

## SWA ORDINANCE NO. 18

### AN ORDINANCE AMENDING AND REPLACING EXISTING SACRAMENTO REGIONAL SOLID WASTE AUTHORITY (“SWA”) TITLE I OF THE SWA CODE REGULATING COMMERCIAL SOLID WASTE COLLECTION, TRANSPORTATION, OR DISPOSAL

The Board of Directors of the Sacramento Regional Solid Waste Authority ordains as follows:

SECTION 1. Ordinance 18 of the Sacramento Regional Solid Waste Authority is hereby added to amend and replace the Sacramento Regional Solid Waste Authority Code, Title I, to read as follows:

#### TITLE I

#### Chapter 1.01 COMMERCIAL SOLID WASTE COLLECTION, TRANSPORTATION, OR DISPOSAL

##### 1.01.010 Purpose and Declarations

A. It is hereby declared and determined that the business of collecting and subsequently transporting, transferring, disposing and/or recycling of commercial solid waste generated, kept or accumulated in the Sacramento Regional Solid Waste Authority (hereinafter referred to as “SWA”) region, as defined herein, affects the health, safety, public welfare and quality of life of the inhabitants of the SWA region. The SWA further declares that the business of collecting and disposing of commercial solid waste is a public service and should be regulated by the SWA. The use of any public street or public property in connection with such business is of great concern to the SWA and should be regulated by the SWA. Therefore, it is the purpose of this code to provide such regulation.

B. It is further declared that the business of collecting of commercial solid waste is a distinct marketplace from the business of moving, hauling, landscaping and cleaning services, that may be occasionally augmented by waste removal and/or disposal, provided out of necessity to residents and businesses within the SWA region, and generally proffered by special businesses.

C. It is the further purpose of this code to regulate such business in order to ensure its orderly operation, and to minimize the adverse effects it may have on the local environment. It is also the purpose of this part, aside and apart from regulation, to require compensation for the value of the franchise issued by the SWA.

D. It is the further purpose of this code to provide for the uniform regulation of commercial solid waste collection, removal and transportation within the geographical area of the SWA.

E. It is the further purpose of this code to provide a mechanism to require the diversion of a sufficient portion of the commercial solid waste stream generated within the SWA’s jurisdiction to enable the SWA member agencies to meet the solid waste diversion requirements set forth in Public Resources Code Section 41780. It is the intent of the Board in this regard to require all holders of commercial solid waste franchises to satisfy

the diversion requirement of this code through the diversion of commercial solid waste that is currently being disposed of in solid waste facilities. It is the intent of the Board in establishing a diversion requirement for the franchisee to take into account the existing diversion of recyclable materials by recycling businesses, brokers, and generators that would otherwise become solid waste. It is not the Board's intent to allow franchise holders to satisfy this diversion requirement by assuming credit for materials that are not recognized by the California Integrated Waste Management Board as recyclable materials or for the diversion of recyclable material that is currently being diverted by other parties.

F. Pursuant to the provisions of SWA Joint Powers Agreement, the SWA hereby elects to have the grant of franchises governed by this code, and any ordinances amendatory thereof, and these provisions shall constitute the exclusive procedure applicable to the granting of franchises for the conduct of the business of collecting, transporting or disposing of commercial solid waste.

G. If any portion of this code is for any reason held invalid or unconstitutional by any decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining part of this code.

#### **1.01.020 Definitions**

Unless the context otherwise requires, the definitions set forth in this chapter shall govern the interpretation of this code.

(a) "Administrator" means the Administrator of County's Municipal Services Agency and/or his or her designee.

(b) "Board" means the Board of Directors of the Sacramento Regional Solid Waste Authority.

(c) "Clerk of the Board" means the Clerk of the SWA Board.

(d) "Collection" means the act of collecting and removing solid waste or recyclable material at the place of waste generation.

(e) "Commercial Hauler or Hauler" means any person who loads, collects, hauls, or transports commercial solid waste, that was generated by another person or its employees or subcontractors in the course of providing its principal service, or manufacturing or constructing or assembling its major product; for a fee by use of any means, including, but not limited to, a dumpster truck, roll-off truck, a side-load, front-load, or rear-load garbage truck, or a trailer.

(f) "Commercial Solid Waste" means all solid waste as defined in subdivision (u) hereof, and generated by commercial and industrial sources, multi-family dwelling units and construction and demolition activities; that is collected by a commercial hauler.

(g) "County" means the County of Sacramento.

(h) "Environmental Management Department or EMD" means County's Environmental Management Department.

(i) "Franchise" means a commercial solid waste collection franchise issued under the provisions of this code to a commercial hauler within the SWA region.

(j) "Franchisee" means a commercial hauler holding a franchise issued pursuant to this code.

(k) "General Manager/Engineer or GME" means the Director of the Department of Waste Management and Recycling of the County's Municipal Services Agency and/or his or her designee.

(l) "Materials Recovery Facility or MRF" means a permitted solid waste facility where solid wastes or recyclable materials are sorted, or separated, by hand or by use of machinery, for the purposes of recycling or composting. This definition shall apply only within the framework of materials recovery facility services and the reporting requirements of this code.

(m) "Multi-Family Dwelling Units" means five (5) or more residential dwelling units located on a single parcel of land.

(n) "Person" means an individual, firm, limited liability company, association, partnership, industry, public or private corporation, or any other entity whatsoever.

(o) "Recycling" means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become solid waste and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place. Recycling does not include transformation as defined in Public Resources Code Section 40201.

(p) "Recycling Facilities" means those facilities or operations that receive, process, and transfer to market recyclable materials that have been source separated from the solid waste stream.

(q) "Recyclable Material" or "Recyclables" means materials that have been separated from the solid waste stream prior to disposal and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place, and that are not landfilled.

(r) "Removal" means the act of taking solid wastes or recyclables from the place of waste generation.

(s) "Rubbish" means non-putrescible solid wastes such as ashes, paper, cardboard, tin cans, yard waste, wood, glass, bedding, crockery, plastics, rubber by-products and litter.

(t) "Sacramento Regional Solid Waste Authority" (SWA) means the joint powers authority of Sacramento County and the Cities of Sacramento and Citrus Heights.

(u) "Solid Waste" means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, construction and demolition debris, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. Solid waste does not include hazardous waste or low-level radioactive waste regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code or medical waste. Solid waste does not include source separated recyclable materials set out for separate collection for the purposes of recycling, and that are not land filled.

(v) "Source Separate or Source Separated" means the keeping of recyclable materials independently containerized or clearly segregated from solid waste at the point of generation for the purpose of reuse or recycling and preventing them from being contaminated by solid waste.

(aa) "SWA" means the Sacramento Regional Solid Waste Authority.

(bb) "SWA Region" means the territorial jurisdictions of any city or county who is a member of the SWA.

(cc) "Treated Medical Waste" means medical waste as defined in subsection (a) of Health and Safety Code Section 25123.5.

(dd) "WMR" means the Department of Waste Management and Recycling of the County's Municipal Services Agency.

**1.01.030 Collection or Transportation Prohibited**

Except as authorized by Sections 1.01.040 and 1.01.050 hereof, it shall be unlawful for any person to engage in the business of collecting, removing or transporting commercial solid waste, or otherwise organizing, directing, sponsoring, brokering or causing the collection, removal or transportation of commercial solid waste within the SWA region without possessing a valid franchise granted by the SWA.

**1.01.040 Franchise Requirement**

It is unlawful for any person to engage in the business of collecting, transporting or disposing commercial solid waste, accumulated or generated in the SWA region, or to engage in the business of soliciting accounts or invoicing customers for commercial solid waste service in the SWA region unless:

A. A franchise therefore has first been granted pursuant to the provisions of this code and such franchise is in full force and effect and a written franchise agreement therefore has been executed between such person and the SWA and such agreement is in full force and effect, or

B. The commercial solid waste is generated and hauled by the same person.

**1.01.050 Exempt Collection or Transportation**

The following persons shall be authorized to collect or transport commercial solid waste within the SWA region, or collect or transport solid waste, without a franchise:

A. The United States, State of California, a city, the County, a special district or other local public agency, or any employee or member of the Armed Forces thereof, when collecting or transporting solid waste produced by operation of the public entity under a system of solid waste collection and transportation operated and maintained by the public agency;

B. The owner, operator or occupant or employee of a farm or ranch consisting of five acres or more, when transporting for off-site disposal solid waste accumulated as a result of operation of the farm or ranch;

C. An owner or occupant of a residential unit, when collecting or transporting rubbish, not containing garbage, from his or her residential premises to a lawful point of disposal;

D. A person or employee thereof, when collecting or transporting dead animals, bones, meat scraps or food waste resulting from food processing plants for tallow or fertilizer, or other waste material to be used as raw material in manufacturing, or solid waste that is collected without charging a fee to the customer for purposes of salvage, provided that such persons shall reuse or recycle or cause to be reused or recycled all materials collected, and shall not transport or arrange for the transport of any collected materials to a disposal site; and

E. An operator or employee thereof of one or more industrial plants which are under single ownership, when collecting or transporting wastes which cannot be handled

by standard solid waste collection equipment or which involve significant health, operating or handling hazards, including but not limited to, rice hulls, tomato pulp, chemical residues, explosives, and other toxic, noxious or hazardous substances, provided that all such wastes shall be deposited at an appropriate disposal area permitted pursuant to California State Solid or Hazardous Waste Management Standards.

F. Any person collecting or transporting hazardous waste, medical waste and designated waste, as defined in law, regardless of its source.

G. Any person collecting or transporting by-products of sewage treatment, including sludge, sludge ash, grit, and screenings.

H. Any person collecting or transporting residue or non-processible waste from a solid waste management facility, including material recovery, composting, and transformation facilities.

I. Municipal corporations and other governmental agencies using their own vehicles engaged in the collection, transportation, or disposal of solid waste within the SWA region.

#### **1.01.060 Franchise – Board Authority to Grant**

A. The SWA Board may and is hereby empowered to grant to a qualified applicant a non-exclusive franchise to engage in the business of collecting, transporting or disposing of commercial solid waste kept, accumulated or generated in the SWA region.

B. The SWA Board may grant a franchise to an applicant based on compliance with this code. Any grant of a franchise by the SWA Board may be subject to such terms, conditions, rules, regulations, restrictions, and limitations, as the SWA Board deems necessary to protect the public health, safety, or welfare.

C. The SWA Board hereby empowers and grants to the Administrator, the authority to administer and negotiate non-substantive changes to the franchise agreements. The SWA Board may delegate authority by resolution to the Administrator, to administer, negotiate and execute franchise agreements.

D. Wherever approval by SWA is required, it shall mean approval by the Administrator as directed by the SWA Board.

#### **1.01.070 Franchise Terms and Conditions**

A. All franchises granted to persons pursuant to this part shall be nonexclusive to allow franchisees to compete with each other for commercial solid waste and recycling service accounts. No provisions of this part shall be deemed to require restricting the number of franchises to one or any particular number, and no provision of this part shall be deemed to require the Board to grant any franchise if the Board finds or determines that the grant of any such franchise is not for the public good.

B. All franchises shall be subject to the terms and conditions specified in this, code and any amendments thereto, in the franchise agreement and in all other applicable federal, state and local laws and regulations.

C. In granting any franchise, the SWA Board may prescribe such other additional terms and conditions, not in conflict with this code, as in the judgment of the SWA Board to be in the public interest.

D. Each franchisee shall provide commercial solid waste collection, removal, recycling, and transportation services consistent with the provisions of this code, and any amendments thereto, the terms and conditions of the franchise issued to the franchisee, and any applicable federal, state, or local statute, ordinance, rule or regulation.

E. Each franchisee shall provide services without undue interruptions caused by mechanical failures or other inadequacies of equipment and shall utilize equipment in quantities and of an age and quality adequate for the provisions of reliable service and to provide preventive and repair maintenance of such equipment sufficient to ensure reliability.

#### **1.01.080 Application for Franchise**

A. All applications for franchises pursuant to this code shall be in writing and shall be filed with the SWA Administrator.

B. A fifty-dollar (\$50.00) application fee will apply to all application packages that are physically mailed to an applicant. A five hundred dollar (\$500.00) one-time processing fee is required with the submittal of an application package to the SWA Administrator.

C. Each application for a franchise shall be on a form provided by the Administrator, shall include all attachments required by the Administrator, and shall contain the following information:

1. Identification.

(a) The name and address of the applicant.

(b) Business address and telephone number, and email address of the applicant.

(c) Address where all vehicles and operating equipment used within the SWA region will be kept.

(d) If the applicant is a partnership, the applicant shall include the name and address of each partner, general, limited or otherwise, owning more than ten percent (10%) ownership in the partnership and their percentage of ownership.

(e) If the applicant is a corporation, the application shall state the names and addresses of the corporation's directors, date and place of incorporation, main offices, major stockholders and associates, and the names and addresses of the parent and subsidiary companies.

(f) If the applicant is a corporation whose stock is traded on a national exchange, the names of persons owning or controlling less than one-half of one percent of the outstanding shares need not be listed in the application and transfers of less than one-half of one percent of the outstanding shares need not be reported unless such a transfer results in the transferee owning or controlling one-half of one percent or more of the outstanding shares; provided, however, that upon reasonable request of the Administrator, the applicant or party submitting an application shall provide a list of all stockholders or shall provide to the Administrator the source material from which the names of such stockholders may be readily obtained.

(g) If the applicant is an affiliate or a franchised operation of another corporation (not to be confused in this instance with a solid waste franchisee of the SWA), the applicant shall list the names and addresses of the parent or subsidiary companies, together with a description of their business interests and/or ownership.

(h) If the applicant is a joint venture or other combination of persons and corporations identify separately the names and addresses of each member of the joint venture or combined effort, together with their percentage interest.

2. Business Operations.

The names of the executive, operational and financial managers to be used in connection with the solid waste collection services, together with documentation that such persons and the applicant have sufficient experience in solid waste handling to perform solid waste collection services in the SWA region.

(a) Attestation that books and accounts of all revenue and income arising out of its operations will be kept in a manner that conforms to Generally Accepted Accounting Principals.

(b) A statement that the applicant shall obtain insurance prior to commencing business subject to the franchise agreement.

(c) A statement that the applicant shall maintain and report on a timely basis all operational information and data elements reasonably required by the SWA to comply with its reporting requirements such as those established under AB 939, and as defined in the franchise agreement.

(d) A complete listing and explanation of any civil or criminal rulings or judgments in excess of five thousand dollars (\$5,000), or convictions against applicant, any of applicant's partners, major stockholders, corporate directors or parent or subsidiary companies, occurring within the last five (5) years. Applicants that are subject to the periodic reporting requirements of Section 13 (a) of the Securities Exchange Act, may, in lieu of the information required by 1.01.080 C. (1) (f) and 1.01.080 C. (2) (d), submit the information reported pursuant to 17 CFR §§ 229.103 (Legal proceedings) and 229.403 (Security ownership of certain beneficial owners and management) on the most recent form 10-K filed by the Applicant with the Securities and Exchange Commission.

3. Facilities and Equipment.

(a) A description of all vehicles and equipment that the applicant owns, has control of, or intends to acquire for the collection, transportation, or disposal of commercial solid waste in the SWA region and which are subject to the provisions of the franchise agreement. A statement as to whether said vehicles and equipment are self-unloading and equipped with audible automatic back-up warning devices. The minimum vehicle description for existing vehicles shall include Vehicle Identification Number (VIN) and license plate number.

(b) Evidence demonstrating that the applicant owns or will have access to suitable facilities for keeping vehicles and equipment clean and in good repair, and that the applicant owns or will have access to reasonable office and billing facilities.

(c) Evidence demonstrating that the applicant is the registered owner, as defined by California Vehicle Code Section 505, of at least two collection vehicles, the bodies of which are closed, leak resistant, and constructed for the purpose of solid waste collection, transportation, and disposal. In the alternative, for the purposes of this provision, an applicant may demonstrate by the evidence that they service and transport open-top roll-off boxes for the collection, transportation, and disposal of non-putrescible waste and/or roll-off compaction boxes which are closed, leak resistance, and are constructed for the purpose of solid waste collection, transportation, and disposal. If the applicant does not own at least two collection vehicles, a back-up agreement executed

with another franchised hauler must be submitted for the provisions of meeting the two truck requirement and/or ensuring that solid waste collection will continue if the franchised hauler's equipment is out of service.

4. Financial Resources.

(a) Applicant shall provide proof satisfactory to the Administrator, that the applicant has adequate financial resources to conduct commercial solid waste collection services.

(b) Applicant shall provide a financial guarantee to insure performance under the Franchise granted herein in a form approved by the Administrator, including, but not limited to, a irrevocable letter of credit, or cash deposit to the SWA in an amount equal to or greater than the Franchisee's approximate average monthly Franchise Fee calculated on gross collection revenues as described in article 1.01.160 (G) herein, and calculated, with a minimum, as a function of the number of vehicles identified in the application pursuant to article 1.01.080 (C) (3) (a) herein, at the time of Franchise Application submittal.

5. Diversion Plans.

Each franchisee shall submit a Diversion Plan, including one for Multi-Family Dwelling Units as applicable, with their franchise application. The Diversion Plan shall include a detailed description of how the franchisee intends to comply with the diversion requirements set forth in 1.01.230 hereof. The Diversion Plan must include a plan describing how the franchisee intends to satisfy its diversion requirements by diverting recyclable materials from commercial solid waste that is being disposed of in solid waste facilities.

6. Application for Sheriff's Review.

(a) The Sheriff shall review each franchise application prior to the SWA issuing a franchise. The Administrator, shall refer all franchise applications or renewals pursuant to this code to the Sheriff who, in conjunction with WMR, shall make such investigation of the applicant or other persons or parties who exercises policy control over the operation(s) and who assumes business responsibility of the firm as deemed necessary and as determined by the Administrator. The requirements of this section apply to all pending or future applications or proposals for issuance or renewal of such franchise pursuant to this code. The Sheriff's investigation may include, but is not limited to, obtaining the fingerprints and a photograph of the applicant, or any other person connected with the firm that the applicant represents, and the obtaining of reports from the state and federal law enforcement agencies and reports from any other appropriate sources.

(b) The Sheriff shall evaluate each franchise application or proposal to determine whether the operation of the business which the applicant or party submitting the proposal represents would involve an unreasonable risk to the health, safety or general welfare of the public. In making such a determination the Sheriff shall consider the character of the applicant or party submitting the proposal and each director, officer, manager and other person who exercises policy control over the operations of the applicant or proponent, the business responsibility of the firm which the applicant or party submitting the proposal represents, and the manner in which the firm intends to conduct its business.

(c) The Sheriff shall notify WMR of the results of his investigation of each application or proposal. If the Sheriff recommends disapproval of the application or proposal, his reasons for disapproval shall be specified in writing. He shall forward a copy of the statement of reasons to WMR and shall provide a copy to the applicant or party submitting the application.

7. Other.

(a) Any other evidence that demonstrates that the applicant is able to render and subsequent transportation, and/or disposal services in accordance with applicable federal, state and local statutes.

(b) Such additional information as may be reasonably requested by the Administrator.

(c) During the application or proposal period and during the full term of any franchise all information contained in the franchise application shall be kept up-to-date by the applicant who shall file a new verified statement within forty-eight (48) hours of any change indicating in detail the nature of any change in the information.

D. The application shall be signed by the person applying for the solid waste collection franchise or, in the case of a partnership or corporation, by a person authorized to bind the partnership or corporation.

#### **1.01.090 Franchise Application Review Process**

A. The Board may award franchises for the collection of commercial solid waste within the SWA region. The franchises awarded by the Board shall be granted to currently licensed private haulers meeting all terms and conditions of both this code and the franchise agreement.

B. Applicants may submit their completed application for a franchise, as provided in 1.01.080, to the Administrator, for review and consideration at any time during a designated application period. The Administrator, shall review such submittals and either make a recommendation to the SWA Board to award such franchise, or notify applicant of denial, within sixty (60) days of receiving a completed application.

C. The Administrator, shall take into consideration all components of the completed application, including but not limited to:

1. The ability of the applicant to meet all terms of the agreement;

2. Any history of civil or criminal convictions that may compromise the public's interests; and

3. The completeness, accuracy, and validity of the application. The Administrator, shall also have the authority to verify independently any and all statements made and implied in the application. The Administrator may also request clarification from applicant of any or all elements of the submitted application.

D. After the sixty (60) day review period, the Administrator, shall either:

1. Deny an award and notify the applicant in writing of the reasons why the award was denied; or

2. Recommend to the SWA Board that a franchise be awarded.

E. Upon concurrence with a positive recommendation, the SWA Board will award the franchise or will delegate authority to the Administrator, to award the franchise within a reasonable period of time. The Administrator will notify applicant in writing of an award.

### **1.01.100 Appeal Upon Denial of Award**

A. Within thirty (30) days of written notification of award denial or within sixty (60) days of Administrator's failure to act on the franchise application, applicant has the right to meet with the Administrator, to review the items cited in the written notice and provide any additional evidence to support an award. Within fifteen (15) days of such meeting, the Administrator will make a final, written determination of the application, based on the reviews of additional evidence, together with the original application. Administrator will send a copy of all final, written determinations, including reasons for denial, if any, to both applicant and the Board.

B. Applicant may, within ten (10) days after receiving the Administrator's final denial, request a public hearing before the Board by submitting to the Clerk of the Board a written petition for an appeal hearing. If a public hearing is requested, the Clerk of the Board shall set the matter for hearing at the next regularly scheduled Board meeting or any later date as agreed upon by the applicant and Clerk of the Board. At such hearing, applicant may present evidence in writing and through testimony of its employees and others relevant to the application. During such hearing, the Board may demand from the applicant such additional information, as the Board may deem relevant and necessary. Standard rules of evidence are not in effect at such public hearing, and the applicant shall have the burden of proof to show facts demonstrating that the applicant does in fact meet the requirements of this code. Any hearing may be continued or adjourned to a stated time and place without the giving of further notice. The Board will provide applicant with a written explanation of its determination on the application within thirty (30) days of such hearing. The Board's decision is final.

C. If the term of an applicant's existing franchise expires while the application is under SWA review, the SWA Board or the Administrator, may administratively extend the term for such period of time as is required to complete the appeal process.

### **1.01.110 Awarding of Franchise**

A. A franchise shall become effective only once the applicant and the SWA Administrator have signed a written agreement, and upon applicant's satisfying all of the requirements and conditions set forth in both this code and the franchise agreement.

B. Prior to performing any services provided under the award of a franchise, franchisee must provide to the SWA Administrator, copies of all required certificates of insurance, and copies of all required truck inspection forms as enumerated in the franchise agreement and this code. Should franchisee fail to maintain all such insurance and bonding requirements, uninterrupted for the term of the agreement, the SWA will immediately suspend or terminate the franchise.

C. If the franchisee's description of vehicles and equipment, as required under 1.01.080, has changed between the application date and the effective date of the franchise agreement, franchisee must submit to Administrator, an amended description, including all identification elements required under 1.01.080, prior to commencing services authorized in the agreement.

#### **1.01.120 Requirements for Franchise Effectiveness**

A franchise granted pursuant to this part shall not become effective unless and until all of the following requirements have been satisfied:

- A. The ordinance granting the franchise is effective.
- B. The applicant and the SWA Administrator have executed a franchise agreement.
- C. Within twenty days (20) from the date of adoption of the ordinance granting the franchise, or delegating authority to the Administrator, to grant the franchise, the applicant to whom a franchise has been granted has filed with the Clerk of the Board evidence of compliance with the insurance requirements specified in the franchise agreement.

#### **1.01.130 Term of Franchise**

The initial term for any franchise agreement shall not exceed five (5) years. The SWA Board may extend any such agreement under the terms and conditions provided for in the agreement. The SWA Board hereby empowers and grants to the Administrator the authority to extend the term of the Franchise agreement upon mutual written consent by Franchisee and SWA Board.

#### **1.01.140 Termination or Suspension of Franchise**

A. The Board, or the Administrator pursuant to 1.01.060 (D), shall have the right to terminate any franchise granted pursuant to this code if the Board or Administrator finds, after a public hearing following not less than fourteen (14) days written notice to the franchisee, that:

1. The grantee has failed to comply with, or to do anything required of the grantee by, applicable provisions of the SWA Joint Powers Agreement, provisions of this code, provisions of the ordinance granting the franchise, or provisions of the franchise agreement; or
2. Any provision of this part becomes or is declared to be invalid and the Board expressly finds that such provision constitutes a material consideration to the grant or continuation of such franchise.

B. Any franchise granted pursuant to this part shall automatically be suspended whenever the grantee:

1. Fails to keep in full force and effect the insurance required by the franchise agreement; or
2. Fails to keep in full force and effect any applicable licenses or permits required by federal, state or local law.
3. The grantee has not conducted any solid waste collection activity for a period of twelve (12) consecutive months.

The suspension shall remain in effect until the grantee provides documentation satisfactory to the Administrator, verifying that the reason for the suspension specified above no longer exists.

C. The Administrator may suspend any franchise granted under this part if the grantee fails to submit timely reports as described in 1.01.190. The Administrator must give fifteen (15) days written notice before suspending the franchise due to failure to submit timely reports. The suspension shall remain in effect for the period specified in the

Administrator's notice unless the suspension is reversed or modified by the Administrator or upon appeal by the franchisee to the Board.

D. In the event the franchise granted pursuant to this part is terminated, the grantee shall have no right or authority to engage in commercial solid waste collection, transportation or disposal operations in the SWA region unless and until a subsequent commercial solid waste collection franchise is granted to the grantee. Nothing herein shall require the SWA to grant any subsequent franchise to the grantee.

E. In the event the franchise granted pursuant to this part is suspended, the grantee shall have no right or authority to engage in commercial solid waste collection, transportation or disposal operations in the SWA region during the period of suspension.

F. In the event any franchise granted pursuant to this part is terminated under 1.01.140 (A) above, then within the time period specified by the SWA Board, the grantee shall:

1. Remove all of the grantee's, and any subcontractor's, solid waste containers from all service locations where services have been provided pursuant to such franchise; and

2. Properly dispose of any and all solid wastes in the containers at the time of removal.

3. Pay to SWA any and all outstanding fees due and/or debts, including but not limited to, Franchise Fees and delinquent charges.

G. If the grantee fails to remove any solid waste container or to properly dispose of any solid waste in any container within the time period specified by the SWA Board, the SWA may remove the container and/or dispose of the solid waste therein and may charge the grantee for the SWA's costs. The grantee shall pay to the SWA all of the costs incurred by the SWA in such removal and/or disposal within ten (10) days of the date of the SWA's invoice for such costs.

H. Notwithstanding any other provisions of the Franchise Agreement and 1.01.150 below, Franchisee may relinquish or otherwise terminate its SWA franchise with 30 days written notice to the Administrator.

#### **1.01.150 Franchise Transfer or Assignment**

Any franchise granted pursuant to this part is a privilege to be held in trust by the original grantee. Any franchisee shall not sell, lease, transfer, assign or otherwise dispose of, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy, reorganization under bankruptcy laws or otherwise, a franchise issued pursuant to this code without the prior consent of the Board. Any such consent of the Board shall be subject to such terms and the Board may prescribe conditions as may be prescribed by the Board. This restriction includes the transfer of ownership of the franchise, or a majority of the ownership or control of the franchisee, or the conveyance of a majority of the franchisee's stock to a new controlling interest. Franchises shall become void upon the abandonment of same by franchisee.

#### **1.01.160 Franchise Fees**

A. Each person engaging in the business of collecting, transporting or disposing of commercial solid waste kept, accumulated or generated in the SWA region shall pay a franchise fee to the SWA. The Board shall set the franchise fee by resolution.

B. Franchise fees shall be payable on a monthly basis, and shall be due and payable on the first day of the second month immediately following the month in which collection services were provided. Each payment shall be calculated in accordance with the provisions of this code.

C. The required franchise fee shall be paid to the SWA Administrator. Each payment shall be accompanied by a written statement, verified by the person making the payment, or a duly authorized representative of the person, showing the calculation of the franchise fee payable in such form and detail as the Administrator, may require and such other information as the Administrator, may determine is material to a determination of the amount due.

D. No statement filed under this chapter shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the SWA from collecting by appropriate action the sum that is actually due and payable.

E. The payment of franchise fees to the SWA pursuant to this part shall be in addition to any license fee or business tax prescribed by any local jurisdictions for the same period.

F. If franchise fees are not paid by the grantee at the times required by this chapter, then in addition to the franchise fees, the grantee shall pay a late payment charge in an amount equal to ten percent (10%) of the franchise fee that is due plus interest equal to one and one-half percent (1 ½%) for each month in which the franchise fee was not timely paid. This late fee will be a minimum of \$200 but will not exceed \$1000. The Administrator may, at his/her sole discretion, charge and collect the delinquent franchise fees and any and all late payment charges from the financial guarantee mechanism required in article 1.101.080 (C) (4) of this Code.

G. Commercial Solid Waste Franchise fees shall be payable on all gross collection revenues collected by a franchisee from its commercial solid waste collection customers located within the SWA region. The franchise fee shall be calculated based on gross collection revenues prior to franchisee imposing the franchise fee on its customers. For any new service agreement or service agreement amendments executed by a franchisee after July 1, 2002, franchisees shall also pay franchise fees on revenues received from federal and state governments, provided that a franchisee's franchise agreement requires such payment.

#### **1.01.170 Use of Franchise Fees**

The SWA fees and revenues collected pursuant to this code shall be deposited into the SWA Fund and, in accordance with the limits set in the SWA annual budget, funds may be paid out of the SWA Fund to cover SWA administrative, program and member distributions.

#### **1.01.180 Franchise Operations**

A. All new customer agreements executed after the effective date of the franchise must contain clauses that automatically terminate such customer agreements in the event that the franchise or franchise agreement is terminated. Upon termination of any franchise, franchisee is required to notify all its customers in writing within thirty (30) days of such termination and provide verification to the General Manager/Engineer, and/or his or her designee.

B. Franchisee must offer recycling services to each of its customers or provide its customers with a list of companies who provide recycling services in the area.

C. The agreement shall provide for the requirements relating to the frequency and hours of collection, the size, placement and care of the containers, and special collections.

**1.01.190 Reporting Requirements.**

A. The grantee shall file with the Administrator, a quarterly report of the quantities of commercial solid waste collected, transported, diverted, and/or disposed. Such report shall be in such form, including electronic form, and detail as required by the Administrator. Specifically, the report shall the following information: (i) the commercial solid waste tonnage collected and removed within the SWA region during the previous quarter; (ii) the commercial solid waste tonnage collected and removed during the previous quarter within the SWA region that was diverted and the location of the facility where such solid waste was diverted; (iii) the commercial solid waste tonnage collected and removed within the SWA region that was disposed of during the previous quarter and the location of the disposal facility where the disposal of such waste occurred; and (iv) the progress in implementing its Diversion Plan and achieving the diversion performance requirements set forth in 1.01.230 hereof.

B. Franchisees may use information supplied by certified MRFs to meet the requirements of this chapter.

C. All franchisees shall maintain quarterly records, on forms, including electronic forms, prescribed by WMR, containing such information as may be required by WMR pertaining to the number and types of accounts served by the franchisee. This information shall be provided to WMR upon request. If upon review of this information by WMR it is determined that the franchisee has claimed credit for the diversion of solid waste that is already being diverted by a third party for purposes of satisfying the diversion requirements set forth in 1.01.230, such action by the franchisee shall constitute cause for termination or suspension of the franchise pursuant to 1.01.140 hereof.

D. WMR shall establish guidelines, forms and other appropriate material to assist franchisee in preparing the reports required by this chapter. A franchisee's failure to file the reports required by this chapter shall constitute cause for termination or suspension of its permit pursuant to 1.01.140 hereof.

E. To the extent permitted by the California Public Records Act, any reports, plans, and information required by this code or the franchise agreement shall be deemed confidential and shall not be subject to public disclosure except for each franchisee's aggregate totals.

F. If the quarterly report required under 1.01.190 (A) is not filed by the due date specified in the franchise agreement, the report shall be deemed delinquent, and the grantee shall pay to the SWA a delinquent report charge in the amount of fifty dollars (\$50.00). If the report remains delinquent for more than fifteen (15) days, the grantee shall pay to the SWA a delinquent report charge in the amount of one hundred dollars (\$100.00). Such delinquent report charge shall be in addition to any franchise fees or other charges payable by the grantee for the same period of time.

**1.01.200 Recycling Facility Reporting Requirements**

A. All recycling facilities shall provide semi-annual written reports to the Administrator, which include the following information for the previous six (6) months: (i) the total aggregate tonnage of recyclable material received from generators located within the SWA region; (ii) the aggregate tonnage of recyclable material received from waste management and recycling operations in the SWA region; (iii) the aggregate tonnage of recyclable material received from franchise operating within the SWA region; and (iv) the total aggregate amount of residuals generated at the facility and disposed of at a permitted solid waste disposal facility, expressed as a percentage of total tonnage received. Such reports shall be due forty five (45) days after the close of the six-month (6-month) reporting period.

B. WMR shall establish guidelines, forms and other appropriate material to assist facility operators in preparing the semi-annual report required by this section.

C. To the extent permitted by the California Public Records Act, any report or other information required by this code shall be deemed confidential and shall not be subject to public disclosure except for aggregate totals for all facilities.

D. Recycling facilities receiving only scrap metals, agricultural waste, inert materials, and/or discarded, white-coated, major appliances, that are not normally disposed of and thus cannot be counted towards the state's diversion requirements, are exempt from the reporting requirements of this code.

#### **1.01.210 Restrictions on Franchisees**

The following restrictions shall be applicable to franchisees:

A. Except as provided for in 1.01.230 and except to meet the two-truck requirement of 1.01.080 (C)(3)(c), no franchisee shall, by contract, subcontract, or otherwise, share with another franchisee any office space associated with operations under a franchise.

B. No franchisee by contract, express understanding or indirectly, shall, in cooperation with another franchisee, divide, segregate or apportion any territory within the SWA region for the purpose of restricting competition within a particular territory.

C. No franchisee shall, directly or indirectly, enter into any contract, express understanding or other transaction with another franchisee for the purpose of fixing customer rates or charges or otherwise maintaining rates or charges at a particular level.

D. No franchisee or any director, officer, partner, joint venturer, sole proprietor or corporate owner thereof, shall be a controlling shareholder of, be a partner, joint venturer or sole proprietor, own any other interest in or be employed by another franchisee. No franchisee which is owned in whole or in part by a corporation shall be effectively controlled by a person or entity by virtue of that person or entity's ownership of shares in the corporation, if the same person or entity otherwise controls another franchisee. The sole remedy for violation of the provisions of this subparagraph shall be revocation or refusal to renew a franchise.

E. Each shall provide to the Administrator, such information as the Administrator, determines is reasonably necessary to facilitate effective administration of the franchise under the provisions of this code. Diversion information may be provided consistent with the framework for materials recovery facility (MRF) services and reporting of 1.01.250.

F. Notwithstanding any other provisions of this code, it shall be allowable for a franchisee having an interest in a materials recovery facility (MRF) to provide a reporting service, a solid waste processing service, and/or a recyclables processing service to another franchisee consistent with the framework for MRF services and reporting of 1.01.250.

**1.01.220 Diversion Plans**

A. Each franchisee holding a franchise shall submit a Diversion Plan to WMR on an annual basis, no later than January 1 of each year. The Diversion Plan shall include a detailed description of how the franchisee intends to comply with the diversion requirements set forth in 1.01.230 hereof. The Diversion Plan must include a description of the methods the franchisee intends to use to satisfy its diversion requirements. WMR shall establish guidelines, forms and other appropriate material to assist franchisees in preparing the Diversion Plan required by this section.

B. Within ninety (90) days from the date of receipt of a Diversion Plan, WMR shall determine whether the Diversion Plan complies with the requirements of this section and, based on that determination, shall approve or disapprove the Diversion Plan. If WMR fails to approve or disapprove the Diversion Plan within such ninety (90) day period, WMR shall be deemed to have approved the Diversion Plan.

C. If WMR disapproves a Diversion Plan, WMR shall issue a notice of deficiency to the franchisee that identifies the specific reasons for the deficiency and specific recommendations on how to correct the identified deficiencies. Within thirty (30) days of receipt of the notice of deficiency, the franchisee shall correct the deficiencies and submit a revised Diversion Plan.

D. If WMR determines that the revised Diversion Plan still fails to meet the requirements of this section, WMR shall schedule a public hearing before the Board for the purpose of hearing testimony on the Diversion Plan and the deficiencies identified by WMR. After conducting the public hearing, the Board shall make a determination as to whether the Diversion Plan complies with the requirements of this section. If the Board determines that the Diversion Plan fails to comply with the requirements of this section, it may either grant the franchisee an additional period of time to correct any remaining deficiencies or revoke the franchise. If the Board grants the franchisee an extension, it shall continue the public hearing at which time it shall make a determination as to whether the franchisee has brought its Diversion Plan into compliance with the requirements of this section. If the Board determines that the Diversion Plan is still not in compliance at that time, the Board may revoke the franchise.

E. The failure to file a Diversion Plan shall constitute cause for termination or suspension of a franchise pursuant to 1.01.140 hereof.

**1.01.230 Diversion and Recycling Requirements**

Each franchisee shall divert at a rate of thirty percent (30%) by weight of all commercial solid waste collected and removed by it within the SWA region. For purposes of satisfying this diversion requirement, the franchisee shall not be given credit for the diversion of any source-separated or commingled recyclables that are already being diverted by commercial recyclers, brokers, and other recycling generators or by another third party. The franchisee shall likewise not be given credit for any increased diversion of

recyclable material collected and removed by it unless such increased diversion is reflected in a corresponding reduction in the amount of solid waste being disposed of by the franchisee. The rate of diversion required by franchisees shall be subject to annual review and adjustment to reflect changes in the total diversion rate for the commercial solid waste sector. Such an annual adjustment of the diversion required by franchisees shall take into account the amount of recyclable materials diverted by commercial recyclers, brokers, and other recyclables generators instituted subsequent to the effective date of this code. In such an annual adjustment, the weight of recyclables materials diverted by parties other than franchisees shall be allocated to individual franchisees on the basis of the relative weight percentage of total tonnage collected by each franchisee. Any reduction in the rate of diversion required by the franchisees below the rate of thirty percent (30%) shall require an amendment to this code.

**1.01.240 Recycling Incentive Fee**

A. Any franchisee not diverting thirty percent (30%) of its waste stream shall pay a "Recycling Incentive Fee" of twenty dollars (\$20.00) per ton for the tonnage shortfall that would be needed for the franchisee to be diverting waste in compliance with 1.01.230 of this code. The tonnage shortfall shall be based on quarterly reports and documented diversion reported by the franchisee, as determined by WMR staff, acting on behalf of the SWA.

B. The following formula will be used to address the difference in cost of recovery from a debris box waste stream and front-loader waste stream:

$$\text{Incentive Fee} \times \frac{(\text{Total Fleet} + \text{Debris Box Fleet})}{\text{Total Fleet}} = \text{Fee/ton}$$

This formula will be applied to each franchisee's truck fleet, and the tonnage shortfall, to determine each franchisee's incentive fee.

C. The implementation of the Recycling Incentive Fee does not relieve franchisee from the obligation of complying with the diversion requirements of 1.01.230. Further, a franchisee who collected commercial solid waste in the SWA region as of July 1, 1999 who was not in compliance with the thirty percent (30%) diversion requirement in the quarter beginning July 1, 1999, as determined by WMR staff, is required to increase diversion in subsequent quarters until it makes up the tonnage shortfall since July 1, 1999. Franchisees shall not be in compliance with this code, and, as such, subject to termination or suspension of their franchise, until such time as the franchisee makes up all diversion tonnage shortfalls. Failure to pay any Recycling Incentive Fee shall constitute grounds for the immediate suspension of the franchise, without advance notice or hearing, pending compliance by the franchisee with the requirements hereof.

D. Franchisees shall be responsible for reimbursement of audit costs for County staff, and any other County or Consultant services, to perform detailed follow-up audits where staff determines that documentation of diversion, as reported by franchisees, is inadequate. Where necessary, WMR staff will retain the services of an independent consultant to verify performance and conduct any necessary diversion audits.

E. Any moneys collected pursuant to this chapter shall be available to SWA for any use in its discretion.

### **1.01.250 MRF Certification**

A. WMR shall be authorized to make a certification that a MRF operation is capable of diverting a certain percentage of recyclable material from solid waste that would otherwise be disposed. Such a certification shall be based on an evaluation of an application by a MRF operator.

1. Once WMR has determined a certification application to be complete, WMR shall make its certification determination within ninety (90) days.

2. A certification by WMR shall specify the percent diversion at which the MRF is so certified.

B. MRF operators may seek a MRF certification by submitting an application with WMR.

1. A certification application shall specify the diversion level certification desired in terms of a percentage of the targeted waste stream(s) tonnage.

2. A certification application shall be in a form and content as may be prescribed by WMR.

3. A certification application shall provide historical information on facility performance in terms of tonnage handled, diverted from disposal, and disposed.

C. The level of diversion for a facility certification shall be based solely upon historical documented diversion of recyclable material at the facility that would have otherwise been disposed. The first certification for a facility may be based upon one quarter of operating performance.

D. MRF certifications shall be subject to quarterly review by WMR. WMR shall base its quarterly certification review on evaluation of facility diversion performance based on tonnage received, recyclables diverted that would have otherwise been disposed, and solid waste tonnage disposed.

E. For the purposes of complying with the diversion requirements of this code, franchisees using certified MRFs may claim diversion increases and corresponding disposal tonnage reductions at the level for which the MRF is certified for the tonnage of waste handled by the MRF for the franchisee.

F. For compliance with the franchisee reporting requirements of 1.01.190, certified MRFs may aggregate tonnage of wastes handled, diverted, and disposed for client franchisees. The certified diversion level shall apply to the facility and all tonnage handled at the facility, and need not be based upon individual loads taken to the facility by individual client franchisees. WMR shall establish reporting forms suitable for reporting such aggregated information for client franchisees.

### **1.01.260 Medical Waste**

A. Notwithstanding the requirements of 1.01.230 hereof, franchisees shall not be required to divert treated medical waste and such waste shall not be included in determining a franchisee's compliance with the diversion requirements set forth in 1.01.230.

B. All franchisees shall nevertheless on a quarterly basis report to WMR all combined or separately collected treated medical waste tonnage disposed of during the previous quarter by disposal location. WMR shall establish guidelines, forms and other appropriate material to assist franchisees in preparing such reports. A franchisee's failure

to file the required treated medical waste disposal reports shall constitute cause for termination or suspension of its franchise pursuant to 1.01.140 hereof.

C. No treated medical waste from commercial solid waste generators shall be delivered by a permittee to a materials recovery facility for the purpose of recycling.

**1.01.270 Inspection Authority**

A. Each franchisee shall at all times maintain accurate and complete accounts of all revenues and income arising out of its operations under the franchise granted pursuant to this code; all solid waste collected, transported and/or disposed of; the source of such solid waste; and the final destination of such solid waste. Grantee's books, accounts and records reasonably necessary for the enforcement of this code and the franchise agreement shall be made available for inspection, examination and audit during normal business hours by authorized officers, employees and agents of the SWA. The Administrator shall give written notice at least three (3) days prior to any inspection, audit or examination of these records.

B. Where the Administrator, determines that an audit is necessary, franchisees shall be responsible for reimbursement of audit costs, including any County or Consultant services, to perform audits of accounts of all franchisee revenues and income arising out of operations under the franchise granted pursuant to this code.

**1.01.280 Enforcement**

Except as otherwise expressly provided, the provisions of this code shall be administered and enforced within the SWA region on behalf of the SWA by the Administrator. The provisions of 1.01.310 (A), 1.01.320, 1.01.340 (A)(4), 1.01.400 and 1.01.410 (A) & (B) of this code shall be administered and enforced within the SWA region on behalf of the SWA by the County of Sacramento Environmental Management Department.

**1.01.290 Abatement Proceedings**

Any operation or activity contrary to the provisions of this code or a franchise agreement, including the terms and conditions of any franchise, is unlawful and shall constitute a public nuisance. The Administrator, is authorized to commence in the name of the SWA actions or proceedings for the abatement and removal and enjoining thereof in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate and remove such operation and restrain and enjoin any person, firm or corporation from so operating.

**1.01.300 Notices**

A. Whenever a provision of this code authorizes or requires a public hearing to be conducted by the Board, notice of the time, date, place and purpose of the hearing shall be served upon each franchisee who is affected by such hearing.

B. Any written notice or other communication to a franchisee which is authorized or required by this code shall be deemed served and effective for all purposes when deposited in the United States mail, postage prepaid, and addressed to the latest address of the franchisee shown on file in the SWA records pertaining to the franchise.

### **1.01.310 On-Site Storage and Container Requirements**

A. Every owner of any multiple family dwelling units and every owner, operator or keeper of any business with a fixed location in the SWA region which generates solid waste and/or recyclable materials shall provide and at all times keep within an enclosure, or conveniently located near an enclosure or building, water-tight containers for solid waste and suitable containers for recyclable materials, and shall cause to be deposited in such containers, and not elsewhere, all solid waste and/or recyclable materials which accumulates on the premises. The containers shall have tightly fitted covers and shall not leak or permit the escape of odors. Notwithstanding the requirements of this section, generators shall not be required to set out or store recyclable materials together with solid waste and generators shall be allowed to appropriately store recyclable materials for collection separate from solid waste.

B. Containers shall be clearly identified with the name, or recognizable corporate or company logo, and phone number of the franchisee that is legible from a distance of fifty (50) feet.

C. All containers used for the collection of solid waste must be franchisee-owned or generator-owned, such as a grocery store chain or construction contractor that generates waste and owns their own containers. It shall be unlawful for a franchised hauler to use containers owned by a third party to collect solid waste within the SWA region, or for an unfranchised hauler to set out containers in the SWA region.

D. It shall be unlawful for any person to fail to comply with the requirements of this section.

### **1.01.320 Signs**

Each franchisee shall have permanently displayed in a prominent place on the exterior of each truck utilized in the collection, removal or transportation of commercial solid waste under its franchise a sign which contains such information as is required by regulation of the Environmental Management Department adopted pursuant to the provisions of the California Code of Regulations, Title 14, Section 17344.

### **1.01.330 Office Required**

Every franchisee shall at all times maintain a central office within the SWA region, or within the metropolitan area immediately adjacent to the SWA region, where the agent, servant or representative of the franchisee can be reached by telephone 9:00 a.m. through 5:00 p.m., Mondays through Fridays, legal holidays excepted. Such office shall have a local telephone number so that customers served by the franchisee may contact the franchisee without the necessity of making a long distance telephone call.

### **1.01.340 Solid Waste Disposal Restrictions**

A. It shall be unlawful for any franchisee to do any of the following:

1. To operate or have an interest in a solid waste disposal site, other than a transfer/processing facility, within the SWA;
2. To operate a solid waste disposal area in the SWA region;
3. To enter into a billing, invoicing, subcontracting, or brokering agreement for the purpose of providing commercial solid waste collection services in the SWA region with

an operator of a solid waste disposal site, its principal employees, or affiliated companies; or

4. To dump any solid waste upon, or permit the same to fall upon, any property, road or highway other than the areas designated by this code for the disposal or dumping of solid waste.

B. The provisions of Section 1.01.340 (A)(4) shall be enforced by the Environmental Management Department.

C. Public agencies owning or having an interest in a solid waste disposal site shall be exempt from the requirements of this chapter.

#### **1.01.350 Use of Containers.**

No person other than a customer who has contracted for service with a franchisee, or a person with such customer's consent, shall deposit solid waste into a commercial solid waste bin, drop box or compactor placed in the SWA region by a franchisee for the purpose of receiving solid waste.

#### **1.01.360 Commercial Solid Waste and Recyclables Ownership**

Commercial solid waste and recyclables lawfully deposited in bins, drop-boxes or other containers used by a franchisee for collection for either disposal or recycling shall become the property of the franchisee upon its deposit in any such container.

#### **1.01.370 Indemnification**

Each franchisee must agree to defend, with counsel to be agreed upon by both parties, indemnify, and hold harmless, SWA and its agents, officers, servants, and employees, and each SWA member jurisdiction, and its agents, officers, servants, and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to SWA employees, agents, or officers which arise from, or are connected with, or are caused or claimed to be caused by acts or omissions of franchisee, or their agents, officers or employees, in the performance of the nonexclusive franchise agreement, or in performing the work or services therein, and all costs and expenses of investigating and defending against same; provided, however, that franchisee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the SWA, its agents, officers, or employees. This indemnification requirement shall be included in every franchise agreement.

#### **1.01.380 Insurance**

A. Each franchisee shall maintain, at its own expense, insurance coverages, as provided in the franchise agreement or as established from time to time by the Administrator. All such insurance shall remain in effect, uninterrupted, through the term of the franchise agreement.

B. Minimum insurance coverage shall include, at a minimum as determined by the GME, the following items, in amounts to be determined by the Administrator: Comprehensive General Liability and Insurance Services Office covering Broad Form Comprehensive General Liability Automobile Liability; Worker's Compensation insurance as required by the Labor Code of the State of California and Employers' Liability insurance.

C. The SWA and each member agency, and in their capacities as such, their officers, agents and employees shall be named as primary insureds in such policies. All such policies shall contain a provision requiring that written notice be mailed to WMR by the insurer not less than thirty (30) days in advance of the cancellation, modification or reduction of the insurance, or failure to renew such insurance, whether by the insurer or insured, and whether for non-payment of premium or otherwise. Certificates of Insurance shall be filed with WMR prior to the issuance of any permit.

D. Any act, omission or circumstance which results in the holder of a franchise being out of compliance with the requirements of this section during the term of the franchise shall constitute grounds for the immediate suspension of the franchise, without advance notice or hearing, pending re-establishment of compliance by the franchisee with the requirements hereof.

### **1.01.390 Rules and Regulations**

A. The collection and subsequent transportation and disposal of commercial solid waste within the SWA region is under the supervision of the Administrator, who shall have the power to promulgate rules and regulations regulating such collection and subsequent transportation and disposal, including but not limited to:

1. Commercial solid waste generation, storage, recycling, recovery, accumulation, collection, removal, transportation and disposal;
2. The manner in which commercial solid waste collection and recycling services are provided;
3. Types of commercial solid waste and recycling containers and vehicles used therefore;
4. The operation and maintenance of sanitary methods of commercial solid waste disposal;
5. Reporting requirements for recycling facilities;

B. A copy of said rules and regulations and all amendments thereto shall be sent, postage prepaid, to all affected franchisees addressed to their last place of business. To the extent not otherwise provided by law, it shall be unlawful for a franchisee to collect and subsequently transport or dispose of commercial solid waste contrary to any regulation, order, permit or requirement promulgated by the Administrator.

C. All such rules and regulations shall be consistent with the provisions of this code and shall be effective on the thirtieth (30th) day following the filing of any such rules and regulations with the Clerk of the Board.

D. Any person who asserts that he or she is aggrieved by the terms or application of a regulation issued pursuant to this section may appeal the issuance of such regulation by filing a written notice of appeal with the Clerk of the Board. The notice of appeal shall specifically identify the regulation or regulations from which the appeal is taken and the reasons for the appeal. Upon receipt of such notice, the Clerk of the Board shall schedule the appeal for a public hearing by the Board, notice of which shall be given in the manner prescribed by 1.01.300 hereof. At the conclusion of the public hearing the Board shall be vested with jurisdiction to deny the appeal or to rescind or modify the regulation. The Board's determination in this regard shall be final.

E. Any regulation from which an appeal is filed prior to its effective date shall not become effective until the date of a determination by the Board of the appeal. Any

regulation from which an appeal is filed on or subsequent to the effective date thereof shall remain in full force and effect during the pendency of the appeal, and any decision that rescinds or modifies the regulation shall apply prospectively.

F. It shall be unlawful and constitute a violation of this code for any person to violate or otherwise fail to comply with any rule or regulation issued pursuant to this section.

**1.01.400 Vehicle Inspection and Tags**

A. All vehicles and other equipment used in the collection and subsequent transportation, and disposal of commercial solid waste in the SWA region shall be inspected as often as the Administrator, deems necessary and at such times and places as shall be designated by said Administrator. No vehicle shall be used in the collection and subsequent transportation, and/or disposal of commercial solid waste within the SWA region unless it carries a current, unrevoked tag or decal issued by the SWA authorizing such activity. The Administrator, shall provide for each vehicle operated by franchisee, a durable tag or decal upon completion of a satisfactory vehicle inspection. Such tag or decal shall be securely fastened and maintained by the franchisee on each vehicle so as to be clearly visible. The Administrator, may suspend the tag or decal of any vehicle that fails to meet the requirements of this section, and such vehicle shall not be used for the collection and subsequent transportation or disposal of refuse until the tag or decal has been reinstated by the Administrator. In the event any vehicle fails to meet the requirements of this code, or in the event any vehicle becomes temporarily or permanently inoperable or unavailable, the franchisee may transfer said vehicle's tag or decal to another vehicle to be operated by franchisee, which vehicle has passed inspection and does meet the requirements of this chapter. The franchisee must notify WMR of any changes to its vehicles or tags.

B. All trucks and containers used in the collection, removal, transportation or storage of commercial solid waste in the SWA region shall be subject to inspection by the Environment Management Department for the purpose of determining whether or not the trucks and containers comply with California Code of Regulations, Title 14, Section 17341 through 17345 or any other regulatory requirements as determined by EMD.

C. Franchisee shall be responsible for all of the costs of all inspections under this Article and any others inspections or vehicle approvals, certifications, permits or authorizations to insure compliance with this Chapter.

**1.01.410 Vehicle Requirements**

A. The bodies of vehicles used in the collection, removal or transportation of commercial solid waste in the SWA region shall have beds of metal or other impervious material which can be cleaned, and shall otherwise be of a type approved by the Environmental Management Department adopted pursuant to the California Code of Regulations, Title 14, Section 17341.

B. The Environmental Management Department shall be authorized to issue administrative regulations pertaining to specifications for vehicles and containers, the cleansing and disinfection thereof, and other sanitary measures in connection therewith.

C. The franchisee must be the registered owner, as defined by California Vehicle Code Section 505, of all vehicles used in the collection, removal, or transportation

of commercial solid waste in the SWA region under their franchised operations. If the applicant does not own at least two collection vehicles, a back-up agreement executed with another franchised hauler must be submitted for the provisions of meeting the two-truck requirement and/or ensuring that solid waste collection will continue if the franchised hauler's equipment is out of service.

**1.01.420 Covered Load Requirement**

A. All franchisee vehicles and all privately owned or operated vehicles using solid waste disposal facilities in the SWA shall have their vehicle loads covered, with a tarp or equivalent cover, to ensure protection from littering during transportation from the origin of the trip to any waste disposal facility located in the SWA region.

B. All vehicles hauling materials with the load originating in the SWA region to a waste disposal facility located out of the SWA region shall have their loads "covered" while in transit in the SWA region.

C. Every permitted or non-permitted waste disposal facility located in the SWA region shall post signs notifying the public that it is illegal to haul uncovered loads to the facility. These facilities shall cooperate with the SWA enforcement staff by providing covered load education and promotion information to their customers to help assure the effectiveness of this code.

D. This provision shall be enforced by WMR staff acting as the SWA staff. WMR, the Environmental Management Department, and the Sacramento County Code Enforcement agencies shall have citation power to enforce this code in the City of Sacramento and the County unincorporated area.

E. Violation of this provision shall be an infraction, and may result in the issuance of a citation, punishable by a fifty-dollar (\$50.00) fine for the first violation, a one hundred dollar (\$100.00) fine for the second violation, and a two hundred dollar (\$200.00) fine for succeeding violations.

**1.01.430 Rights Reserved to SWA**

In addition to all other rights reserved to the SWA under this code, the following shall apply:

A. There is hereby reserved to the SWA every right and power, and the exercise thereof, which is reserved or authorized by any provision of any lawful ordinance or resolution of the SWA, whether enacted before or after the effective date of this code.

B. Neither the granting of any franchise nor any provision of any franchise shall constitute a waiver of or a bar to the exercise of any governmental right or power of the SWA.

C. The grantee shall have no recourse whatsoever against the SWA, its officers, employees or agents or any of the SWA member entities, their officers, employees, or agents for any loss, cost, expense or damage arising out of any provision or requirement of this code or of any franchise issued under this code or because of the enforcement of this code.

D. There is hereby expressly reserved to the SWA the power and authority to amend any chapter of this code so as to require additional or greater standards on the part of the grantee and the power and authority to increase the franchise fees to be paid by the grantee pursuant to 1.01.160.

**1.01.440 Other Franchise Provisions**

A. The SWA Board may expand or contract the scope of franchise agreements over time due to changes in law or interpretations of law.

B. The Administrator shall have the right to inspect franchisee's records for purposes of determining AB 939 and other reporting requirements. The Administrator may also inspect franchisee's records to determine proper calculation and payment of franchise fees. The Administrator will provide franchisee with at least three (3) days advanced written notice of its intent to inspect any of franchisee's records.

C. The Administrator retains the right to terminate or suspend the agreement, as provided in the agreement.

D. The Administrator may restrict the hours of collection of solid waste or recyclable materials by franchised waste haulers in designated areas. Such restrictions shall be imposed only after promulgation of rules pursuant to section 1.01.390 of this Chapter which specify the criteria and process for imposing such restrictions.

**1.01.450 Related to Source Separated Material**

At direction of the Administrator, franchisees claiming that specified gross receipts are excluded from calculation of franchise fees will sort source separated materials or characterize or analyze those source separated materials by weight in a manner satisfactory to the Administrator in order to establish to satisfaction of Administrator that they are "source separated materials" as defined in this Chapter. Disputes over whether gross receipts are excluded from calculation of franchise fees will be resolved by the Administrator. The Administrator's decision may be appealed to the SWA Board, explaining the basis of the appeal, within 10 days of the Administrator's decision and the prepayment of the SWA's projected costs and expenses of conducting the appeal, including related staff time and fees of consultants to the SWA. The burden of proof will be on the franchisee challenging the Administrator's decision. The SWA Board will hear the appeal and render a written decision that will be final. The SWA will return any excess prepayments to the franchisee within 30 days of rendering the written decision by the SWA Board that directs return of any excess prepayments, or the franchisee will reimburse the SWA additional costs and expenses within 30 days of rendering the written decision by the SWA Board that directs the franchisee to reimburse the SWA.

SECTION 2. This ordinance was introduced and the title thereof read at the regular meeting of the Board of Directors on \_\_\_\_\_ and on \_\_\_\_\_ further reading was waived by the unanimous vote of the Directors present.

This ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of

Directors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of Sacramento.

On a motion by Director \_\_\_\_\_, seconded by Director or \_\_\_\_\_, the foregoing ordinance was passed and adopted by the Board of Directors of the Sacramento Regional County Solid Waste Authority, this \_\_\_\_\_ day of \_\_\_\_\_ 2007, by the following vote:

AYES: Directors,

NOES: Directors,

ABSENT: Directors,

ABSTAIN: Directors,

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Chair of the Board of Directors  
of the Sacramento Regional County  
Solid Waste Authority

(SEAL)

ATTEST: \_\_\_\_\_  
Clerk, Board of Directors