

AMENDMENT #1 TO

AMENDED AND RESTATED FRANCHISE AGREEMENT BETWEEN THE COUNTY OF TUOLUMNE AND MOORE BROS. SCAVENGER CO., INC. FOR COLLECTION OF SOLID WASTE IN COLLECTION AREA 4 AS PER THE MAP ENTITLED "SOLID WASTE COLLECTION AREAS OF TUOLUMNE COUNTY"

This Amendment #1 ("Amendment #1") is entered into this 4 day of June, 2013 by and between the County of Tuolumne ("County") and Moore Bros. Scavenger Co., Inc. ("Franchisee").

WHEREAS, on June 28, 1994 the County and the Franchisee entered into a Franchise Agreement For Collection of Solid Waste in Collection Area 4 ("Agreement"); and

WHEREAS, on April 17, 2012 the Agreement was Amended and Restated; and

WHEREAS, the current language in the Agreement regarding the posting of a surety for full and faithful performance is limited to a Faithful Performance Surety Bond; and

WHEREAS, due to the length of the Agreement, the Franchisee is unable to obtain a Faithful Performance Surety Bond; and

WHEREAS, other agreements entered into by County offer other options for posting a surety for full and faithful performance.

NOW THEREFORE, THE COUNTY AND THE CONTRACTOR AGREE as follows:

1. Amend Article 5. Section C to read: Franchise, shall, prior to this Agreement becoming effective, deliver to the Risk Manager a surety for full and faithful performance in the form of a performance bond, a letter of credit, cash, certificate of deposit or assignment of savings account, in the amount of ten thousand (\$10,000) which shall be approved by the Risk Manager to secure the full and faithful performance of the terms, obligations and agreements on the part of Franchisee to be performed. Risk Manager shall retain the right to approve or disapprove of Franchisee's surety.

The surety shall not be subject to cancellation and shall be in full force and effect for at least one year, and shall be renewed, or a new surety furnished, subject to the same approval, not less than thirty (30) days prior to the expiration of the then existing surety on file with Risk Manager. Franchisee shall, at all times during the term of this Agreement, maintain a surety in accordance with the terms of this paragraph, in full force and effect.

2. Except as amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

4/17/2012

**AMENDED AND RESTATED  
FRANCHISE AGREEMENT  
BETWEEN THE COUNTY OF TUOLUMNE AND  
MOORE BROS. SCAVENGER CO., INC.  
FOR COLLECTION OF SOLID WASTE  
IN COLLECTION AREA 4  
AS PER THE MAP ENTITLED  
"SOLID WASTE COLLECTION AREAS OF TUOLUMNE COUNTY"  
APPROVED BY THE BOARD OF SUPERVISORS  
RESOLUTION NO. 136-94 ADOPTED ON JUNE 28, 1994**

## AMENDED AND RESTATED FRANCHISE AGREEMENT

This Amended and Restated Franchise Agreement ("Agreement"), made effective April 17, 2012 ("Effective Date"), by and between COUNTY OF TUOLUMNE, ("County") and Moore Bros. Scavenger Co., Inc, ("Franchisee"). This Agreement amends and restates that certain Franchise Agreement made March 28, 1995, by and between the County and Moore Bros. Scavenger Co., Inc, as amended by amendments dated September 14, 1999, June 13, 2000 and March 13, 2001 ("Original Agreement"). This Agreement supersedes the Original Agreement in its entirety.

WHEREAS, the County wishes pursuant to Title 7 of the Tuolumne County Ordinance Code to enter into an exclusive franchise agreement with Franchisee to provide Solid Waste Collection and Recycling Services for customers within Collection Area 4 in the County of Tuolumne; and

WHEREAS, Franchisee wishes to enter into a franchise agreement with County for said services.

NOW THEREFORE, County and Franchisee hereby agree as follows:

### **I. Definitions.**

- A. Definitions for terms and phrases not defined in this Agreement shall have the meanings given to them in Title 7 of Tuolumne County Ordinance Code.
- B. References to "Title," "Chapter" or "Section" are to the Tuolumne County Ordinance Code unless otherwise indicated.
- C. "Acceptable Waste" means all Solid Waste and Recyclables other than the following: Hazardous Waste, special waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Franchisee reasonably believes would, as a result of or upon disposal, be a violation of local, state or federal law, regulation or ordinance, including land use restrictions or conditions, and waste that cannot be disposed of in Class III landfills; but not including de minimis volumes or concentrations of waste of a type and amount normally found in residential solid waste.

### **II. Grant of Franchise.**

Franchisee shall have the sole and exclusive right and franchise, in accordance with the terms and conditions of this Agreement and Title 7, to provide collection services for Residential, Commercial and Industrial Customers within the County of Tuolumne for Collection Area 4 as described in the map adopted by Resolution No. 136-94 of the Tuolumne County Board of Supervisors. County agrees not to let any contract to, or enter into any contract with any other person for Solid Waste collection or Recycling services required to be performed by

Franchisee. County agrees not to engage other individuals or itself become involved in the activity of collection services or any other activity that would impair the exclusive right of the Franchisee.

**III. Term of Franchise.**

- A. The term of this Agreement shall commence on the Effective Date and shall terminate September 30, 2023, unless sooner terminated as hereinafter provided.
- B. Upon mutual written agreement at least eighteen months prior to the end of the term in paragraph A, this Agreement may be renewed for an additional term of ten (10) years.
- C. Notwithstanding the Effective Date of this Agreement, the date of October 1<sup>st</sup> of each subsequent year shall be deemed to be the "anniversary date" of this Agreement. September 30, 2012, shall be deemed the end of the first contract year.
- D. The franchise in this Agreement does not include those permits authorized by the Solid Waste Manager under Section 7.12.060.

**IV. Services of Franchisee.**

- A. Franchisee undertakes and agrees, in accordance with the terms and conditions herein contained, to provide the Solid Waste Collection and Recycling Services for Residential, Commercial and Industrial Customers comprised of furnishing the necessary labor, vehicles, equipment, and facilities to provide such services. Franchisee has no obligation to collect Solid Waste or accept Recyclables that are not Acceptable Waste.
- B. Residential Solid Waste Collection. The Franchisee shall each week collect and dispose of all Solid Waste from Residential Customers within Collection Area 4 that is placed at the roadside on public streets, alleyways or other locations approved by Franchisee.
- C. Recycling. The Franchisee shall accept recyclable materials from residents and businesses in Collection Area 4 at the drop-off recycling facility located at the headquarters for Moore Bros. Scavenger Co., Inc. at 11300 Wards Ferry Road, Big Oak Flat, CA. Recyclable materials accepted are listed in Exhibit D.
- D. Commercial Services. Commercial Customers may subscribe for Solid Waste Services at the rates specified for Commercial Customers for such services in Resolution 99-10 or subsequent resolutions superseding Resolution 99-10.
- E. Industrial Services. Industrial Customers may subscribe for Solid Waste Collection Services at the rates specified for Commercial Customers for such

services in Resolution 99-10 or subsequent resolutions superseding Resolution 99-10.

- F. Operations Plan. Franchisee shall annually submit to the County an updated operations plan, including, but not limited to, franchise operating plan contents as described in Section 7.16.030. Changes to the operations plan shall be submitted to the Solid Waste Manager for approval. Such approval shall not be unreasonably withheld.
- G. Recycling Public Awareness Program. County and Franchisee shall work jointly to develop and implement the Recycling Public Awareness Program described below:
1. Franchisee will distribute by mail or billing inserts new program announcements.
  2. Franchisee will distribute information regarding the recycling program.
  3. County and Franchisee will cooperate in contacting local media to seek coverage of the recycling program to increase citizen awareness of the benefits of recycling.
  4. Franchisee will make presentations at public meetings and community events upon request.
  5. County reserves the right to approve any and all public awareness materials prior to distribution.
  6. Franchisee agrees to sponsor and provide recycling/source reduction information as described in Exhibit A.
- H. The California Public Resources Code requires the County to prepare and implement a Source Reduction and Recycling Element ("SRRE") and a Household Hazardous Waste Element ("HHWE"). Franchisee shall be responsible for implementing provisions of these plans to the extent such plans impose duties upon Franchisee. The County Administrative Officer or his/her designee ("CAO"), Solid Waste Manager and Franchisee shall meet annually prior to October 1<sup>st</sup> to determine the responsibilities for the SRRE and HHWE and determine if any rate adjustments are necessary to fund these programs for the subsequent contract year after the anniversary date. The CAO, Solid Waste Manager and Franchisee must mutually agree on a program to be presented to the County. The Board of Supervisors is to receive, as a minimum, the following:
1. Proposed program description;
  2. Diversion expected;
  3. Cost of proposed program; and

4. How proposed program integrates with existing programs.
- I. The Franchisee will not be responsible for providing services where there is unacceptable safety or risk factors. The CAO, Solid Waste Manager and Franchisee shall establish standards for bridges and roads. If unsafe conditions persist, the Franchisee has the right to ask for a waiver from providing service. If a location is found to be unsafe and, the potential Customer wants service, the refuse is to be located at a site mutually agreed upon by Franchisee, CAO, Solid Waste Manager and Customer or service can be denied without being a violation of this Agreement.
  - J. Franchisee agrees to provide the following ancillary services, as contained herein:
    1. Franchisee agrees to conduct a cleanup coupon program as provided in Exhibit B.
    2. Franchisee will provide Christmas tree pick up upon request for residents that are unable to use the drop off slash facilities at either the Groveland Transfer Station or the Pine Mountain Lake Compost Facility.
    3. Franchisee agrees to use its best effort in load checking during the collection of Solid Waste to screen out unacceptable wastes. In the event that unacceptable wastes are found, the container shall not be serviced and a notice of the correct disposal method for the waste shall be left for the Customer.
  - K. Franchisee agrees to install and maintain computers and software compatible with County approved programs for basic, efficient office practices. Appropriate employee training will be included.
- V. **Obligations of Franchisee**
- A. Franchisee shall comply with all federal, state, local statutes, ordinances and regulations, including Titles 7 and 8.
  - B. Franchisee, prior to award of franchise, shall provide and maintain at its own expense at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the County as may be required by the Risk Manager of the County. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the County by registered mail, return receipt requested, or delivered in person to Risk Manager, for all of the following stated insurance policies:
    1. Worker's Compensation in compliance with the statutes of the State of California.

2. General Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage. This insurance shall indicate on the policy and certificate of insurance the following coverage and indicate the policy aggregate limit applying to premises and operations and broad term contractual liability.
3. Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage. This insurance shall cover for bodily injury and property damage, owned automobiles, and non-owned automobiles.

Upon failure of the Franchisee to furnish, deliver or maintain such insurance and policies as above provided, this Agreement, at the election of the County, may be forthwith declared suspended, or terminated. Failure of the Franchisee to obtain and/or maintain any required insurance shall not relieve the Franchisee from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Franchisee concerning indemnification. The County, its elected and appointed officials, officers, employees, agents and volunteers ("Additional Insured") shall be named as an additional insured on all insurance policies required herein. The Franchisee's insurance policy(ies) shall include a provision that the coverage is primary as respects the Additional Insured; shall include no special limitations to coverage provided to the Additional Insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or better or with approval of the Risk Manager.

- C. Franchisee, shall, prior to this Agreement becoming effective, deliver to the Risk Manager a Faithful Performance Surety Bond in the amount of ten thousand dollars (\$10,000.00) which shall be approved by the Risk Manager to secure the full and faithful performance of the terms, obligations and agreements on the part of Franchisee to be performed. Risk Manager shall retain the right to approve or disapprove of Franchisee's surety.

The Faithful Performance Surety Bond shall not be subject to cancellation and shall be in full force and effect for at least one year, and shall be renewed, or a new bond furnished, subject to the same approval, not less than thirty (30) days prior to the expiration of the then existing bond on file with Risk Manager. Franchisee shall, at all times during the term of this Agreement, maintain a Faithful Performance Surety Bond, in accordance with the terms of this paragraph, in full force and effect.

- D. In the event of the termination or cancellation of the insurance policies required by this Agreement, or the failure of Franchisee to obtain the insurance policy or performance bond required by this Agreement, the franchise may be terminated by County upon written notice to Franchisee. If insurance is terminated due to an unforeseeable event, not the fault of the Franchisee, the Franchisee will have sixty (60) days to have insurance policies replaced without breaching this Agreement.

- E. Franchisee shall indemnify, defend, save, protect and hold harmless County, its elected and appointed officials, officers, employees, agents and volunteers from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, injury or death (collectively, "Liability") arising directly or indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Franchisee, its officers, employees, agents, contractors, consultants, or any person under its direction or control and will make good to and reimburse County for any expenditures, including reasonable attorney's fees, the County may make by reason of such matters and, if requested by County, will defend any such suits at the sole cost and expense of Franchisee. Franchisee's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Franchisee shall not be required to indemnify, save, protect or hold harmless County for the proportion of Liability a court determines is attributable to the negligence or willful misconduct of the County.

If such indemnification becomes necessary, the County Counsel for the County shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the County. This indemnification clause shall survive the termination or expiration of this Agreement.

- F. Franchisee shall not assign, or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise, without the prior written consent of County. Any attempt to do so without that consent shall be null and void, and any assignee, or transferee shall acquire no right or interest by reason of such attempted assignment, or transfer. County shall not unreasonably withhold consent.

## **VI. County Franchise Fee.**

- A. In consideration of the exclusive franchise provided by this Agreement, Franchisee shall pay to County 1½% of the gross revenue derived by Franchisee from Solid Waste Collection and Recycling Services provided in Collection Area 4. Franchisee agrees to allow County to increase or decrease this franchise fee to any amount at the sole discretion of County. County may immediately adjust collection rates to fully cover such increase if increase causes Franchisee to fall below the agreed upon fair return on revenues as described in section VII. Revenues derived from all other operations are excluded from calculating the franchise fee.

Franchisee shall prepare and mail remittance each quarter not later than twenty (20) calendar days after the end of each quarter. The remittance will be accompanied by a report setting forth the basis and calculations used for computing the amount due. The figures used shall agree with the general books of account of Franchisee. Said books of account shall be made available to County upon demand for the purposes of audit, pursuant to Title 7.



- B. Franchisee shall reimburse County for County costs associated with any audit, review or required report as provided in Section 7.16.070.
- C. Franchisee agrees to provide all Solid Waste Collection Services, equipment, and containers needed by County facilities and properties as listed in Exhibit C at no charge to County. Containers shall be of the type and size the Franchisee owns or controls and shall be distributed to County property, including any other County property or property currently or in the future owned, rented or occupied by the County requiring such service. The Facilities Manager and/or Solid Waste Manager will provide the service level, frequency and location of the services needed. The Facilities Manager and/or Solid Waste Manager may, from time to time, order changes in the services described in this paragraph. The Franchisee will not be responsible for paying to the County any Integrated Waste Management Fee for the provision of these services.

**VII. Franchisee Fees, Charges and Adjustments to Fees & Charges.**

- A. Upon the Effective Date of this Agreement, Franchisee's rates and services will be as described in Resolution 99-10 or resolutions superseding Resolution 99-10. Rates for additional services not specified in Resolution 99-10 or resolutions superseding Resolution 99-10 shall be as agreed between Franchisee and a customer with written notice to the Solid Waste Manager; provided, however, that in the case of a dispute, the dispute shall be submitted to the Solid Waste Manager for resolution.

- B. Applications for rate increases will be based as follows:

- 1. CPI Indexed Rates. The rates approved as part of this Agreement, and all rates established by the Board of Supervisors pursuant to Title 7 hereafter, shall be considered for periodic increases which are 100 percent of the percentage of change in the Consumer Price Index (CPI-U), San Francisco, Oakland-San Jose, as published by the Bureau of Labor Statistics, commencing with the index for June 2011, being the base period for purposes of making adjustments. Should the Bureau of Labor Statistics of the Department of Labor discontinue publication of the described index, or publish it less frequently, or alter it in any other manner, the parties shall mutually adopt a substitute index or procedure which reasonably reflects and monitors consumer prices.

The first adjustment for the period October 2012 to September 2013 shall be made effective as of October 1, 2012, and rates shall be adjusted in the same manner annually thereafter.

Adjustments in accordance with the CPI shall be subject to the following qualifications:

- a. Rates adjusted in accordance with the CPI shall not be greater than six percent (6%) nor less than zero percent (0%) in any one year regardless of the percentage changes in the CPI; and
- b. In the event Franchisee obtains a return on revenues that averages more than ten percent (10%) per annum, using a 3-year rolling average, then the Franchisee will not be entitled to make a CPI adjustment for the immediately succeeding year, and continually thereafter so long as the 3-year rolling average of return on revenues exceeds (10%).

Franchisee shall be entitled to a fair return on revenues. Return on revenues is hereby defined as the ratio of net income to gross revenues. Net income is arrived at by deducting all expenses (including taxes) from gross revenues.

In the event Franchisee obtains a return on revenues that averages more than ten percent (10%) per annum, using a three year rolling average, then Franchisee shall refund full amount above ten percent (10%) to Customers through a rate reduction for the following year.

2. Adjustment for Extraordinary Costs. The process for effecting any rate adjustment above the annual CPI increase shall be made by application. Franchisee may apply to County for consideration of a special interim rate review as provided in Title 7. If, in any contract year, Franchisee incurs extraordinary expenses, over and above the annual CPI increase for reasons beyond Franchisee's control, Franchisee may request an adjustment in rates to compensate for the amount of such increased cost. Nothing herein shall obligate the County to grant such increase, but it shall negotiate in good faith. If in any contract year Franchisee is subject to a disposal increase, all of said increase shall be passed through by means of an immediate rate increase. If the increase is due to the imposition of a host fee, the County will review the fees to determine if the increase should be passed through.

At County's expense County may initiate an interim rate review at its option. Any rate review, whether initiated by County or Franchisee, will follow the format specified for in Title 7.

Franchisee shall provide written notice to Customers of proposed rate changes and annual rate pursuant to Title 7. Prior to providing said

notice to Customers, Franchisee shall provide said notice to County for review and approval.

### **VIII. Performance Review**

- A. Franchisee shall maintain complete and accurate financial records with respect to gross revenue, costs, expenses, receipts, inventory, and other such information required to assess Franchisee's financial position relating to residential, commercial and industrial Solid Waste Collection and Recycling Services under County's jurisdiction. All such records shall be maintained in accordance with generally accepted accounting principles and Title 7.
- B. In addition to financial records, Franchisee shall maintain complete and accurate records for all aspects of Franchisee's compliance with this Agreement including, but not limited to, collection route maps, Customer lists and payment records, disposal records by truck, local enforcement agency records of inspection, truck inspection records, SRRE and HHWE compliance records, Customer complaints, and other like materials.
- C. All records required to be kept by Franchisee shall be clearly identified and readily accessible. Franchisee shall provide free access to the representatives of County (according to Title 7) or their agent during all normal business hours to such books or records, and give the County the right to examine and audit same, and to make transcripts therefrom or copies as necessary. All records will be maintained for five years after the completion of the year which they were prepared.
- D. Franchisee shall prepare, mail and collect bills (or shall issue written receipts for cash payments) for Solid Waste Collection Services provided by Franchisee under this Agreement. Bills for services shall at a minimum be mailed to Customers annually in advance of the provision of services.

Franchisee shall maintain copies of said billings and receipts in chronological order for a period of three (3) years after the date of service for inspection by County. Franchisee may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

- E. Franchisee agrees to indemnify County against all fines or penalties imposed by the California Integrated Waste Management Board or other regulatory agencies in the event that regulatory objectives are not met for the residential and commercial sector served by Franchisee for which Franchisee is responsible. Such indemnity shall be limited to exclude all damages or claims to the extent that they are caused by, arise from or in connection with (i) any negligent actions or omissions or willful misconduct of the County, or its employees, agents, appointed and elected officials; or (ii) the failure of the County or its employees, agents, appointed and elected officials to comply with or enforce applicable solid

waste and/or recycling statutes, ordinances, regulations, or other requirements, other than failures attributable to Franchisee's performance under this Agreement. The extent of the Franchisee's liability under this Section shall not exceed the amount of Franchisee's proportionate share of fault.

- F. Franchisee shall be responsible for the prompt, courteous and reasonable resolution of all Customer complaints.

Franchisee shall record in a separate log all complaints, noting the name and address of complainant, date and time of complaint, nature of complaint and resolution. This complaint log will be retained by the Franchisee at the office and be available for inspection by the LEA, CAO and Solid Waste Manager during regular business hours. The Franchisee will submit a copy of the complaint log annually to CAO and Solid Waste Manager.

- G. Franchisee shall, on an annual basis, file reports as required by law and provide reports to CAO and Solid Waste Manager pursuant to local, state and federal laws. All such reports must contain information sufficient to report its progress to the State regarding the implementation of County's SRRE and HHWE pursuant to the California. Public Resources Code. In addition to any reports required by law, the Franchisee shall provide any reports that are needed by the CAO or Solid Waste Manager in the execution of their duties to the County or needed for the enforcement of this Agreement.

#### **IX. Liquidated Damages**

- A. County finds, and Franchisee agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which will be incurred by County as a result of a material breach by Franchisee of its obligations under this Agreement.
- B. Accordingly, the Board may, in its discretion, assess liquidated damages not to exceed the sum of five hundred dollars (\$500) per day, for each calendar day that service is not provided by Franchisee in accordance with this Agreement. In addition, the Board may order the assessment against the cash bond required by this Agreement, the termination of this Agreement, or both.
- C. County finds, and Franchisee acknowledges and agrees that the above-described liquidated damages provisions represent a reasonable sum in light of all of the circumstances. Liquidated damages shall be applicable to each calendar day during which Franchisee has been found by the Board to be in default pursuant to this Article. Franchisee shall pay any liquidated damages assessed by the Board within ten (10) days after they are assessed. If they are not paid within the ten-day period, County may withdraw them from the security fund established by the performance bond required by this Agreement.

**X. Termination of Franchise.**

- A. In the event Franchisee should default in the performance of any material provisions of this Agreement, and the default is not cured within thirty (30) days after receipt of written notice of default from the County, then County may, at its option, hold a hearing to determine whether this Agreement should be terminated. In the event County decides to terminate this Agreement, County shall serve ten (10) days' written notice of its intention to terminate upon Franchisee. In the event County exercises its right to terminate this Agreement, County may, at its option, either directly undertake performance of the services or arrange with other persons to perform the services. In either event, Franchisee shall be liable to County for any expense County incurs in performing the services.
- B. In the event County exercises its option under this Article to terminate this Agreement, and directly performs the services, County shall pay to Franchisee, from revenues received by County from Customers, any amounts due Franchisee for services performed as of the date of termination, which amount remain unpaid ninety (90) days from such date. If County arranges with other persons to perform the services, County shall ensure that such other persons pay Franchisee the amounts due under this paragraph and agrees to pay such amounts in the event the other persons do not. County may take possession of Franchisee's equipment necessary to perform the services required under this Agreement, and retain it until County can purchase or otherwise acquire equipment suitable for that purpose, but in no event longer than one hundred and twenty (120) days. County shall compensate Franchisee for the reasonable rental value of its equipment during the period County retains possession of it.

County further reserves the right to terminate this Agreement or impose liquidated damages in the event of any of the following, unless such event is susceptible to cure and has been cured promptly upon written notice to Franchisee by County:

1. If Franchisee becomes insolvent, unable or unwilling to pay its debts, or upon listing of an order for relief in favor of Franchisee in a bankruptcy proceeding.
2. If Franchisee fails to abide by County's direction as provided in Article XII.
3. If Franchisee knowingly violates any orders or rulings of any regulatory body having jurisdiction over Franchisee relative to this Agreement, provided that Franchisee may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until resolution of that proceeding.

4. If Franchisee ceases to provide Solid Waste Collection or Recycling Services as required under this Agreement over all or a substantial portion of its service area for a period of seven (7) days or more, for any reason within the control of Franchisee. (For purposes of this section, a labor strike or similar organized work stoppage, acts of nature, or inaccessibility due to acts of nature which are not encountered in the normal course of business, will not be deemed to be within the control of Franchisee.)
5. If Franchisee willfully fails to make any payments or reports required under this Agreement and fails to cure such failure promptly after written notice.
6. If Franchisee, one of its officers or managers, is found guilty of a felony relating to Solid Waste Collection or Recycling Services, or is found guilty of illegal dumping of solid or hazardous waste, and fails to implement corrective action promptly and to the County's reasonable satisfaction.
7. In the event that this Agreement is terminated by County upon the failure of Franchisee to secure and maintain the insurance policies and/or performance bond required under the terms of this Agreement, Franchisee shall be liable to County for any and all damages suffered by County arising out of failure to provide insurance under this Agreement.

**C. Franchisee's Liability to Perform Due to Act of God**

Franchisee's failure to perform under the terms of this Agreement by reason of a major disaster, epidemic, or other act of God or other emergency shall not constitute a breach of this Agreement for purposes of paragraph A, above.

**XI. Arbitration, Judicial Venue and Governing Law.**

- A. Prior to any action by the County or Franchisee in taking any item of this Agreement to arbitration or court, the item shall be reviewed by the CAO. If the Franchisee or Board of Supervisors does not concur with the decision of the CAO, either party may proceed.
- B. Arbitration. Franchisee and County may agree that any dispute arising out of this Agreement shall be decided by arbitration in accordance with California Code of Civil Procedure section 1280, et seq. or like statute. If both parties agree to arbitration, the parties shall have the right of discovery under the California discovery statutes.
- C. Attorneys' Fees. The parties shall share the cost of any arbitration. In the event suit or action or arbitration is instituted as a result of a dispute under this

Agreement, the prevailing party shall be awarded its attorneys' fees and costs, including, but not limited to, expert witness fees.

- D. Standing. Only the County and the Franchisee shall have standing to bring or become a party to arbitration claims or legal actions under this Agreement.

## **XII. Disposition of Solid Waste.**

- A. All Acceptable Waste collected by Franchisee shall become the property of Franchisee upon placement by the Customer for collection, and shall be forthwith removed and conveyed to the Cal Sierra/Waste Management Material Recovery Facility/Transfer Station or other County authorized facility by Franchisee, subject to the provisions of this Agreement.
- B. Notwithstanding the provisions of Paragraph A, County has the right to direct that any Acceptable Waste collected by Franchisee shall be delivered to a County-authorized facility.
- C. In the event that modifications to Franchisee's operations are necessary to comply with the terms and conditions of this Article, and the modification thereof affect Franchisee's costs of doing business, Franchisee or County may initiate a rate adjustment pursuant to Article VII and Title 7.

## **XIII. Miscellaneous Provisions.**


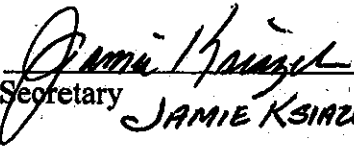
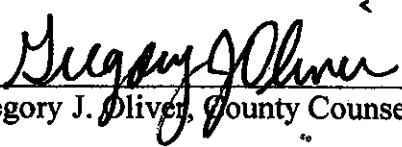
- A. The failure of either party at any time to require performance by the other party herein shall not affect the right of such party to enforce the same thereafter, nor shall the waiver by either party of any breach of any provision or as a waiver of the provision itself.
- B. All terms used in the singular or in the masculine gender shall apply to the plural or to the feminine or neuter gender as the context thereof requires.
- C. The Article headings used in this Agreement are intended solely for convenience and reference and shall not in any way or manner amplify, limit, modify, or otherwise be used in the interpretation of this Agreement.
- D. This Agreement may be amended at any time by mutual agreement of the parties, provided such amendment shall be operative and valid only if set forth in writing and signed by all of the parties.
- E. This Agreement constitutes the entire understanding with respect to the subject matter hereof and supersedes any and all prior understandings or agreements, whether written or oral, including without limitation the Original Agreement.
- F. This Agreement shall be binding on the parties hereto and on their respective successors and assigns.

- G. If any term, provision or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- H. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party hereto, by the other party to this Agreement shall be in writing and shall be deemed duly served when personally delivered to the party to whom they are directed, or in lieu or such personal service when deposited in the United States mail, first-class certified or registered mail, postage prepaid, addressed to County at 2 South Green Street, Sonora, California 95370, with a duplicate copy to the County Counsel, 2 South Green Street; Sonora, California 95370 or to Franchisee at P.O. Box 278, Big Oak Flat, CA 95305-0278.
- I. It shall be Franchisee's and County's responsibility to enforce this franchise pursuant to Section 7.04.040. Franchisee may enforce this Agreement civilly without the consent of the County. County may enforce criminally without the consent of Franchisee.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, County has caused its name and seal to be hereunto subscribed and affixed by the Board Clerk, duly authorized, and said Franchisee has caused its corporate name and seal to be hereunto subscribed and affixed by its President and Secretary.

<p>COUNTY OF TUOLUMNE</p> <p>By _____ Richard H. Pland, Chair, Board of Supervisors</p>	<p>MOORE BROS. SCAVENGER, INC</p> <p>By  Steve Moore, President</p>
<p>ATTEST:</p> <p>By _____ Chief Deputy Clerk of the Board of Supervisors</p>	<p>ATTEST:</p> <p>By  Secretary JAMIE KSIRZEK</p>
<p>APPROVED AS TO FORM:</p> <p>By  Gregory J. Oliver, County Counsel</p>	

**EXHIBITS**  
**&**  
**ATTACHMENTS**

## **EXHIBIT A**

### **Public Information and Education**

Franchisee's public education program shall focus on providing information to Customers to ensure that they understand: (i) the services that are provided under this Agreement, (ii) the proper method for placing materials in Containers for Collection and setting Containers out for Collection, and (iii) materials prohibited from Collection such as Hazardous Waste. Educational information may include, but not be limited to, newsletters, flyers, door hangers, notification tags, and direct contact. Franchisee shall allow the County a reasonable opportunity to review public education materials, request modifications to materials, and approve all public education materials before printing, publication, distribution, and/or release. County shall have the right to request that Franchisee include the County name, County logo, and/or community names on public education materials.

Franchisee shall prepare and distribute a "Starter Kit" to all new subscribing customers. The Starter Kit shall include a service information brochure describing how to drop off recyclable materials at Franchisee's drop-off recycling facility and list the acceptable materials that can be included. Information about materials to be excluded from solid waste collection, suggestions for proper placement of containers on collection day and information on the proper disposal of other waste streams, such as; household hazardous waste, sharps, E-waste, Universal Waste will be included.

Educational speaking engagements and facility tours will be conducted by the Franchisee or its agent upon request. The presentations and tours shall aim to educate the public on the environmental benefits of recycling and resource conservation and provide them with information on increasing waste reduction and recycling at their homes and businesses. Presentations will be available to groups, civic organizations, schools or businesses. Schedules for speaking engagements and tours will be set by the Franchisee.

## EXHIBIT B

### CLEAN UP COUPON PROGRAM FOR TUOLUMNE COUNTY

The Franchisee will provide the following program as the countywide Clean Up Program through the term of the Agreement, as mutually agreed between the Franchisee and County.

The Franchisee will make available to Collection Area 4 Residential Customers two coupons per year redeemable at the Groveland Transfer Station. These coupons will be valid from January 1 to December 31 of each year through the term of the Agreement. Customers will pick up the coupons at the Franchisee's office, currently located at 11300 Wards Ferry Road, Big Oak Flat, CA. The participants must be a Residential Customer for solid waste collection services, *in good standing*, when applying for a coupon.

The following restrictions apply:

- Only the Tuolumne County citizen who signed the coupon will be able to redeem it. (Valid ID. will be required)
- Each coupon will be valid only for the period specified on the coupon. **(Freon appliances will require *the then current established fee for Freon removal with presentation of coupon*)**
- Each coupon is good for up to one (1) cubic yard. Materials for disposal may include items, such as junk, bulky waste or one appliance, or one piece of furniture.
- Both coupons can be redeemed at the same time or on separate dates. No Household Garbage or Hazardous Waste is permitted.

The County will waive the per ton Integrated Waste Management Fee. The Franchisee which issues the coupon will be responsible for the remaining dollar value of the coupon. The Franchisee will pay the value of the coupon at the rate of the then current established franchise hauler rates.

## **EXHIBIT C**

The following facilities are identified as Tuolumne County facilities for the purposes of Section VI-C.

**The Groveland Youth Center**  
18950 Highway 120, Groveland

**The Groveland Community Hall**  
18720 Highway 120, Groveland

**Tuolumne County Road Department Yard**  
11240 Wards Ferry Road, Big Oak Flat

**Groveland Library & Museum**  
18990 Highway 120, Groveland

### **Exhibit D**

Notwithstanding the definition in Title 7 of Tuolumne County Ordinance Code, for all purposes under this Agreement **"Recyclable"** or **"Recyclable Material"** means the following materials:

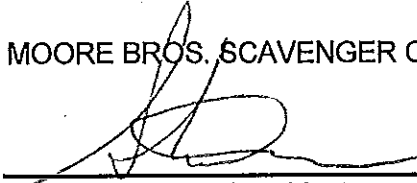
1. Aluminum cans
2. Clean cardboard
3. Glass: bottles and jars
4. Newspaper
5. Clean paper: bags (all colors), catalogs, chipboard or paperboard boxes (cereal, cracker, shoe boxes), computer paper, construction paper, non-styrofoam egg cartons, envelopes, junk mail, magazines, telephone books, white and colored paper
6. Plastic bottles, jugs and jars labeled #1 or #2
7. Tin and bimetal cans

Materials may be added to or deleted from this Exhibit with written approval by the Franchisee and Solid Waste Manager.

IN WITNESS WHEREOF, the parties have executed this Amendment #1 as of the date written above.

COUNTY OF TUOLUMNE

MOORE BROS. SCAVENGER CO., INC.



By: Randell A. Hanvelt, Chair  
Board of Supervisors

By: Steve Moore, President

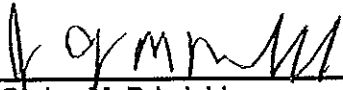
ATTEST:



By: Alicia Jamar  
Chief Deputy Clerk of the Board

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

APPROVED AS TO LEGAL FORM:



By: Carlyn M. Drivdahl  
Deputy County Counsel

ALICIA L. JAMAR  
Clerk of the Board

By: 