



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Meeting Agenda City Council

**THE FORT BRAGG CITY COUNCIL MEETS CONCURRENTLY AS
THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1
AND THE FORT BRAGG REDEVELOPMENT SUCCESSOR
AGENCY**

Monday, June 8, 2020

6:00 PM

Town Hall, 363 N. Main Street

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

PLEASE TAKE NOTICE

DUE TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20 WHICH SUSPEND CERTAIN REQUIREMENTS OF THE BROWN ACT, AND THE ORDER OF THE HEALTH OFFICER OF THE COUNTY OF MENDOCINO TO SHELTER IN PLACE TO MINIMIZE THE SPREAD OF COVID-19, THE CITY COUNCIL MEMBERS WILL BE PARTICIPATING BY VIDEO CONFERENCE IN THE CITY COUNCIL MEETING OF MONDAY, JUNE 8, 2020.

In compliance with the Shelter-In-Place Orders of the County and State, this meeting will be closed to the public. The meeting will be live-streamed on the City's website at city.fortbragg.com and on Channel 3. Public Comment regarding matters on the agenda are restricted to electronic, written and voice mail communications. Comments may be made in any of the following ways: (1) Through the City's online eComment agenda feature, (2) Emailed to City Clerk June Lemos, jlemos@fortbragg.com, (3) Written comments delivered through the drop-box for utility payments to the right of the front door at City Hall, 416 N. Franklin Street; or (4) Voice mail comments called in to (707) 961-1694 by 5:00 PM on the day of the meeting. See Item 7A below for information on public comments for the public hearing.

Comments can be made at any time prior to the meeting, in real-time while the item is being considered by the Council, and up to 12 PM on the next day. The Clerk will read aloud all comments received prior to or during the meeting. Any comment on agenda items exceeding three minutes and those received after the meeting will be included in the public record as part of the agenda packet the next business day after the meeting.

We appreciate your patience and willingness to protect the health and wellness of our community and staff. Please contact the City Clerk at (707) 961-1694 or jlemos@fortbragg.com if you have questions on the agenda.

AGENDA REVIEW

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

- 1A. [20-760](#) Presentation of Proclamation Recognizing June 22-28, 2020 as National Pollinator Week

Attachments: [05-2020 National Pollinator Week](#)

2. PUBLIC COMMENTS ON: (1) NON-AGENDA, (2) CONSENT CALENDAR & (3) CLOSED SESSION ITEMS

3. STAFF COMMENTS

4. MATTERS FROM COUNCILMEMBERS

5. CONSENT CALENDAR

All items under the Consent Calendar will be acted upon in one motion unless a Councilmember requests that an individual item be taken up under Conduct of Business.

- 5A. [20-720](#)** Adopt City Council Resolution Calling and Giving Notice of the Holding of a General Municipal Election to be Held on Tuesday, November 3, 2020, for the Election of City Councilmembers as Required by the Provisions of the Laws of the State of California Relating to General Law Cities

Attachments: [RESO Calling a General Municipal Election](#)

- 5B. [20-759](#)** Adopt City Council Resolution Requesting that the Board of Supervisors of the County of Mendocino Consolidate a General Municipal Election to be Held on November 3, 2020, with the Statewide General Election to be Held on that Date Pursuant to §10403 of the Elections Code and to Render Specified Services to the City Relating to the Conduct of Said Election

Attachments: [RESO Calling for Election Consolidation](#)

- 5C. [20-745](#)** Adopt City Council Resolution Amending the City of Fort Bragg Conflict of Interest Code

Attachments: [RESO Conflict of Interest Code](#)

- 5D. [20-761](#)** Adopt Joint City Council/Improvement District/Redevelopment Successor Agency Resolution Approving a Professional Services Agreement with JJACPA, Inc. for Auditing Services and Authorizing City/District Manager/Executive Director to Execute Same (Amount Not to Exceed \$42,550; Split Among the Agencies)

Attachments: [RESO JJACPA Contract for Audit](#)
[JJACPA Contract](#)

- 5E. [20-766](#)** Adopt City Council Resolution Confirming the Continued Existence of a Local Emergency in the City of Fort Bragg

Attachments: [RESO Declaring Continuing Local Emergency](#)
[Public Comment 5E](#)

- 5F. [20-767](#)** Approve Letter Requesting the California State Legislature and Governor Newsom Increase CARES Act Funding Allocated to Cities to \$500 Million to Support Local COVID-19 Expenses

Attachments: [6-08-20 CARES Act Funding Request](#)
[ACTION ALERT CARES Act funding to CA Cities](#)

5G. [20-755](#) Approve Minutes of May 26, 2020

Attachments: [CCM2020-05-26](#)

5H. [20-762](#) Approve Minutes of Special Meeting of May 28, 2020

Attachments: [CCM2020-05-28 Special](#)

6. DISCLOSURE OF EX PARTE COMMUNICATIONS ON AGENDA ITEMS

7. PUBLIC HEARING

When a Public Hearing has been underway for a period of 60 minutes, the Council must vote on whether to continue with the hearing or to continue the hearing to another meeting.

PLEASE TAKE NOTICE

This public hearing is being conducted pursuant to the federal Tax Equity and Fiscal Responsibility Act or TEFRA. You may participate in the Public Comment portion of this hearing by calling toll free 1-866-423-8755 and entering Participant Code 999905#. You will be prompted to state your name. You are not required to give your name to make a public comment, however we request that you at least state your first name so the Clerk may call upon you. Each person will have three minutes to speak under Public Comment for this hearing.

7A. [20-729](#) Receive Report, Conduct Public Hearing, and Consider Adoption of City Council Resolution Approving the Issuance of Revenue Bonds by the California Municipal Finance Authority for the Purpose of Financing the Acquisition and Rehabilitation of a 56-unit Multifamily Development known as Walnut Apartments, for the Benefit of DFA Development, LLC

Attachments: [06082020 Walnut Apartments Financing](#)

[Att 1 - Resolution](#)

[Att 2 - Public Hearing Script](#)

[Att 3 - Public Hearing Notice](#)

8. CONDUCT OF BUSINESS

8A. [20-756](#) Receive Report and Consider Adoption of City Council Resolution Approving Waste Management Residential, Commercial and Multifamily and Rolloff Rate Increases

Attachments: [06082020 WM Rate Increases](#)

[Att. 1 Resolution](#)

[Att. 2 Exhibit A Rate Sheets](#)

[Att. 3 Franchise Agreement](#)

[Att. 4 Amendment 1](#)

[Att. 5 Amendment 2](#)

[Att. 6 Amendment 3](#)

[Att. 7 Amendment 4](#)

9. CLOSED SESSION

ADJOURNMENT

The adjournment time for all Council meetings is no later than 10:00 p.m. If the Council is still in session at 10:00 p.m., the Council may continue the meeting upon majority vote.

**NEXT REGULAR CITY COUNCIL MEETING:
6:00 P.M., MONDAY, JUNE 22, 2020**

STATE OF CALIFORNIA)
)ss.
COUNTY OF MENDOCINO)

I declare, under penalty of perjury, that I am employed by the City of Fort Bragg and that I caused this agenda to be posted in the City Hall notice case on June 2, 2020.

June Lemos, CMC, City Clerk

NOTICE TO THE PUBLIC

DISTRIBUTION OF ADDITIONAL INFORMATION FOLLOWING AGENDA PACKET DISTRIBUTION:

- *Materials related to an item on this Agenda submitted to the Council/District/Agency after distribution of the agenda packet are available for public inspection upon making reasonable arrangements with the City Clerk for viewing same during normal business hours.*
- *Such documents are also available on the City of Fort Bragg's website at <https://city.fortbragg.com> subject to staff's ability to post the documents before the meeting.*

ADA NOTICE AND HEARING IMPAIRED PROVISIONS:

It is the policy of the City of Fort Bragg to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities. If you need assistance to ensure your full participation, please contact the City Clerk at (707) 961-2823. Notification 48 hours in advance of any need for assistance will enable the City to make reasonable arrangements to ensure accessibility.

This notice is in compliance with the Americans with Disabilities Act (28 CFR, 35.102-35.104 ADA Title II).



City of Fort Bragg

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Text File

File Number: 20-760

Agenda Date: 6/8/2020

Version: 1

Status: Mayor's Office

In Control: City Council

File Type: Proclamation

Agenda Number: 1A.

Presentation of Proclamation Recognizing June 22-28, 2020 as National Pollinator Week

PROCLAMATION



National Pollinator Week June 22-28, 2020

WHEREAS, pollinator species such as thousands of species of bees are essential partners in producing much of our food supply; and

WHEREAS, pollinator species provide significant environmental benefits that are necessary for maintaining healthy, diverse urban and suburban ecosystems; and

WHEREAS, pollination plays a vital role for the trees and plants of our community, enhancing our quality of life, and creating recreational and economic development opportunities; and

WHEREAS, in the last year, the City of Fort Bragg has managed urban landscapes and public lands that include many municipal parks and greenways, as well as wildlife habitats; and

WHEREAS, the City of Fort Bragg encourages developers and residents to use bee friendly landscaping and promote wise conservation stewardship, including the protection of pollinators and maintenance of their habitats in urban and suburban environments;

NOW, THEREFORE, I, William V. Lee, Mayor of the City of Fort Bragg, on behalf of the entire City Council, do hereby proclaim the Week of June 22-28, 2020 as National Pollinator Week in the City of Fort Bragg and urge all citizens to recognize this observance.

SIGNED this 8th day of June, 2020

WILLIAM V. LEE, Mayor

ATTEST:

June Lemos, CMC, City Clerk



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Text File

File Number: 20-720

Agenda Date: 6/8/2020

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5A.

Adopt City Council Resolution Calling and Giving Notice of the Holding of a General Municipal Election to be Held on Tuesday, November 3, 2020, for the Election of City Councilmembers as Required by the Provisions of the Laws of the State of California Relating to General Law Cities Registered voters in the City of Fort Bragg elect five members to the City Council to provide oversight and set policy for the operation of the City, its agencies, programs and services. Councilmembers serve a four-year term with elections being conducted on the first Tuesday in November in each even numbered year. City Councilmember terms are staggered and overlap such that in one election year two City Councilmembers are elected and in the next, three members are elected. In November 2020, two seats will be available.

In order to provide an efficient and coordinated election process Countywide, the City of Fort Bragg and each of the other Mendocino County cities "consolidate" their biannual elections with the County. The County will be responsible for establishing precinct boundaries, designating polling places, appointing and paying election officers, verifying signatures appearing on candidate nomination papers, providing sample ballots and receiving absentee and vote by mail ballots, canvassing (counting) the ballots and providing certification of the results of the canvass. The City Clerk will be responsible for furnishing and receiving nomination papers and receiving Candidate's Statements, and publishing a Notice of Election and Notice of Candidates. Costs for conducting the November 2020 election are estimated at \$10,000 and will be shown as a proposed expenditure in the FY 2020-21 budget.

On January 13, 2020, the City Council adopted Resolution 4221-2020 adopting regulations for candidates for elective office pertaining to candidate statements submitted to the voters at an election. The Resolution provides for, among other things, a brief description of no more than 200 words of the candidate's education and qualifications. The resolution also provides that the City of Fort Bragg will pay all costs for printing and translations of candidate statements for all City Council candidates. No change to that Resolution is proposed at this time.

This resolution gives notice that the City will hold a General Municipal Election on Tuesday, November 3, 2020, for the election of two Councilmembers. By adopting this resolution, the City is giving official notice to the public of the election process.

RESOLUTION NO. ____-2020

RESOLUTION OF THE FORT BRAGG CITY COUNCIL CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, FOR THE ELECTION OF CITY COUNCILMEMBERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, a General Municipal Election shall be held on Tuesday, November 3, 2020, for the election of City Councilmembers; and

WHEREAS, the City, by separate resolution, will be requesting the Mendocino County Board of Supervisors to consolidate the City's municipal election with the Statewide General Election;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby resolve, declare, determine and order as follows:

SECTION 1. Pursuant to the requirements of the laws of the State of California relating to general law cities there is called and ordered to be held in the City of Fort Bragg, California, on Tuesday, November 3, 2020, a general municipal election for the purpose of electing two (2) members of the City Council for the full term of four (4) years.

SECTION 2. The ballots to be used at the election shall be in form and content as required by law.

SECTION 3. The City Clerk is authorized, instructed and directed to:

- A. Furnish, distribute and receive all nomination papers;
- B. Receive Candidate's Statements pursuant to Election Code §13307;
- C. Receive Code of Fair Campaign Practice Statements; and
- D. Receive Disclosure Statements as required by law.

SECTION 4. The County Clerk, pursuant to Resolution ____-2020, has been requested to and shall conduct the election pursuant to the appropriate provisions of State law.

SECTION 5. The polls for the election shall be open at seven o'clock a.m. on the date of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, pursuant to Election Code §10242, except as provided in §14401 of the Elections Code of the State of California. This Section is subject to orders of the President of the United States, the Governor of the State of California, the Public Health authorities of the County of Mendocino and any other laws or orders that may modify how elections are conducted during the COVID-19 pandemic.

SECTION 6. In all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 7. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 8. In the event of a tie vote (if any two or more persons receive an equal and the highest number of votes for an office) as certified by the County of Mendocino Registrar-Recorder/County Clerk, the City Council, in accordance with Election Code §15651(a) shall set a date, time and place and summon the candidates who have received the tie votes to appear and will determine the tie by lot.

SECTION 9. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 8th day of June, 2020, by the following vote:

**AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:**

**WILLIAM V. LEE
Mayor**

ATTEST:

**June Lemos, CMC
City Clerk**



City of Fort Bragg

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Text File

File Number: 20-759

Agenda Date: 6/8/2020

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5B.

Adopt City Council Resolution Requesting that the Board of Supervisors of the County of Mendocino Consolidate a General Municipal Election to be Held on November 3, 2020, with the Statewide General Election to be Held on that Date Pursuant to §10403 of the Elections Code and to Render Specified Services to the City Relating to the Conduct of Said Election
The City historically requests that the Mendocino County Board of Supervisors authorize the County Clerk to conduct the November election on behalf of the City. By consolidating with the County, the City is providing an efficient process for conduct of the election on a date when voters are typically most likely to participate.

In order to provide an efficient and coordinated election process Countywide, the City of Fort Bragg and each of the other Mendocino County cities "consolidate" their biannual elections with the County. The County will be responsible for establishing precinct boundaries, designating polling places, appointing and paying election officers, verifying signatures appearing on candidate nomination papers, providing sample ballots and receiving absentee and vote by mail ballots, canvassing (counting) the ballots and providing certification of the results of the canvass. The City Clerk will be responsible for furnishing and receiving nomination papers and receiving Candidate's Statements, and publishing a Notice of Election and Notice of Candidates. Costs for conducting the November 3, 2020 election are estimated at \$10,000 and will be shown as a proposed expenditure in the FY 2020-21 budget.

On January 13, 2020, the City Council adopted Resolution 4221-2020 adopting regulations for candidates for elective office pertaining to candidate statements submitted to the voters at an election. The Resolution provides for, among other things, a brief description of no more than 200 words of the candidate's education and qualifications. The resolution also provides that the City of Fort Bragg will pay all costs for printing and translations of candidate statements for all City Council candidates. No change to that Resolution is proposed at this time.

RESOLUTION NO. ____-2020

A RESOLUTION OF THE FORT BRAGG CITY COUNCIL REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF MENDOCINO TO CONSOLIDATE A GENERAL ELECTION, WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020 PURSUANT TO SECTION 10403 OF THE ELECTIONS CODE

WHEREAS, the City Council of the City of Fort Bragg called a General Municipal Election to be held on November 3, 2020, for the purposes of election of two City Councilmembers for a term of four years; and

WHEREAS, a statewide general election is scheduled for November 3, 2020; and

WHEREAS, it is desirable that the General Election be consolidated with the Statewide General Election to be held on the same date, and that within the City, the precincts, polling places, and election officers of the two elections be the same, and that the County Election Department of the County of Mendocino canvass the returns of the General Election and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Fort Bragg does hereby resolve, declare and order as follows:

Section 1 – Request for Consolidation

- A. That pursuant to the requirements of section 10403 of the Elections Code, the Board of Supervisors of the County of Mendocino is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 3, 2020, for the purpose of electing two City Councilmembers for a term of four years.

Section 2 – Request for Election Services

- A. Pursuant to the requirements of Elections Code section 10403 of the California Elections Code, the Mendocino County Board of Supervisors is hereby requested to consent and agree to the consolidation of the City's General Election with the General Election on November 3, 2020. The consolidated elections will be held and conducted in the manner prescribed in Elections Code section 10418.

- B. The County Elections Department is authorized to canvass the returns of the General Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.
- C. The Board of Supervisors is requested to issue instructions to the County Elections Department to take any and all steps necessary for the holding of the consolidated election.
- D. The City of Fort Bragg recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.
- E. The City Clerk is authorized, instructed, and directed to coordinate with the Mendocino County Clerk to procure and furnish any and all official ballots, notices, printed matter, and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct the election.
- F. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law.
- G. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

Section 3 – Designation of Duties

- A. The County Clerk, in conducting the City’s election is requested to provide the following services:
 1. Establish precinct boundaries to coincide with the General Election;
 2. Designate polling places and appoint election officers;
 3. Notify election officers of their appointment and instruct inspectors concerning their duties;
 4. Hire and pay election officers;
 5. Arrange for the availability of polling places and all supplies necessary for casting ballots, and setting up voting booths;
 6. Publish lists of precincts, election officers, polling places, and the hours that polls will be open;
 7. Verify signatures appearing on candidates’ nomination papers;
 8. Provide sample ballots to each voter;
 9. Receive Vote-by-Mail (VBM) and absentee voter applications; supply VBM and absentee voter ballots to applicants; accept VBM and absentee voter ballot returns; retain custody of VBM and absentee voter ballots; count VBM and absentee voter ballots; and
 10. Provide Certificate of County Clerk as to Result of the Canvass, for approval by the Fort Bragg City Council.
- B. The City Clerk in conducting the City’s election shall provide the following services:

1. Publish the Notice of Election;
2. Publish Notice of Nominees as required by law;
3. Distribute and receive nomination papers;
4. Receive Candidate Statements; and
5. Receive campaign statements and disclosure statements as required by law.

Section 4 – Direction to City Clerk

- A. The City Clerk is directed to forward without delay a certified copy of this resolution to the Board of Supervisors and to the County Elections Department.
- B. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 8th day of June, 2020, by the following vote:

**AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:**

WILLIAM V. LEE
Mayor

ATTEST:

June Lemos, CMC
City Clerk



City of Fort Bragg

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Text File

File Number: 20-745

Agenda Date: 6/8/2020

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5C.

Adopt City Council Resolution Amending the City of Fort Bragg Conflict of Interest Code Title 2, Division 6, of the California Code of Regulations (CCR) sets forth the State's Fair Political Practices Commission (FPPC) requirements for public agencies to establish a Conflict of Interest Code. The FPPC requires agencies to review their Conflict of Interest Code biennially during even-numbered years and to make any necessary changes/updates. On June 25, 2018, Council reviewed the Conflict of Interest Code and adopted Resolution 4105-2018. Since that time, changes to the list of designated employees have been made and the resolution needs to be updated.

The FPPC's regulations regarding adopting and amending conflict of interest codes state:

When determining whether to amend, an agency should carefully review its current conflict of interest code and consider the following:

Is the current code more than five years old?

Have there been any substantial changes to the agency's organizational structure since the current code was adopted?

Have any positions been eliminated or renamed since the current code was adopted?

Have any new positions been added since the current code was adopted?

Have there been any substantial changes in duties or responsibilities for any positions since the current code was adopted?

If an agency answers "yes" to any of the above questions, most likely its conflict of interest code will need to be amended.

Since Resolution 4105-2018 was adopted, the Administrative Services Director, Police Lieutenant and SPecial Projects Manager positions have been eliminated and the Senior Planner position has been added. The list of designated employees in Exhibit B to the Resolution has been updated to reflect these changes. Adoption of the Resolution will fulfill FPPC requirements.

RESOLUTION NO. ____-2020

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL
AMENDING THE CITY OF FORT BRAGG CONFLICT OF INTEREST CODE**

WHEREAS, the City Council of the City of Fort Bragg adopted a Conflict of Interest Code on August 23, 1976 (Resolution 663-76) in accordance with the requirements of State Law, Title 2, Division 6, California Code of Regulations, Regulations of the Fair Political Practices Commission (FPPC); and

WHEREAS, the City Council is charged with reviewing the Conflict of Interest Code, adopting amendments and verifying the List of Designated Positions to which the Code applies; and

WHEREAS, the City Council has amended said Conflict of Interest Code from time to time since that date, most recently by Resolution 4105-2018 on June 25, 2018; and

WHEREAS, consistent with FPPC regulations, it is the desire of the City Council to incorporate by reference the terms of Title 2, Section 18730 of the California Code of Regulations (Exhibit "A"), in substitution for the terms of the Conflict of Interest Code already in effect; and

WHEREAS, further consistent with FPPC regulations, it is the desire of the City Council to replace the City's existing Conflict of Interest Code Exhibit "B" (Designated Employees and Disclosure Obligations for the City of Fort Bragg) with a new Exhibit "B."

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby incorporate by this reference the terms of Title 2, Section 18730 of the California Code of Regulations as set forth in Exhibit "A" and hereby replaces the existing Exhibit "B" (Designated Employees and Disclosure Obligations for the City of Fort Bragg) with a new Exhibit "B."

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____ and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 8th day of June, 2020.

**AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:**

**WILLIAM V. LEE
Mayor**

ATTEST:

**June Lemos, CMC
City Clerk**

EXHIBIT "A"

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18730. Provisions of Conflict of Interest Codes.

- (a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Section 87300 or the amendment of a conflict of interest code within the meaning of Section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.
- (b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regulations 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix (Exhibit "B") are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

- (A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;
- (B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.¹

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.²

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1. If a person reports for military service as defined in the Servicemember's Civil Relief Act, the deadline for the annual statement of economic interests is 30 days following his or her return to office, provided the person, or someone authorized to represent the person's interests, notifies the filing officer in writing prior to the applicable filing deadline that he or she is subject to that federal statute and is unable to meet the applicable deadline, and provides the filing officer verification of his or her military status.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

¹ Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Section 81004.

² See Section 81010 and Regulation 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements.

Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure. When an investment or an interest in real property³ is required to be reported,⁴ the statement shall contain the following:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property equals or exceeds \$2,000, exceeds \$10,000, exceeds \$100,000, or exceeds \$1,000,000.

(B) Personal Income Disclosure. When personal income is required to be reported,⁵ the statement shall contain:

1. The name and address of each source of income aggregating \$500 or more in value, or \$50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was \$1,000 or less, greater than \$1,000, greater than \$10,000, or greater than \$100,000;
3. A description of the consideration, if any, for which the income was received;
4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;
5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁶ the statement shall contain:

³ For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

⁴ Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

⁵ A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

⁶ Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, Government Code.

1. The name, address, and a general description of the business activity of the business entity;
2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than \$10,000.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

(D) This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$500.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$500 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan

from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

- (B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.
- (C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.
- (D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.
- (E) This section shall not apply to the following:
 - 1. Loans made to the campaign committee of an elected officer or candidate for elective office.
 - 2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
 - 3. Loans from a person which, in the aggregate, do not exceed \$500 at any given time.
 - 4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

- (A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan

agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.
2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.
2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:
 - a. The date the loan was made.
 - b. The date the last payment of \$100 or more was made on the loan.
 - c. The date upon which the debtor has made payments on the loan aggregating to less than \$250 during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.
2. A loan that would otherwise not be a gift as defined in this title.
3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.
4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.
5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

- (A) Any business entity in which the designated employee has a direct or indirect investment worth \$2,000 or more;
- (B) Any real property in which the designated employee has a direct or indirect interest worth \$2,000 or more;
- (C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;
- (D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or
- (E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$500 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

- (A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or
- (B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value \$1,000 or more.

- (10) Section 10. Disclosure of Disqualifying Interest.
When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.
- (11) Section 11. Assistance of the Commission and Counsel.
Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Section 83114 and Regulations 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.
- (12) Section 12. Violations.
This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

EXHIBIT “B”

**DESIGNATED EMPLOYEES AND DISCLOSURE OBLIGATIONS
FOR THE CITY OF FORT BRAGG**

Designated Employees Listed in Government Code Section 87200:

- City Attorney
- City Councilmembers
- City Manager
- Finance Director/City Treasurer
- Planning Commissioners

Other Designated Employees:

- Assistant City Attorney
- Assistant Director of Public Works
- Associate City Engineer
- Chief of Police
- City Clerk
- Community Development Director
- Consultants¹
- Public Works Director
- Senior Government Accountant
- Senior Planner

Obligations:

All designated employees listed above must disclose:

- Investments
- Interests in real property
- Interests in real property held by a trust or business entity
- Investments held by a trust or business entity
- Income, including loans received, gifts, and honoraria
- Commission income received by brokers, agents and salespersons
- Income and loans to business entities or trusts
- Income from rental property
- Interest in business property
- Business positions

¹ New positions and consultants, pursuant to FPPC Reg. § 18734, must be included in the list of designated employees upon determination of the City Manager that the new position or consultant effectively is acting as a designated employee. Such new positions and consultants must disclose pursuant to the broadest disclosure in the Code unless the City Manager determines that the broadest disclosure is not necessary and sets disclosure that is more tailored to positions with a limited range of duties. The City Manager's determination must be in writing, and must show that a particular new position or consultant hired for a “designated position” is performing a range of duties sufficient in scope that the consultant or new employee effectively is acting as a designated employee, and therefore must fully comply with the disclosure requirements described in this Section. This determination shall include a description of the position's duties and, based upon that description, a statement of the extent of disclosure requirements. Broadest disclosure shall be defined as Disclosure Categories 1 and 2. The City Manager's determination is a public record and must be retained for public inspection by the City Clerk in the same manner and location as this Conflict of Interest Code.



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 20-761

Agenda Date: 6/8/2020

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5D.

Adopt Joint City Council/Improvement District/Redevelopment Successor Agency Resolution Approving a Professional Services Agreement with JJACPA, Inc. for Auditing Services and Authorizing City/District Manager/Executive Director to Execute Same (Amount Not to Exceed \$42,550; Split Among the Agencies)

Since Fiscal Year 2014/15, JJACPA, Inc. has provided financial auditing services for the City of Fort Bragg. The Professional Services Agreement of June 24, 2019 expires on June 30, 2020. The parties desire to enter into a new agreement to include financial auditing services for Fiscal Year 2019/20. JJACPA, Inc. has agreed to provide these services at a cost of \$42,550, an increase in cost of \$800 over the previous year's audit. The Professional Services Agreement with JJACPA needs to be approved by the City Council, Municipal Improvement District Board, and Redevelopment Successor Agency Board. Staff recommends adopting the resolution approving the contract.

RESOLUTION NO. ____-2020

RESOLUTION OF THE FORT BRAGG CITY COUNCIL

and

RESOLUTION NO. ID ____-2020

RESOLUTION OF THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT BOARD

and

RESOLUTION NO. RS __-2020

RESOLUTION OF THE FORT BRAGG REDEVELOPMENT SUCCESSOR AGENCY

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH JJACPA, INC. FOR AUDITING SERVICES AND AUTHORIZING CITY/DISTRICT MANAGER/EXECUTIVE DIRECTOR TO EXECUTE SAME (AMOUNT NOT TO EXCEED \$42,550; SPLIT AMONG THE AGENCIES)

WHEREAS, the City of Fort Bragg, Fort Bragg Redevelopment Successor Agency, Fort Bragg Municipal Improvement District No. 1, and C.V. Starr Community and Aquatic Center (collectively "the City") maintain financial information which is reported in year-end financial statements which must be filed with the State of California, bond rating agencies, and various regulatory oversight bodies all of whom require that the statements be audited by independent certified public accountants; and

WHEREAS, the City has engaged JJACPA, Inc. to provide auditing services since 2015; and

WHEREAS, A Professional Services Agreement is proposed to engage JJACPA, Inc. to audit fiscal year ending June 30, 2020; and

WHEREAS, total annual costs pursuant to the Professional Services Agreement are \$42,550; and

WHEREAS, based on all the evidence presented, the City Council/District Board/Agency Board finds as follows:

1. JJACPA, Inc. is licensed with the California Board of Accountancy, with a clear license status and has no disciplinary actions or license restrictions.
2. JJACPA, Inc. is qualified, based on previous experience as noted in their proposal and based on their history of providing services to the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg/District Board of the Fort Bragg Municipal Improvement District No. 1/ and Agency Board of the Fort Bragg Redevelopment Successor Agency do hereby approve a professional services agreement with JJACPA, Inc. for auditing services and authorizes the City/District Manager/Executive Director to execute same (amount not to exceed \$42,550 split among the agencies).

The above and foregoing Resolution was introduced by Council/Board/Agency Member _____, seconded by Council/Board/Agency Member _____ and

passed and adopted at a regular meeting of the City Council of the City of Fort Bragg/District Board of the Fort Bragg Municipal Improvement District No. 1/Agency Board of the Fort Bragg Redevelopment Successor Agency held on the 8th day of June, 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

WILLIAM V. LEE
Mayor/Chair

ATTEST:

June Lemos, CMC
City/District Clerk/Agency Secretary

**CITY OF FORT BRAGG
PROFESSIONAL SERVICES AGREEMENT
WITH
JJACPA, INC.**

THIS AGREEMENT is made and entered into this ___ day of June, 2020 (“Effective Date”), by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”), and JJACPA, INC., a California Corporation, 7080 Donlon Way, Suite 204, Dublin, California 94568 (“Consultant”).

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide financial auditing services for the City of Fort Bragg, Fort Bragg Redevelopment Successor Agency, Fort Bragg Municipal Improvement District No. 1, and C.V. Starr Community and Aquatic Center as more fully described herein; and

B. WHEREAS, City and Consultant desire to contract for the specific services described in **Exhibit A** (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

E. WHEREAS, the legislative body of the City on June 8, 2020 by Resolution No. authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Work. Consultant shall provide the professional services described in the Consultant’s Proposal (“Proposal”), attached hereto as **Exhibit A** and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement. Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. City officers and employees shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City as hereinafter specified. Evaluations of the work will be done

by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender, sexual orientation, or disability except as permitted pursuant to Section 12940 of the Government Code. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

Consultant shall, in all solicitations and advertisements for employees placed by, or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender, sexual orientation, or disability. Consultant shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense. All insurance requirements contained in this Agreement are independently

applicable to any and all subcontractors that Consultant may engage during the term of this Agreement.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant's total compensation shall not exceed **Forty-two Thousand Five Hundred Fifty Dollars (\$ 42,550.00)**.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of work specified in the Consultant's Proposal or which is inconsistent with or in violation of the provisions of this Agreement unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the hereinabove described "Scope of Work," an additional fee based upon the Consultant's standard hourly rates shall be paid to the Consultant for such additional services. The City Manager may approve contract change orders not exceeding a total of 10% of the approved contract or up to the contingency amount whichever amount is less for any one project.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but not more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the date of final payment.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the issuance of Notice to Proceed. Said services shall be performed in strict compliance with the schedule set forth in the Scope of Work attached hereto as **Exhibit A**. Consultant will complete the services in accordance with this Agreement by **June 30, 2021**. The Time of Completion may only be modified by a written amendment of the Agreement signed by both the City and the Consultant and in accordance with its terms.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the Consultant is encountered, a time extension may be mutually agreed upon in writing by the City and the Consultant. The Consultant shall present documentation satisfactory to the City to substantiate any request for a time extension.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and expire on **September 30, 2021** unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least ten (10) days prior written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. If the City suspends, terminates or abandons a portion of this Agreement, such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the Consultant defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

The City shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement, immediately upon service of written notice of termination on the Consultant, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

4.3. Compensation. In the event of termination, City shall pay Consultant for

reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination within thirty-five (35) days after service of the notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant. City shall not be liable for any claim of lost profits.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Broad-form commercial general liability, in a form at least as broad as ISO form #CG 20 01 04 13, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate, combined single limits. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit. If Consultant maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the high limits maintained by the Consultant.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, each incident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident for any employee or employees of Consultant. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officials, officers, agents, employees, and volunteers for losses arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

Before execution of this Agreement by the City, the Consultant shall file with the City Clerk the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The Consultant shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the City Clerk before execution of this Agreement by the City. The City, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the consultant to comply with this section.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

Neither the City nor any of its elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by Consultant under this Agreement are adequate to protect Consultant. If Consultant believes that any such insurance coverage is insufficient, Consultant shall provide, at its own expense, such additional insurance as Consultant deems adequate.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Fort Bragg and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Consultant shall forthwith obtain and submit proof of substitute insurance. Should Consultant fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at Consultant's sole cost and expense."
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Fort Bragg, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Fort Bragg shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Fort Bragg, its officers, officials, agents, employees, and volunteers.

- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self-Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance and endorsements shall be attached hereto as **Exhibit B** and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. The Project Manager designated to work directly with Consultant in the performance of this Agreement will be **Brett Jones, CPA**. It shall be the Consultant's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the Consultant shall refer any decision, which must be made by City, to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager.

Consultant designates **Victor Damiani, Finance Director**, as its Project Manager, who shall represent it and be its agent in all consultations with City during the term of this Agreement and who shall not be changed by Consultant without the express written approval by the City. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications

concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or if mailed, shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:
Joseph Arch, President
JJACPA, Inc.
7080 Donlon Way, Suite 204
Dublin, CA 94568-2787
Tel: (925) 556-6200
Fax: (707) 232-6226

IF TO CITY:
City Clerk
City of Fort Bragg
416 N. Franklin St.
Fort Bragg, CA 95437
Tel: (707) 961-2823
Fax: (707) 961-2802

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Mendocino County, California. Consultant agrees to submit to the personal jurisdiction of such court in the event of such action.

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. If Consultant is not a design professional performing "design professional" services under this Agreement, as that term is defined in Civil Code Section 2782.8, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and

replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, preliminary notes, working documents, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of Consultant. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City, but shall be made available to the City within ten (10) days of request or within ten (10) days of termination. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to

City any findings, reports, documents, information, data, preliminary notes and working documents, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.13. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.15. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.16. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, the conflict shall be resolved by giving precedence in the following order, if applicable: This Agreement, the City's Request for Proposals, the Consultant's Proposal.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental

beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraph and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY

CONSULTANT

By: _____

Tabatha Miller

Its: City Manager

DocuSigned by:
By: *Joseph Arch* _____

9154DD1EA28A1FC
Joseph Arch, CPA

Its: President

[Attach Notary Acknowledgment Page]

ATTEST:

By: _____
June Lemos, CMC
City Clerk

APPROVED AS TO FORM:

DocuSigned by:
By: *Keith Collins* _____
35110274715827D4
Keith F. Collins
City Attorney

EXHIBIT A**City of Fort Bragg****Dollar Cost Bid****SCHEDULE OF PROFESSIONAL FEES AND EXPENSES - TOTAL HOURS BY POSITION**
FOR THE AUDIT OF THE FISCAL YEARS 2020 FINANCIAL STATEMENTS - Adjusted to include 1
additional year

				2020
	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total Cost
Principal	40	\$ 200	\$ 175	\$ 7,000
Manager	40	\$ 175	\$ 150	6,000
Staff	160	\$ 150	\$ 125	20,000
Administrative	4	\$ 100	\$ 75	300
Total for audit services*	244			33,300
Single Audit	60			7,500
Gann Limit Report	4		included	-
Total all-inclusive maximum price for this audit	308			40,800
Consulting or assistance regarding accounting or bookkeeping matters			included	-
Out of Pocket Costs				1,750
Total all-inclusive maximum price				\$ 42,550

EXHIBIT B
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 20-766

Agenda Date: 6/8/2020

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5E.

Adopt City Council Resolution Confirming the Continued Existence of a Local Emergency in the City of Fort Bragg

At a special meeting on March 24, 2020, the Fort Bragg City Council ratified the City Manager's Proclamation declaring a local emergency due to COVID-19 in its Resolution No. 4242-2020. On April 6, 2020, the City Council adopted Resolution No. 4245-2020 by which it continued the local emergency. On April 20, 2020, the City Council adopted Resolution No. 4247-2020 again confirming the continued local emergency. The local emergency was again reconfirmed on May 11, 2020 by City Council Resolution No. 4250-2020 and on May 26, 2020 by City Council Resolution No. 4253-2020. The City is required to reconfirm the existence of a local emergency every 21 days pursuant to Fort Bragg Municipal Code Section 2.24.040.

RESOLUTION NO. ____-2020

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL
CONFIRMING THE CONTINUED EXISTENCE OF A LOCAL EMERGENCY
IN THE CITY OF FORT BRAGG**

WHEREAS, California Government Code section 8630 empowers the Fort Bragg City Council to proclaim the existence of a local emergency when the City is threatened or likely to be threatened by the conditions of extreme peril to the safety of persons and property that are or are likely to be beyond the control of the services, personnel, equipment, and facilities of this City; and

WHEREAS, California Government Code section 8558(c) states that a “local emergency” means the duly proclaimed existence of conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a city; and

WHEREAS, COVID-19, a novel coronavirus causing infectious disease, was first detected in China in December 2019 and has spread across the world and to the United States. Symptoms of COVID-19 include fever, cough, and shortness of breath; outcomes have ranged from mild to severe illness, and, in some cases, death. The Center for Disease Control and Prevention (CDC) has indicated the virus is a tremendous public health threat; and

WHEREAS, on March 13, 2020, the President of the United States issued a proclamation declaring the COVID-19 outbreak in the United States as a national emergency, beginning March 1, 2020; and

WHEREAS, the Governor of the State of California and the Public Health Officer of the County of Mendocino have both issued Shelter-in-Place orders to combat the spread of COVID-19; and

WHEREAS, on March 17, 2020 the City Manager, as the City’s Director of Emergency Services, issued Proclamation No. CM-2020-01 declaring a local emergency as authorized by Government Code section 8630 and Fort Bragg Municipal Code section 2.24.040(B); and

WHEREAS, at a special meeting on March 24, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4242-2020, ratifying the City Manager’s Proclamation declaring the existence of a local emergency;

WHEREAS, at a special meeting on April 6, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4245-2020 by which it continued the local emergency;

WHEREAS, at a special meeting on April 20, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4247-2020 by which it continued the local emergency;

WHEREAS, at a regular meeting on May 11, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4250-2020 by which it continued the local emergency;

WHEREAS, at a regular meeting on May 26, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4253-2020 by which it continued the local emergency;

NOW, THEREFORE, BE IT RESOLVED AND PROCLAIMED by the City Council of the City of Fort Bragg that for reasons set forth herein, said local emergency shall be deemed to continue to exist until the City Council of the City of Fort Bragg, State of California, proclaims its termination; and

BE IT FURTHER RESOLVED that the City Council of the City of Fort Bragg will review the need for continuing the local emergency at least once every 21 days until the City Council terminates the local emergency; and

BE IT FURTHER RESOLVED that this resolution confirming the continued existence of a local emergency shall be forwarded to the Director of the Governor's Office of Emergency Services and the Governor of the State of California, as well as the Mendocino County Office of Emergency Services.

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 8th day of June, 2020, by the following vote:

**AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:**

WILLIAM V. LEE
Mayor

ATTEST:

June Lemos, CMC
City Clerk

City Council - Via Video Conference

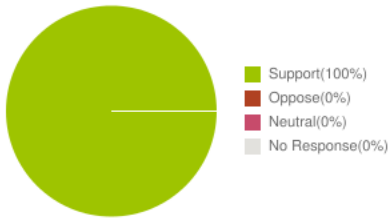
06-08-20 18:00

Agenda Name	Comments	Support	Oppose	Neutral
5E. 20-766 Adopt City Council Resolution Confirming the Continued Existence of a Local Emergency in the City of Fort Bragg	1	1	0	0

Sentiments for All Agenda Items

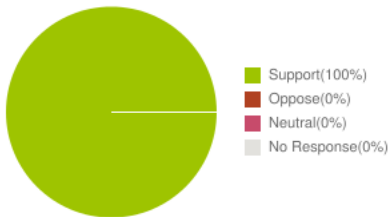
The following graphs display sentiments for comments that have location data. Only locations of users who have commented will be shown.

Overall Sentiment



Agenda Item: eComments for 5E. 20-766 Adopt City Council Resolution Confirming the Continued Existence of a Local Emergency in the City of Fort Bragg

Overall Sentiment



Gabriel Maroney

Location:

Submitted At: 9:19pm 06-08-20

It seems overly reasonable for the City Council meetings to be taking place in person now. If someone is at risk or anxious about attending a meeting in person, perhaps they could then use Zoom or some other solution to bring them in. The sense of duty to the brown act combined with scientific data on SARS-CoV-2 should have had these meetings in person already. There is an emergency and these meetings are Epi-Essential.



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 20-767

Agenda Date: 6/8/2020

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Council Letter

Agenda Number: 5F.

Approve Letter Requesting the California State Legislature and Governor Newsom Increase CARES Act Funding Allocated to Cities to \$500 Million to Support Local COVID-19 Expenses



CITY OF FORT BRAGG

Incorporated August 5, 1889

416 N. Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

June 8, 2020

Assembly Member Jim Wood
State Capitol, Rm 6005
Sacramento, CA 95814
VIA Email assemblymember.wood@assembly.ca.gov

Senator McGuire
State Capitol, Room 5061
Sacramento, CA 95814
VIA Email: senator.mcguire@senate.ca.gov

Dear Assembly Member Wood and Senator McGuire:

The City of Fort Bragg thanks you for your efforts to protect and support Californians during this unprecedented public health crisis. Since the beginning of the COVID-19 outbreak, cities have been coordinating across jurisdictional lines, enacting emergency measures to slow the spread of the coronavirus pandemic, taking action to protect individuals and small businesses, and incurring significant unplanned expenses to protect public health and the economy. These actions have saved lives and serve as a model for the country. But, these actions come at a cost.

The City of Fort Bragg appreciates the May Revision allocation of \$450 million of the state's CARES Act funding to cover COVID-19-related costs by cities. However, under the current formula our City will only receive \$75,494. This is not nearly enough to provide adequate levels of personal protective equipment to front line workers, to disinfect and sanitize public facilities, or to take other needed public health actions to begin the process of reopening.

We are calling on the Legislature and the Governor to increase the state's CARES Act funding allocation to cities to \$500 million and establish a floor allocation of \$50,000 per city. Cities need additional funding and a minimum allocation to ensure that CARES Act funding is distributed fairly and equitably, and is a meaningful amount for all jurisdictions.

CARES Act funding will help our City recover from this pandemic faster, and reopen our communities without furthering city revenue shortfalls and threatening core city services.

It is important to note that CARES Act funding is only for COVID-19-related expenses. Our City still needs direct state and federal funding to address the devastating impact stay-at-home orders have had on our budget and local economy. In total, cities around the state are facing a

nearly \$7 billion revenue shortfall over the next two years, and this shortfall grows by billions of dollars as modified stay-at-home orders extend into the summer months and beyond.

The City of Fort Bragg appreciates your consideration of our budget requests and looks forward to further discussing how together we can continue to best protect Californians and reopen our economy. Thank you again for your leadership and partnership during these uncertain times.

Sincerely,

William V. Lee
Mayor

Bernie Norvell
Vice Mayor

Teresa K. Albin-Smith
Councilmember

Jessica Morsell-Haye
Councilmember

Lindy Peters
Councilmember

Cc: Governor Gavin Newsom: ExternalAffairs@gov.ca.gov
Sara Sanders, Regional Public Affairs Manager, sanders@cacities.org
Meg Desmond, League of California Cities, cityletters@cacities.org

ACTION ALERT!!

CARES Act Budget Request

BACKGROUND:

Since the beginning of the COVID-19 outbreak, cities have been coordinating across jurisdictional lines, enacting emergency measures to slow the spread of the coronavirus pandemic, taking action to protect residents and small businesses, and incurring significant unplanned expenses to protect public health and the economy.

These actions have saved lives and serve as a model for the country. But, these actions come at a cost.

CARES Act funding provides cities the ability to recover from this pandemic faster, and reopen our communities without furthering city revenue shortfalls and threatening core city services.

The League requests that the Legislature and the Governor:

1. Increase the state's CARES Act funding allocation to cities to \$500 million to support local COVID-19 expenses; and
2. Establish a minimum allocation of \$50,000 to all cities.

ACTION:

All California cities, regardless of population, urgently need CARES Act funding to help continue to fight COVID-19 and protect residents through the summer months and beyond. No city can be left behind. Cities can help in the following ways:

- 1) Send a formal city letter to your Assembly Member and Senator as soon as possible.
(See attached sample letter)
- 2) Call your Assembly Member and Senator to inform them of the importance of receiving CARES Act funding to continue to fight COVID-19. Please refer to the talking points on the next page for additional guidance.

Attached to this you will find a breakdown of the CARES Act funding per city as proposed in the May Revision and a breakdown of the CARES Act funding as proposed by the League of California Cities (\$500 million total allocation, and \$50,000 minimum per city).

Also attached are guidelines and Q&A from the US Treasury that provide additional information on how CARES Act funds can be expended by cities.

TALKING POINTS:

California's 482 cities are on the front lines of the COVID-19 pandemic, protecting residents and incurring additional expenses as they work to prevent further transmission.

- Since the beginning of this outbreak, cities have been coordinating across jurisdictional lines, enacting emergency measures to slow the spread of the coronavirus pandemic, taking action to protect individuals and small businesses, and incurring significant unplanned expenses to protect public health and the economy.
- These actions have saved lives and serve as a model for the country. But, these actions come at a cost.

Cities appreciate the Governor's allocation of \$450 million of the state's CARES Act funding to cover COVID-19-related costs by cities, but when under the current formula, some cities will receive as little as \$3,000 to respond to COVID-19 in their communities.

- All California cities, big and small, are feeling the severe financial impacts of this pandemic.
 - Nine out of 10 cities are buying personal protective equipment.
 - Nine out of 10 cities report increased spending to disinfect and sanitize public facilities.
 - 12 percent of cities report spending more than \$500,000 to address the outbreak in their communities.

We are calling on the Legislature and the Governor to increase the state's CARES Act funding allocation to cities to \$500 million and establish a floor allocation of \$50,000 per city.

- Cities need additional funding and a minimum allocation to ensure that CARES Act funding is distributed fairly and equitably, and is a meaningful amount for all jurisdictions.
- CARES Act funding provides cities the ability to recover from this pandemic faster, and reopen our communities without furthering city revenue shortfalls and threatening core city services.
- Providing funding to cities is not optional – a safe, equitable, and expedited economic recovery depends on it.

CARES Act funding is only for COVID-19-related expenses. Cities still need direct state and federal funding to address the devastating impact stay-at-home orders have had on city budgets and local economies.

- As unanticipated emergency costs continue to grow, resources to fund core local services are plummeting. Cities are facing a nearly \$7 billion revenue shortfall over the next two years, and this shortfall grows by billions of dollars as modified stay-at-home orders extend into the summer months and beyond.
- CARES Act funding can only be used for COVID-19 related expenses, and will not help address the \$7 billion general revenue shortfall facing cities. Without additional funding, essential city services that residents depend on face significant impacts, and may be reduced or even eliminated.
- That's why the League is asking for direct and flexible funding from state and federal governments to help cities respond to, and recover from, this crisis.



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 20-755

Agenda Date: 6/8/2020

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Minutes

Agenda Number: 5G.

Approve Minutes of May 26, 2020



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Meeting Minutes City Council

*THE FORT BRAGG CITY COUNCIL MEETS CONCURRENTLY AS
THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1
AND THE FORT BRAGG REDEVELOPMENT SUCCESSOR
AGENCY*

Tuesday, May 26, 2020

6:00 PM

Town Hall, 363 N. Main Street

AMENDED

CALL TO ORDER

Mayor Lee called the meeting to order at 6:03 PM, all Councilmembers appearing via video conference.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: 5 - Mayor Will Lee, Vice Mayor Bernie Norvell, Councilmember Tess Albin-Smith, Councilmember Jessica Morsell-Haye and Councilmember Lindy Peters

AGENDA REVIEW

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

Mayor Lee read a plaque and proclamation honoring Byron and Helen Haverfield for their donation of \$10,000 to refurbish the Guest House Museum in December 1988.

Councilmember Peters joined the meeting at 6:10 PM.

2. PUBLIC COMMENTS ON: (1) NON-AGENDA, (2) CONSENT CALENDAR & (3) CLOSED SESSION ITEMS

Public Comment was read into the record by the City Clerk as follows:

(1) Non-Agenda Items:

- Marianne McGee submitted comments regarding garbage on the Coastal Trail.

(2) Consent Calendar Items:

- None.

(3) Closed Session Items:

- None.

3. STAFF COMMENTS

City Manager Miller reported on the following:

- The skate park, dog park and petanque courts at the CV Starr Center were all opened today.
- City Hall will be open to the public on a limited basis beginning June 1, subject to certain requirements.
- The Police Department responded to complaints about violations of Shelter-in-Place orders

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over the weekend. The PD will continue to respond to all calls, but criminal complaints take priority.

- An arrest has been made in the recent gang incident in Noyo Harbor.
- Diversion Strategies has submitted a draft of their evaluation report on the Central Coast Transfer Station. The final draft will be available in July.
- The City is preparing for wildfire season and Public Safety Power Shutoff events in coordination with PG&E.
- The Grocery Outlet project is out for review.
- The Danco housing project is underway with construction to begin in mid-October.
- The Governor's executive orders allow every voter in California to vote by mail in November.

4. MATTERS FROM COUNCILMEMBERS

Councilmember Albin-Smith reported on recent communications with the Food Bank operations manager regarding grants, donations and volunteers. Councilmember Morsell-Haye said that there is a public desire to hold open meetings so members of the public can participate, and she asked when that might be possible. After a brief discussion, the Mayor and other members of the Council suggested that a reasonable date would be the second meeting in June, on June 22, 2020. Councilmember Morsell-Haye asked the Council to consider an extension of the temporary moratorium on evictions which expires at the end of May. A special meeting was set for this Thursday, May 28, 2020 to consider an extension of the Urgency Ordinance. Councilmember Peters mentioned that the dog park and skate park are open. He complimented Vice Mayor Norvell for putting the flags up for Memorial Day. The Vice Mayor noted that Nancy Bennett of Cowlick's and Sergeant Lee also participated in putting up flags. Mayor Lee announced the Class of 2020 graduation parade will begin at 5PM on June 5. He noted that the hospital is working with the County and partner hospitals to increase COVID-19 testing capabilities on the coast. Fort Bragg area has tested nearly 600 citizens so far, all negative, no hospitalizations.

5. CONSENT CALENDAR

Approval of the Consent Calendar

A motion was made by Councilmember Peters, seconded by Councilmember Morsell-Haye, to approve the Consent Calendar. The motion carried by the following vote:

Aye: 5 - Mayor Lee, Vice Mayor Norvell, Councilmember Albin-Smith, Councilmember Morsell-Haye and Councilmember Peters

- 5A. [20-730](#)** Accept Certificate of Completion for the 2019 Sewer Lift Station Project, City Project No. WWP-00017, and Direct City Clerk to File Notice of Completion

This Certificate of Completion was accepted on the Consent Calendar.

- 5B. [20-732](#)** Adopt City Council Resolution Confirming the Continued Existence of a Local Emergency in the City of Fort Bragg

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 4253-2020

- 5C.** [20-733](#) Adopt City Council Resolution Modifying the City's Compensation Plan and Confirming the Pay/Rates/Ranges for All City of Fort Bragg Established Classifications Effective May 10, 2020

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 4254-2020

- 5D.** [20-734](#) Adopt City Council Resolution Modifying the City's Compensation Plan and Confirming the Pay/Rates/Ranges for All City of Fort Bragg Established Classifications Effective May 24, 2020

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 4255-2020

- 5E.** [20-736](#) Adopt City Council Resolution Approving Application for Funding and the Execution of Grant Agreements and Amendments from the 2019-20 Funding Year of the State CDBG Program

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 4256-2020

- 5F.** [20-738](#) Adopt Joint City Council/Improvement District Resolution Authorizing the Execution of First Amendment to the July 1, 2019 Employment Agreement for City Manager with Tabatha Miller

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 4257-2020 / RES ID 426-2020

- 5G.** [20-744](#) Approve Scope of Work for the Request for Proposals to Provide Economic Development Business Loan Development, Project Underwriting, Over-the-Counter Application Preparation, Loan Servicing, and Related Services for the City of Fort Bragg

This Scope of Work was approved on the Consent Calendar.

- 5H.** [20-746](#) Adopt City Council Resolution Ratifying the City Manager's Approval of a Three-Month Business Loan Forbearance for Overtime Brewing, Inc. Due to the COVID-19 Pandemic

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 4258-2020

- 5I.** [20-731](#) Approve Minutes of May 11, 2020

These Minutes were approved on the Consent Calendar.

5J. [20-748](#) Approve Minutes of Special Closed Session of May 19, 2020

These Minutes were approved on the Consent Calendar.

5K. [20-750](#) Adopt Resolution Approving the Side Letter Agreement with the Fort Bragg Police Association and Authorizing City Manager to Execute

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 4259-2020

6. DISCLOSURE OF EX PARTE COMMUNICATIONS ON AGENDA ITEMS

None.

7. PUBLIC HEARING

8. CONDUCT OF BUSINESS

8A. [20-735](#) Receive Report and Consider Adoption of City Council Resolution Authorizing Amendment of #16-HOME-11373 Standard Agreement to Include Tenant Based Rental Assistance Program

City Manager Miller presented the staff report on this agenda item and responded to questions from Councilmembers regarding program guidelines, compliance, and using in-house staff whose hours have been reduced for administration of the program.

Public Comment was read into the record by the Clerk as follows:

- Jacob Patterson commented in support of the resolution.

Discussion: The Council thanked Special Projects Assistant McLaughlin for finding this opportunity to provide more hours for workers who have been furloughed.

A motion was made by Councilmember Albin-Smith, seconded by Councilmember Peters, that this Resolution be adopted. The motion carried by the following vote:

Aye: 5 - Mayor Lee, Vice Mayor Norvell, Councilmember Albin-Smith, Councilmember Morsell-Haye and Councilmember Peters

Enactment No: RES 4260-2020

8B. [20-742](#) Receive Report and Consider Adoption of Urgency Ordinance No. 962-2020 Waiving Zoning Requirements and/or Standards to Facilitate Business Operations Affected by Public Health Orders

Housing & Economic Development Coordinator McCormick presented the report on this agenda item.

Public Comment was read into the record by the Clerk as follows:

- Jacob Patterson commented in support of the resolution.

Discussion: The Council discussed an appeal process, agreeing that appeals could be brought forward to the Community Development Committee, with a final appeal to the City Council. City Manager Miller said that the appeal process can be handled administratively without having to include the particulars of the process in the Urgency Ordinance.

A motion was made by Vice Mayor Norvell, seconded by Councilmember Morsell-Haye, that this Ordinance be adopted. The motion carried by the following vote:

Aye: 5 - Mayor Lee, Vice Mayor Norvell, Councilmember Albin-Smith, Councilmember Morsell-Haye and Councilmember Peters

Enactment No: ORD 962-2020

8C. [20-739](#)

Receive Report and Consider Adoption of City Council Resolution Authorizing City Manager to Execute PG&E Loan Documents (Amount Not To Exceed \$112,921.46) Associated with the CV Starr LED Lighting Project

City Manager Miller summarized the staff report on this agenda item.

Public Comment: None.

A motion was made by Councilmember Peters, seconded by Councilmember Albin-Smith, that this Resolution be adopted. The motion carried by the following vote:

Aye: 5 - Mayor Lee, Vice Mayor Norvell, Councilmember Albin-Smith, Councilmember Morsell-Haye and Councilmember Peters

Enactment No: RES 4261-2020

9. CLOSED SESSION

ADJOURNMENT

Mayor Lee adjourned the meeting at 7:13 PM.

WILLIAM V. LEE, MAYOR

June Lemos, CMC, City Clerk

IMAGED (_____)



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 20-762

Agenda Date: 6/8/2020

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Minutes

Agenda Number: 5H.

Approve Minutes of Special Meeting of May 28, 2020



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Meeting Minutes Special City Council

*THE FORT BRAGG CITY COUNCIL MEETS CONCURRENTLY AS
THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1
AND THE FORT BRAGG REDEVELOPMENT SUCCESSOR
AGENCY*

Thursday, May 28, 2020

5:00 PM

Via Video Conference

Special Meeting

CALL TO ORDER

Mayor Lee called the meeting to order at 5:01 PM, all Councilmembers appearing via video conference.

ROLL CALL

Present: 5 - Mayor Will Lee, Vice Mayor Bernie Norvell, Councilmember Lindy Peters, Councilmember Jessica Morsell-Haye and Councilmember Tess Albin-Smith

1. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

Public comment on a non-agenda item was read into the record by the City Clerk as follows:

- Nancy Bennett expressed gratitude for the community's support of the Fort Bragg High School graduating class.

2. CONDUCT OF BUSINESS

2A. [20-751](#) Receive Report and Consider Extension of Urgency Ordinance No. 960-2020 Providing a Temporary Moratorium on Evictions Due to COVID-19

City Manager Miller presented the staff report on this agenda item.

Public Comment: None.

Discussion: Councilmembers discussed the potential risk associated with extending the urgency ordinance contrasted with the need to provide a safety net to local tenants, both residential and commercial. At the time of this special meeting, it was unknown whether the Governor would extend the statewide moratorium on tenant evictions or not. A majority of the Council expressed their belief that the extension of the moratorium for one additional month, through June 30, 2020, would present minimal risk.

A motion was made by Councilmember Morsell-Haye, seconded by Councilmember Albin-Smith, that this Urgency Ordinance Amendment be adopted. The motion carried by the following vote:

Aye: 4 - Mayor Lee, Councilmember Peters, Councilmember Morsell-Haye and Councilmember Albin-Smith

No: 1 - Vice Mayor Norvell

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Enactment No: ORD 960-2020 AMENDMENT

2B. [20-753](#) City Council Discussion on Reopening City Hall and Public Meetings at Town Hall

City Manager Miller said the City Hall and Police Department lobbies will reopen to the public on June 1, 2020. She noted that on Wednesdays, the City Hall lobby sees a lot of traffic for the public restrooms due to Farmers Market and requested that City Hall be closed for an In-Service Day on Wednesdays until the social distancing orders are lifted. This would also allow staff whose hours have been reduced due to the COVID-19 emergency to complete assignments and projects. The target date for opening Council meetings to the public, with conditions such as masking and social distancing, is June 22, 2020.

Public Comment by Gabriel Maroney was read into the record by the City Clerk.

Council directed that City Hall should remain closed on Wednesdays for an In-Service Day until further notice.

3. CLOSED SESSION

Mayor Lee recessed the meeting at 5:55 PM; the meeting reconvened to Closed Session at 6:00 PM.

3A. [20-752](#) CONFERENCE WITH LABOR NEGOTIATORS: Pursuant to Government Code Section 54957.6: City Negotiator: William V. Lee, Mayor. Employee Classification: City Manager

Mayor Lee reconvened the meeting to Open Session at 6:57 PM and reported that no reportable action had been taken on the Closed Session item.

ADJOURNMENT

Mayor Lee adjourned the meeting at 6:57 PM.

WILLIAM V. LEE, MAYOR

June Lemos, CMC, City Clerk

IMAGED (_____)



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 20-729

Agenda Date: 6/8/2020

Version: 1

Status: Public Hearing

In Control: City Council

File Type: Resolution

Agenda Number: 7A.

Receive Report, Conduct Public Hearing, and Consider Adoption of City Council Resolution Approving the Issuance of Revenue Bonds by the California Municipal Finance Authority for the Purpose of Financing the Acquisition and Rehabilitation of a 56-unit Multifamily Development known as Walnut Apartments, for the Benefit of DFA Development, LLC



AGENCY: City Council
MEETING DATE: June 8, 2020
DEPARTMENT: Administration
PRESENTED BY: S McCormick
EMAIL ADDRESS: smccormick@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Receive Report, Conduct Public Hearing, and Consider Adoption of City Council Resolution Approving the Issuance of Revenue Bonds by the California Municipal Finance Authority for the Purpose of Financing the Acquisition and Rehabilitation of a 56-unit Multifamily Development known as Walnut Apartments, for the Benefit of DFA Development, LLC

ISSUE:

DFA Development, LLC (the Borrower) has requested that the California Municipal Finance Authority (CMFA) serve as the municipal issuer of the Bonds in an aggregate principle amount not to exceed \$8,000,000 of tax-exempt revenue bonds. The proceeds of the bonds will be used for the acquisition and rehabilitation of a 56-unit multifamily residential facility known as Walnut Apartments, located at 311 Walnut Street in the City of Fort Bragg.

In order for all or a portion of the Bonds to qualify as tax-exempt bonds, the City of Fort Bragg must conduct a public hearing (the TEFRA Hearing) providing members of the community an opportunity to speak in favor of or against the use of tax-exempt bonds for the financing of the Project. Prior to such TEFRA Hearing, reasonable notice must be provided to the members of the community. Following the close of the TEFRA Hearing, an "applicable elected representative" of the governmental unit hosting the Project must provide its approval of the issuance of the Bonds for the financing of the Project.

ANALYSIS:

CALIFORNIA MUNICIPAL FINANCE AUTHORITY

The CMFA was created on January 1, 2004 pursuant to a joint exercise of powers agreement to promote economic, cultural and community development, through the financing of economic development and charitable activities throughout California. To date, over 300 municipalities have become members of CMFA.

The CMFA was formed to assist local governments, non-profit organizations and businesses with the issuance of taxable and tax-exempt bonds aimed at improving the standard of living in California. The CMFA's representatives and its Board of Directors have considerable experience in bond financings.

EXECUTION OF THE JOINT EXERCISE OF POWERS AGREEMENT

The Bonds to be issued by the CMFA for the Project will be the sole responsibility of the Borrower, and the City will have no financial, legal, moral obligation, liability or responsibility

for the Project or the repayment of the Bonds for the financing of the Project. All financing documents with respect to the issuance of the Bonds will contain clear disclaimers that the Bonds are not obligations of the City or the State of California but are to be paid for solely from funds provided by the Borrower.

The Board of Directors of the California Foundation for Stronger Communities, a California non-profit public benefit corporation (the Foundation), acts as the Board of Directors for the CMFA. Through its conduit issuance activities, the CMFA shares a portion of the issuance fees it receives with its member communities and donates a portion of these issuance fees to the Foundation for the support of local charities. With respect to the City of Fort Bragg, it is expected that a portion of the issuance fee attributable to the City will be granted by the CMFA to the general fund of the City. Such grant may be used for any lawful purpose of the City.

RECOMMENDED ACTION:

1. Conduct the public hearing under the requirements of TEFRA and the Internal Revenue Code of 1986, as amended (the Code). In response to the COVID-19 Pandemic, the City must provide a toll free telephone line for members of the public to call in to the public hearing to provide their input. The toll free telephone number was provided to the public 48 hours in advance as a posting to the City’s website. The number will also be provided at the beginning of the public hearing.
2. Adopt the Resolution approving the issuance of the Bonds by the CMFA for the benefit of the Borrower, DFA Development, LLC, a California limited liability company, to provide for the financing of the Project. Such adoption is solely for the purposes of satisfying the requirements of TEFRA, the Code and the California Government Code Section 6500.

ALTERNATIVE ACTION(S):

Do not conduct the public hearing or adopt the Resolution. The impact of not taking the recommended action is that DFA Development, LLC will not be able to obtain tax-exempt funding through the CMFA and such inaction will likely result in the project not going forward in Fort Bragg in the near term future.

FISCAL IMPACT:

Outside of holding the TEFRA hearing, and adopting the required resolution, no other participation or activity of the City or the City Council with respect to the issuance of the Bonds will be required.

GREENHOUSE GAS EMISSIONS IMPACT:

Rehabilitation of the 58-unit affordable housing project will temporarily increase greenhouse gas emissions as the result of the construction activity.

CONSISTENCY:

Support for the DFA Development, LLC is consistent with the City Council’s goal of providing affordable housing units.

IMPLEMENTATION/TIMEFRAMES:

N/A

ATTACHMENTS:

1. Resolution
2. Public Hearing Script
3. Public Hearing Notice

NOTIFICATION:

1. Danny Fred, DFA Development, LLC
2. Notify Me subscriber lists: Affordable Housing, Public Hearings

RESOLUTION NO. ____-2020

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING THE
ISSUANCE OF MULTIFAMILY HOUSING REVENUE BONDS BY THE
CALIFORNIA MUNICIPAL FINANCE AUTHORITY FOR THE PURPOSE OF
FINANCING THE ACQUISITION AND REHABILITATION OF A MULTIFAMILY
RENTAL HOUSING FACILITY KNOWN AS WALNUT APARTMENTS**

WHEREAS, pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), certain public agencies (the "Members") have entered into a Joint Exercise of Powers Agreement, effective on January 1, 2004 (the "Agreement") in order to form the California Municipal Finance Authority (the "Authority"), for the purpose of promoting economic, cultural and community development, and in order to exercise any powers common to the Members, including the issuance of bonds, notes, or other evidences of indebtedness; and

WHEREAS, the City of Fort Bragg (the "City") is a member of the Authority; and

WHEREAS, there is now before this City Council (the "City Council") the form of the Agreement; and

WHEREAS, the Authority is authorized to issue and sell revenue bonds for the purpose, among others, of financing or refinancing the acquisition, construction and rehabilitation of multifamily rental housing projects; and

WHEREAS, DFA Development LLC, a California limited liability company ("DFA") has requested that the Authority issue or incur one or more series of debt obligations (which may be in the form of a loan evidenced by a note or tax-exempt revenue bonds, and referred to in this Resolution as the "Bonds") in an aggregate principal amount not to exceed \$8,000,000, and lend the proceeds of the Bonds to a California limited partnership (the "Borrower") to be formed by DFA or an affiliate of DFA for the purpose of financing the costs of the acquisition and rehabilitation of a 56 unit multifamily residential rental facility located at 311 Walnut Street in the City known as Walnut Apartments (the "Project"), to be owned by the Borrower; and

WHEREAS, in order for the interest on Bonds to be tax-exempt, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") requires that the "applicable elected representative" with respect to the Project approve the issuance of the Bonds and the financing of the Project; and

WHEREAS, the Authority has determined that the City Council is an "applicable elected representative" for purposes of holding such hearing; and

WHEREAS, the Authority has requested that the City Council approve the issuance of the Bonds by the Authority following the conduct of the public hearing, in order to satisfy the

public approval requirements of Section 147(f) of the Code and the requirements of Section 4 of the Agreement; and

WHEREAS, notice of such public hearing has been duly given as required by the Code, and the City Council of the City has heretofore held such public hearing at which all interested persons were given an opportunity to be heard on all matters relative to the location, financing and nature of the Project and the Authority's incurrence of the Bonds therefor; and

WHEREAS, it is in the public interest and for the public benefit that the City Council of the City approve the issuance of the Bonds by the Authority for the aforesaid purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, AS FOLLOWS:

Section 1. The foregoing recitals are true and correct.

Section 2. The City Council of the City of Fort Bragg does hereby approve the issuance of the Bonds by the Authority for the purpose of providing funds to make a loan to the Borrower to enable the Borrower to finance costs of the Project. It is the purpose and intent of the City Council that this Resolution constitute approval of the issuance of the Bonds by the Authority for the purposes of: (a) Section 147(f) of the Code, by the applicable elected representative of the governmental unit having jurisdiction over the area in which the Project is located, in accordance with said Section 147(f), and (b) Section 4 of the Agreement.

Section 3. The issuance of the Bonds shall be subject to approval of the Authority of all financing documents relating thereto to which the Authority is a party. The City shall have no responsibility or liability whatsoever with respect to repayment or administration of the Bonds.

Section 4. The adoption of this Resolution shall not obligate the City or any department thereof to (1) provide any financing to acquire or rehabilitate the Project; (2) approve any application or request for or take any other action in connection with any planning approval, permit or other action necessary for the acquisition, rehabilitation or operation of the Project; (3) make any contribution or advance any funds whatsoever to the Authority; or (4) take any further action with respect to the Authority or its membership therein.

Section 5. The Mayor, the City Manager, the City Clerk and all other officers and officials of the City are hereby authorized and directed to do any and all things and to execute and deliver any and all agreements, documents and certificates which they deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this Resolution and the financing transaction approved hereby.

Section 6. The City Clerk shall forward a certified copy of this Resolution to the bond counsel for the Bonds, addressed as follows

Paul J. Thimmig, Esq.
Quint & Thimmig LLP
900 Larkspur Landing Circle, Suite 270
Larkspur, CA 94939-1726

Section 7. This resolution shall take effect immediately upon its passage.

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 8th day of June, 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

WILLIAM V. LEE
Mayor

ATTEST:

June Lemos, CMC
City Clerk

We are here this evening to conduct a public hearing pursuant to the federal Tax Equity and Fiscal Responsibility Act or TEFRA. TEFRA requires that a public hearing be held by the governing body of the jurisdiction in which a project to be financed with tax-exempt financing is located, and that the governing body approve the proposed Financing.

A partnership, to be formed by DFA Development, LLC, proposes to obtain tax exempt financing for approximately \$8,000,000 to finance the acquisition and rehabilitation of a 56-unit multifamily project known as Walnut Apartments, located at 311 Walnut Street in the City of Fort Bragg, California.

The California Municipal Finance Authority (CMFA) is a joint powers authority formed to assist local governments, non-profit organizations, and businesses with the issuance of both taxable and tax-exempt debt.

The debt to be issued by the CMFA will be the sole responsibility of the Borrower and the City will have no financial or legal obligations or responsibilities with regard to the repayment of the debt. All financing documents will carry disclaimers that the loan is not an obligation of the City. The City will also bear no costs in the issuance of the proposed debt. This is a private loan with the borrower and their bank.

It is recommended that the City Council adopt a resolution approving the issuance of bonds by the CMFA for the benefit the Borrower. Such adoption is solely for the purposes of satisfying the requirements of TEFRA, the Code, and the California Government Code Section 6500.



CITY OF FORT BRAGG

Incorporated August 5, 1889
416 N. Franklin St.
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on Monday, June 8, 2020, a public hearing as required by Section 147(f) of the Internal Revenue Code of 1986 (the "Code") will be held by the Fort Bragg City Council with respect to a proposed issuance by the California Municipal Finance Authority (the "Authority") of revenue bonds in one or more series issued in an amount of approximately \$8,000,000 (the "Bonds"). The proceeds of the Bonds will be used to: (1) finance the acquisition and rehabilitation of a 56-unit multifamily rental housing facility currently known as Walnut Apartments, located at 311 Walnut Street in the City of Fort Bragg, California; and (2) pay certain expenses incurred in connection with the issuance of the Bonds. The facility is to be owned by a partnership to be formed by DFA Development, LLC (the "Borrower"). All of the rental units in the facility will be rented to persons and families of low or very low income.

The Bonds and the obligation to pay principal of and interest thereon and any redemption premium with respect thereto do not constitute indebtedness or an obligation of the Authority, the State of California or any political subdivision thereof, within the meaning of any constitutional or statutory debt limitation, or a charge against the general credit or taxing powers of any of them. The Bonds shall be a limited obligation of the Authority, payable solely from certain revenues duly pledged therefor and generally representing amounts paid by the Borrower.

The hearing will commence on Monday, June 8, 2020 at 6:00 p.m. or as soon thereafter as the matter can be heard, and will be held at the City of Fort Bragg Town Hall, 363 North Main Street, Fort Bragg, California. Interested persons wishing to express their views on the issuance of the Bonds or on the nature and location of the facility proposed to be financed or refinanced may attend the public hearing or, prior to the time of the hearing, submit written comments.

PLEASE NOTE: If state and county Shelter-in-Place orders are still in effect at the time of the public hearing, this hearing may be held by teleconference and/or video conference. Information on how to submit public comments for the hearing will be contained in the agenda packet for June 8, 2020.

Additional information concerning the above matter may be obtained from, and written comments should be addressed to, City Clerk, City of Fort Bragg, 416 North Franklin Street, Fort Bragg, California 95437.

DATED: May 22, 2020

 June Lemos, CMC, City Clerk

PUBLISH/POST: May 28, 2020

STATE OF CALIFORNIA)
) ss.
COUNTY OF MENDOCINO)

I declare, under penalty of perjury, that I am employed by the City of Fort Bragg in the Administrative Services Department; and that I caused this Notice to be posted in the City Hall Notice Case on May 28, 2020.

 June Lemos, CMC, City Clerk



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 20-756

Agenda Date: 6/8/2020

Version: 1

Status: Business

In Control: City Council

File Type: Resolution

Agenda Number: 8A.

Receive Report and Consider Adoption of City Council Resolution Approving Waste Management Residential, Commercial and Multifamily and Rolloff Rate Increases



AGENCY: City Council
MEETING DATE: June 8, 2020
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
EMAIL ADDRESS: tmiller@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Adoption of City Council Resolution Approving Waste Management Residential, Commercial and Multifamily, and Rolloff Rate Increases

ISSUE:

The City's current Franchise Agreement (Agreement) with USA Waste of California, Inc., DBA Empire Waste Management (Waste Management) provides for the approval of all rates and charges by the City Council and/or the City Manager prior to such rates and charges becoming effective.

The Agreement entitles Waste Management to receive an annual cost-of-living rate adjustment as of June 1st of each year and pass-through adjustments when disposal rates are increased or decreased. Waste Management has calculated the June 1, 2020 rate increase of 4.10% and is requesting the City's approval.

ANALYSIS:

Pursuant to the Agreement, Waste Management is entitled to rate adjustments in the form of pass-through adjustments, cost-of-living adjustments and extraordinary rate adjustments.

The Agreement Section 14 A, titled City's Powers, provides for City approval of all rates:

Maximum rates and charges assessed by Grantee for any and all services and activities it performs or engages in the Franchise Area, and which are covered under this Agreement, must be approved by the City Council and/or the City Manager prior to such rates and charges becoming effective.

The current practice is to have both the City Council and City Manager approve rate changes, so that the public has an opportunity to participate and is better informed about the changes.

Pass-Through Adjustment

Pass-through adjustments are provided for in the Agreement (Attachment 3, Section 15 A, Pass-through Rate Adjustment). The Agreement states that a City surcharge or an increase in a disposal charge will be "passed-through" to the rate. The Agreement explicitly provides for retroactive application of a pass-through adjustment. Likewise, if another jurisdiction establishes or increases surcharges, fees or taxes, the increased expense may be added to the rate and applied retroactively.

The rates provided for in the letter from Waste Management include a weighted percent increase of 1.94% due to increased costs of disposal. Disposal costs account for nearly 30% of the rate and increased 6.50%. This includes an increase in fees for Solid Waste of Willits, an increase of tipping fees at Cold Creek Compost, and an increase in recycling costs as of January 1, 2020.

Disposal Changes						
Material	Previous Rate	New Rate	Rate Change	Rate Change Percent	Material Allocation	Allocated Rate Change
MSW	\$76.76	\$79.74	\$2.98	3.88%	61.86%	2.40%
Yard Waste	\$36.00	\$36.97	\$0.97	2.69%	16.18%	0.44%
Recycle	\$60.00	\$70.00	\$10.00	16.67%	21.96%	3.66%
Combined Disposal Adjustment Eff 1/1/2020						6.50%

Cost of Living Adjustment

Positive annual cost-of-living adjustments are provided for as of June 1st of each year in the Agreement (Attachments 3 and 7, Section 15 B, Cost of Living Rate Adjustment, as amended by Amendment No. 4 to Franchise Agreement Between the City of Fort Bragg and USA Waste of California Inc., DBA Empire Waste Management). The cost-of-living adjustment is based on the change in CPI-U, all items for the San Francisco-Oakland-San Jose CA and the most recently published California Index for #2 diesel fuel.

Additionally, Mendocino Solid Waste Management Authority (MSWMA) added a \$1.50 per ton to the disposal rate in Mendocino County, effective January 31, 2020, although this is reflected as an increase effective June 1, 2020 as provided in the chart below:

Expense Allocation %	Fuel Component	6.61%	Fuel % Change	0.51%	Weighted % Change
	All Other Component	57.35%	CPI % Change	2.91%	0.03%
	Disposal Pass Through Component	36.04%	Disposal % Change	1.16%	1.67%
					0.42%
					2.12% RRI Total % Adj. Eff. 6/1/20

Individual service rate increases are set forth in Attachment 2. A typical residential customer with a 32-gallon trash container will see a \$1.53 increase in the monthly service fee.

RECOMMENDED ACTION:

Consistent with the Agreement, staff recommends that the Council adopt a Resolution to approve the rate adjustment of 2.12%, effective June 1, 2020. Staff recommends the pass-through rate adjustment of 1.94% be approved per the Agreement retroactive to January 1, 2020.

ALTERNATIVE ACTION(S):

Do not approve the Resolution or the Waste Management rate increases. However, the Franchise Agreement requires the City to provide rate adjustments, so long as they meet the terms of the Agreement.

FISCAL IMPACT:

The rate increases impact City of Fort Bragg Residents and Businesses. Increases in City of Fort Bragg fees result in the same increase in franchise fees that the City receives on gross revenue generated within the City limits.

GREENHOUSE GAS:

The price increases are not expected to have any direct impact on greenhouse gas emissions, although any action that encourages a reduction in the waste stream through diversion, composting or reduced production of waste will reduce creation of methane gas in landfills and reduce the number of truck trips to haul the waste to recycle centers, compost facilities and/or the landfill.

CONSISTENCY:

Approval of the rate increases are consistent with the terms of the current Franchise Agreement.

IMPLEMENTATION/TIMEFRAME:

If approved, the rate increases will be applied to the Waste Management bills generated in the month of June. The disposal pass-through increase will apply retroactively to January 1, 2020 and the cost-of-living adjustment will be effective June 1, 2020.

As a reminder, the Franchise Agreement expires on June 30, 2021.

ATTACHMENTS:

1. Resolution
2. Rate Increase Submittal
3. Franchise Agreement
4. Amendment No. 1 to Franchise Agreement
5. Amendment No. 2 to Franchise Agreement
6. Amendment No. 3 to Franchise Agreement
7. Amendment No. 4 to Franchise Agreement

NOTIFICATION:

1. Kayla Rodriguez, Public Sector Manager, Waste Management
2. Steve Shamblin, District Manager 1, Empire Waste Management

RESOLUTION NO. ____-2020

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING WASTE MANAGEMENT PROPOSED RESIDENTIAL, COMMERCIAL AND MULTIFAMILY, AND ROLLOFF RATE CHANGES

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

WHEREAS, pursuant to California Public Resources Code Section 40059 (a) (2), the City Council of the City of Fort Bragg (City) determined that the public health, safety and well-being require that an exclusive franchise be awarded to a qualified Solid Waste enterprise for the collection and recovery of solid waste from certain residential, industrial and commercial areas in the City; and

WHEREAS, the City and USA Waste of California, Inc., DBA Empire Waste Management (Waste Management) executed a Franchise Agreement (Agreement) dated January 8, 2007; and

WHEREAS, the City and Waste Management executed an Amendment No. 2 to the Agreement that extended the term until June 30,2021; and

WHEREAS, the City's intention in executing the Agreement with Waste Management was to maintain reasonable rates for collection and transportation of solid waste, discarded recyclable materials and green waste within the area covered by the Agreement; and

WHEREAS, the Agreement provides for approval by the City Council and/or the City Manager of rates and charges by Waste Management; and

WHEREAS, the Agreement provides for rate adjustments annually as of June 1 based on the change in CPI-U, all items for the San Francisco-Oakland-San Jose CA and the most recently published California Index for #2 diesel fuel, along with pass-through adjustments and extraordinary rate adjustments; and

WHEREAS, based on all the evidence presented, the City Council finds as follows:

1. That the rate adjustments set forth in Exhibit A are consistent with the Franchise Agreement.
2. That the 1.94% portion of rate increase associated with the pass-through disposal adjustment is to be applied retroactively to January 1, 2020.
3. That the 2.12% portion of the rate adjustment based on the cost of living formula set forth in Amendment No. 4 and the pass-through portion associated with the increase in disposal resulting from Mendocino Solid Waste Management Authority (MSWMA) additional charge is to be effective June 1, 2020.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve the rate adjustments as set forth in Exhibit A for Residential, Commercial and Multifamily, and Rolloff services within the City limits, with the pass-through disposal adjustment effective January 1, 2020 and the cost of living adjustment plus additional pass-through disposal cost increase effective June 1, 2020.

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 8th day of June, 2020, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

WILLIAM V. LEE
Mayor

ATTEST:

June Lemos, CMC
City Clerk



**City of Fort Bragg
Residential Service Rates
Effective January 1, 2020**

Effective June 1, 2020

Annual Disposal Adj. Eff 1/1/20
1.94%

RRI Adj. Ef 6/1/20
2.12%

Trash Rates - Single Family Dwelling					
Service - Weekly Service	Current Monthly Rate	Annual Disp. Adj.	New Monthly Rate	RRI Adj.	New Monthly Rate
	Eff 7/1/19		Eff 1/1/20		Eff 6/1/20
20 gallons	\$23.42	\$0.45	\$23.87	\$0.51	\$24.38
32 gallons	\$37.32	\$0.72	\$38.04	\$0.81	\$38.85
64 gallons	\$74.64	\$1.45	\$76.09	\$1.61	\$77.70
96 gallons	\$111.99	\$2.17	\$114.16	\$2.42	\$116.58

Ancillary Residential (Ancillary rates do not include franchise fees)					
Service	Current Monthly Rate	Annual Disp. Adj.	New Monthly Rate	RRI Adj.	New Monthly Rate
	Eff 7/1/19		Eff 1/1/20		Eff 6/1/20
Carry Out Charge - per month	\$9.52	\$0.18	\$9.70	\$0.21	\$9.91
Extra Material ¹	\$11.29	\$0.22	\$11.51	\$0.24	\$11.75
Cart Replacement - After One	\$102.63	\$1.99	\$104.62	\$2.22	\$106.84
Bad/Returned Check - Not adjusted by CPI rate	\$25.00	N/A	\$25.00	N/A	\$25.00
Late/Finance Payment - Applied to unpaid balances 30 or more days from invoice date	Greater of 2.5% or \$5.00 min	N/A	Greater of 2.5% or \$5.00 min	N/A	Greater of 2.5% or \$5.00 min

Notes

1) Extra material must be bagged in approved bag size on service day. Cannot exceed 20 lbs



**City of Fort Bragg
Commercial Service Rates**

Effective January 1, 2020

Effective June 1, 2020

Annual Disposal Adj. Eff 1/1/20
1.94%

RRI Adj. Ef 6/1/20
2.12%

Commercial & Multifamily (2+ Units) Bin Rates					
Service	Current Monthly Rate Eff 7/1/19	Annual Disp. Adj.	New Monthly Rate Eff 1/1/20	RRI Adj.	New Monthly Rate Eff 6/1/20
	32 gallons	\$35.81	\$0.69	\$36.50	\$0.77
64 gallons	\$71.59	\$1.39	\$72.98	\$1.55	\$74.53
96 gallons	\$107.41	\$2.08	\$109.49	\$2.32	\$111.81
1 cubic yards - 1xWeek	\$215.58	\$4.18	\$219.76	\$4.66	\$224.42
1 cubic yards - 2xWeek	\$307.16	\$5.96	\$313.12	\$6.64	\$319.76
1 cubic yards - 3xWeek*	\$408.89	\$7.93	\$416.82	\$8.84	\$425.66
1.5 cubic yards - 1xWeek	\$289.11	\$5.61	\$294.72	\$6.25	\$300.97
1.5 cubic yards - 2xWeek	\$454.80	\$8.82	\$463.62	\$9.83	\$473.45
1.5 cubic yards - 3xWeek*	\$596.32	\$11.57	\$607.89	\$12.89	\$620.78
2 cubic yards - 1xWeek	\$373.07	\$7.24	\$380.31	\$8.06	\$388.37
2 cubic yards - 2xWeek	\$608.00	\$11.80	\$619.80	\$13.14	\$632.94
2 cubic yards - 3xWeek*	\$789.82	\$15.32	\$805.14	\$17.07	\$822.21
2 cubic yards - 4xWeek*	\$1,024.60	\$19.88	\$1,044.48	\$22.14	\$1,066.62
2 cubic yards - 5xWeek*	\$1,131.80	\$21.96	\$1,153.76	\$24.46	\$1,178.22
3 cubic yards - 1xWeek	\$437.80	\$8.49	\$446.29	\$9.46	\$455.75
3 cubic yards - 2xWeek	\$777.92	\$15.09	\$793.01	\$16.81	\$809.82
3 cubic yards - 3xWeek	\$1,117.83	\$21.69	\$1,139.52	\$24.16	\$1,163.68
3 cubic yards - 4xWeek	\$1,457.90	\$28.28	\$1,486.18	\$31.51	\$1,517.69
3 cubic yards - 5xWeek	\$1,797.97	\$34.88	\$1,832.85	\$38.86	\$1,871.71
4 cubic yards - 1xWeek	\$682.15	\$13.23	\$695.38	\$14.74	\$710.12
4 cubic yards - 2xWeek	\$1,224.63	\$23.76	\$1,248.39	\$26.47	\$1,274.86
4 cubic yards - 3xWeek*	\$1,563.89	\$30.34	\$1,594.23	\$33.80	\$1,628.03
4 cubic yards - 4xWeek*	\$2,105.97	\$40.86	\$2,146.83	\$45.51	\$2,192.34
4 cubic yards - 5xWeek*	\$2,648.35	\$51.38	\$2,699.73	\$57.23	\$2,756.96

*3-5 days per week service option will be determined by WM Operations Department availability

Commercial and Multifamily (2+ Units) - Green Waste					
Service	Current Monthly Rate Eff 7/1/19	Annual Disp. Adj.	New Monthly Rate Eff 1/1/20	RRI Adj.	New Monthly Rate Eff 6/1/20
	96 Gallon (1st Cart included)	\$0.00	\$0.00	\$0.00	\$0.00
96 Gallons (add'l chargeable carts)	\$27.86	\$0.54	\$28.40	\$0.60	\$29.00

Commercial and Multifamily (2+ Units): Insta-Bin Rates - Not available in all Areas					
Service	Current Monthly Rate Eff 7/1/19	Annual Disp. Adj.	New Monthly Rate Eff 1/1/20	RRI Adj.	New Monthly Rate Eff 6/1/20
	2 Yard - first service	\$191.59	\$3.72	\$195.31	\$4.14
2 Yard - each additional service	\$105.16	\$2.04	\$107.20	\$2.27	\$109.47
4 Yard - first service	\$205.07	\$3.98	\$209.05	\$4.43	\$213.48
4 Yard - each additional service	\$123.89	\$2.40	\$126.29	\$2.68	\$128.97
Initial Delivery (included)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
7 Day rental (included)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Per Day rental after 7 days at customer site	\$12.78	\$0.25	\$13.03	\$0.28	\$13.31

Commercial and Multifamily (2+ Units) Compactor					
Service	Current Monthly Rate Eff 7/1/19	Annual Disp. Adj.	New Monthly Rate Eff 1/1/20	RRI Adj.	New Monthly Rate Eff 6/1/20
	2 cubic yards - 1xWeek	\$590.64	\$11.46	\$602.10	\$12.76
2 cubic yards - 2xWeek	\$1,020.21	\$19.79	\$1,040.00	\$22.05	\$1,062.05
3 cubic yards - 1xWeek	\$643.97	\$12.49	\$656.46	\$13.92	\$670.38
3 cubic yards - 2xWeek	\$1,074.28	\$20.84	\$1,095.12	\$23.22	\$1,118.34
4 cubic yards - 1xWeek	\$761.37	\$14.77	\$776.14	\$16.45	\$792.59
4 cubic yards - 2xWeek	\$1,445.57	\$28.04	\$1,473.61	\$31.24	\$1,504.85

*3-5 days per week service option will be determined by WM Operations Department availability.

Commercial and Multifamily (2+ Units) Ancillary Charges (Ancillary rates do not include franchise fees)					
Service	Current Monthly Rate Eff 7/1/19	Annual Disp. Adj.	New Monthly Rate Eff 1/1/20	RRI Adj.	New Monthly Rate Eff 6/1/20
	Extra Service - Per Bin Size 1cy ¹	\$75.43	\$1.46	\$76.89	\$1.63
Extra Service - Per Bin Size 1.5cy ¹	\$126.61	\$2.46	\$129.07	\$2.74	\$131.81
Extra Service - Per Bin Size 2cy ¹	\$132.32	\$2.57	\$134.89	\$2.86	\$137.75
Extra Service - Per Bin Size 3cy ¹	\$161.08	\$3.12	\$164.20	\$3.48	\$167.68
Extra Service - Per Bin Size 4cy ¹	\$205.07	\$3.98	\$209.05	\$4.43	\$213.48
Replace lost or stolen bin - 1 cubic yard	\$650.73	\$12.62	\$663.35	\$14.06	\$677.41
Replace lost or stolen bin - 1.5 cubic yard	\$652.27	\$12.65	\$664.92	\$14.10	\$679.02
Replace lost or stolen bin - 2 cubic yard	\$798.22	\$15.49	\$813.71	\$17.25	\$830.96
Replace lost or stolen bin - 3 cubic yard	\$911.89	\$17.69	\$929.58	\$19.71	\$949.29
Replace lost or stolen bin - 4 cubic yard	\$1,069.25	\$20.74	\$1,089.99	\$23.11	\$1,113.10
Bad/Return Check ²	\$25.00	N/A	\$25.00	N/A	\$25.00
Late/Finance Payment - applied to unpaid balances 30 or more days from invoice date	2.5% of balance or \$5.00 min chg.	N/A	2.5% of balance or \$5.00 min chg.	N/A	2.5% of balance or \$5.00 min chg.

1) WM may choose to decline the customer request

2) Not adjusted by CPI rate



**City of Fort Bragg
Rolloff Service Rates
Effective January 1, 2020**

Effective July 1, 2019

Annual Disposal Adj. Eff 1/1/20
1.94%

RRI Adj. Ef 6/1/20
2.12%

Rolloff - Debris Box					
Service	Current Monthly Rate Eff 7/1/19	Annual Disp. Adj.	New Monthly Rate Eff 1/1/20	RRI Adj.	New Monthly Rate Eff 6/1/20
	20 Yard Debris Box	\$605.22	\$11.74	\$616.96	\$13.08
30 Yard Debris Box	\$639.84	\$12.41	\$652.25	\$13.83	\$666.08
MSW Per ton rate ¹	\$97.12	N/A	\$97.12	N/A	\$97.12
Recycle Per ton rate ²	\$88.56	N/A	\$88.56	N/A	\$88.56
Green Waste Per ton rate ¹	\$34.62	N/A	\$34.62	N/A	\$34.62

Rolloff - Compactors					
Service	Current Monthly Rate Eff 7/1/19	Annual Disp. Adj.	New Monthly Rate Eff 1/1/20	RRI Adj.	New Monthly Rate Eff 6/1/20
	20 Yard Compactor	\$605.22	\$11.74	\$616.96	\$13.08
30 Yard Compactor	\$639.84	\$12.41	\$652.25	\$13.83	\$666.08
MSW Per ton rate ¹	\$97.12	N/A	\$97.12	N/A	\$97.12
Recycle Per ton rate ²	\$88.56	N/A	\$88.56	N/A	\$88.56
Green Waste Per ton rate ¹	\$34.62	N/A	\$34.62	N/A	\$34.62

Rolloff Ancillary Rates ²					
Service	Current Monthly Rate Eff 7/1/19	Annual Disp. Adj.	New Monthly Rate Eff 1/1/20	RRI Adj.	New Monthly Rate Eff 6/1/20
	Relocate Charge ³	\$47.43	\$0.92	\$48.35	\$1.03
Bad/Return Check ⁴	\$25.00	N/A	\$25.00	N/A	\$0.00
Late/Finance Payment ⁵	2.5% of balance or \$5.00 min	N/A	2.5% of balance or \$5.00 min	N/A	\$0.00

Notes:

- 1) Not adjusted by CPI. Actual disposal rate is charged, adjusted for City Fees
- 2) Ancillary rates do not include franchise fees
- 3) Customer requests the container be moved to a different location

Customer Charge - Rate per ton			
MSW Solid Waste of Willits TS Rate Change			
Eff. 6/1/20	\$81.24	Per ton	
	20.96%	Franchise Fee Percent	
	<u>\$102.78</u>	Customer Per Ton Rate	
Recycle - Solid Waste of Willits TS Rate Change			
Eff. 1/1/20	\$70.00	Per ton	
	20.96%	Franchise Fee Percent	
	<u>\$88.56</u>	Customer Per Ton Rate	
Green Waste - Cold Creek Compost			
Eff. 1/1/20	\$36.97	Per ton	
	20.96%	Franchise Fee Percent	
	<u>\$46.77</u>	Customer Per Ton Rate	

FRANCHISE AGREEMENT

between

THE CITY OF FORT BRAGG

and

**USA WASTE OF CALIFORNIA, INC.,
DBA EMPIRE WASTE MANAGEMENT**

January 8 .2007

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**FRANCHISE AGREEMENT BETWEEN THE CITY OF FORT BRAGG
AND
USA WASTE PF CALIFORNIA, INC., dba EMPIRE WASTE MANAGEMENT**

This Franchise Agreement ("Agreement") is entered into this ____ day of ____, 2007, between the City of Fort Bragg ("City") and USA Waste of California, Inc., dba Empire Waste Management, ("Grantee"), for the Collection, Transportation, and Disposal of Solid Waste and the Collection, Transportation, Processing, and marketing of Recyclable Materials and Green Waste.

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a) (2), the City Council of the City of Fort Bragg has determined that the public health, safety and well-being require that an exclusive franchise be awarded to a qualified Solid Waste enterprise for the Collection and recovery of Solid Waste from certain residential, industrial and commercial areas in the City; and

WHEREAS, City and Grantee are mindful of the provisions of local, state, and federal laws governing the safe Collection, Transport, Recyclable Material and Disposal of Solid Waste, including, but not limited to, AB939, the Resource Conservation and Recovery Act ("RCRA") and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); and

WHEREAS, City has not, and, by this Agreement does not, instruct Grantee on its Collection methods, nor supervise the Collection of waste; and

WHEREAS, Grantee has represented and warranted to City that it has the experience, responsibility, and qualifications to arrange with residents, commercial, industrial, institutional, and other entities in the Franchise Area for the Collection and safe Transport to Disposal facilities and Disposal of Solid Waste, the City Council of the City determines and finds that the public interest, health, safety and well-being would be best served if Grantee were to make arrangements with residents and other entities to perform these services; and

WHEREAS, the City Council of the City declares its intention of maintaining reasonable rates for Collection and Transportation of Solid Waste, Discarded Recyclable Materials and Green Waste within the area covered by this grant of franchise.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1 - GRANT AND ACCEPTANCE OF EXCLUSIVE RESIDENTIAL AND COMMERCIAL FRANCHISE

A. City grants to Grantee, for the term of and in accordance with this Agreement (including all extensions or renewals), an exclusive privilege, duty and right to make and enter into independent arrangements with residents of single family units, residents and/or Owners of multifamily units and Persons in charge of commercial, industrial, institutional and other entities in the Franchise Area for the Collection, Transportation and removal to Solid Waste Disposal facilities, all Residential, Commercial, and Industrial Solid Waste, including Discarded Recyclable Materials and Green Waste generated or accumulated within the Franchise Area, with the exception of sewage sludge and seepage, which has been placed in a Grantee-provided Solid Waste Container, within the City Limits. Grantee is an Authorized Recycling Entity.

B. Grantee agrees to be bound by and comply with all the requirements of this Agreement. Grantee waives any right or claim to serve any part of the City under any prior grant of franchise, contract, license or permit issued or granted by any governmental entity.

C. In the event and to the extent that any of the following (Items 1-3, below) require or are amended to require that either party take certain action or desist from taking certain action that affects the promises, covenants and/or performance of the parties hereunder, then this Agreement shall be amended to provide for the satisfaction of such requirements. Furthermore, should such amendments to this Agreement result in the Grantee having to incur additional expenses in performing its obligations hereunder, or if certain cost cutting measures are implemented that justify lower rates, then Grantee or City may seek rate adjustments therefore in accordance with the procedures under Section 15, below.

- (1) The City Code, the California Public Resources Code, other applicable state and federal laws, rules and regulations promulgated thereunder;
- (2) The City Integrated Waste Management Plan and the City's Source Reduction and Recycling Element and Household Hazardous Waste Element; and
- (3) Any and all amendments to said laws, plans, and regulations.

SECTION 2 – DEFINITIONS

- A. **“AB939”** means the California Public Resources Code 40000 et. seq. and the regulations promulgated by the California Integrated Waste Management Board.
- B. **“Agreement”** means this Franchise Agreement between the City and Grantee.
- C. **“Applicable Law”** means all federal, State, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, Processing, and Disposal of Solid Waste and Recyclable Materials that are in force on the Effective Date and as they may be enacted, issued or amended during the Term of this Agreement.
- D. **“Approved Green Waste Processing Site”** means a Green Waste Processing facility used by Grantee, to be approved by the City.
- E. **“Approved Recyclable Materials Processing Site”** means a Recyclable Materials Processing facility used by Grantee, to be approved by the City. The initial Approved Recyclable Materials Processing Site is the Grantee’s Processing Facility at 3400 Standish Avenue in Santa Rosa, California.
- F. **“Authorized Recycling Entity”** means that person, partnership, joint venture or corporation authorized by a franchise agreement or permit with the City to collect Discarded and/or Non-Discarded Recyclable Materials. An Authorized Recycling Entity may be a municipal collection service, private refuse hauler, private recycling enterprise, or private nonprofit corporation or association.
- G. **“Bin”** shall mean a container designed for mechanical emptying with a close fitting cover and of a design approved by the City with capacity of approximately one to six cubic yards.
- H. **“Bulky Waste”** means and includes, but not by way of limitation, discarded white goods (i.e., major household appliances), furniture, tires, carpets, mattresses, and similar large items, which cannot be placed in a covered Container.
- I. **“Cart”** means a plastic container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 64, or 96 gallons (or similar volumes).
- J. **“City”** means the City of Fort Bragg, State of California.
- K. **“City Council”** means the City Council of the City of Fort Bragg.
- L. **“Collection”** means the act of collecting Solid Waste, Recyclable Materials, and

other material at the place of generation in the Franchise Area.

- M. **"Commercial Solid Waste"** includes all types of Solid Wastes generated by commercial, industrial, governmental, and other sources, which have been placed in an authorized Grantee-provided Solid Waste Container used for the temporary storage of Solid Waste awaiting pickup. The term "Commercial Solid Waste" does not include Hazardous Wastes generated by commercial, industrial, governmental, and other sources and which are placed in separate Containers and which are covered by Hazardous Waste manifests.
- N. **"Compactor"** means a mechanical apparatus that compresses materials and/or the Container that holds the compressed materials. Compactors include two to four cubic yard Bins serviced by front-end loader Collection vehicles and 6 to 50 cubic yard Debris Boxes serviced by roll-off Collection vehicles.
- O. **"Containers"** mean Carts, Bins, Compactors, and Debris Boxes.
- P. **"Customer"** means any Person receiving Solid Waste, Recyclable Material and/or Green Waste service under the provisions of this Agreement.
- Q. **"Debris Box"** means an open-top Container with a capacity of 8 to 50 cubic yards that is serviced by a roll-off Collection vehicle.
- R. **"Demolition and Construction Debris"** means:
- (1) Discarded materials generally considered to be not water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt material, pipe, gypsum, wallboard, and lumber from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure and/or landscaping, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing, landscaping and development operations for a construction project.
 - (2) Clean cardboard, paper, plastic, wood, and metal scraps from any construction and/or landscape project.
 - (3) Non-construction and demolition debris wood scraps.
 - (4) Insignificant amounts of other non-hazardous wastes that are generated at construction or demolition projects, provided such amounts are consistent with best management practices of the industry.
 - (5) Mixing of construction and demolition debris with other types of Solid Waste will cause it to be classified as other than construction and demolition debris.
- S. **"Designated Collection Location"** shall mean that Location at which only an Authorized Recycling Entity may collect materials.

- T. **"Designated Disposal Location"** means the disposal location designated by City for Grantee to use for all Solid Waste collected in City; initially to be Willits Solid Waste Transfer Station, 350 Franklin Avenue, Willits.
- U. **"Designated Waste"** means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal Sites or Class III Disposal Sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State of California, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.
- V. **"Discarded Recyclable Materials"** means any Recyclable Materials which the Generator Disposes of without selling or donating.
- W. **"Disposal or Dispose (or variation thereof)"** means the ultimate Disposal of Solid Waste at a Disposal Site.
- X. **"Disposal Site"** means a facility for ultimate Disposal of Solid Waste as defined in Public Resources Code Section 401.22.
- Y. **"Franchise Area"** means the incorporated area of the City of Fort Bragg.
- Z. **"Franchise Fee"** means the fee or assessment imposed by the City on Grantee solely because of its status as party to this Agreement, and which, inter alia, is intended to compensate City for its expenses in administering this Agreement and other Solid Waste-related activities.
- AA. **"Generator"** means any Person as defined by the Public Resources Code, whose act or process produces Solid Waste or Recyclable Materials as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.
- BB. **"Grantee"** shall mean the Person granted the franchise to arrange for the Collection of Solid Wastes and Recyclable Materials and Green Waste pursuant to this Agreement
- CC. **"Green Waste"** means those discarded materials that will decompose and/or putrefy, including but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste. Green Waste shall be placed in a Container for Collection and shall not exceed six inches in diameter and four feet in length. Tree stumps and logs are not to be considered "Green Waste" unless they are reduced to a chipped form; they shall be considered Bulky Waste. Biodegradable plant material, which is mixed with other kinds of Solid Waste, shall

not be considered "Green Waste."

- DD. **"Gross Revenues"** means any and all revenue or compensation received pursuant to this Agreement by Grantee for Collection, Processing and disposal services, and for Recyclable Materials sales, provided under this Agreement, except for revenues collected from certain government agencies as set forth herein.
- EE. **"Hazardous Waste or Materials"** means any waste materials or mixture of wastes defined as such pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., and all future amendments to either of them, or as defined by the California Environmental Protection Agency or the California Integrated Waste Management Board, or either of them. Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over Hazardous or Solid Waste, the term "Hazardous Waste" shall be construed to have the broader, more encompassing definition.
- FF. **"Holidays"** are defined as New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas Day.
- GG. **"Multi-Family Units"** shall mean any residential building, apartment building, condominium complex, stock cooperative complex consisting of two or more independent dwelling units which receives Solid Waste and/or Recyclable Material and/or Green Waste services and which provides Solid Waste disposal services at centralized locations serving multiple units, and not individual service for each unit contracted for by each tenant. Multi-Family Units does not include motels, hotel, or automobile courts.
- HH. **"Non-Discarded Recyclable Materials"** means any Recyclable Materials, as defined herein, the Generator retains, sells, or donates.
- II. **"Occupant"** means the Person in possession or control of the Premises, including but not limited to Persons such as tenant, lessee, licensee, manager, custodian, or caretaker.
- JJ. **"Owner"** means the Person having dominion of or title to Premises.
- KK. **"Person"** means any individual, firm, corporation, partnership, joint venture, association, special district, school districts, limited liability company or partnership, group or combination thereof, includes the plural as well as the singular.
- LL. **"Premises"** means a parcel of real property to the center of any alley adjacent thereto, upon which is situated any dwelling house or other place of human habitation, including each unit of a multiple dwelling building, or of a mobile home park; or upon which is conducted any business, occupation, or activity which results

in the production or accumulation of Solid Waste.

- MM. **"Processing"** means to prepare, treat, or convert through some special method.
- NN. **"Processing Site"** means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Recyclable Materials or Green Waste for the purpose of making such material available for reuse.
- OO. **"Rate Period"** means a 12-month period, commencing January 1 and concluding December 31 for which rates are calculated.
- PP. **"Recyclable Material(s)"** includes materials which are reused or Processed into a form suitable for reuse through reprocessing or remanufacture, consistent with the requirements of the Public Resources Code. No materials shall be considered Recyclable Materials unless such material is separated from Solid Waste and Green Waste. Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes); chipboard; corrugated cardboard; paper milk cartons; glass containers of any color (including brown, clear, and green glass bottles and jars); aluminum (including beverage containers, foil, food containers, small pieces of scrap metal); small pieces of scrap metal weighing less than 10 pounds and fitting into the Recyclable Materials Collection Container; steel, tin or bi-metal cans; plastic containers (no. 1 to 7); and aseptic beverage boxes.
- QQ. **"Residential Solid Waste"** means all types of Solid Waste which originate from residents of Single-Family Units and Multi-Family Units.
- RR. **"Responsible Party"** means: any individual or any corporation, partnership or business association or an officer, director, or management employee of a corporation, partnership, or business association that has the authority to make discretionary decisions with respect to the operations or financial management of the Grantee; any corporation, sole-proprietorship, partnership, or business association, or officer, director, or management employee of such entity, that holds at least five percent (5%) equity or debt interest in the Grantee. If any holder of such debt or equity is not a natural person, the term "Responsible Party" includes only the debtor, equity holding Person and officers, directors, and management employees of the debt or equity holder who are empowered to make discretionary decisions with respect to the operation or financial management of the Grantee.
- SS. **"Segregated Recyclable Materials"** means those Recyclable Materials which: have been source separated by the Person from whom they are being collected; or are physically separated from other waste material following Collection.

- TT. **"Single-Family Unit"** means a dwelling which receives individual Solid Waste and/or curbside Recyclable Material and/or Green Waste service, including units within a housing complex of any type which individually contract for Grantee's services.
- UU. **"Solid Waste"** means and includes all putrescible and non-putrescible solid and semisolid wastes (including semi-liquid or wet wastes with insufficient moisture so as not to be free flowing) ashes, Recyclable Materials that have not been separated from Solid Waste, Demolition and Construction Debris and other discarded materials resulting from domestic, institutional, commercial, industrial, agricultural and community operations and activities. Solid Waste shall be expressly deemed to include Bulky Wastes as defined herein. Solid Waste does not include Hazardous Wastes or Designated Waste.
- VV. **"Solid Waste Collector"** means a Person who collects or Transports Solid Waste under authority granted by the City including his/her agents and employees.
- WW. **"Solid Waste Ordinance"** means the ordinance or ordinances adopted by the City Council pertaining to the Collection of Solid Waste and Recyclable Materials within the City.
- XX. **"Subcontractor"** means a party who has entered into a contract, expressed or implied, with the Grantee for the performance of an act that is necessary for the Grantee's fulfillment of its obligations under this Agreement.
- YY. **"Transportation"** means the act of transporting or state of being transported.
- ZZ. **"Waste Stream"** means the total amount of Solid Waste generated in a given area, such as the City or a specific Franchise Area. Waste Stream does not include Recyclable Materials or Green Waste that have been separated from Solid Waste by the Generator so that the Recyclable Materials and Green Waste never become discarded waste.

SECTION 3 - COMPLIANCE WITH LAWS AND REGULATIONS

Grantee warrants that it will comply with all Applicable Laws in effect during the term of this Agreement, including implementing regulations, as they may, from time to time, be amended, specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the California Public Resources Code Section 40000 et. seq., and all other Applicable Laws of the State of California, the County of Mendocino, ordinances of the City, the City's Source Reduction and Recycling Element, the City's Household Hazardous Waste Element, the City-wide Integrated Waste Management Plan, the requirements of Local Enforcement Agencies and other agencies with jurisdiction relating to the services provided by Grantee under this Agreement. In the event of conflict between regulations or statutes, Grantee shall comply with the regulation or statute containing the most stringent applicable standards. Grantee shall comply with all final and binding judgments entered against Grantee regarding its services performed under this Agreement.

SECTION 4 - TERM AND SCOPE OF AGREEMENT

A. Term of Agreement

- (1) **Effective Date and Commencement Date.** The Effective Date of this Agreement shall be the date the latter of the two Parties signs the Agreement.

The Commencement Date shall be June 1, 2007 and shall be the date on which Grantee initiates provision of Collection, Transportation, and Processing services required by this Agreement.

Between the Effective Date and Commencement Date, Grantee shall perform all activities necessary to prepare itself to start Collection, Transportation, and Processing, services required by this Agreement on the Commencement Date.

- (2) **Term.** The Term of this Agreement shall continue in full force from 12:01 a.m. on June 1, 2007 (Commencement Date), to midnight June 30, 2014 unless the Agreement is extended as provided for herein or terminated in accordance with Section 19C.
- (3) **Option to Extend Term.** The City shall, at its sole discretion, have the option to extend this Agreement on one or more occasions providing said extension is necessary in order for the termination of this Agreement to coincide with the termination of Grantee's separate agreement with the County of Mendocino; providing, however, that no extension shall go beyond June 30, 2017.
- (4) **City's Rights upon Expiration or Revocation.** At the expiration or revocation of this Agreement, the City may proceed with a competitive bidding or request for proposal process or exercise any other option available under Applicable Law.

B. Scope of Agreement

The Grantee shall have the exclusive right to service any Occupant or Owner to make all Solid Waste, Recyclable Material, and Green Waste Collections within the Franchise Area, except as described in Section 4C or except otherwise precluded by Applicable Law.

The Grantee or its Subcontractor (refer to Section 4.D, below), shall be responsible for the following services:

- (1) Collecting all Solid Waste, Recyclable Materials and Green Waste generated in the Franchise Area and placed by Generator for Collection.
- (2) Transporting collected materials to the Designated Disposal Location, Approved Recyclable Materials Processing Site or Green Waste Processing Site, and

Disposing of said materials.

- (3) Processing and marketing of Recyclable Materials collected in the Franchise Area by Grantee.
- (4) Processing and diverting from landfill disposal, Green Waste collected in the Franchise Area.
- (5) Collecting all Demolition and Construction Debris generated within the Franchise Area.
- (6) Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement.
- (7) Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, regulatory fees, Pass-Through Costs, utilities, etc.
- (8) Providing all services required by this Agreement in a thorough and professional manner so that residents, businesses, and the City are provided timely, reliable, courteous and high-quality service at all times.
- (9) Complying with Applicable Law.
- (10) Performing or providing all other services necessary to fulfill its obligations under this Agreement.
- (11) Operating a California Certified Redemption Center and drop-off recycling center in the City at its premises at 219 Pudding Creek Road, Fort Bragg, California.

C. Limitations to Scope

The materials listed below in this Section may be Collected and Transported by other Persons. Such Persons shall do so in accordance with the City's Municipal Code.

- (1) **Non-Discarded Recyclable Materials**, providing the transporter is paid no direct or in-kind fee for the service and compensates the Generator for the Recyclable Materials.
- (2) **Materials Hauled by Owner, Occupant, or a Cooperative of Persons, or its Contractor.** Solid Waste, Recyclable Materials, and/or Green Waste that are removed from any Premises by the Owner, Occupant, or a cooperative of Persons and are Transported, without compensation, to a Disposal Site or Processing Site

by (i) the Owner, Occupant or cooperative of Persons of such Premises, (ii) by full-time employee(s) of Owner, Occupant, or cooperative of Persons that uses the Owner's, Occupant's, or cooperative of Persons' equipment to Transport materials; or (iii) by a contractor whose removal of the Solid Waste, Recyclable Materials, Green Waste, and/or Demolition and Construction Debris is incidental to the service being performed and such contractor removes materials at no additional or separate fee using contractor's own equipment and labor;

- (3) **Containers Recycled.** Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, California Public Resources Code et. seq. as may be amended from time to time;
- (4) **Animal, Grease Waste, and Used Cooking Oil.** Animal waste and remains from slaughterhouse or butcher shops, grease waste, or used cooking oil;
- (5) **Sewage Treatment By-Product.** By-products of sewage treatment including sludge, sludge ash, grit, and screenings;
- (6) **Hazardous Wastes.** Household Hazardous Waste, Hazardous Waste, and Designated Waste regardless of its source.
- (7) **State and Federal Wastes.** Materials generated by state and federal agencies, special districts, school districts, State parks, State correction facilities, and Indian reservations.
- (8) **Other Materials.** Lead-acid batteries, waste oil, tires, and scrap metal.

D. Subcontracting

Grantee shall not engage any Subcontractor for Collection, Transportation, Processing, or Disposal of Solid Waste, Recyclable Materials or Green Waste services without the prior written consent of the City. As of the Effective Date of this Agreement, the City has approved Grantee's use of the Subcontractors identified in Grantee's proposal.

E. Franchise Area Defined

This Agreement allows the Grantee to Collect, Transport, and Process Solid Waste, Recyclable Materials, Demolition and Construction Debris, and Green Waste generated within the incorporated area of the City of Fort Bragg, including territory which may in the future be annexed to City, subject to implementation delays which may be imposed by law.

F. Franchise Area Limits

No Persons shall be granted a right to collect refuse in Grantee's Franchise Area unless approved by the City due to an emergency, a lack of service by the Grantee, or as allowed according to Section 18 herein. Except as stated herein, Grantee shall be entirely independent of every other franchise holder and shall be independent as to ownership, and operational capability, unless approved by City in accordance with the assignment provisions of Section 18 of this Agreement.

SECTION 5 - SERVICES PROVIDED BY GRANTEE

A. City to Approve All Services

The nature of the Solid Waste, Recyclable Material, and Green Waste services Grantee shall offer and provide to Customers residing or doing business in the City has been determined by the City Council.

B. Collection Service

In order to protect the public health and safety, Grantee shall collect, in a manner consistent with public health and safety, Solid Waste, Recyclable Materials, and Green Waste from its Customers in the City as frequently as scheduled by Customer, but not less than once per week. Solid Waste service shall be provided in the Container Sizes and Collection frequencies as set forth in the Rate Table, Exhibit A to this Agreement, and the billings to Customers for Solid Waste service shall incorporate at no extra cost Recyclable Material Collection and Green Waste Collection, except as set forth herein.

- (1) **Single-Family Units.** Grantee shall collect Solid Waste (except Bulky Wastes), Recyclable Materials, and Green Waste from Single-Family Units which have been placed, kept, or accumulated in Grantee-provided Containers at the curb of City-maintained streets or alleys, or other designated Collection location, prior to Grantee's normal weekly Collection time.

Grantee shall provide each Single-Family Unit Customer with the following collection Carts: (1) a wheeled gray Solid Waste Cart or Carts in a size corresponding to the service level selected by the Customer. (2) a wheeled blue Recyclable Materials Cart, unless the Customer declines recycling service, in a 96-gallon size, provided that a Customer may select a 32-gallon size or 64-gallon size instead. (3) a wheeled green Green Waste Cart in a 96-gallon size, unless the Customer declines Green Waste service. Each Single-Family Unit Customer may request one additional Recyclable Materials Cart and Green Waste Cart if needed.

The Recyclable Materials Cart may be used by the Customer for single-stream mixing of all Recyclable Materials as defined in this Agreement.

- (2) **Multi-Family Units.** Grantee shall collect Solid Waste (except Bulky Wastes), Recyclable Materials, and Green Waste from Multi-Family Units, which have been placed, kept, or accumulated in Grantee-provided Containers, at least once per week, and more frequently if authorized by Customer. Grantee shall provide Solid Waste, Recyclable Materials, and Green Waste Containers in types, sizes and numbers which are optimally suited for the convenience of the Multi-Family Customers and which will maximize the diversion of recyclables. Containers will be located with consent of Customer at locations to maximize the Customers'

convenience, provided that Grantee's truck access is not unreasonably restricted. All Containers will be clearly identified for their purpose by color and labeling.

Recyclable Materials Carts or Bins may be used by Customer for single-stream mixing of all Recyclable Materials as defined in this Agreement.

- (3) **Commercial and Industrial Customers.** Grantee shall collect Solid Waste (except Bulky Waste) and Recyclable Materials from the Commercial and Industrial Premises of Customers, which have been placed, kept or accumulated in Grantee-provided Containers, at least once per week, or more frequently by arrangement with the Customer, except that one-time-rental Industrial Debris Boxes may be collected upon request of Customer.

Upon receiving a call for new service from any Commercial or Industrial Customer, Grantee's Customer service representative shall specifically ask the Customer what Recyclable Materials the Customer expects to generate and shall encourage the Customer to accept recycling Containers, emphasizing that recycling Containers are provided without additional charge except as provided herein, and shall make all reasonable efforts to encourage the Customer to divert Solid Waste from disposal.

Recyclable Materials Carts or Bins may be used by the Customer for single-stream mixing of all Recyclable Materials as defined in this Agreement, except that, if Grantee determines that there is sufficient volume of one type of Recyclable Material, the Grantee may require Customer to use Segregated Recycled Material Bin(s) for that material.

Commercial and Industrial Customers may choose to utilize the same sizes of Recyclable Material and Green Waste Carts as provided to Single-Family Units.

Materials for which a recycling market exists, including but not limited to wood, rubble, and metal, which are not included in the definition of "Recyclable Materials" in Section 2 herein, shall be collected by Grantee from Commercial and Industrial Customers for a fee that equals the actual pass-through recycling costs (positive or negative) incurred by Grantee for the material, plus the bin-only rental rates set forth in the Industrial Rates section of Exhibit A. Grantee shall seek and obtain the lowest cost pass-through recycling fee for all such materials, and shall disclose the fees to the City upon request.

For quantities of Green Waste in excess of one 96-gallon Cart per week, Commercial and Industrial Customers shall be provided with service by Grantee on the same fee basis as other pass-through-cost Recyclable Materials in the previous paragraph.

Grantee shall continually evaluate opportunities to reduce the cost and improve the convenience of Commercial and Industrial recycling service in order to promote the City's objective of increasing waste diversion, including, but not limited to, providing a commingled construction & demolition recycling service where Recyclable Materials are sorted at a remote Processing facility.

Grantee shall provide Collection of Solid Waste and Recyclable Materials from City-owned public receptacles located on sidewalks and other public venues, at no cost to City, not to exceed thirty (30) receptacles serviced twice weekly.

Grantee shall provide Containers of the necessary size and number and shall provide Collection of Solid Waste, Recyclable Materials and Green Waste, at no cost to City, at the following City facilities: City Hall, Town Hall, police headquarters, fire station, corporation yard, wastewater treatment plant, and water plant. Additional facilities may be serviced at mutually agreed upon intervals and rates.

C. Hours of Collection

Grantee's trucks will make all Collections in residential areas between 5 a.m. and 7 p.m., and no Collections shall be made at schools, churches, offices or commercial establishments within 200 feet of said residential districts prior to 5 a.m. or after 9 p.m., unless a modification of these hours is allowed in writing by the City Manager, which modification may be revoked at the sole discretion of the City.

D. Collection on Holidays

If the day of Collection on any given route falls on a Holiday, Grantee shall provide Collection service for such route on the work day either before or following such Holiday and shall not provide Collection service on such Holiday, and all subsequent Collection days during that Holiday week shall be adjusted at the discretion of Grantee. Grantee shall be responsible for providing timely Customer notification of Holiday Collection arrangements.

SECTION 6 - SPECIAL PROGRAMS AND SERVICES PROVIDED BY GRANTEE

A. Source Reduction and Waste Diversion Programs

At City's request, and subject to an agreed-to change in scope and compensation, Grantee shall provide special programs as are required by federal, state, or local regulations, including but not limited to, the City-wide Integrated Waste Management Plan, the Source Reduction and Recycling Element, and the Household Hazardous Waste Element.

B. Public Education

Grantee's public education program shall focus on providing information to Customers in accordance with the specific requirements described in Exhibit C. Educational media shall include, but not be limited to, newsletters, flyers, door hangers, notification tags, and direct contact. Information shall be provided for initial start of service, to solicit feedback about the service and suggested improvement/change, and to educate Customers about source reduction, reuse, and Recycling opportunities. Materials shall be printed on paper containing the highest levels of recycled content material as is reasonably practical with a minimum requirement of 30% post-consumer content based on Federal standards.

All public education materials required in this Section and Exhibit C shall be printed in English and Spanish.

Grantee shall allow the City to review and approve all public education materials.

If Grantee fails to perform some or all of the requirements of the public education program described in this Section and in Exhibit C, the Grantee shall pay the City Liquidated Damages as described in Exhibit E.

C. Billing

- (1) **General.** The City shall establish the rates that Grantee may charge Customers for Solid Waste, Recyclable Materials, and Green Waste services. Grantee shall bill all Customers monthly and collect Billings in accordance with this Agreement.

The Grantee shall prepare, mail, and collect bills (or shall issue written receipts for cash payments) for Collection services provided by Grantee. The City shall have the right to review, and approve the Billing format.

Grantee shall arrange to allow its Customers to pay bills through the following means: check, cash, or credit card or internet payment service.

Grantee shall maintain copies of all Billings and receipts, each in chronological

order, for five years for inspection and verification by City at any reasonable time upon request. The Grantee 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.

Grantee shall be responsible for Collection of payment from Customers with past due accounts ("bad debt"). Grantee shall make reasonable efforts to obtain payment from delinquent accounts through issuance of late payment notices, telephone requests for payments, and assistance from Collection agencies. Accounts that are delinquent for a period of ninety-days (90) or more may be terminated by Grantee.

- (2) **Bill Inserts.** City may direct Grantee to insert mailers (which shall be a single sheet of paper no larger than 8.5 inches by 11 inches) relating to service with the Bills, if the bills are normally enclosed in an envelope. The mailers shall be printed on double-sided, post consumer content paper and shall fit in standard envelopes. Grantee also agrees to insert with the Billings, mailers describing activities of the City government. City will provide not less than 30 calendar days' notice to Grantee before the date of any proposed mailing, to permit Grantee to make appropriate arrangements for inclusion of the City's materials. City will provide Grantee the mailers at least 15 calendar days before the mailing date.
- (3) **Review of Billings.** Grantee shall review its Billings to Customers to determine (i) if the amount the Grantee is Billing each Customer is correct in terms of the level of service (i.e., frequency of Collection, size of Container) Grantee is providing such Customer, and (ii) that all parties receiving service are invoiced for service. Grantee shall review Residential Customer accounts at least every other year and Commercial Customer accounts at least every other year, unless City directs Grantee to do otherwise. Grantee shall submit to City every year, a written report of the billing review 30 days after the end of each Rate Period. The scope of the review, the Grantee's work plan, and the format of the report (including supporting exhibits) shall be submitted to the City for approval no later than 60 days prior to commencement of the Billing review process. Should Grantee fail to perform any such review, the City may perform this review itself or through use of an agent, at Grantee's expense.

D. Recycling Center

Grantee shall operate a California Certified Redemption Center and drop-off recycling center in the City which shall pay the specified California Redemption Value to the public for Redemption items and shall additionally accept all Recyclable Materials (as defined herein) plus used motor oil from the public without charge. Grantee shall also accept used antifreeze from the public and may charge a rate equal to Grantee's Disposal cost. Grantee's Redemption Center

and drop-off recycling center shall be open Tuesday through Friday, 8:30 a.m. to 4 p.m., and Saturday, 9 a.m. to 1 p.m., except Holidays. Grantee's premises shall be available without charge for up to 7 two-day (Friday-Saturday) household Hazardous Waste collection events per year to be conducted by City or its designated agency.

E. Other Special Services

Grantee can provide other special services as related to this Agreement at their discretion provided said services and charges for such services are approved by the City.

F. Containers - Refusal to Pick Up

Grantee shall notify City whenever the collector has refused to pick up a Container because the Container is dilapidated, disintegrated, overloaded, contains dangerous and prohibited material or the Container has been tipped over and the contents scattered. Grantee shall notify City when that person observes any violation of the City Solid Waste Ordinance.

G. Containers - Noticing Violators

Whenever a Grantee gives or intends to give a report of violation to City, Grantee shall place a notice on the Container or otherwise give the Owner or Occupant notice of the substance of his/her report to the City. Whenever an authorized representative of the City observes a violation of the City Solid Waste Ordinance or other Applicable Laws or regulations, that person shall place a notice on the Container or otherwise give the Owner or Occupant notice of the illegal condition.

H. Residential Bulky Waste Pickup

Grantee will provide an annual Bulky Waste pickup without charge to residential Customers in January or February, beginning in 2008. Bulky Waste items eligible under this program shall include furniture, household appliances, mattresses, and similar residential waste objects that won't fit in a curbside collection Cart. Grantee will mail a notice to each residential Customer announcing the pickup program, at least one week in advance of the pickup day, and shall enclose two (2) adhesive labels for placement on items put out at the curb for pickup. The notice will inform Customers that they may acquire two (2) additional labels upon request at Grantee's office. Customers will be instructed to place labeled items adjacent to their collection Carts on their regular Collection day. Grantee will pick up all properly-labeled bulky items and will Dispose or recycle them without cost to the Customers or City. Removal of bulky items in each Collection area that were set out on the designated day will be completed with 48 hours.

SECTION 7 – STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT, AND PERSONNEL

A. Manner of Collection

All Collection equipment shall be designed and operated such that no Solid Waste, Recyclable Material, or Green Waste is allowed to blow or drop from vehicles during Transport. Adequacy of load covers or control measures shall be determined by City. All Collections shall be made as quietly as reasonably possible, the use of any unnecessarily noisy trucks or equipment is declared unlawful, and Grantee shall not use any equipment that makes additional noise due to disrepair, lack of maintenance, or improper operation.

B. Vehicles and Equipment - Standards

- (1) **General.** It is Grantee's intent that all Collections shall be made with existing equipment. In the event Grantee adds new or different equipment, it must first be approved by the City. Grantee shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean, and operable condition at all time.
- (2) **Cleaning.** Collection vehicles shall be thoroughly washed and thoroughly steam cleaned as necessary, to present a clean appearance of the exterior and interior compartment of the vehicle.
- (3) **Maintenance.** Grantee shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operate properly. Grantee shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule or in accordance with California Highway Patrol standards, whichever are more stringent. All vehicles shall be painted in a uniform manner that does not create a resemblance between Grantee's vehicles and City utility vehicles. Grantee shall keep accurate records of all vehicle maintenance, recorded according to vehicle, date, and mileage, and shall make such records available to the City upon request to the extent necessary to perform the inspections described in Section 7D.
- (4) **Repairs.** Grantee shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause so as to maintain all equipment in a safe and operable condition. Grantee shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

C. Vehicles - Identification

The Grantee shall have printed or stenciled in a prominent place on the exterior of each vehicle used in the Collection of Solid Waste, Recyclable Materials and Green Waste the following information in at least four-inch letters:

Truck # _____
Grantee (name) _____ (Telephone number) _____

D. Vehicles and Equipment - Inspection

All vehicles and equipment of Grantee shall be inspected at Grantee's place of business or another location as designated by City on an annual basis. Vehicles and equipment shall conform to the requirements of the California Vehicle Code, this Agreement, and rules or regulations of the City Council. City shall give Grantee twenty-four (24) hours verbal notification of inspection.

E. Vehicles - Shovel, Broom and Fire Extinguisher Required

The Grantee shall equip each Collection vehicle with a shovel, broom, and fire extinguisher of a type approved by City.

F. Container Requirements

- (1) **General.** Grantee shall provide all Carts, Bins, and Debris Boxes to all Customers as part of its services, except that Customer-owned cans do not need to be replaced by Grantee-provided Carts until 180 days after the Commencement Date. Grantee-provided Containers shall be designed and constructed to be watertight and prevent the leakage of liquids. All Containers with a capacity of one cubic yard or more shall meet applicable federal, state, and local regulations for Bin safety and be covered with attached lids. Grantee shall obtain City's written approval of Cart colors before acquisition. The useful life of Carts, Bins, and Debris Boxes provided to Customers shall be equal to or longer than the Term of the Agreement. All Containers, except Carts, shall be painted the Grantee's standard color.
- (2) **Cleaning, Painting, and Maintenance.** All Containers shall be maintained in a safe, serviceable, and functional condition. Grantee shall steam clean and repaint all Containers, except Carts, as necessary, to present a clean appearance. Customers using Carts shall be responsible for cleaning such Carts. If any Cart is defaced by graffiti, Grantee shall replace the Cart within 72 hours. If any Containers, except Carts, are impacted by graffiti, Grantee shall either replace the Container with a Container which is free of graffiti or repaint the entire Container with the Grantee's standard color for such Container. Repainting of the Container

shall restore the Container's aesthetic values to its condition before it sustained the graffiti damage.

- (3) **Repair and Replacement.** Grantee shall repair and, if the repair must be performed off of the Premises, replace all Containers damaged by Collection operations within a one-week period. If the repair or replacement cannot be completed within one week, the Grantee shall notify Customer and a Container of the same size or larger shall be made available until the proper Container can be replaced.

At no additional cost, once during the life of the Agreement, Grantee shall replace Customer Carts that have been stolen or damaged. Grantee shall allow Customer to exchange Containers for a Container of a different size at no additional cost once per year. Grantee shall charge Customers for additional Cart replacements at City-approved rates.

- (4) **City's Rights to Containers.** Upon expiration or early termination of this Agreement, (providing said earlier termination is for cause and not by mutual consent or by reason of City's failure to perform) all Containers (for permanent Customers) acquired by or leased by Grantee and put into service at Customer's Premises before or after the first (1st) anniversary of the Commencement Date shall be made available to the City for purchase at Grantee's net book value.

G. Personnel

- (1) **General.** Grantee shall furnish such qualified drivers, mechanical, supervisory, Customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.
- (2) **Approval of Management.** In the event of an approved assignment of this Agreement, the City shall have the right to request the new Grantee to replace its facility manager, if Liquidated Damages levied for events listed in Exhibit E, with the exception of damages levied for Collection reliability and Collection quality events items 1, 3, and 9 of Exhibit E, in any three month period exceed \$5,000 or if Liquidated Damages levied for Collection reliability and Collection quality events items 1, 3, and 9 of Exhibit E in any three month period exceed \$45,000. If replacement of the facility manager is requested by the City, the new Grantee shall provide an interim manager and have 90 calendar days to replace the manager and shall seek the City's approval of the replacement manager prior to hiring such person and such approval shall not be unreasonably withheld.
- (3) **Provision of Field Supervision.** Grantee shall provide supervision necessary to ensure contract compliance. In the event of an approved assignment of this Agreement, the new Grantee shall designate at least one qualified employee as

supervisor of field operations. The field supervisor will be allowed by Grantee sufficient time in the field to check on Collection operations, including responding to complaints.

- (4) **Driver Qualifications.** All drivers shall be trained and qualified in the operation of Collection vehicles, and must have in effect a valid license, of the appropriate class, issued by the California City of Motor Vehicles. Grantee shall use the Class II California City of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.
- (5) **Customer Service Representative Training.** Customer service representatives shall be trained on specific City service requirements. A City information sheet shall be provided to each Customer service representative for easy reference of City requirements and general Customer needs, including the procedure for promoting recycling to Customers who call to begin service. The information sheet, training agenda, and associated documentation shall be forwarded to the City after the training if the City so requests.
- (6) **Safety Training.** Grantee shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment or who are otherwise directly involved in such Collection, Disposal, or Processing. Grantee shall train its employees involved in Collection to identify, and not to collect, Hazardous Waste or Infectious Waste. Upon the City's request, Grantee shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.
- (7) **No Gratuities.** Grantee shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation, or gratuity from members of the public for Collection services.
- (8) **Employee Conduct and Courtesy.** Grantee shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Grantee shall regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection employees to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Grantee shall take all appropriate corrective measures. The City may require Grantee to reassign an employee, if the employee has conducted himself or herself inconsistently with the terms of this Agreement.
- (9) **Uniforms.** While performing services under this Agreement, all of the Grantee's employees performing field service shall be dressed in clean uniforms. The employee's name and/or employee number, and Grantee's name shall be apparent

on the uniform. No portion of this uniform may be removed while working.

SECTION 8 - PUBLIC ACCESS TO GRANTEE

A. Name and Office Hours

The Grantee shall establish and maintain a Customer service office where service may be applied for and complaints made within the Franchise Area. Grantee's Customer service office shall be open to the public from 9:00 a.m. to 4:30 p.m. Monday through Friday. The office may be closed on Saturdays, Sundays, and Holidays. Such office shall be equipped with a listed telephone to which calls from Grantee's Customers may be placed without payment of a toll charge and shall have a responsible Person in charge or an answering machine in service during normal business hours.

B. Service Complaints

Customer service complaints may be made directly to the Grantee by telephone or in writing. Grantee is responsible for rectifying the complaints and for maintaining a log of complaints received, date received, actions taken, and date of actions, as specified in Section 13H(3)(b).

C. Overcharge

All charges or fees for service by a Grantee shall be approved by the City Council, except a lower charge than approved by the City Council may be negotiated (to provide for consideration of the weight of the material collected and/or the distance from the operations yard or transfer station) or in connection with a formal written bid made in response to a Request for Bids from any federal, state or tribal entity that is exempt from the exclusive grant of service to Grantee in this Agreement. Any Customer contending they have been required to pay a charge not approved by the City Council, or has in any manner been subject to an overcharge, may file a written complaint with the City setting forth the facts of such alleged mis-charge, and the City shall notify the Grantee of the complaint, shall investigate the matter of the complaint, and shall determine the appropriate charge.

SECTION 9 - SERVICE EXCEPTIONS; HAZARDOUS WASTE NOTIFICATIONS

A. Responsibility to Identify Hazardous Waste

Grantee shall keep current with the regulations regarding Hazardous Waste substances and identification of such substances and to comply with all federal, state, and local regulations concerning such substances. Grantee shall make every reasonable effort to prohibit the Collection and the Disposal of Hazardous Waste in any manner inconsistent with Applicable Law.

Grantee shall conduct a visual inspection of all Solid Waste, Recyclable Materials, and Green Waste that it Collects, Transports, Disposes, or Processes pursuant to this Agreement for the purpose of discovering, identifying, and refusing to Collect, Transport, Dispose, and/or Process Hazardous Wastes or materials.

B. Response to Hazardous Waste Identified at Disposal Site or Processing Site

If materials Collected by Grantee are delivered to a facility owned by Grantee or an affiliate of Grantee, for purposes of transfer, Processing, or Disposal, load checkers and equipment operators at such facility shall conduct inspections in areas where Collection vehicles unload Solid Waste, Recyclable Materials, and Green Waste to identify Hazardous Wastes. Facility personnel shall remove these materials for storage in approved, on-site, hazardous materials storage Container(s). Grantee shall make reasonable efforts to identify and notify the Generator. Grantee shall arrange for removal of the Hazardous Wastes by permitted haulers in accordance with Applicable Laws and regulatory requirements.

If unacceptable material is delivered to the Designated Disposal Location or Processing Sites by Grantee before its presence is detected, and the Generator cannot be identified or fails to remove the material after being requested to do so, the Grantee shall arrange for its proper Disposal. The Grantee shall make a good faith effort to recover the cost of Disposal from the Generator, and the cost of this effort, as well as the cost of Disposal shall be charged to the Generator.

C. Notification for Hazardous Waste

Grantee shall, if required based on reportable levels, notify all agencies with jurisdiction, including the California Department of Toxic Substances Control, and, if appropriate, the National Response Center, of reportable quantities of Hazardous Waste, found or observed by Grantee in Solid Waste, Recyclable Materials, and/or Green Waste anywhere within the City, including on, in, under or about City property, including streets, easements, rights of way and City waste containers. In addition to other required notifications, if Grantee observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully Disposed of or released on City property, including streets, storm drains, or public

rights of way, Grantee also will notify the City Director of Public Works or his/her designated City employee.

D. Rights Reserved as to Hazardous Wastes

The City reserves the right to contract with other parties to have household Hazardous Wastes Collected, Transported, Disposed of, Processed and/or diverted.

SECTION 10 - DISPOSAL AND PROCESSING

A. Solid Waste Disposal

Grantee shall Transport and Dispose of all Solid Waste Collected in the Franchise Area at the Designated Disposal Location. Grantee shall pay all costs associated with the Transporting and Disposing of Solid Waste.

B. Recyclable Materials Processing and Marketing

- (1) **Processing.** Grantee shall Transport and deliver all Segregated Recyclable Materials collected in the Franchise Area at the Approved Recyclable Materials Processing Site. Grantee shall pay all costs associated with the Transporting and Processing of all Recyclable Materials.

Grantee shall maintain accurate records of the quantities of Recyclable Materials Collected, Transported, and Processed at the Approved Recyclable Materials Processing Site and shall cooperate with the City in any audits or investigation of such quantities.

Providing Grantee or an Affiliate of Grantee owns and/or operates the Approved Processing Center, Grantee shall ensure that all existing permits and approvals necessary for use of the Recyclable Materials Processing Site in full regulatory compliance are current and in effect. Upon request, Grantee shall provide copies of notices of violation or permits to the City.

- (2) **Marketing.** Providing the Approved Processing Center is owned and/or operated by Grantee or by an Affiliate of Grantee, Grantee shall provide proof to the City that all Recyclable Materials collected are marketed for Recycling or reuse in such a manner that materials shall be considered as diverted in accordance with the State regulations established by the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time. No Recycling Material shall be Transported to a domestic or foreign location if Solid Waste Disposal of such material is its intended use. If City requests, and providing Grantee or an Affiliate of Grantee owns and/or operates the Approved Recycling Processing Facility, Grantee shall provide to City a list of the brokers or buyers used at that time by the Processing Center, subject to any reasonable privacy or confidentiality protections. Grantee's proposal includes a sales price paid by the Approved Processing Center to Grantee of net twenty (\$20) dollars per ton of single-stream materials delivered. The twenty dollar net Recyclable Materials sales revenue per ton shall remain constant for the term of the Agreement providing Grantee continues to use the initially designated Approved Processing Center.

- (3) **Disposal of Recyclable Materials Prohibited.** Recyclable Materials may not be Disposed of in lieu of Recycling the material.

C. Green Waste Processing and Marketing

- (1) **Processing.** Grantee shall Transport and deliver all Segregated Green Waste collected in the Franchise Area to the Approved Green Waste Processing Site. Grantee shall pay all costs associated with the Transporting and Processing of all Green Waste.

Grantee shall maintain accurate records of the quantities of Green Waste Collected, Transported, and Processed at the Approved Green Waste Processing Site and shall cooperate with the City in any audits or investigation of such quantities.

If Grantee owns or operates the Approved Processing Center, Grantee shall keep all existing permits and approvals necessary for use of the Green Waste Processing Site in full regulatory compliance. Further, providing it owns or operates the Processing Center, upon request, Grantee shall provide copies of notices of violation or permits to the City.

- (2) **Marketing.** Providing the Approved Processing Center is owned and/or operated by Grantee or by an Affiliate of Grantee, Grantee shall be responsible for marketing products derived from Green Waste collected in the Franchise Area.
- (3) **Disposal of Green Waste Prohibited.** Green Waste may not be Disposed of in lieu of reusing the material. Green Waste shall not be used as alternative disposal cover at a Solid Waste landfill without prior written approval of the City.

D. Change in Designated Disposal Location, Recyclable Materials Processing Site, or Green Waste Processing Site

The City has the right, at its option, to control the Collection, Disposal, and diversion of all Solid Waste generated within the Franchise Area. As part of the rights agreed to herein, the parties hereto agree that:

- (1) The City has the right to direct Solid Waste to be Disposed of at any Solid Waste facility or in any manner, respectively, the City may designate; and
- (2) The City has the right to direct Solid Waste to be diverted at any transfer or Processing station the City may designate; and

- (3) The City has the right to direct Discarded Recyclable Materials collected by Grantee to be processed at or marketed to a specific facility when in the best interest of the City and provided the collector would receive a reasonable, competitive market value for the Recyclable Materials.
- (4) The City has the right to direct Green Waste collected by Grantee to be Processed at or marketed to a specific facility when in the best interest of the City.
- (5) If City directs a change in the Designated Disposal Location, or Approved Recyclable Materials Processing Site or Green Waste Processing Site which impacts Grantee's operational costs, then either party to this Agreement may apply for a rate increase or decrease through the provisions of Section 15A with the intent being to fully compensate Grantee for all changes in costs and pass-through amounts.
- (6) Any change in the Designated Disposal Location, Approved Recyclable Materials Processing Site, or Approved Green Waste Processing Site made by City under this section must comply with all federal, state, and local laws and regulations.

E. Grantee's Responsibility in Lieu of Direction by City

Throughout the term of this Agreement, unless the City gives notice as provided for herein and subject to the terms of this Agreement, it shall be the Grantee's sole responsibility and duty to Dispose of the Solid Waste Collected and Process the Recyclable Materials and Green Waste Collected in a safe manner and in compliance with all federal, state, and local laws and regulations. Grantee agrees that it shall Dispose of all Solid Waste Collected and Process all Recyclable Materials and Green Waste Collected in the Franchise Area at a Solid Waste facility or Processing facility that is fully licensed and appropriately permitted and, to Grantee's knowledge, is not in material violation of any health, safety or Hazardous Materials laws, rules, regulations or orders.

F. Invalidation of City Flow Control Voids Franchise

Should a court of competent jurisdiction rule any material provision in this Franchise Agreement unlawful or unconstitutional, and such ruling prevents in any material way the provision of services hereunder, then the entire Franchise Agreement shall become null and void. However, this Agreement shall not become null and void, and shall remain in full force and effect, as long as the Grantee continues to direct Solid Waste, Recyclable Materials, and Green Waste as instructed by the City and abides by all other terms of this section. City deems control of the Waste Stream a vital component of its waste Disposal program which inures to the general benefit and welfare of the public. This provision will preserve the City's ability to pursue any legal methods whereby flow control of Waste Stream can be achieved.

SECTION 11 - OWNERSHIP OF SOLID WASTE, RECYCLABLE MATERIALS, AND GREEN WASTE

All Solid Waste, prior to being placed in a Grantee-provided Container and placed at a Designated Collection Location, shall be the property of the Generator or producer, if known. In the event said Generator or producer of the Solid Waste is unknown, the Solid Waste shall become the property of the Owner of the parcel upon which said Solid Waste has been deposited. All Solid Waste, upon being placed in a Grantee-provided Container, and all Segregated Recyclable Materials and Green Waste, upon being placed in a Grantee-provided Container, and placed at a Designated Collection Location, shall become the property of the Grantee. Upon being legally deposited in a Disposal site approved by the City, or transferred to a Processing facility or transfer station not owned by the Grantee, all Solid Waste, Recyclable Materials, and Green Waste shall forthwith become the property of the permitted operator of the approved transfer station, Disposal site, or Processing facility.

SECTION 12 - PRIVACY

A. Customers Rights of Privacy

Grantee shall use its best efforts to observe and protect the rights of privacy of Customers. Information identifying individual Customers, or the composition of a particular Customer's Solid Waste, Recyclable Materials, or Green Waste materials shall not be revealed to any Person, private agency or company, unless upon request of federal, state, or local law enforcement personnel, the authority of a court of law, a statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude Grantee from preparing, participating in, or assisting in the preparation of waste characterization studies or Waste Stream analysis which may be reasonably necessary to comply with AB939 or any other reports requested by the City under the Agreement or required or requested by any governmental agency.

B. Use of Customer Lists

Grantee shall not market or distribute outside the normal course of its business, mailing lists with the names and addresses of Customers except to supply such lists upon request to City.

SECTION 13 - GRANTEE'S BOOKS AND RECORDS; REPORTS AND AUDITS

A. Customer List and Routes

Grantee shall supply the City, upon request, with the name of the Owner or Occupant of each Premise served, the address of the property, the service level subscribed to, and with current maps and schedules of Collection routes.

B. Record-keeping and Inspection

Grantee shall maintain detailed records of all receipts and expenditures received or incurred in the operation of such business, including all revenues collected for services rendered and all "pass-through" expenses. The City, its officers, employees, and agents, shall be entitled to inspect, and audit at City's sole expense such books and records upon reasonable notice during normal business hours for the purposes of determining actual billings and Franchise Fee payments and as necessary to determine any adjustment to rates in accordance with Section 15 A of this Agreement. The City will make reasonable efforts to protect proprietary information, if so labeled by Grantee.

C. Financial and Operational Records

Grantee shall maintain accurate and complete accounting records containing the underlying financial and operating data relating to and showing the basis for computation of all costs associated with providing services. The accounting records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied.

D. Collection Service Records

Records shall be maintained by Grantee for City relating to:

- (1) Customer services and billing;
- (2) Weight and volume of material Collected by type (e.g., Solid Waste, Recyclable Materials, Green Waste).
- (3) Routes;
- (4) Facilities, equipment and personnel used;
- (5) Facilities and equipment operations, maintenance and repair;
- (6) Tonnage of Solid Waste, Recyclable Materials, and Green Waste listed by Processing Site or Disposal Site where such materials were delivered;

- (7) Recyclable Materials and Green Waste Collection participation and setout rates;
- (8) Recyclable Materials sales revenue;
- (9) End use and markets for Recyclable Materials and Green Waste.

E. Transfer, Processing, and Disposal Records

Grantee shall maintain records of transfer, Disposal, and Processing of all Solid Waste, Recyclable Materials, and Green Waste Collected by Grantee.

F. Customer Service Records

Records shall be maintained by Grantee for City related to:

- (1) Number of calls received from Customers within Franchise Area;
- (2) Categories (compliments, missed pickups, complaints, damage, etc.) of calls;
- (3) Complaint log noting the name and address of complainant, date and time of complaint, nature of complaint, and nature and date of resolution;
- (4) New Customer log.

G. CERCLA Defense Records

City views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, the City regards its ability to prove where Solid Waste collected are taken for transfer or Disposal, as well as where they are not taken, to be matters of concern. Grantee shall maintain, retain and preserve records which can establish where Solid Waste collected were Disposed (and therefore establish where they were not). This provision shall survive the expiration or earlier termination of this Agreement. Grantee shall maintain these records for a minimum of 10 years beyond expiration or earlier termination of the Agreement. Grantee shall provide these records to City (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or Disposing of them.

H. Monthly Reports

Reports shall present the following information:

- (1) Solid Waste Services. Total tonnage Collected and Disposed.
- (2) Recyclable Materials and Green Waste Services.

Tonnage Collected and Recycled and tonnage of residue Disposed. If the Processing Site handles Recyclable Materials and/or Green Waste Collected in the Franchise Area and from other parties, provide a description of how the quantities of Recyclable Materials and/or Green Waste are tracked and allocated to the Franchise Area.

- (3) Customer Service.
 - (a) Number of Customer calls and category (e.g., compliments, missed pickups, scheduled clean-ups, Billing concerns, damage claims, etc.).
 - (b) Number of complaints received, whether delivered in person, telephone, mail, or others means. The report shall show the date the complaint was received, actions taken to rectify the complaint, and the date the actions were taken.

I. Annual Financial Report

Grantee shall maintain accounting records specific to the Franchise Area, separate from activities in other counties and separate from activities in any other governmental jurisdiction.

Grantee shall, at its own expense, be required to annually provide the City with a copy of a compiled independent audit report on its operations under this Agreement. The audit report shall be prepared by a certified public accountant. The accountant shall be entirely independent of the Grantee, shall have no financial interest whatsoever in the business of the Grantee, and shall be approved by the City Finance Director.

The annual financial statement or audit report must include, but is not limited to the following:

- (1) Except as provided in Section 4F, Ownership of Grantee shall be entirely independent of every other City franchise holder. Grantee shall file a statement of ownership and shall verify the same as being true and correct under the penalty of perjury. The statement shall be in such form as may be prescribed therefore by the City.
- (2) Income Statement for the Franchised Area. The Income Statement should disclose revenue by line of business and expenses by line of business and detail expense descriptions.

In addition, the Grantee shall make available to the City, or its designee, upon request:

- (1) Supporting documentation to determine the reasonableness of revenues (e.g., average number of monthly residential, industrial, and commercial Customers and average monthly rates for each type of Customer service).
- (2) Supporting documentation (invoices and descriptive schedules) for major expense line items including but not limited to depreciation, salaries, repair and maintenance, equipment rental, and Disposal expense.
- (3) Grantee's documentation of its specific transactions with affiliated companies.
- (4) Any other information specifically related to the Agreement, which is reasonably required by City staff for review of rate adjustment requests.

In the event of the failure of the Grantee to provide any such report, the City may employ a qualified accountant or consultant or the City Finance Director to prepare the report, and the Grantee shall be liable for and pay the associated costs and expenses of the accountant or City Finance Director.

J. Annual Operations Report

The Grantee shall submit a written annual report, in a form approved by City, including but not limited to the following:

Reports shall be for the period July 1 through June 30, except for the first report which shall cover the period of June 1, 2007 through June 30, 2008.

- (1) Information as required pursuant to Section 13H of this Agreement, summarized for the preceding four quarters.
- (2) Identification of severe market depressions for Recyclable Materials and contingency plans for such events in the future.
- (3) Summary assessment of the overall Solid Waste, Recyclable Material, and Green Waste programs from Grantee's perspective, including but not limited to, (i) highlights of significant accomplishments, (ii) problems, and (iii) recommendations and plans to improve the programs.
- (4) A revenue statement, showing quarterly Franchise Fee payments and a summary of corresponding quarterly revenue.
- (5) Grantee shall report any events of non-compliance with any provisions of the City Code, state and federal law, regulatory orders, and regulations imposed by other regulatory agencies, and the conditions contained in the Agreement during the prior 12-month period.

K. Annual Disclosure Statement

In conjunction with the annual operations report, as described in Section 13J, Grantee shall file a disclosure statement which contains the following information:

- (1) A listing of all Subcontractors to this Agreement (including the name, address, and social security or tax identification number of the Subcontractor);
- (2) A listing of all felony convictions or pleas of nolo contendere of the Grantee or Subcontractor by final judgment in any state or federal court within the preceding three years;
- (3) A listing of any instances in which a permit or contract held by the Grantee or Subcontractor was terminated by a final judgment in any state or federal court within the preceding three years;
- (4) A listing of all final adjudications finding the Grantee or Subcontractor in contempt of any state or federal court order enforcing any state and federal law within the preceding three years;
- (5) A listing of all final convictions or pleas of nolo contendere of the Grantee or Subcontractor, under state or local laws governing safety of operations, compliance with environmental and other franchise requirements in the City, whether misdemeanors or infractions.

If the Grantee or Subcontractor is a chartered lending institution or a publicly held company or a wholly-owned subsidiary of such a company required to file annual or quarterly reports under the Securities and Exchange Act of 1934, the Grantee or Subcontractor may provide the above required information by submitting quarterly or annual reports for the preceding three years. If these reports are incomplete or if they fail to contain the information requested in subsection D items 1, 2, 3, 4, and 5 herein, the Grantee or Subcontractor shall make such information available to City.

If Grantee or Subcontractor have filed a disclosure statement, it shall file a supplemental disclosure statement only to the extent that its status or events differ from those covered by the original disclosure statement.

L. Reporting Requirements

Grantee may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by the City. Grantee agrees to mail a copy of all reports and submit all reports on computer discs, by e-mail or by modem in a format compatible with City's software and computers at no additional charge. Grantee will provide a

certification statement, under penalty of perjury, by the responsible Grantee official, that the report being submitted is true and correct to the best knowledge of such official after their reasonable inquiry.

Grantee shall submit monthly reports within 15 calendar days after the end of the reporting month. Grantee shall submit annual reports no later than 45 calendar days after the end of the reporting year.

Grantee shall submit (via mail and e-mail) all reports to:

City Manager
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437

M. Failure to Report

If not otherwise cured after reasonable written notice by the City, the refusal, failure, or neglect of the Grantee to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by the Grantee in such report shall be deemed a material breach of the Agreement, and shall subject the Grantee to all remedies, legal or equitable, which are available to the City under the Agreement or otherwise.

SECTION 14 - GRANTEE'S RATES

A. City's Powers

Maximum rates and charges assessed by Grantee for any and all services and activities it performs or engages in the Franchise Area, and which are covered under this Agreement, must be approved by the City Council and/or the City Manager prior to such rates and charges becoming effective.

B. Rate Requirements

- (1) Grantee shall provide the services described in this Agreement and be compensated by its Customers at the rates specified in Exhibit A.
- (2) The rates specified in Exhibit A shall be effective as of the Commencement Date.
- (3) The rates specified in Exhibit A may be modified in accordance with the Rate Adjustments as described in Section 15 of this Agreement.
- (4) At any time during the term of this Agreement, City may choose, at its sole discretion, to require by mandatory collection ordinance that all residential waste Generators subscribe to Grantee's service at not less than the minimum residential service level, and institute procedures to use the City's water and sewer billing, or another device, to ensure payment to Grantee.
- (5) Charges for Industrial Solid Waste removal service may be negotiated between the collector and the Customer. If the negotiated charges are less than the rates specified in Exhibit A, Grantee shall notify the City in writing of each Customer that is offered and charged a lower rate. In no event shall the Grantee charge a rate in excess of those specified in Exhibit A without prior written approval by the City, except for weight overages as provided for in this section.
- (6) Grantee may not charge residential and commercial Customers at rates other than those specified pursuant to this Agreement except that the City may authorize a Customer to receive reduced service for a reduced charge and may approve an agreement between the Customer and the Grantee to provide additional service for an additional charge. These authorized reduced or additional charges may be revised by the City Council from time to time after a public hearing thereon and a determination by the City Council that a change is in the public interest and is mutually agreed upon by both parties.
- (7) All compensation paid to the Grantee shall be paid by its Customers and the City is in no way obligated to provide the Grantee any compensation for services

described in this Agreement. Notwithstanding the foregoing, the City is required to provide rate adjustments as set forth herein.

- (8) Charges for special services shall be as specified in Exhibit A and as they may be modified in accordance with Section 15.

SECTION 15 - RATE ADJUSTMENT PROCEDURES

A. Pass-through Rate Adjustment

- (1) At any time that the City Council either establishes a City surcharge on Grantee's Customers, increases an existing City surcharge on Grantee's Customers, increases the Franchise Fee rate, or increases the Disposal charge at City-owned facilities, Grantee shall be entitled to a corresponding rate adjustment to take effect at the same time the "pass through" adjustment is imposed by the City. City shall provide Grantee with the amount of the surcharge or fee increase and Grantee shall thereafter recalculate rates accordingly to be billed during the next applicable billing cycle retroactive to the date of implementation.
- (2) If a jurisdiction other than the City establishes or increases surcharges, fees or taxes that affect Grantee's expenses, Grantee shall within sixty (60) calendar days of notice of such increase -- providing notice was timely received by Grantee -- inform the City of the increase and provide documentation demonstrating the required adjustment to rates. Billing shall be retroactive to the date the surcharge or fee first went into effect.
- (3) At any time that the City Council either eliminates a City surcharge on Grantee's Customers, decreases an existing City surcharge on Grantee's Customers, decreases the Franchise Fee rate, decreases the Disposal charge at the City owned facilities, or directs Grantee to use a different Disposal Site at lesser total cost for Transportation and Disposal, a corresponding rate adjustment will be made. Grantee shall provide documentation to the City sufficiently demonstrating the impact on Grantee's costs, where applicable, along with calculations supporting the corresponding rate adjustment.
- (4) If a jurisdiction other than the City eliminates or decreases surcharges, fees or taxes that affect Grantee's expenses, the same procedures as described in (3), above, apply.
- (5) In the case of a jurisdiction other than the City eliminating or decreasing surcharge or fees that affect Grantee's expenses, Grantee shall be responsible for notifying the City in writing. If Grantee fails to notify City of eliminated or decreased surcharges or fees per this section, then the City may apply for and request a retroactive pass through rate adjustment decrease.

B. Cost-of-Living Rate Adjustment

No sooner than ^{June} ~~May~~ 1, 2008, and annually thereafter, Grantee shall be entitled to a rate adjustment based on: 1) 100% of the change in the value of the most recently published All Urban Consumers Index (CPI-U), all items, for the San Francisco-Oakland-San Jose, CA, Base

Period 1982 – 1984 = 100, not seasonally adjusted, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor and its value twelve months before, and 2) 100% of the change in the value of the most recently published Series ID:wpu057303; Commodity Code 0573-03 #2 Diesel Fuel compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor and its value twelve months before. At least thirty (30) days prior to the Adjustment Date, Grantee shall notify the City of the CPI adjustment to take place and shall provide the City with its computations and documentation therefore.

The rates would be divided into three components – Fuel, Pass-through and All Other. The Fuel Component would equal 3.3% of the first year rate. The Pass-through Component would equal 38.6%. The All Other Component would equal 58.1% of the rate. When the first adjustment to rates occurs, it will be done in the following manner:

Fuel Component: Existing Billed Rate x 3.3% x Diesel Fuel Index

Pass-through Component: None, since pass-through increases, if any, will be made pursuant to Section 15(A) above.

All Other Component: Existing Billed Rate x 58.1% x CPI Index

The sum of the above equals the New Rate.

C. Extraordinary Rate Adjustment

In addition to the pass-through and CPI adjustments set forth in Sections 15A and B, rates may be adjusted upward or downward to reflect and account for material changes in Grantee's costs due to (1) force majeure events; (2) extraordinary and unanticipated events that do not otherwise prevent Grantee's or the City's performance; and (3) changes in Applicable Laws, rules, permits and/or regulations occurring after the effective date of the Agreement (other than government fees, taxes or surcharges which are to be recognized as a 100 percent pass-through at the time of implementation) To qualify as a material impact on costs, the effect must exceed, or be less than, the applicable CPI for the relevant period of time by at least one hundred (100) percent. Further, any such rate adjustment shall occur no more than once during any Rate Period.

The party requesting the extraordinary rate adjustment shall notify the other party in writing and shall provide documentation sufficient to support the increase or reduction in cost. Such documentation shall include: (1) support for the additional marginal cost or savings; (2) documentation that the cost or savings exceeds the required CPI threshold; (3) the basis for computing the cost/savings impact, and (4) financial documentation establishing the current costs affected by the extraordinary event. City and Grantee agree to work cooperatively and in good faith in reviewing and considering extraordinary rate adjustments.

SECTION 16 - FEES

A. Franchise Fee & Caspar Closure Fee - Amount

In consideration of the exclusive rights provided herein, Grantee shall pay a Franchise Fee to the City calculated as 10% of the annual net revenues collected for service. Annual net revenues shall equal Gross Revenues. The initial Franchise Fee of 10% shall not be subjected to pass-through rate adjustment. The Franchise Fee may be revised by the City Council from time to time after a public hearing thereon and a determination by the City Council that a change is in the public interest, such increases or decreases determined by the City Council shall be subject to pass-through rate adjustment.

In addition, Grantee shall pay a Caspar Closure Fee to City at the same time and in the same manner as the Franchise Fee, equal to 10.96% of Gross Revenues, including the sale of Recyclable Materials.

The above paragraphs notwithstanding, Grantee shall not pay the Franchise Fee or Caspar Closure Fee on revenues received from state, federal or tribal government Customers. if all of the following occur: (1) said Customer issues a competitive bid request or request for proposals for Solid Waste disposal service; (2) Grantee has been notified that it will not be the sole bidder; and (3) Grantee wins the competitive bid process by making a sealed bid rate proposal to said Customer which offers rates which are 10% or more less than the rates which would ordinarily be charged pursuant to this Agreement.

B. Franchise Fee - Quarterly Payments and Revenue Statements

Grantee shall pay the Franchise Fee and Caspar Closure Fee in quarterly payments due within 30 days after the close of each calendar quarter. Along with the quarterly payment, Grantee shall include a quarterly revenue statement, certified by an officer of the Grantee, that shows the basis for the calculation thereof.

C. Franchise Fee - Deposit

Franchise fees and Caspar Closure Fees shall be paid to the City which shall deposit them to the City General Fund.

D. Franchise Fee - Delinquency Penalty

Payments are delinquent if not received by the City within 30 days as provided above. All delinquent fees are subject to a delinquency penalty of ten percent (10%), which attaches on the first day of delinquency. These penalties are in addition to the franchise termination provisions of Section 19.

E. Refund of Franchise Fees

Grantee shall be entitled to a refund of any overpayment of franchise or Caspar closure fees.

SECTION 17 - BONDS, INSURANCE, AND INDEMNIFICATION

A. Bonds

- (1) The City may require the Grantee to post a performance bond at a value up to 25% of the estimated annual revenues generated through this Agreement. If, however, the Grantee has previously satisfactorily demonstrated that Grantee has the financial means and capabilities to perform required services, the City may waive the performance bond requirement, or may reduce the required amount of the performance bond.

The amount and specifications of the performance bond required for this Agreement are described in Exhibit D.

B. Insurance

Insurance policies are to be secured by the Grantee and remain in full force and effect at all times to provide protection against liability for damages which may be imposed for the negligence of the Grantee or that Persons employees or agents, including, but not limited to, general liability and automobile liability insurance. Grantee shall also provide liability coverage under California Workers' Compensation laws. The amounts of insurance required are to be established herein. Said amounts shall not be construed to limit the Grantee's liability.

The insurance requirements provided herein may be modified or waived in writing by the City Council, provided the City Council determines that such waiver or modification does not unreasonably increase the risk of exposure to the City, including the fact that the parent of Grantee may be self-insured up to a certain acceptable amount.

- (1) **Workers' Compensation Insurance.** Grantee shall obtain and maintain in full force and effect throughout the entire term of this Agreement full Workers' Compensation Insurance in accord with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the required coverage shall be filed and maintained with the City throughout the term of this Agreement. Any policy of Workers' Compensation Insurance relied upon by Grantee to satisfy the terms of this requirement shall include an endorsement whereby all rights of subrogation against City are waived.
- (2) **Comprehensive General Liability.** Grantee shall obtain and maintain in full force and effect throughout the entire term of this Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of FOUR MILLION DOLLARS (\$4,000,000.00) aggregate and TWO MILLION DOLLARS (\$2,000,000.00) per occurrence for bodily injury and property damage, Said insurance shall protect Grantee and City from any claim for damages for bodily injury, including accidental death, as well as from any claim

for property damage which may arise from operations performed pursuant to this Agreement, whether such operations be by Grantee itself, or by its agents, employees and/or Subcontractors. Copies of the policies or endorsements evidencing the above-required insurance coverage shall be filed with the City. Endorsements are required to be made a part of all of the following insurance policies required by this Section:

- (a) "The City, its employees, agents, and officers, are hereby added as insureds as respects liability arising out of activities performed by or on behalf of Grantee."
 - (b) "This policy shall be considered primary insurance as respects any other valid collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it."
 - (c) "This policy shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
 - (d) "Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to the City in the event of suspension, cancellation, reduction in coverage or in limits or non-renewal of this policy for whatever reason. Such notice shall be sent to the City."
- (3) Vehicle Liability. Grantee shall obtain and maintain in full force and effect throughout the entire term of this Agreement a vehicle liability policy with a minimum limit of TWO MILLION DOLLARS (\$2,000,000.00) per occurrence for bodily injury and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per occurrence for property damage. Said insurance shall protect Grantee and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operation of owned and non-owned vehicles. Copies of the policies or endorsements evidencing the above-required insurance coverage shall be filed with the City.

The limits of such insurance coverage, and companies, shall be subject to review and approval by the City every year and may be increased at that time and match the coverage provided by the City's own liability insurance policy. The City shall be included as a named insured on each of the policies, or policy endorsements.

C. Indemnification

(1) Indemnification of City.

- (a) Grantee shall defend the City with counsel reasonably acceptable to the City and indemnify the City from and against any and all liabilities, costs, claims and damages which are caused by Grantee's negligence or failure to comply with Applicable Laws and regulations, including but not limited to liabilities, costs, claims and damages described in Section 17B, above.
- (b) Grantee agrees that it shall protect and defend the City with counsel reasonably acceptable to City, indemnify and hold harmless City, its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments (including attorney's fees), arising out of or resulting in any way from Grantee's performance of this Agreement, unless such claim is due to the sole negligence or willful acts of the City, its officers, employees, agents or contractors from City's grant of this Agreement to Grantee.
- (c) In addition, Grantee shall defend the City with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all litigation and claims, damages and liabilities arising there from, brought to enforce or to challenge this Agreement and/or Grantee's exclusive rights granted hereunder with respect to the services provided hereunder; provided, however, that Grantee's obligations hereunder extend only to actions brought against or by Persons not parties to this Agreement and do not include any actions with respect to the setting of rates or the application, if at all, of the provisions of Articles XIIC or XIID of the California Constitution.

If the City is unable to set rates as provided for herein, the City agrees that Grantee shall be allowed to set said rates in conformance with the rules and amounts provided in this Agreement, and all other provisions of this Agreement shall remain in full force and effect. Should a court of competent jurisdiction determine that the City lacks authority to set and/or increase rates for charges related to Franchise and governmental fees and charges then Grantee shall reduce the rates it charges Customers a corresponding amount, providing said fees, rates and/or charges disallowed by the court are not related to the cost of providing service hereunder and had already been incorporated in the rates charged by Grantee to its Customers.

Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to the setting of rates for the services provided under this Agreement; rather this section is provided merely to allocate risk of loss as between the parties.

- (2) Indemnification of Grantee.
 - (a) Except as provided by subparagraph (3) AB939 Indemnification, the City shall defend, with counsel reasonably acceptable to Grantee, indemnify and hold Grantee harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the City and/or Grantee for the City's failure to meet the requirements of AB939, its amendments or any successor legislation and/or all rules and regulations promulgated hereunder if said failure is due solely to the negligence or misconduct of the City, including but not limited to the City's failure to adopt Source Reduction and Recycling Elements mandated under AB939.
 - (b) In the event that the City directs the Grantee to Dispose of or Transport Solid Waste, Recyclable Materials, and/or Green Waste to a specific facility, the Grantee shall not be held liable for damages at or to that facility, or to the City as a result of the acts or omissions of that facility, unless the damages are caused by the willful or negligent acts of the Grantee.
- (3) AB939 Indemnification. Grantee shall defend with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the City for the City's failure to meet the requirements of AB939, with respect to the Waste Stream under Grantee's control, its amendments or any successor legislation and/or all rules and regulations promulgated hereunder if said failure results from Grantee's failure to comply with this Agreement and/or Grantee's failure to comply with said laws, rules or regulations, including but not limited to failing to timely supply to the City the reports and information required by the City in order to comply with AB939.

SECTION 18 - FRANCHISE TRANSFER, ISSUANCE, AND RENEWAL

A. Franchise Transfer

In the event that ownership interest of a Grantee is sold, transferred, leased, assigned, mortgaged, pledged, hypothecated, or otherwise encumbered or Disposed of in whole or in part, directly or indirectly, whether voluntarily or by operation of law or through any stock transfer, transfer in trust, change in control, consolidation or merger, this Agreement will be considered non-transferable unless all of the following conditions are met:

- (1) The Grantee notifies the City, in writing, at least sixty (60) days in advance of the transfer in ownership interest, as defined above, and submits a Disclosure Statement in accordance with Section 13K; and
- (2) The Grantee and the party to which ownership interest is being transferred demonstrate that the party to which ownership interest is being transferred has the financial means, experience and capabilities to fulfill the requirements of this Agreement; and
- (3) The party to which ownership interest is being transferred demonstrates that the best interest of the public will be served, and that service levels will not decline or rates increase as a result of the transfer of ownership.

If the Grantee and the party to which ownership interest is being transferred have satisfactorily complied with all of the conditions described above, the City shall not unreasonably deny the transfer of this Agreement. In the event that ownership interest in Grantee changes as described in this section, and the City has approved the transfer of this Agreement, the City has the right to require competitive bid or request for proposal of said Agreement at any time during the remainder of this Agreement term. A two year notification of such intent shall be given to the Grantee provided that two or more years remain in the Agreement term.

Any transfer of ownership interest made without having met the conditions described above, and without City approval to transfer this Agreement, shall constitute good cause for revocation of the affected Agreement.

The Grantee shall compensate the City for all costs incurred by the City to examine the transfer of the Agreement, whether or not the City agrees to the transfer.

B. General Standards of Responsibility

The City may refuse to renew this Agreement or refuse to approve the transfer of this Agreement, if the City finds by a preponderance of evidence that the Grantee has:

- (1) Intentionally misrepresented or concealed any material fact in the disclosure statement;
- (2) Obtained a license, permit, contract, or franchise from the City by intentional misrepresentation or concealment of a material fact;
- (3) Been convicted of a felony or pleaded guilty or nolo contendere to a felony involving the laws of any state or the federal government within the three years preceding the issuance of the license or permit, or execution of the contract or Agreement;
- (4) Been adjudicated in contempt of an order of any court enforcing laws of this state or the federal government within three years preceding the issuance of the license or permit, or execution of the contract or Agreement; or
- (5) Disregarded the public safety, as evidenced by convictions or pleas of nolo contendere to the violation of state and local law governing safety of operations, compliance with environmental and other franchise requirements within the City.

In deciding whether to renew or allow transfer of this Agreement, the City shall consider the facts and mitigating factors surrounding the foregoing including:

- (1) The relevance of the offense to the business for which the license, permit, contract or franchise is issued;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense; and
- (5) The ownership and management structure in place at the time of the offense.

The City Manager shall recommend to the City Council whether the Grantee is fit to retain the rights granted under this Agreement. The City shall notify the Grantee within sixty (60) days following the Grantee's submittal of the disclosure form, in the case of transfer or renewal of the Agreement, thirty (30) days prior to the expiration of this Agreement, whichever is earlier. Failure by the City to make a recommendation regarding the Grantee's fitness for renewal or transfer, within the time frame indicated above, shall in no case result in the revocation of the Grantee's rights under the Agreement, an order to cease operations, or a termination of this Agreement.

C. Opportunity to Demonstrate Rehabilitation

In determining whether to recommend approval to the City Council of a renewal or transfer of this Agreement, the City shall first allow the Grantee to submit evidence of rehabilitation and shall consider the Grantee's efforts to prevent recurrence of unlawful activity. Items to be considered by the City shall include:

- (1) The Grantee's record and history of implementing successful corrective actions undertaken to prevent or minimize the likelihood of recurrence of the offense;
- (2) Whether the offense was an isolated incident or a series of related incidents;
- (3) Whether the Grantee cooperated with government bodies during investigations;
- (4) The number and types of permits, contracts or franchises held by the Grantee;
- (5) Implementation by the Grantee of formal policies, training programs, and management controls to substantially minimize or prevent the occurrence of future violations or unlawful activities;
- (6) Implementation by the Grantee of an environmental compliance auditing program to assess and monitor the adequacy of the internal systems to ensure compliance with environmental laws, regulations and conditions set forth in this Agreement;
- (7) The Grantee's discharge of individuals, or severance of the interest of or affiliation with responsible parties, which would otherwise cause the City to deny the renewal, transfer or refuse to enter into this Agreement; and
- (8) Consideration of the need for this Agreement in advancing the City's welfare, health, and prosperity.

Where the City determines that pursuant to the above, mitigating factors exist, or, pursuant to this Section 18C, that the Grantee has demonstrated rehabilitation, the City Manager shall recommend to the City Council the renewal or transfer of this Agreement.

SECTION 19 - TERMINATION

A. Events of Default

Each of the following shall constitute an event of default (“Event of Default”) hereunder:

- (1) Grantee has demonstrated an inability to properly perform the franchised activity, failed to comply with one or more of the terms or conditions of this Agreement, or future amendment(s) to this Agreement, failed to comply with any material federal, state or local laws, ordinances, rules or regulations pertaining to the franchised activity, or when the franchised activity has become a nuisance or is detrimental to the public health, safety or welfare. If Grantee does not perform franchise services for a period in excess of 15 days, this Agreement may be terminated by the City. Grantee shall not be in default of this Agreement if Grantee commences such action required to cure the particular breach within 7 calendar days after such notice, and it continues such performance diligently until completed.
- (2) Any representation, warranty, or disclosure made to City by Grantee in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation, warranty, or disclosure appears as part of this Agreement;
- (3) There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Grantee, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to substantially impair Grantee's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within 48 hours excluding weekends and Holidays;
- (4) Grantee files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Grantee or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Grantee for any part of Grantee's operating assets or any substantial part of Grantee's property, or shall make any general assignment for the benefit of Grantee's creditors, or shall fail generally to pay Grantee's debts as they become due or shall take any action in furtherance of any of the foregoing;

- (5) A court having jurisdiction shall enter a decree or order for relief in respect of the Grantee, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Grantee shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Grantee or for any part of the Grantee's operating equipment or assets, or orders the winding up or liquidation of the affairs of Grantee;
- (6) If Grantee (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or (iii) is the subject of a civil or criminal judgment or order entered by a federal, state, regional or local agency for violation of an Applicable Law, and the City believes in good faith that Grantee's ability to perform under the Agreement has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from Grantee reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Agreement. If Grantee fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default.

B. Right to Suspend, Amend, or Terminate

Upon an "Event of Default" by Grantee, the City may suspend, amend, or terminate this Agreement.

C. Procedures

Prior to suspending, amending, or terminating this Agreement granted, the City may provide the Grantee with written notice of the proposed action and the reasons for it. The notice shall state that prior to the suspension, amendment or revocation, the Grantee is entitled to a hearing before the City if the Grantee requests such a hearing in writing and the request is received by the City not more than ten (10) days after notice of the proposed action has been mailed to the Grantee.

If the City does not receive a written request for a hearing within the time period prescribed above, the Grantee is deemed to have waived the right to a hearing and the City may immediately suspend, amend, or terminate this Agreement on the terms specified in the notice.

In the event of a serious violation, as determined by the City, or in the event of repeated violations of this Agreement, the Agreement shall be terminated by the City Council.

D. Agreement - Revocation - Equipment Use by City

In the event of suspension or revocation of this Agreement, the City shall have the right forthwith to take possession of all trucks and other equipment of the Grantee for the purpose of Collecting and Disposing of the Solid Waste and performing all other duties, which the Grantee is obligated to perform. The City shall have the right to retain possession of such trucks and equipment until other suitable trucks and equipment can be purchased or otherwise acquired by the City for such purpose. The City shall pay the Grantee a reasonable rental for the use of such trucks and equipment.

E. Liquidated Damages

- (1) **General.** The City and Grantee find 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 shall be incurred by City as a result of a breach by Grantee of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that exclusive services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.
- (2) **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable Solid Waste, Recyclable Materials and Green Waste Collection service is of utmost importance to City and that City has considered and relied on Grantee's representations as to its quality of service commitment in awarding an Agreement to it. The City and Grantee recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The City and Grantee further recognize that if Grantee fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Section, the City and Grantee agree that the Liquidated

Damages amounts established in Exhibit E of this Agreement and the following Liquidated Damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Grantee agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in the Schedule of Liquidated Damages, Exhibit E.

City must document the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representative or investigation of complaints by Customers, Owners, and Generators.

Liquidated Damages will only be assessed after Grantee has been given the opportunity but failed to rectify the damages as described in this Agreement. City shall give Grantee notice of its intention to assess Liquidated Damages. The notice will include a brief description of the incident(s) and non-performance. The City may review (and make copies at its own expense) all information in the possession of Grantee relating to incident(s) and non-performance. City may, within 10 calendar days after issuing the notice, request a meeting with Grantee. City may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. City will provide Grantee with a written explanation of its determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 18E(2). The decision of City shall be final and Grantee shall not be subject to, or required to, exhaust any further administrative remedies.

- (3) **Amount.** City may assess Liquidated Damages for each calendar day or event, as appropriate, that Grantee is determined to be liable in accordance with this Agreement in the amounts specified in Exhibit E subject to annual adjustment described below.

The amount of Liquidated Damages specified in Exhibit E shall be adjusted annually on the first day of the Rate Period. The adjustment shall be rounded to the nearest cent. Liquidated Damage amounts shall be adjusted to reflect 75% of the changes in the All Urban Consumers Index (CPI-U), all items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982 – 1984 = 100, not seasonally adjusted, compiled and published by the U. S. City of Labor, Bureau of Labor Statistics or its successor agency, using the method following:

Adjusted Liquidated Damage Amount = Then-current Liquidated Damage Amount x most current CPI-U/previous 12-month CPI-U

For example:

Current Liquidated Damage Amount = \$150.00

Most recently published index (May 2004) = 193.5

Index published twelve months prior to most recently published index (May 2003) = 191.0

Adjusted Liquidated Damage Amount = \$150.00 x (193.5/191.0) = \$151.96

If the CPI-U is discontinued or revised during the Term by the United States City of Labor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

- (4) **Timing of Payment.** Grantee shall pay any Liquidated Damages assessed by City within 10 calendar days of the date the Liquidated Damages are assessed. If they are not paid within the 10-day period, and providing Grantee has exhausted its right to administrative review in accordance with this Section, City may proceed against the performance bond required by the Agreement, or order the termination of the exclusive Collection rights granted by this Agreement, or all of the above.

SECTION 20 - RIGHTS OF CITY TO PERFORM DURING EMERGENCY

A. Provision of Emergency Services

Grantee shall provide emergency services at the City's request in the event of major accidents, disruptions, or natural calamities. Emergency services may include, but are not limited to, assistance handling salvaged materials, Processing, Disposing of Solid Waste, Recyclable Materials or Green Waste following a major accident, disruption, or natural calamity. Grantee shall be capable of providing emergency services within 24 hours of notification by the City or as soon thereafter as is reasonably practical in light of the circumstances. Emergency services, which exceed the Grantee's obligations, shall be compensated in accordance with Section 15C. If Grantee cannot provide the requested emergency services, the City shall have the right to take possession of the Grantee's equipment for the purposes of providing emergency services.

B. Franchise Revocation - Emergency Actions

Notwithstanding provisions of this Agreement to the contrary, the City may temporarily suspend this Agreement, without prior notice and a hearing, whenever an emergency exists which poses an immediate threat to the public health, safety, or welfare. In such a case, the City shall attempt to notify the Grantee at least twenty four (24) hours prior to the proposed action. A hearing shall be held within seventy two (72) hours of the action taken to suspend the franchise. Appeals to the City Council are governed by Section 21.

C. Labor Dispute - City Assumption of Duties - Authorized

In the event the Grantee's Collection services are interrupted by a labor dispute and scheduled Collections are discontinued for more than seventy-two (72) hours, the City shall have the right to forthwith take temporary possession of all facilities and equipment of the Grantee for the purpose of continuing the service which the Grantee has agreed to provide in order to preserve and protect the public health and safety. The City shall have the right to retain possession of such facilities and equipment and to render the required service, until the Grantee can demonstrate to the satisfaction of the City that required services can be resumed by the Grantee; provided, however, that such temporary assumption of the Grantee's obligations under this Agreement shall not be continued by the City for more than one hundred twenty (120) days from the date such operations were undertaken. Should the Grantee fail to demonstrate to the satisfaction of the City that required services can be resumed by the Grantee prior to the expiration of the aforementioned one hundred twenty (120) days, the rights and privileges granted to the Grantee may be forfeited and the franchise granted herein may be terminated.

Should the City exercise its right to take temporary possession of Grantee's facilities used in providing service under this Agreement, City shall recognize Grantee's obligations to provide service in accordance with other agreements and shall cooperate with Grantee in its efforts to provide such other service using the Grantees facilities in the City's temporary possession.

D. Labor Dispute - City Assumption of Duties - Use of Revenue

During any period in which the City has temporarily assumed the obligations of the Grantee under this Agreement, the City shall be entitled to the Gross Revenues attributable to operations during such period and shall pay there from only those costs and expenses, including a reasonable rental for use of trucks and equipment, applicable or allocable to the period. The excess, if any, of revenue over applicable or allocable costs and expenses during such period shall be deposited in the treasury to the City to the credit of the General Fund. Final adjustment and allocation of Gross Revenues, costs and expenses to the period during which the City temporarily assumed the obligations of the Grantee shall be determined by an audit, by a certified public accountant or licensed public accountant, and prepared in report form with that person's unqualified opinion annexed thereto.

E. Labor Dispute - City Assumption of Duties – Employees

Employees of the Grantee may be employed (providing employee consents) by the City during any period in which the City temporarily assumes the obligations of the Grantee under this Agreement; provided, however, that the rate of compensation to be paid the employees, or any other employees, shall be the rate or rates in effect at the time the Grantee's service was interrupted by the labor dispute, and the terms and conditions of employment shall be the same as provided by the Grantee.

SECTION 21 - GENERAL PROVISIONS

A. Entire Agreement

This Agreement, including the exhibits, represents the full and entire Agreement between the City and Grantee with respect to the matters covered herein.

B. Force Majeure

Neither party shall be in default under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to any of the following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides, fires, and volcanic eruptions, strikes, lockouts and other labor disturbances or other catastrophic events which are beyond the reasonable control of Grantee.

A party claiming excuse under this Section must (i) have taken reasonable precautions to avoid being affected by the cause, and (ii) notify the other party in writing within 5 days after the occurrence of the event specifying the nature of the event, the expected length of time that the party expects to be prevented from performing, and the steps which the party intends to take to restore its ability to perform.

C. Notice Procedures

All notices, demands, requests, proposals, approvals, consents, and other communications which this Agreement requires, authorizes, or contemplates shall be in writing and shall either be personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid, addressed as follows:

(1) If to City:

City Manager
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437

(2) If to Grantee:

District Manager, USA Waste of California,
Empire Waste Management
219 Pudding Creek
Fort Bragg, CA 95437

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

All notices required or given pursuant to this title shall be deemed properly served on the day it is personally delivered or three business days after deposited, postage prepaid, in the United States mail, addressed to the address provided to the City.

D. Independent Contractor

Grantee is an independent contractor and not an officer, agent, servant or employee of City. Grantee is solely responsible for the acts and omissions of its officers, agents, employees, Grantees and Subcontractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Grantee. Neither Grantee nor its officers, employees, agents, or Subcontractors shall obtain any rights to retirement or other benefits which accrue to City employees.

E. Roadway Damage

Grantee shall be responsible for any extraordinary damage (not including normal wear) caused by Grantee's negligence to City's driving surfaces, whether or not paved, resulting from the weight of vehicles providing Collection services at the location of Bins and Containers on public property. This Agreement does not purport to affect, in any way, Grantee's civil liability to any third parties.

F. Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees, Grantees or Subcontractors of the Grantee to private or public property shall be repaired or replaced by Grantee, at Grantee's sole expense.

G. Compliance with City Code

Grantee shall comply with those provisions of the City Code which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement, subject to Section 1C.

H. Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Agreement or any part thereof is, for any reason, held to be illegal, such decision shall not affect the validity of the remaining portions of this Agreement or any part thereof, except as specifically set forth herein.

I. Waiver or Modification

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties to this Agreement.

J. Forum Selection

Grantee and City stipulate and agree that any litigation relating to the enforcement or interpretation of this Agreement, arising out of Grantee's performance or relating in any way to the work shall be brought in California State Courts in Mendocino County.


K. Court Costs and Attorney Fees

In the event legal action is instituted by either party to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees and actual costs in connection with such action.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands on the day and year this Agreement first above written.

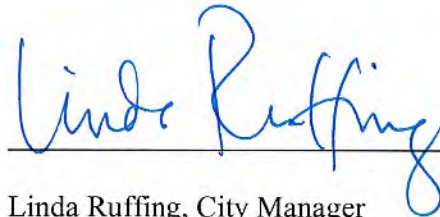
GRANTEE:

Date: 1/3/07


USA Waste of California, Inc. dba Empire
Waste Management

CITY OF FORT BRAGG

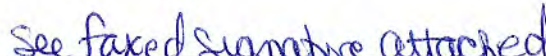
Date: 1.17.07


Linda Ruffing, City Manager

ATTEST:
City Clerk of the City Council


By: Cynthia M. VanWormer, CMC

APPROVED AS TO FORM:
City Attorney


By: Michael Gogna

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Date: _____

USA Waste of California, Inc. dba Empire
Waste Management

CITY OF FORT BRAGG

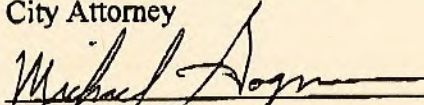
Date: _____

Linda Ruffing, City Manager

ATTEST:
City Clerk of the City Council

APPROVED AS TO FORM:
City Attorney

By: Cynthia M. VanWormer, CMC




By: Michael Gogna

**EXHIBIT A
CUSTOMER RATES**

**Charge per month for pickup once per week
or at a different frequency as noted.**

20 gal residential	16.81
35 gal residential	26.81
64 gal residential	53.62
96 gal residential	80.44
35 gal commercial	25.71
64 gal commercial	51.43
96 gal commercial	77.14
1/CY x 1/WK	154.85
1/CY x 2/WK	220.63
1/CY x 3/WK	293.71
1.5/CY x 1/WK	207.67
1.5/CY x 2/WK	326.68
1.5/CY x 3/WK	428.35
2/CY x 1/WK	267.98
2/CY x 2/WK	436.73
2/CY x 3/WK	567.32
3/CY x 1/WK	314.47
3/CY x 2/WK	558.77
4/CY x 1/WK	489.98
4/CY x 2/WK	879.67
4/CY x 3/WK	1123.33

Roll-offs, Compactors haul fee only (disposal cost additional)	
6 cubic yard bin one-time	417.45
20 cubic yard box or compactor	442.75
30 cubic yard box or compactor	468.05
40 cubic yard box or compactor	493.36

Grantee
Initial Here: 

City
Initial Here: 

EXHIBIT B

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**EXHIBIT C
PUBLIC EDUCATION AND COMMUNITY OUTREACH PROGRAMS**

1. Prior to delivering Grantee-owned Carts to Customers pursuant to this Agreement, Grantee shall mail to all residential Customers, and to commercial Customers who subscribe to 30-gallon can or multiple can service, an illustrated brochure describing the wheeled Solid Waste Carts that will be provided by Grantee to replace Customer's own containers, and providing all necessary instructions for the use and placement of the Carts. This brochure will also advise Customers of the availability of 32-gallon and 64-gallon recycling Carts instead of the larger size.
2. Prior to the commencement date of this Agreement, Grantee shall mail to all commercial Customers a letter stating that all charges for commercial recycling of Recyclable Materials have been eliminated, with a description of the sizes and types of Recyclable Material Containers available to them, with encouragement for Customers to sign up for such service, and additionally stating the rates for service for other Recyclable Materials (wood, Green Waste in excess of one 96-gal Cart, metal, rubble, etc.).
3. Prior to delivering Grantee-owned Carts to Customers pursuant to this Agreement, Grantee shall mail to all residential Customer who subscribe to the 10-gallon service a letter stating that they will be provided a 20-gallon capacity wheeled Cart because it is the smallest size which can be accommodated by automated pickup
4. Prior to the commencement date of this Agreement, Grantee shall mail to all recycling-only residential Customers a letter stating that the recycling-only service has been discontinued but that the Customer is invited to subscribe to the Solid Waste service, stating the rates for different sizes of service.
5. Prior to the commencement date of this Agreement, Grantee shall provide to the City's Water Department all necessary information, forms and materials to allow the Water Department to provide the maximum feasible assistance in encouraging new Water Customers to also subscribe to Grantee's service.
6. Grantee shall implement a written protocol for answering telephone calls for service from new Customers that will provide education and encouragement to make maximum utilization of Grantee's recycling and Green Waste services. This protocol will include questions to the Customer about what Recyclable Materials will be present in Customer's waste, and information about how Customer can reduce costs and promote conservation by diverting those materials. This protocol will include appropriate questions and suggestions for different categories of Customers, including one-time-rental Debris Box Customers.
7. In the event that City adopts a construction & demolition recycling ordinance, Grantee will institute additional telephone answering protocols and Customer relations procedures as

requested by the City to assist the City's policy of obtaining specified diversion goals for construction and demolition projects.

8. Within 60 days of the commencement date of this Agreement, Grantee shall provide to new Customers, when they subscribe, a brochure with instructions on use of the recycling and Green Waste Carts so that maximum diversion is achieved without contamination.
9. Annually, beginning in 2007, Grantee shall mail a brochure to all Customers with general information about Grantee's services, including, but not limited to, (1) the importance and cost savings of waste diversion, (2) recognizing and handling Hazardous Waste, and (3) Disposal options for bulky items.
10. Grantee shall place a violation card on all Solid Waste, Recyclable Material, and Green Waste Containers that are improperly positioned or contaminated by Customer, in the event that Grantee refuses to empty the container, or if Grantee otherwise recognizes the need to advise Customer. The violation card will give clear and specific information of the nature of the violation.
11. Annually, beginning in 2007, Grantee shall prepare a door-hanger card for Multi-Family residential tenants who do not directly contract with Grantee for service, which explains how to use Grantee's recycling and Green Waste service to their multi-family complexes. Grantee shall provide a quantity of each door-hanger to the management of each Multi-Family complex sufficient for all existing tenants and projected new tenants in the upcoming year, for distribution by the manager.
12. Grantee shall submit draft copies of all materials described in Paragraphs 1 through 11 above to the City for approval prior to use. All materials described above shall include the statement that "Trash Disposal and recycling services are provided to Fort Bragg residents under term and conditions of a franchise contract with the City of Fort Bragg."

EXHIBIT D
PERFORMANCE BOND

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EXHIBIT E
SCHEDULE FOR LIQUIDATED DAMAGES

Grantee may be assessed Liquidated Damages if Grantee fails to fulfill its obligations with regards to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement with regards to the time frame for accomplishing each event and nature of the responsibility associated with the event unless otherwise stated in this Exhibit.

COLLECTION RELIABILITY

1.	Maintain Collection Schedule. For each failure over 5 during any Rate Period to Collect from all Customers on a route on the scheduled day (unless non-collection was warranted pursuant to this Agreement)	\$12.50/ Container
2.	Start New Customer. For each failure over 5 during Rate Period to commence service to a new Customer within 7 calendar days after order received and account number established	\$75/ event
3.	Missed Pick-Ups. For each failure over 15 per month to Collect Solid Waste or Recyclable Materials which has been properly set out for Collection by a Customer on the scheduled Collection day	\$75/ event
4.	Consecutive Missed Pick-Ups. For each failure to Collect Solid Waste or Recyclable Materials which has been properly set out for Collection, from the same Customer on 2 consecutive scheduled pick ups	\$75/ event

COLLECTION QUALITY

5.	Leaks, Litter or Spills. For each occurrence over 5 during the Rate Period of unreasonable leaks, litter, or spills of Solid Waste or Recyclable Materials near Containers or on public streets and failure to pick up or clean up such material immediately	\$150/ event
6.	Improper Container Placement. For each occurrence over 12 during the Rate Period of failure to replace Containers in original position, upright, with lids attached to or on Carts or Bins	\$75/ event
7.	Care of Private Property. For each failure over 24 during the Rate Period of not closing a Customer's gate, crossing planted areas, or damaging private property (including private vehicles)	\$150/ event
8.	Repair of Private Property. For each occurrence over 5 during the Rate Period of failure to repair damage to property within 30 days of the date the damage was reported	\$125/ event
9.	Unauthorized Collection or Sweeping Hours. For each occurrence over 5 the during Rate Period of Collecting Solid Waste and Recyclable Materials during unauthorized hours	\$150/ event
10.	Excessive Noise. For each occurrence over 12 during the Rate Period of excessive noise	\$150/ event

11.	Non-Collection Tags. For each failure over 12 during the Rate Period of not tagging Containers which have not been Collected explaining the reason for non-Collection	\$75/ event
12.	Cleaning Collection Vehicles. For each occurrence over 5 during the Rate Period of failure to clean Collection vehicles at least one time per week	\$75/ event
13.	Discourteous Behavior. For each occurrence of discourteous behavior by Collection vehicle personnel, Customer service personnel, or other employees of Grantee	\$250/ event
14.	Injuries to Others. For each incident of personal injury to a Person requiring medical treatment or hospitalization, where the negligence of the Grantee or its personnel was a contributing factor to the injury	\$2,500/ incident

CUSTOMER SERVICE RESPONSIVENESS

15.	Call Responsiveness. For each failure to answer the telephone during business hours specified in the Agreement or failure for answering machine to record call during non-business hours specified in the Agreement	\$150/ event
16.	30-Second Call Hold Time. Failure to answer 90 percent of calls received during office hours within 30 seconds	\$500/ quarter
17.	3-Minute Call Hold Time. Failure to answer 100 percent of calls received during office hours within 3 minutes	\$500/ quarter
18.	After-Hours Call Returns. Failure to return 100 percent of calls received on Grantee's answering machine before noon of the following business day	\$500/ quarter
19.	Complaint Level. Failure to maintain Complaint level below 0.005 % where the percent is calculated equal to the number of complaints divided by the total service opportunities (the total residential stops and commercial lifts performed in the reporting period)	\$50/ quarter
20.	Respond to Complaint or Service Request. For each failure to inform Customer, within one business day of receipt of the complaint or service request, of the action Grantee will take to remedy a complaint or to respond to a service request	\$150/ event
21.	Resolve Complaint or Service Request. For each failure to resolve or remedy a complaint or service request within five business days of receipt of complaint or service request with the exception of missed pick-ups which are addressed below	\$150/ event
22.	Collection of Missed Pick-Ups. For each failure to Collect missed Containers within 25 hours of receipt of the complaint	\$150/ event

REPORTING AND NOTICING

23.	Monthly Reports. Failure to submit monthly report (as described in Section 14.H) in the time frame specified in Section 14.L of this Agreement	\$50/ day report is overdue
24.	Annual Reports. Failure to submit annual reports (as described in Sections 14.I through 14.K) in the timeframe specified in Section 14.L of this Agreement.	\$150/ day report is overdue
25.	Report Hazardous Waste. For each failure to notify the appropriate authorities of known reportable quantities of Hazardous Waste within one business day.	\$250/ event

PUBLIC EDUCATION


26.	Failure to distribute within 30 days of due date any public education item required in Exhibit C	\$125/ day for each day until item is sent
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OTHER


27.	Disposal of Recyclables or Green Waste. For each ton of Recyclable Materials or Green Waste Disposed of without written approval of the City	\$250/ ton
28.	Use of Unauthorized Facilities. For each ton of Solid Waste, Recyclable Materials or Green Waste Disposed or Processed at a facility not approved for use under the provisions of this Agreement	\$125/ ton
29.	Failure of Other Obligations. Failure to perform any of the obligations set forth in this Agreement not specifically stated above and not corrected or proceeding in good faith to correct within 24 hours upon 24 hour notification by City:	\$125/ for each obligation per day until obligation is performed

In placing initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had many opportunities to consult with legal counsel and obtain an explanation of liquidated damage provisions of the time that the Agreement was made.

Grantee

Initial Here: 

City

Initial Here: 

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AUG - 3 2006



August 2, 2006

Ms. Cynthia VanWormer, CMC
CITY OF FORT BRAGG
416 N. Franklin St.
Fort Bragg, CA 95437

Dear Ms. VanWormer:

Pursuant to your letter dated July 28, 2006, please find enclosed the two-signed Agreements to Extend Term of Refuse Collection Agreement between the City of Fort Bragg and Fort Bragg Disposal/Empire Waste Management. Upon execution, please provide me with an original for our files.

Sincerely,

A handwritten signature in black ink that reads "J. E. Devlin". The signature is written in a cursive style with a large, sweeping initial "J".

James Devlin
Bay Area Vice President

Enclosures (2)
Vb

Cc: Linda Ruffing

AGREEMENT TO EXTEND TERM OF REFUSE COLLECTION AGREEMENT

Fort Bragg Disposal Co., Inc., on behalf of itself and of Empire Waste Management (individually and collectively, "CONTRACTOR") and the City of Fort Bragg (CITY") enter into this Agreement to Extend Term of Refuse Collection Agreement as of the latest date shown below for the purpose of extending the term of the existing Refuse Collection Agreement, as previously amended through four Addenda and an action of the Fort Bragg City Council, taken on March 11, 2002. The original Refuse Collection Agreement, dated October 13, 1987, and all subsequent Addenda and action of the Fort Bragg City Council are hereinafter referred to as "the Refuse Agreement".

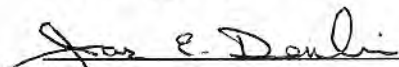
For valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Refuse Agreement is currently due to expire on December 31, 2006.
2. It is in the best interests of the parties and the best interest of the public to extend the term of the Refuse Collection Agreement so that solid waste collection and disposal services can continue to be provided to the residents of CITY by CONTRACTOR to allow for a period of new contract negotiations.
3. The term of the Refuse Agreement is hereby extended for a period of ninety (90) days such that the Refuse Agreement shall expire on March 31, 2007.
4. This extension is without prejudice to either CONTRACTOR or CITY with respect to their respective authority to negotiate a further extension of the Refuse Agreement, including without limitation to the authority of CITY to either deny such further extension or to condition it.
5. Except for the term, which is hereby extended to March 31, 2007, the same terms and conditions as currently exist in the Refuse Collection Agreement shall remain in full force and affect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

Fort Bragg Disposal Co., Inc.

Dated: August 2, 2006


By: _____

City of Fort Bragg

Dated: August ____, 2006

Linda Ruffing, City Manager

Attest:

Cynthia M. VanWormer, CMC
City Clerk

AGREEMENT TO EXTEND TERM OF REFUSE COLLECTION AGREEMENT

Fort Bragg Disposal Co., Inc., on behalf of itself and of Empire Waste Management (individually and collectively, "CONTRACTOR") and the City of Fort Bragg (CITY") enter into this Agreement to Extend Term of Refuse Collection Agreement as of the latest date shown below for the purpose of extending the term of the existing Refuse Collection Agreement, as previously amended through four Addenda and an action of the Fort Bragg City Council, taken on March 11, 2002. The original Refuse Collection Agreement, dated October 13, 1987, and all subsequent Addenda and action of the Fort Bragg City Council are hereinafter referred to as "the Refuse Agreement".

For valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Refuse Agreement is currently due to expire on December 31, 2006.
2. It is in the best interests of the parties and the best interest of the public to extend the term of the Refuse Collection Agreement so that solid waste collection and disposal services can continue to be provided to the residents of CITY by CONTRACTOR to allow for a period of new contract negotiations.
3. The term of the Refuse Agreement is hereby extended for a period of ninety (90) days such that the Refuse Agreement shall expire on March 31, 2007.
4. This extension is without prejudice to either CONTRACTOR or CITY with respect to their respective authority to negotiate a further extension of the Refuse Agreement, including without limitation to the authority of CITY to either deny such further extension or to condition it.
5. Except for the term, which is hereby extended to March 31, 2007, the same terms and conditions as currently exist in the Refuse Collection Agreement shall remain in full force and affect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

Fort Bragg Disposal Co., Inc.

Dated: August 2, 2006

James E. Donlin
By: _____

City of Fort Bragg

Dated: August ____, 2006

Linda Ruffing, City Manager

Attest:

Cynthia M. VanWormer, CMC
City Clerk

FIRST AMENDMENT TO FRANCHISE AGREEMENT BETWEEN THE CITY OF FORT BRAGG AND USA WASTE OF CALIFORNIA INC., DBA EMPIRE WASTE MANAGEMENT

This first amendment to the 2007 Franchise Agreement between the City of Fort Bragg ("City") and USA Waste of California Inc., dba Empire Waste Management ("Grantee"), is entered into on the 23rd day of ~~February~~, February, 2009.

City and Grantee agree as follows:

1. The first sentence of Section 6, Subsection H, Residential Bulky Waste Pickup, is amended to read as follows:

Grantee will provide an annual Bulky Waste pickup without charge to residential customers in March or April.

2. The second paragraph of Section 13, Subsection L, Reporting Requirements, is amended to read as follows:

Grantee shall submit monthly reports within 15 calendar days after the end of the reporting month. Grantee shall submit annual reports no later than 150 calendar days after the end of the reporting year.

3. Except as expressly amended herein, the 2007 Franchise Agreement between the City of Fort Bragg and USA Waste of California Inc. is reaffirmed.

IN WITNESS WHEREOF, the parties have executed this Amendment:

CITY OF FORT BRAGG

Linda Ruffing
Linda Ruffing, City Manager

ATTEST:

Cynthia M. VanWormer
By: Cynthia M. VanWormer, CMC,
City Clerk

GRANTEE:

[Signature]
USA Waste of California, Inc. dba Barry Steinhilber as Vice President
Empire Waste Management

APPROVED AS TO FORM:

see attached
Michael Gogna, City Attorney

FIRST AMENDMENT TO FRANCHISE AGREEMENT BETWEEN THE CITY OF
FORT BRAGG AND USA WASTE OF CALIFORNIA INC., DBA EMPIRE WASTE
MANAGEMENT

This first amendment to the 2007 Franchise Agreement between the City of Fort Bragg ("City") and USA Waste of California Inc., dba Empire Waste Management ("Grantee"), is entered into on the ____ day of February, 2009.

City and Grantee agree as follows:

1. The first sentence of Section 6, Subsection H, Residential Bulky Waste Pickup, is amended to read as follows:

Grantee will provide an annual Bulky Waste pickup without charge to residential customers in March or April.

2. The second paragraph of Section 13, Subsection L, Reporting Requirements, is amended to read as follows:

Grantee shall submit monthly reports within 15 calendar days after the end of the reporting month. Grantee shall submit annual reports no later than 150 calendar days after the end of the reporting year.

3. Except as expressly amended herein, the 2007 Franchise Agreement between the City of Fort Bragg and USA Waste of California Inc. is reaffirmed.

IN WITNESS WHEREOF, the parties have executed this Amendment:

CITY OF FORT BRAGG

GRANTEE:

Linda Ruffing, City Manager

USA Waste of California, Inc. dba
Empire Waste Management

ATTEST:

APPROVED AS TO FORM:

By: Cynthia M. VanWormer, CMC,
City Clerk

Michael Gogna
Michael Gogna, City Attorney

**AMENDMENT NO. 2 TO FRANCHISE AGREEMENT BETWEEN THE CITY OF
FORT BRAGG AND USA WASTE OF CALIFORNIA INC., DBA EMPIRE WASTE
MANAGEMENT**

This second amendment (“2nd Amendment”) to the 2007 Franchise Agreement between USA Waste of California, Inc., dba Empire Waste Management, hereinafter called “GRANTEE”, and the City of Fort Bragg, hereinafter called “CITY,” is made this 23rd day of August, 2011 at Fort Bragg, California.

WHEREAS, CITY and GRANTEE entered into the Franchise Agreement (the “Agreement”) for the collection, transportation, and disposal of solid waste in the CITY on January 8, 2007; and

WHEREAS, Grantee has satisfactorily performed its obligations under the Agreement; and

WHEREAS, it is in the public interest to revise and extend the Agreement until June 30, 2021, subject to the terms and conditions set forth in this 2nd Amendment;

WHEREAS, the Parties hereto agree that notwithstanding any terms and/or conditions set forth herein, this 2nd Amendment shall be null and void and of no force or effect unless and until the County of Mendocino enters into an amendment extending the term of its current Franchise Agreement with USA Waste of California, Inc. dba Empire Waste Management to June 30, 2021;

NOW THEREFORE, it is agreed as follows:

1. The term of the Agreement under Section 4(A)(2) is extended to June 30, 2021.
2. Within 30 days of execution of this 2nd Amendment, Grantee shall deliver to City a check in the amount of \$350,000.00, payable to City, as a contract renewal fee to be applied at City’s discretion for public benefit purposes. Failure of Grantee to make this payment within 30 days shall be grounds for City, at its sole discretion, to revoke and terminate this 2nd Amendment.
3. Section 13(I), Annual Financial Report, is amended to remove the requirement that GRANTEE employ an independent certified public accountant to prepare the reports required under this subsection. All other requirements for the financial report shall remain in effect. CITY may conduct independent audits of GRANTEE’s operations pursuant to the Agreement at CITY’s expense.
4. Section 17(B)(2) is amended to require a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage.

5. Save and except as amended hereby, and by the First Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

CITY OF FORT BRAGG

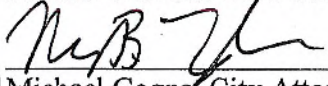
USA WASTE OF CALIFORNIA, INC.

By: _____
Linda Ruffing, City Manager

ATTEST:

Cynthia M. VanWormer, CMC, City Clerk

APPROVED AS TO FORM:

(for) 

Michael Gogna, City Attorney

5. Save and except as amended hereby, and by the First Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

CITY OF FORT BRAGG

By: Linda Ruffing
Linda Ruffing, City Manager

USA WASTE OF CALIFORNIA, INC.

[Signature]
Barry Skolnick, Area Vice President
8/25/11

ATTEST:

Cynthia M. VanWormer
Cynthia M. VanWormer, CMC, City Clerk

APPROVED AS TO FORM:

See Attached
Michael Gogna, City Attorney

**AMENDMENT NO. 3 TO FRANCHISE AGREEMENT BETWEEN THE CITY
OF FORT BRAGG AND USA WASTE OF CALIFORNIA INC., DBA EMPIRE
WASTE MANAGEMENT**

This third amendment to the 2007 Franchise Agreement between USA Waste of California, Inc., dba Empire Waste Management, hereinafter called "GRANTEE", and the City of Fort Bragg, hereinafter called "CITY," is made this 13th day of September, 2011 at Fort Bragg, California.

WHEREAS, CITY and GRANTEE entered into the Franchise Agreement for the collection, transportation, and disposal of solid waste in the CITY on January 8, 2007; and

WHEREAS, CITY directed GRANTEE in 2009 to change the destination for recyclables collected under the Agreement from North Bay Corporation to Solid Wastes of Willits; and

WHEREAS, CITY and GRANTEE believe that additional clarification is necessary regarding the mutual obligations that arise from the 2009 redirection and from future change in the market value of recyclables; and

WHEREAS, it is in the public interest to adopt this Amendment;

NOW THEREFORE, it is agreed as follows:

The following new Section 15(D) is added to the Agreement: "The redirection of single-stream recyclables by Grantee from the City to Solid Wastes of Willits in Willits which occurred pursuant to City instruction in 2009, is declared to be revenue and cost neutral to Grantee under Section 10(D) of the Agreement under the current terms of payment to Grantee from Solid Wastes of Willits, up to and including the date of execution of this Amendment. Grantee shall diligently seek to obtain full market value for recyclables collected under this Agreement, and shall report revenues and prices received for recyclables to City as part of the monthly reports described in Section 13(H). Future increases or decreases in revenue from recyclables, beginning with the date of execution of this Amendment, will be fully accounted by Grantee at the time of each annual rate

adjustment and shall be applied as a credit or debit on any rate adjustment.”

CITY OF FORT BRAGG

USA WASTE OF CALIFORNIA, INC.

By:

Linda Ruffing, City Manager

Barry Skolnick, Area Vice President

ATTEST:

Cynthia M. VanWormer
Cynthia M. VanWormer, CMC, City Clerk

APPROVED AS TO FORM:

see attached
Michael Gogna, City Attorney

adjustment and shall be applied as a credit or debit on any rate adjustment.”

CITY OF FORT BRAGG

USA WASTE OF CALIFORNIA, INC.

By: _____
Linda Ruffing, City Manager

ATTEST:

Cynthia M. VanWormer, CMC, City Clerk

APPROVED AS TO FORM:



Michael Gogna, City Attorney

AMENDMENT NO. 4 TO FRANCHISE AGREEMENT BETWEEN THE CITY OF FORT BRAGG AND USA WASTE OF CALIFORNIA INC., DBA EMPIRE WASTE MANAGEMENT

This fourth amendment to the 2007 Franchise Agreement(hereinafter, "Agreement") between USA Waste of California, Inc., dba Empire Waste Management, hereinafter called "GRANTEE", and the City of Fort Bragg, hereinafter called "CITY," is made this 14th day of January, 2013 at Fort Bragg, California.

WHEREAS, CITY and GRANTEE entered into the Agreement for the collection, transportation, and disposal of solid waste in the CITY on January 8, 2007; and

WHEREAS, CITY and GRANTEE amended the Agreement by approving a first amendment in 2009, a second amendment in 2011, and a third amendment in 2011; and

WHEREAS, changes are necessary to the fuel adjustment mechanism in order to more accurately determine what rate changes should occur in response to changes in GRANTEE's fuel costs;

NOW THEREFORE, it is agreed as follows:

1. Section 15 (B) of the Agreement is revised to read as follows:

"B. Cost of Living Rate Adjustment.

"No sooner than June 1, 2008, and annually thereafter, Grantee shall be entitled to a rate adjustment based on (1) 100% of any positive change in the value of the most recently published All Urban Consumers Index (CPI-U), all items, for the San Francisco-Oakland-San Jose CA, base period 1982-1984 = 100, not seasonally adjusted, compiled and published by the U.S. Department of Labor or its successor and its value twelve months before; and (2) 100% of the change in the average monthly value over 12 months, compared to the average monthly value for the preceding 12 month period, of the most recently published California index for #2 diesel fuel, compiled and published by the U.S. Energy Information Administration or its successor. At least thirty (30) days prior to the Adjustment Date, Grantee shall provide the City with its computations and documentation thereof.

"The rates would be divided into three components: Fuel, Pass-Through and All Other. The Fuel Component would equal 3.3% of the first year rate. The Pass-Through Component would equal 38.6%. The All-Other Component would equal 58.1% of the

rate. The percentage that each component comprises of the total rate shall be adjusted annually based on Grantee's annual financial report.

"When the first adjustment to rates occurs, it will be done in the following manner:

"Fuel Component: Existing Billed Rate x 3.3% x Diesel Fuel Index.

"Pass-through Component: None, since pass-through increases, if any, will be made pursuant to Section 15(A) above.

"All Other Component: Existing Billed Rate x 58.1% x CPI index.


"The sum of the above equals the New Rate."

2. All other terms and conditions of the Agreement shall remain in full force and effect.

CITY OF FORT BRAGG

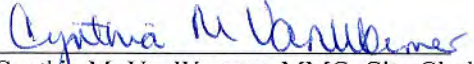
USA WASTE OF CALIFORNIA, INC.

By:


Linda Ruffing, City Manager


[Sign]


ATTEST:


Cynthia M. VanWormer, MMC, City Clerk

Greg Lammers
[Print Name]

Date: 3/25/13

APPROVED AS TO FORM:


David S. Warner, City Attorney

rate. The percentage that each component comprises of the total rate shall be adjusted annually based on Grantee's annual financial report.

"When the first adjustment to rates occurs, it will be done in the following manner:

"Fuel Component: Existing Billed Rate x 3.3% x Diesel Fuel Index.

"Pass-through Component: None, since pass-through increases, if any, will be made pursuant to Section 15(A) above.

"All Other Component: Existing Billed Rate x 58.1% x CPI index.

"The sum of the above equals the New Rate."

2. All other terms and conditions of the Agreement shall remain in full force and effect.

CITY OF FORT BRAGG

USA WASTE OF CALIFORNIA, INC.

By: _____
Linda Ruffing, City Manager

[Sign]

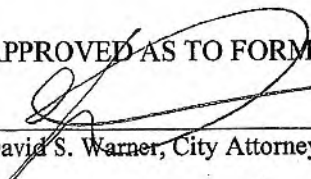
ATTEST:

Cynthia M. VanWormer, MMC, City Clerk

[Print Name]

Date: _____

APPROVED AS TO FORM:



David S. Warner, City Attorney