telephone calls, field trips, draft documents, and the County Board sessions with respect to the planning, development, drafting negotiation and execution of this Agreement.

“Prompt,” “Promptly,” and variations thereof mean as soon as possible, but not less than two (2) days, unless otherwise specified.

“Quarter” means any of the 3-month periods identified in Exhibit 10.02a.

“Quarterly Reports” means reports described in Section 10.02(a).

“Records” are defined in Section 10.01(a).

“Recyclables” means materials that have been separated by the generator from the Solid Waste stream prior to disposal or which have been separated from the solid waste stream after disposal for the purpose of creating raw materials from which new products will be made or for the purpose of reusing them as a used or reconstituted product. Recyclables includes Yard Waste.

“Reasonable Business Efforts” means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of that Person’s business judgment,

intending in good faith to take steps calculated to satisfy the obligation which that Person has undertaken to satisfy.

“Refuse” means Solid Waste comprised of rubbish, trash, and garbage.

“Regularly-Scheduled Collection Day” means Regularly-Scheduled Residential Collection Day and Regularly-Scheduled Commercial Collection Day.

“Regularly-Scheduled Commercial Collection Day” is defined in Section 4.01(c)(2)(iv).

“Regularly-Scheduled Residential Collection Day” is defined in Section 4.01(c)(1)(iv).

“Residential” means any residential premises in Mono County such as single family, duplex, triplex, mobile home, multi-family, apartment, stock cooperative, and condominium residences in the unincorporated area of Mono County, excluding hotels, motels, and automobile courts, that subscribe to Residential Collection Service. Residential Collection Services are described in Section 4.01(c)(1).

“Residential Set-out Site” means the edge of the driveway in front of a Residential Premise or, if there is no accessible driveway, such other location as agreed to between the Residential Customer and Franchisee and specified in the Subscription Order.

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

“Service Asset Documents” are defined in Section 14.08(h).

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

“Service Day” means weekdays and Saturday, other than Holidays.

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

“Set-out Site” means Residential Set-out Site and Commercial Set-out Site.

“Solid Waste” means solid waste defined in Chapter 12.02.020 of the Mono County Code that Franchisee is obligated to Collect pursuant to this Agreement, including Refuse, Bulky Waste, and C&D Waste.

“Solid Waste Handling Services” has the meaning defined in Section 12.02.020 of the Mono County Code.

“Subscription Orders” are described in Section 4.10.

“Suspect Categories” means race, color, religion, national origin, ancestry, age, physical handicap, medical condition, marital status, sex/gender, or sexual orientation.

“Term” is the period beginning on the Commencement Date and ending on the earlier of the expiration of the Agreement in accordance with Section 3.01 or termination of the Agreement in accordance with Article 14.

“Uncontrollable Circumstance(s)” means “uncontrollable circumstances” as defined in Section 12.10.023(E)(6) of the Mono County Code.

“Unpermitted Waste” is defined in Section 12.02.020 of the Mono County Code.

“Unpermitted Waste Screening Protocol” is prescribed in Section 5.06 and contained in Exhibit 5.06.

“Vehicles” means all trucks (including trucks providing Residential and Commercial Collection of Solid Waste, Bulky Waste, and litter pickup; and field supervisors’ and administrators’ vehicles), rolling stock and other vehicles used to provide Franchise Services (including Collection as well as repair and maintenance), whether owned or leased by Franchisee.

“Violate,” “Violates,” or “Violation” is defined in Section 12.10.023(E)(1)(c) of County Code.

“Yard Waste” is defined in Section 12.02.020 of County Code.

EXHIBIT 2.01: FRANCHISEE’S REPRESENTATIONS AND WARRANTIES

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

b. 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.

c. 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: (i) conflicts with, violates, or results in a breach of any Applicable Law; (ii) 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.

d. 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.

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

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

g. Compliance with Applicable Law. Franchisee has fully complied with all Applicable Law, including without limitation law relating to conflicts of interest, in the course of procuring this Agreement.

EXHIBIT 4.01a: SERVICE AREA

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

**EXHIBIT 4.05e: CUSTOMER COMPLAINT AND BILLING DISPUTE RESOLUTION
PROTOCOL**

Franchisee's Customer complaint and billing dispute resolution protocol is attached to this Agreement.

EXHIBIT 5.02g: SERVICE ASSET INVENTORY

Attached to this Exhibit is an inventory of Service Assets, whether new or used, owned or leased by Franchisee, including:

- (1) maintenance yards and facilities; the Office and any other administrative and customer service offices (together with equipment therein),
- (2) Vehicles described by type (i.e., manufacture and model number for cab, chassis and body; and descriptive notation said as front end loader, compactor, etc.), number, DMV license number, the age of the chassis and body; type of body (open-top, closed etc.); type of fuel used; feed and practical or net capacity, including bins or compartments, as applicable; weight; the date of acquisition; the maintenance and rebuilt status; lease or installment purchase information; warranty information;
- (3) Containers described by volume, size, and specifications; and
- (4) computer hardware and software for billing, required record-keeping, inventory, and maintenance and repair records.

EXHIBIT 5.06: UNPERMITTED WASTE SCREENING PROTOCOL

Franchisee will screen all loads of Solid Waste for Unpermitted Waste by causing its drivers to observe, directly or through mirrors or other mechanism(s), the tipping of Containers into Vehicles at the point of Collection. Franchisee will employ direct visual inspection where necessary and appropriate. Franchisee will conduct on-going training of its drivers, mechanics, dispatchers, and other support personnel in Unpermitted Waste recognition and safety procedures, including notification of County as described below. Franchisee will carry in its Vehicles literature developed by County pertaining to the proper handling of Unpermitted Wastes. Such literature will be left by Franchisee with its Customers upon Customer request, upon identification of Unpermitted Waste, or upon request by County.

Franchisee will additionally comply with the following requirements in handling Unpermitted Waste that is Hazardous Waste:

- (1) Driver will immediately notify its dispatch center (“Dispatch”) and take immediate and appropriate action to contain and isolate said load;
- (2) Dispatch will immediately notify the Franchisee’s field supervisor;
- (3) Dispatch will immediately contact the Environmental Health Division of the Mono County Health Department, or if those offices are closed, County Emergency Communications Center;
- (4) Depending on the amount and identity of the Hazardous Waste involved, Franchisee will at its option either (i) segregate and containerize the Hazardous Waste in preparation for manifesting and transport or (ii) contact a permitted Hazardous Waste transport company to assist therein. Franchisee will ensure that an authorized official of Franchisee is available in person or by telephone at all times to authorize the expenditure of funds, if necessary, for Hazardous Waste cleanup. Franchisee will transport any Hazardous Waste it chooses to transport in accordance with Applicable Law, including but not limited to the following:
 - (i) the regulations of the Department of California Highway Patrol (Title 13, Code of California Regulations or “CCR”);
 - (ii) regulations of the federal Department of Transportation (DOT) (Title 49, Code of Federal Regulations);
 - (iii) regulations of the U.S. Environmental Protection Agency (Title 40, Code of Federal Regulations);
 - (iv) the regulations of the California Occupational Health and Safety Administration (Title 8, CCR); and

- (v) the regulations of the California Department of Toxic Substances Control (Title 22, CCR).
- (5) No later than the next County Working Day following its occurrence, Franchisee will orally notify the Director of the incident and its status and/or ultimate disposition. Franchisee will provide a written incident report to the Director within fourteen (14) days. The report will include the following: (i) the date and time of the occurrence; (ii) name of driver; (iii) description of hazardous materials; (iv) origin of the hazardous material (if identifiable); (v) observations made and actions taken by Driver and/or Field Supervisor; (vi) the status and/or ultimate disposition of the material; and (vii) any additional relevant comments.

At least once per Contract Year, Franchisee will provide Notice to its Customers indicating the locations where Unpermitted Waste may be delivered for proper management and processing.

Franchisee will make available to County promptly upon request all Records, including plans and/or other documents maintained by Franchisee with respect to Unpermitted Waste in accordance with Applicable Law.

In lieu of compliance with the above Unpermitted Waste Screening Protocol, Franchisee may provide County with a copy of an Unpermitted Waste Screening Protocol it has developed containing procedures in accordance with applicable law for handling Unpermitted Waste that is hazardous waste that is no less stringent than the Protocol set forth in this Exhibit 5.06. Upon approval by the Director, Franchisee's Unpermitted Waste Screening Protocol shall replace the Protocol set forth herein.

EXHIBIT 7.01b: CAPACITY FEES

Capacity Fees shall be as follows:

For loads verified by a weight ticket from County's Walker Transfer Station, County's Bridgeport Transfer Station, or issued by a certified weighmaster from another California or Nevada state certified truck scale satisfactory to the Director, as required by Section 7.01b, Franchisee shall pay County the amount of County's solid waste tipping fee, as established and may be amended by resolution of the County Board of Supervisors.

As of the Commencement Date of this Agreement, the amount of County's solid waste tipping fee is \$74.00 per ton.

EXHIBIT 10.01a: RECORDS

Franchisee will collect, record, and maintain, at a minimum, the information specified in this Exhibit 10.01a, indicating the date and the day of the week of the event reported. Franchisee will provide the following information to County promptly upon written request by County.

1. Tonnage. Franchisee will collect, record, and maintain information regarding the tonnage of:
 - (a) Residential and Commercial Solid Waste;
 - (b) Recyclables;
 - (c) Bulky Waste; and
 - (d) C&D Wastecollected and delivered to the Designated Disposal Facility, including the following information:
 - (a) route numbers;
 - (b) truck numbers;
 - (c) Designated Disposal Facility's certified weight ticket number for each load;
 - (d) weight of each load (gross, tare, and net); and
 - (e) source-jurisdiction allocation or ratio.

2. Monetary Amounts. Franchisee will collect, record, and maintain information regarding the following:
 - (a) Service Fees – service fees charged to and collected from Customers.
 - (b) Subscription Orders – each Customer's Subscription Order and account service information (Section 4.10).
 - (c) Customer Billing Records – billing records required by Section 4.09, including Customers' special Service requests for on-call pickup of excess and Bulky Waste.
 - (d) Franchisee's Reimbursement Costs – Franchisee's Reimbursement Costs for emergency clean up.
 - (e) Fees payable to County.
 - (i) Financial records, books, accounts, and warranties corroborating the Franchise Fee owed to County in accordance with Section 13.02, including all documentation required by Section 13.02; and
 - (ii) financial records, books, and accounts corroborating any other County Payment Obligations.

3. Customer Service. Franchisee will collect, record, and maintain information regarding the following:

- (a) Complaint Records including logged complaints for alleged missed collections; failure to properly replace Containers (Section 4.01(c)(1)(iii) and Section (c)(2)(iii)), failure to clean up litter (Section 4.03(b)), discourtesy (Section 4.03(a)), damaged property, collecting outside permitted hours (Section 4.01(d)(1)), 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 (Section 4.01(c)(1)(i) and Section (c)(2)(i)); discontinue Franchise Services (Section 4.01(c)(1)(ii) and Section (c)(2)(ii)); deliver, repair or replace, or pick up Containers (Section 4.01(e)); change size or number of Containers; or supply locks (Section 4.01(e)); 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 (Section 4.01(d)(2) and Section 4.06) and public education and community relations materials (Section 4.06).
4. Operations. Franchisee will collect, record, and maintain information regarding the following:
- (a) Routing Specifications (Section 5.01).
 - (b) Service Asset Inventory (Section 5.02(g)) and Service Asset Documentations (Exhibit 5.02g).
 - (c) 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.
 - (d) Records of Vehicle inspections, including Vehicles' fire extinguisher service records, and warranty and maintenance recommendations.
 - (e) Records of Criminal Activity (Article 12).
 - (f) Any documentation with respect to insolvency, bankruptcy or liquidation described in Mono County Code Section 12.10.023(E)(2)(f), including records with respect to Service Assets, such as any seizures, attachments or levies.
 - (g) Container maintenance (Section 4.01(e)).
5. Insurance and Other Performance Assurances. Insurance, performance bonds, letter of credit etc. (Article 11).

EXHIBIT 10.02a: QUARTERLY REPORTS

For the purposes of the Quarterly Reports, the term “quarters” is defined as follows: “First Quarter” consists of January, February, and March; “Second Quarter” consists of April, May, and June; “Third Quarter” consists of July, August, and September; and “Fourth Quarter” consists of October, November, and December. In the Quarterly Report, Franchisee will include, at a minimum, the following information:

- (a) Summary of Records. A summary of the Records for events (including Unpermitted Waste spills or other incidents, Customer complaints, Vehicle inspections, Criminal Activity, or other events) during the previous quarter and a copy of Franchisee’s complaint log, including missed pickups, Non-Collection Notices and a description of how each complaint was resolved.
- (b) Certifications. A certification that Franchisee has met its Performance Obligations including Delivery Obligations (Section 7.01) for the quarter or, alternatively, a description of those Performance Obligations and Delivery Obligations not met during the quarter.
- (c) Summary of Education Efforts. A summary of education efforts undertaken in that quarter and copies of all materials distributed to Customers during the Quarter, including community relations materials (Section 4.06(a)(1)) and promotional materials (Section 4.06(a)(3)).
- (d) Diversion Information. Any information necessary to meet the reporting requirements of the Act, including Solid Waste Collection and disposal tonnages, Recyclables collection and processing tonnages, and the origin thereof.
- (e) Operational Report. A discussion of Service or operational problems and resolution thereof or planned therefore, if requested by County.
- (f) Collection Fee Summaries: Fees invoiced and paid, including (i) service fees charged for each type of service; (ii) service fees collected from Customers; and (iii) Franchise Fees paid to County.

Quarterly Reports may be made on Form 10.02a which is attached to this Exhibit.

FORM 10.02a

MONO COUNTY FRANCHISEE QUARTERLY REPORT

Submitted by: _____ (Franchisee)

FOR THE YEAR OF 20__

- 1st Quarter (January, February, March) (due by April 15)
- 2nd Quarter (April, May, June) (due by July 15)
- 3rd Quarter (July, August, September) (due by October 15)
- 4th Quarter (October, November, December) (due by January 15)

1. Summary of Records	<p>a. Unpermitted Waste Spills:</p> <p>b. Vehicle Inspections:</p> <p>c. Criminal Activity:</p> <p>d. Other Events:</p> <p>e. Complaint Log:</p>	<p><input type="checkbox"/> None <input type="checkbox"/> See Attached</p> <p><input type="checkbox"/> None <input type="checkbox"/> See Attached</p> <p><input type="checkbox"/> None <input type="checkbox"/> See Attached</p> <p><input type="checkbox"/> None <input type="checkbox"/> See Attached</p> <p><input type="checkbox"/> None <input type="checkbox"/> See Attached</p>
2. Certifications	<p>I represent and warrant, under penalty of perjury, that D & S Waste Removal, Inc. (Franchisee) has met its Performance Obligations, including Delivery Obligations, for the Quarter noted above. OR,</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title</p> <p>_____</p> <p>Signature</p>	<p>During the Quarter noted above, D & S Waste Removal, Inc. (Franchisee) did <u>not</u> meet all of its Performance Obligations (including Delivery Obligations) and will pay to County liquidated damages for each failure as noted on the attached sheet.</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title</p> <p>_____</p> <p>Signature</p>
3. Summary of Education Efforts	Such as inserts, mailers, magnets, flyers, etc.	<p><input type="checkbox"/> None <input type="checkbox"/> See Attached</p>
4. Diversion Information	Information required by the Act, including Solid Waste Collection and disposal tonnages, Recyclables collection and processing tonnages, and origin, in accordance with Section 6.01.	<p><input type="checkbox"/> None <input type="checkbox"/> See Attached</p>
5. Collection Fee Summaries (fees invoiced and paid)	<p>a. Service fees charged for each type of service</p> <p>b. Service fees collected from Customers</p> <p>c. Franchise fees paid to County</p>	<p><input type="checkbox"/> See Attached</p> <p>\$ _____</p> <p>\$ _____</p>

EXHIBIT 10.02b: ANNUAL REPORTS

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

1. **Service Asset Inventory.** A complete inventory of Service Assets in accordance with Article 5.02g.
2. **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.
3. **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, including any Criminal Activity defined in Section 12.01a.
4. **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) (Section 16.09).

Annual Reports may be made on Form 10.02b which is attached to this Exhibit.

FORM 10.02b

MONO COUNTY FRANCHISEE ANNUAL REPORT FOR 20_____

Submitted by: _____ (Franchisee)

(Due by February 15)

<p>1. Total information contained in Quarterly Reports for the year</p>		<input type="checkbox"/> See Attached
<p>2. Service Asset Inventory</p>		<input type="checkbox"/> See Attached
<p>3. 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 D & S Waste Removal, Inc.'s (Franchisee) financial status or condition.</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title (CEO or Principal)</p> <p>_____</p> <p>Signature</p>	<p>I represent and warrant, under penalty of perjury, that in the prior Contract Year, those changes to D & S Waste Removal, Inc.'s (Franchisee) financial status or condition listed on the attached sheet which is labeled "Material Changes to D & S Waste Removal, Inc.'s Financial Status or Condition" have occurred.</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title (CEO or Principal)</p> <p>_____</p> <p>Signature</p>
<p>4. 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, including any Criminal Activity under Section 12.01(a).</p>	<input type="checkbox"/> None <input type="checkbox"/> See Attached
<p>5. Subcontractors</p>	<p>Names of all 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) (Section 16.09).</p>	<input type="checkbox"/> None <input type="checkbox"/> See Attached

EXHIBIT 11.01a: INSURANCE

1. Workers' Compensation and Employer's Liability. Franchisee will maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Franchisee will maintain Employer's Liability insurance in an amount not less than One Million dollars (\$1,000,000.00) per accident or disease.

The Workers' Compensation policy will contain endorsements in substantially the following form:

- (a) "30 days prior written notice will be given to County in the event of cancellation of this policy. Such notice will be sent to:

Mono County Risk Management
Post Office Box 696
Bridgeport, California 93517"
- b. "Insurer waives all right of subrogation against County and its officers and employees for losses arising from work performed for County."

2. General Liability and Automobile Liability. Franchisee will maintain comprehensive Commercial General Liability insurance with a combined single limit of not less than Two Million dollars (\$2,000,000.00) per claim or occurrence and Four Million dollars (\$4,000,000.00) aggregate covering all claims and all legal liability for Personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of Franchisee's performance of, or its failure to perform services under this Agreement.

Franchisee will also maintain Automobile Liability Insurance for each of Franchisee's vehicles used in the performance of this Agreement, including owned, non-owned, leased or hired vehicles, in the minimum amount of One Million dollars (\$1,000,000.00) combined single limit per accident.

The Commercial General Liability and Automobile Liability insurance required by this section will be written on an "occurrence" (or in the case of Automobile Liability, on an "accident" basis), rather than a "claims made" basis, if such coverage is readily obtainable for a commercially reasonable premium. If it is not so obtainable, Franchisee must arrange for an extended reporting period ("tail coverage") to protect County from claims filed within one year after the expiration or termination of this Agreement relating to incidents that occurred prior to such expiration or termination. The policy may not contain a deductible or self-insured retention of more than ten thousand dollars (\$10,000.00) per occurrence without prior written approval of County. The existence of a self-insured retention or deductible will not affect Franchisee's duty to defend and indemnify County under this Agreement as to Claims below the self-insured retention or deductible level.

The Commercial General Liability policy will contain endorsements in substantially the following form:

- a. “30 days prior written notice will be given to County in the event of cancellation of this policy. Such notice will be sent to:

Mono County Risk Management
Post Office Box 696
Bridgeport, California 93517”

- b. “The County, its officers, employees, and agents are additional insureds on this policy.”
- c. “This policy will be considered primary insurance as respects any other valid and collectible insurance maintained by County, including any self-insured retention or program of self-insurance, and any other such insurance will be considered excess insurance only.”
- d. “Inclusion of County as an insured will not affect County’s rights as respects any claim, demand, suit or judgment brought or recovered against Franchisee. This policy will protect Franchisee and County in the same manner as though a separate policy had been issued to each, but this will not operate to increase the insurer’s liability as set forth in the policy beyond the amount shown or to which the insurer would have been liable if only one party had been named as an insured.”

3. Pollution Liability. Franchisee will purchase and thereafter maintain, so long as such insurance is available on a commercially reasonable basis, Pollution Liability insurance in the amount of One Million dollars (\$1,000,000.00) covering liability arising from the sudden and accidental release of pollution in the performance of Franchise Services.

4. Physical Damage. Franchisee will maintain comprehensive (fire, theft and collision) Physical Damage insurance covering the vehicles and the machinery and equipment that is owned by Franchisee and used in providing service to County under this Agreement, with a deductible or self-insured retention of not greater than Fifty Thousand dollars (\$50,000.00). The Physical Damage policy will contain the following endorsements:

- (a) Notice of cancellation, as provided in Exhibit 11.01a(2)(a); and
- (b) Cross liability endorsement, as provided in Exhibit 11.01a(2)(d).

EXHIBIT 12.01e(2): FRANCHISEE OR ANY OF ITS CONTRACT MANAGERS

Franchisee Representative identifies the following individuals by name of corporate position as individuals meeting the definition of “Franchisee or any of its Contract Managers.” Upon change in individuals, Franchisee Representative will amend this Exhibit in its next Quarterly Report.

If the Franchisee amends the identification, then the Parties will respectively substitute this amended Exhibit. The dated signature of each Party Representative on such amended form will be deemed evidence that Notice was given in accordance with Section 18.01 and that the new attachment supersedes the prior attachment.

By: _____
Franchisee Representative

Date: _____

EXHIBIT 13.01a: SERVICE FEE FLOORS

Franchisee will not charge Customers Service Fees that are less than those identified below:

RESIDENTIAL RATES¹		COMMERCIAL RATES¹							
CANS, CARTS, VOLUME		BINS			DEBRIS BOXES		COMPACTOR		
Size ²	“A” ³	Size ²	“A” ³	“B” ³	Size ²	“B” ³	Size ²	“B” ³	
1 35-gal. Cart	\$18.38	1 cy	\$120.23	\$27.83	10 cy	\$421.05	10 cy	\$386.93	
2 35-gal. Carts	\$24.15	2 cy	\$165.38	\$38.33	20 cy	\$705.08	20 cy	\$772.28	
1 64-gal Cart	\$27.83	3 cy	\$213.15	\$48.83	30 cy	\$962.85	30 cy	\$1,160.25	
2 64-gal Carts	\$38.33	4 cy	\$248.33	\$57.23	40 cy	\$1,342.43	40 cy	\$1,540.35	
1 95-gal. Cart	\$36.75	6 cy	\$322.28	\$74.03					
2 95-gal. Carts	\$50.93								
1 cubic yard (cy) ⁴	\$29.93								
1 Bear Cart	\$43.05								

Notes:

1. Rates may be adjusted annually in accordance with the formula set forth in Section 13.01(c)(1).
2. Sizes are nominal values, not precise volumes. Fees for nominal container volumes that fall in between or higher than those listed will be determined by linear interpolation or extrapolation, respectively, and rounded to the nearest three significant figures.
3. Service fee categories identified above are as follows: “A” = cost per month; “B” = cost per dump.
4. Or approximately equivalent to 6 35-gallon cans/carts.

EXHIBIT 14.01: COMPENSATORY AND LIQUIDATED DAMAGES

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

1. Compensatory Damages. If County in its sole discretion chooses not to exercise its right to terminate this Agreement in accordance with Section 14.02 in the event Franchisee fails to deliver Solid Waste to the Designated Disposal Facility in accordance with Section 7.01, then the Franchisee will pay County:

- (a) County Reimbursement Costs to provide necessary persons for monitoring of Franchisee’s compliance with said delivery requirements, including following Franchisee’s vehicles on Service routes; and
- (b) The County’s Reimbursement Cost of enforcing or securing specific performance of Franchisee’s delivery obligation; and
- (c) For each ton of Solid Waste collected by Franchisee that Franchisee delivers to a facility or site other than the Designated Disposal Facility (“Undelivered Tons”), as demonstrated by weigh bills at said other facility or site, reports by any monitoring party, or such other evidence as may be deemed satisfactory by County, the Capacity Fee set forth in Exhibit 7.01b. County may estimate the number of Undelivered Tons based on prior disposal records, Customer lists, or other means.

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

DESCRIPTION OF BREACH	DAMAGES
Failure to correct a missed pick-up [Section 4.01(c)(1)(iv) and Section 4.01(c)(2)(iv)].	Up to \$100 per failure per day.
Failure to return emptied container to its proper location [Section 4.01(c)(1)(iii)].	Up to \$100 per failure per day.
Failure to provide Residential Customers with written notice of the availability of cart or can service [Section 4.01(c)(1)(iii)].	Up to \$100 per failure per day.
Failure to commence or discontinue Franchise Services [Section 4.01(c)(1)(i) and Section 4.01(c)(2)(i)]; or to deliver, repair or replace, or pick up Containers [Section 4.01(c)(1)(iii) and Section 4.01(c)(2)(iii)]; change size or number of Containers [Section 4.01(e)]; supply locks [Section 4.01(e)], or clean, paint, and maintain Containers [Section 4.01(e)].	Up to \$100 per failure per day.
Failure to comply with authorized collection hours [Section 4.01(d)].	Up to \$100 per failure per day.
Failure to provide any Customer with timely notice of change in Collection schedule [Section 4.01(d)].	Up to \$100 per failure.

DESCRIPTION OF BREACH	DAMAGES
Discourteous behavior by Franchisee's employees reported by or complained of by customers to Franchisee or County [Section 4.03(a)].	Up to \$100 per incident.
Failure to compensate, repair or replace damaged pavements, utilities and/or customer property caused by Franchisee or its personnel [Section 4.03(d)].	Up to \$250 per failure.
Failure to clean up spillage or litter caused by Franchisee [Section 4.03(b) and (c)]. Failure to properly cover materials in Collection Vehicles [Section 4.03(c)] or to maintain or identify Vehicles [Section 5.02].	Up to \$100 per failure per location.
Failure to maintain a toll-free telephone number or required office hours [Section 4.05(a)].	Up to \$100 per failure per day.
Failure to timely respond and resolve each complaint in accordance with the complaint resolution protocol [Section 4.05(e)].	Up to \$250 per failure.
Failure to record a complaint [Section 4.05(d) and Section 10.01]. Failure to provide County access to records of complaints or to provide copies of complaint logs in Quarterly Reports [Section 4.05(d) and Section 10.02].	Up to \$250 per failure.
Failure to timely submit general Customer correspondence and promotional materials, news releases, public education or community relations materials to County for County review [Section 4.06].	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 [Section 4.10].	Up to \$100 per failure per day.
Failure to meet with County [Section 5.07]. Failure to return County phone calls, e-mails, or other correspondence from County [Section 8.07].	Up to \$100 per failure per day.
Failure to maintain or timely submit complete Reports and/or documents to County (such as Quarterly and Annual Reports [Section 10.02], Financial Reports [Section 10.03], Route Maps and Route Changes [Section 5.01(a) and (b)], Service Asset Inventory [Section 5.02(g)], Contingency Plan [Section 5.05], Hazardous Waste Screening Protocol [Section 5.06], or Insurance certificates or policies [Article 11].)	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.

EXHIBIT 16.09: COUNTY-APPROVED SUBCONTRACTORS