



# City of Fort Bragg

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

## Meeting Agenda 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**

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Wednesday, January 27, 2021

5:00 PM

Via Video Conference

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### Special Meeting

#### CALL TO ORDER

#### 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, CITY COUNCIL MEMBERS AND STAFF WILL BE PARTICIPATING BY VIDEO CONFERENCE IN THE SPECIAL CITY COUNCIL MEETING OF WEDNESDAY, JANUARY 27, 2021.*

*In compliance with the Shelter-in-Place Orders of the County and State, the Town Hall Council Chamber will be closed to the public. The meeting will be live-streamed on the City's website at <https://city.fortbragg.com/> and on Channel 3. Public Comment regarding matters on the agenda may be made in any of the following ways: (1) By joining the Zoom video conference and using the Raise Hand feature during Public Comment, (2) Through the City's online eComment agenda feature, (3) By emailing comments to City Clerk June Lemos, [jlemos@fortbragg.com](mailto:jlemos@fortbragg.com), (4) By delivering written comments through the drop-box for utility payments to the right of the front door at City Hall, 416 N. Franklin Street, or (5) By leaving a voice mail comment at (707) 961-1694 by 4:00 PM on the day of the meeting.*

*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 12:00 PM on Thursday, January 28, 2021. The Clerk will read aloud all eComments or emails received before or during the meeting that have not been published with the agenda packet. Public comments are restricted to three minutes. Written comments on agendized matters and those exceeding three minutes 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. If you have any questions regarding this meeting, please contact the City Clerk at (707) 961-1694 or [jlemos@fortbragg.com](mailto:jlemos@fortbragg.com).*

#### ZOOM WEBINAR INVITATION

*You are invited to a Zoom webinar.  
When: Jan 27, 2021 05:00 PM Pacific Time (US and Canada)  
Topic: Special City Council Meeting*

*Please click the link below to join the webinar:*

<https://zoom.us/j/99773060397>

Or iPhone one-tap :

US: +16699009128,,99773060397# or +13462487799,,99773060397#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 669 900 9128 or +1 346 248 7799 or +1 253 215 8782 or +1 301 715 8592 or +1 312 626 6799  
or +1 646 558 8656

Webinar ID: 997 7306 0397

International numbers available: <https://zoom.us/u/abvZPaCwzF>

TO SPEAK DURING PUBLIC COMMENT PORTION OF THE AGENDA VIA ZOOM, PLEASE JOIN THE MEETING AND USE THE RAISE HAND FEATURE WHEN THE MAYOR OR ACTING MAYOR CALLS FOR PUBLIC COMMENT.

## **1. PUBLIC COMMENTS ON SPECIAL AGENDA ITEMS**

Public comments may be made on the matters described in this Special Meeting Notice (Government Code Section 54954.3).

## **2. CONDUCT OF BUSINESS**

- 2A. [21-023](#) Receive Report and Consider Adoption of City Council Resolution Providing for Assumption and Amendment of the Fort Bragg Solid Waste Franchise Agreement

**Attachments:** [01272021 Solid Waste Franchise Amendment](#)

[Att. 1 – Assumption and Amendment – Fort Bragg Franchise Agreement](#)

[Att. 2 – Resolution](#)

[Att. 3 – C&S Commitment Letter](#)

[Att. 4 – C&S Information Packet](#)

[Att. 5 – References](#)

[Att. 6 – Current Franchise Agreement with USA Waste of California and Amend](#)

[Att. 7 – Option and Lease Agreement](#)

[Public Comment 2A](#)

## **ADJOURNMENT**

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 January 26, 2021.

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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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Fort Bragg, CA 95437  
Phone: (707) 961-2823  
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## Text File

File Number: 21-023

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**Agenda Date:** 1/27/2021

**Version:** 1

**Status:** Business

**In Control:** City Council

**File Type:** Resolution

**Agenda Number:** 2A.

Receive Report and Consider Adoption of City Council Resolution Providing for Assumption and Amendment of the Fort Bragg Solid Waste Franchise Agreement





**AGENCY:** City Council  
**MEETING DATE:** January 27, 2021  
**DEPARTMENT:** City Manager  
**PRESENTED BY:** Tabatha Miller  
**EMAIL ADDRESS:** [tmiller@fortbragg.com](mailto:tmiller@fortbragg.com)

## AGENDA ITEM SUMMARY

**TITLE:**

**Receive Report and Consider Adoption of City Council Resolution Providing for Assumption and Amendment of the Fort Bragg Solid Waste Franchise Agreement**

**ISSUE:**

The City of Fort Bragg's Franchise Agreement with USA Waste of California, Inc., dba Empire Waste Management expires on June 30, 2021. City and County staff jointly met with Waste Management (WM) for initial discussions on negotiating new agreements on September 23, 2020, both jurisdictions thought that working together would be beneficial. At that time, WM indicated that they would not enter into a short-term extension of the Franchise Agreements and the minimum term they would consider was five years. WM also indicated that they would not bid on franchises where they were already the current provider. One of the challenges since September has been engaging WM staff in discussions regarding terms of a new Agreement. As the Council knows, the County Board of Supervisors made the decision to bid their franchise on December 8, 2020.

Part of the challenge, is that it is in WM's best interest to delay negotiations as long as possible in order to prevent another provider from having sufficient time to establish a local facility, purchase the trucks and other equipment necessary to establish an operation on the coast, and hire staff. Six months is considered the time typically needed to make such a transition. On January 31<sup>st</sup>, five months will remain before the WM Agreement expires.

After the City Council Special Meeting on December 22, 2020, where the Council approved the letter to WM indicating that negotiations would not be exclusive, the City Manager reached out to C&S Waste Solutions, based in Ukiah, to inquiry about whether they would be interested in discussing the Solid Waste Franchise Agreement. The City received a proposal and letter of commitment from C&S Waste Solution on December 28, 2020 (Attachment 3). The City Council Ad Hoc Solid Waste Franchise Committee (Mayor Norvell and Councilmember Peters) and City Manager met with representatives of C&S Waste on December 31, 2020. A key aspect of that conversation was the time necessary to transition to a new provider. There was agreement between the parties that if the City was interested in changing providers, that decision would need to be made before the end of January 2021.

**ANALYSIS:**

**Franchise Agreements**

The current Solid Waste Franchise Agreement, was executed on January 8, 2007 and originally contained a termination date of June 30, 2014. In August of 2011, the Agreement was extended to June 30, 2021.

AGENDA ITEM NO. 2A

[California Public Resources Code Section 40059](#) provides the City with the authority to determine all aspects of solid waste handling as it is of local concern, including the frequency of and means of collection, transportation, level of services, charges and fees and extent of providing such services. Section 40059 also allows cities to determine how services are procured, it allows cities to obtain services by using partially exclusive or wholly exclusive franchises, contracts, licenses or permits with or without competitive bidding. This code section also provides the City with the authority to establish its own terms for procuring solid waste services by resolution or ordinance.

[Fort Bragg Municipal Code Chapter 6.08 – Refuse and Recyclable Collections, Section 6.08.020](#) provides that no one can engage in refuse and recycling collection in the City except under contract with the City. That contract can be exclusive or nonexclusive and the City may regulate all aspects of collection. The chapter also provides regulation on how solid waste is prepared, contained, stored and collected within City limits.

### C&S Waste Solutions

C&S Waste Solutions (C&S), based in Ukiah, is a group of companies with more than 20 years of experience in Northern California. The group of companies provide integrated waste services, including collection, transfer and disposal, recyclable collection and processing, green and wood waste collection and processing, landfill operations, sanitation services and scrap metal purchasing and marketing. They also have presence in southern Nevada. C&S currently provides services to the City of Ukiah, Lake County and Clearlake in our area. A full history of the company is attached in the materials provided by C&S (Attachment 4).

Each Councilmember has toured the C&S facility in Ukiah. The facility includes the large Material Recovery Facility (MRF) which can process commingled paper, aluminum, PET, LDPE, HDPE plastics (1-7), glass, cans and cardboard. The facility also houses the green and wood waste processing facility. Both operations have the capacity to add the City of Fort Bragg to their processing. C&S also operates transfer stations in Ukiah and Lake County.

Staff has checked references with each of those jurisdictions and were provided strong reviews. A copy of the written response from the City of Ukiah and the City of Clearlake is attached (Attachment 5). Additionally, staff spent approximately 50 minutes in a phone conversation with staff from Lake County inquiring about the level of services provided by C&S and the County staff's relationship with C&S. The responses received were very positive but also provided honest feedback. Consistent in both the discussions with Lake County and the response from City of Ukiah is the strong support provided by C&S to those jurisdiction for compliance with the state mandated diversion programs, including AB341, SB939 and SB1383. Implementation of the requirements of SB939 and SB1383 are pending issues for the City.

C&S has proposed an assumption and amendment (Attachment 1) to the City's current Franchise Agreement (Attachment 6). The amendment substitutes C&S for WM as of July 1, 2021 and provides for a 10-year Franchise Agreement with two 5-year optional

renewals. The Amendment extends the existing WM levels of services at the current rates. C&S has leased facilities south of Fort Bragg (See Attachment 7) and as a result certain terms of the current agreement would cause C&S to be in default on July 1<sup>st</sup>. To avoid this result, the Amendment waives the requirement to maintain an office, yard and recycling center within the City limits and provides that a coastal facility near the City will meet the terms. Likewise, we have provided a six-month grace period for C&S to establish a Recycling Center to serve City residents. The goal of both the City and C&S is to negotiate a revised agreement no later than December 31, 2021.

In particular, both parties would like to revise the rate adjustment structure, so that large retroactive rate increases do not happen going forward. Nevertheless, according to C&S they have never requested a retroactive rate adjustment.

Finally, the City Council Ad Hoc Solid Waste Franchise Committee was concerned for loss of employment by WM employees laid off as a result of the transition. C&S has committed to hiring all displaced WM employees essential to the Fort Bragg operations that meet their hiring criteria. C&S provided a list of the current Employee Benefit Package as part of Attachment 3 and will honor seniority dates for current WM employees.

**RECOMMENDED ACTION:**

City Council Ad Hoc Solid Waste Franchise Committee recommends the City Council adopt the Resolution approving the Assumption and Amendment of the Fort Bragg Solid Waste Franchise Agreement with C&S Group Holdings, Inc. and authorizing the City Manager to sign.

**ALTERNATIVE ACTION(S):**

1. Do not approve the resolution and direct staff to continue negotiations with USA Waste of California Inc.
2. Revise the resolution or the Assumption and Amendment, subject to C&S approval.
3. Provide alternative direction.

**FISCAL IMPACT:**

The fiscal impact to the City and solid waste customers should be minimal, the contract terms are nearly identical to the current agreement. Under an Amendment or Restatement terms as to price could impact the City and solid waste customers positively or negatively and will certainly be taken into consideration during those negotiations.

**GREENHOUSE GAS EMISSIONS IMPACT:**

Changing solid waste providers by itself will have little impact on greenhouse gas emission, however, new equipment and trucks would positively reduce greenhouse gas emissions.

**CONSISTENCY:**

Securing a long term contract with a provider is consistent with Chapter 6.08: Refuse and Recyclable Collection – of the Fort Bragg Municipal Code.

**IMPLEMENTATION/TIMEFRAMES:**

Service requirements would be effective July 1, 2021.

**ATTACHMENTS:**

1. Assumption and Amendment – Fort Bragg Franchise Agreement
2. Resolution
3. C&S Commitment Letter
4. C&S Information Packet
5. References
6. Current Franchise Agreement with USA Waste of California and Amendments
7. Option and Lease Agreement

**NOTIFICATION:**

1. Bruce McCracken, C&S Waste Solutions

**ASSUMPTION AND AMENDMENT -  
FORT BRAGG FRANCHISE AGREEMENT**

THIS ASSUMPTION AND AMENDMENT - FORT BRAGG FRANCHISE AGREEMENT (the "Amendment") is made and entered into as of January \_\_, 2021 by and between the City of Fort Bragg, a Municipal Corporation hereinafter referred to as "City," and C&S Group Holdings, Inc., a Nevada corporation hereinafter referred to as "C&S," with reference to the following:

A. City and USA Waste of California, Inc. dba Empire Waste Management ("WM"), are parties to that certain Franchise Agreement dated January 8, 2007, as amended by that certain First Amendment dated February 23, 2009, that certain Second Amendment dated August 23, 2011, that certain Third Amendment dated September 13, 2011, that certain Fourth Amendment dated January 14, 2013, that certain Fifth Amendment dated October 10, 2018 and that certain Sixth Amendment dated January 11, 2021 (together the "Agreement"), pursuant to which WM provides Solid Waste, Recyclable Materials and Green Waste services (the "Services") to the residents and businesses in City. The Agreement expires on June 30, 2021.

B. City desires to substitute C&S for WM as Grantee to provide the Services effective July 1, 2021, and to extend the term of and otherwise amend the Agreement pursuant to the terms of this Amendment, and C&S is willing to assume the Agreement as amended hereby.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, City and C&S hereby agree as follows:

1. Assumption of Agreement. Subject to the terms of this Amendment, C&S hereby assumes the duties of Grantee under the Agreement and City hereby accepts C&S as Grantee under the Agreement. C&S shall have the right, upon written notice to City, to assign this Amendment, and the Agreement as amended hereby, to a wholly-owned subsidiary of C&S at any time prior to July 1, 2021, whereupon such subsidiary shall become Grantee under the Agreement as amended hereby, and C&S shall be relieved of all responsibility under the Agreement as amended hereby. Capitalized terms used but not defined in this Amendment shall have the respective meanings assigned them in the Agreement.

2. Term of Agreement. Section 4A of the Agreement is deleted and replaced with the following:

"A. Term of Agreement. The term of this Agreement shall commence on July 1, 2021 (the "Commencement Date") and expire on June 30, 2031, unless extended or terminated as hereinafter provided. Grantee may elect to extend the term, with the approval of City, two (2) times for five (5) years each pursuant to the terms and conditions of this Agreement. Grantee may exercise this option by providing written notice at least three hundred sixty-five (365) days before the end of the initial term or the first extended term, and City shall provide written notice of its approval or disapproval within ninety (90) days after its receipt of Grantee's written notice. Prior to the Commencement Date, Grantee shall perform all activities necessary to prepare itself to perform the services required hereunder."

3. Service Rates. Effective on the Commencement Date, Grantee shall charge customers the existing service rates set forth on Exhibit A attached to this Amendment.

4. Approved Facilities. Subject to City's existing agreement for Green Waste processing with Cold Creek Compost, Inc., as of the Commencement Date, Grantee will use the Approved Recyclable Materials Processing site for processing Recyclable Materials, the Approved Green Waste Processing site for processing Green Waste, and the Designated Disposal Location for disposal of Solid

Waste, all as agreed upon by City and Grantee at least sixty (60) days prior to the Commencement Date. City and Grantee agree to use commercially reasonable efforts to reach agreement on all such facilities by such date.

5. Certain Provisions Waived. City hereby waives any and all provisions in the Agreement (other than the provisions relating specifically to Grantee's performance of the Services, compliance with laws and regulations (Section 3), payment of expenses and fees (such as Sections 4B(7) and 16), providing and maintaining equipment and service standards (Section 7), providing reports and audits (Section 13) and, except as addressed in Section 6 of this Amendment, maintaining bonds, insurance and indemnification (Section 17)) that would cause Grantee to be in default on the Commencement Date, including, without limitation, the provisions requiring Grantee to maintain an office, yard and/or Recycling Center within the Territory. Grantee shall maintain an office and yard in a coastal location near City as of the Commencement Date, and shall maintain a Recycling Center at a coastal location near City within six (6) months after any existing Recycling Center that serves the residents of City ceases to be actively operated.

6. Indemnity. Grantee's obligation to defend, indemnify and hold City harmless from any and all litigation and claims, damages and liabilities brought to challenge this Agreement under Section 17C.(1)(c) of the Agreement shall be limited to Grantee's expenditure of \$100,000.

7. Further Amendments or Restatement. City and Grantee agree to use commercially reasonable efforts to further amend, or to restate, the Agreement, as amended by this Amendment, to better suit their mutual objectives not later than December 31, 2021.

8. Governing Document; Conflict. Except as amended by this Amendment, the Agreement shall remain in full force and effect. In the event of a conflict between the Agreement and this Amendment, this Amendment will control. This Amendment shall be effective as set forth herein.

9. Counterparts. This Amendment may be signed in two (2) or more counterparts, each of which shall be deemed an original but when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Amendment to be signed on the day and year written above, upon which date this Amendment becomes effective.

CITY OF FORT BRAGG, a Municipal Corporation

By: \_\_\_\_\_  
City Manager, City of Fort Bragg

ATTEST:

\_\_\_\_\_  
City Clerk

C&S GROUP HOLDINGS, INC., a Nevada corporation

By: \_\_\_\_\_  
David Carroll, President

**Exhibit A**

[attach existing Rate chart]

**RESOLUTION NO. \_\_\_\_-2021**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL  
APPROVING ASSUMPTION AND AMENDMENT TO THE CITY OF FORT  
BRAGG SOLID WASTE FRANCHISE AGREEMENT**

**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 Fort Bragg Municipal Code Section 6.08.020 provides that no one can engage in refuse and recycling collection services in the City except under contract with the City; and

**WHEREAS**, regular pickup of garbage, green waste and recyclables is more sanitary and reduces the risk of the solid waste being spread by animals or creating unwanted smells; 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 which expires on June 30, 2021; and

**WHEREAS**, the City's intention in executing the Agreement 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 C&S Group Holdings, Inc. has agreed to provide refuse and recyclable services under the terms of the City's existing Agreement, with minor modifications, in exchange for a ten (10) year commitment; and

**WHEREAS**, C&S has operated in Northern California for more than two decades and provides integrated collection, transfer, processing of waste and recyclables (including green waste), and

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

1. It is in the best interest of the City and all Fort Bragg solid waste customers to secure refuse and recyclable collection services for the next ten (10) years.
2. C&S Group Holdings, Inc. has successfully operated integrated waste services locally for more than a decade in Mendocino and Lake County and was recommended to the City by other jurisdictions.



3. C&S Group Holdings, Inc. has agreed to hire staff laid off from Waste Management as a result of the City's decision to transition refuse and recycling services to another provider.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby approve Assumption and Amendment – Fort Bragg Franchise Agreement between the City of Fort Bragg and C&S Group Holdings, Inc. and authorizes the City Manager to execute same.

**The above and foregoing Resolution was introduced by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and passed and adopted at a special meeting of the City Council of the City of Fort Bragg held on the 27th day of January 2021, by the following vote:**

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

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**BERNIE NORVELL**  
Mayor

**ATTEST:**

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**June Lemos, CMC**  
City Clerk



December 28, 2020

Howard Dashiell, Director  
Department of Transportation  
County of Mendocino  
340 Lake Mendocino Drive  
Ukiah, CA 95482

Tabatha Miller, City Manager  
City of Fort Bragg  
415 N. Franklin Street  
Fort Bragg, CA 95437

Dear Mr. Dashiell and Ms. Miller,

As stated in our December 16, 2020 letter to the County of Mendocino, and our verbal discussions with the City of Fort Bragg, we are ready, willing, and able to service the City of Fort Bragg and the entirety of County Area 2 beginning July 1, 2021. This, however, can only happen if a decision is made within the next 30 days due to the current time constraints and contract terms.

While 30 days is a tight window, our suppliers of carts, bins, boxes and most importantly trucks, need the lead time to achieve the desired start date.

It is our understanding that the current service provider is requesting no less than a five-year extension (or no deal) which puts the County and the City in an awkward and unfortunate position. A Request For Proposal during non-pandemic times takes months to develop, issue, review and award. We can remedy this situation. Given the circumstances, we believe the best way to proceed is for you to talk directly to your locally based and trusted service provider: C&S Waste Solutions.

We are willing to assume the current franchise agreements for a 10 year period, with the understanding that during the first year of operation the parties will meet and confer over mutually agreeable revisions and amendments. The hiring of existing employees will ease the transition. Empowering local supervisors and managers to make decisions that benefit their customers will enhance the service experience.

To add to our existing infrastructure in the Ukiah Valley, we have received a verbal agreement to lease a yard and office on the coast to service the City of Fort Bragg and the County coastal area. This will allow us to transfer the material to the disposal and processing facilities currently in use.

The simple truth is that time is running out and a decision must be made. However, we do understand that this is a significant decision for the City of Fort Bragg and the County of Mendocino. We are fully aware of the task at hand we each face and are confident of our collective ability to achieve the July 1, 2021 start date. When we make a commitment, we stand by our word—we do not take this lightly. I have attached a list of contacts in other jurisdictions we serve and encourage you to contact any of them for information on our performance, outreach, and customer service.

We look forward to discussing all of this with you in the immediate future.

Thank you

A handwritten signature in blue ink, appearing to read "Bruce McCracken".

Bruce McCracken

Attachments: List of C&S References

CC via email: Bernie Norvell, Mayor, Fort Bragg  
Jessica Morsell-Haye, Vice-Mayor, Fort Bragg  
Tess Albin-Smith, Councilmember, Fort Bragg  
Will Lee, Councilmember, Fort Bragg  
Lindy Peters, Councilmember, Fort Bragg  
Carmel Angelo, CEO, County of Mendocino  
Carre Brown, 1<sup>st</sup> District Supervisor, County of Mendocino  
John McCowen, 2<sup>nd</sup> District Supervisor, County of Mendocino  
John Haschak, 3<sup>rd</sup> District Supervisor, County of Mendocino  
Dan Gjerde, 4<sup>th</sup> District Supervisor, County of Mendocino  
Ted Williams, 5<sup>th</sup> District Supervisor, County of Mendocino  
Maureen Mulheren, Supervisor Elect District 2, County of Mendocino  
Glenn McGourty, Supervisor Elect District 1, County of Mendocino

**C&S Waste Solutions**

P.O. Box 630 Ukiah Ca 95482

Phone 707-234-6400 / Fax 707-234-6404 / [www.candswaste.com](http://www.candswaste.com)

## **C&S Waste Solutions References**

**Sage Sangiacomo, City Manager**

City of Ukiah  
707-463-6217  
ssangiacomo@cityofukiah.com

**Tim Eriksen, Director of Public Works and City Engineer**

City of Ukiah  
707-463-6280  
teriksen@cityofukiah.com

**Trey Strickland, Environmental Health Director**

County of Mendocino  
707-234-6639  
stricklt@mendocinocounty.org

**Lars Ewing, Public Services Director**

County of Lake  
707-262-1618  
Lars.Ewing@lakecountyca.gov

**Kati Galvani, Public Services Deputy Director**

County of Lake  
707-262-1618  
Kati.Galvani@lakecountyca.gov

**Alan Flora, City Manager**

City of Clearlake  
Phone: 707-994-8201, Extension 120  
[aflora@clearlake.ca.us](mailto:aflora@clearlake.ca.us)



January 21, 2021

Tabatha Miller, City Manager  
City of Fort Bragg  
415 N. Franklin Street  
Fort Bragg, CA 95437

Dear Tabatha,

C&S Waste Solutions (C&S) has been the franchised hauler for three jurisdictions in northern California for over 20 years. As a local company with roots in the communities we serve, C&S provides curbside collection services, recycling processing, organic waste composting, household hazardous waste handling, scrap metal processing and disaster debris diversion.

We are proud of the work we do to protect both the environment and public health, and as a trusted service provider, we stand out in many ways:

- **Local.** We are headquartered in Mendocino County where most of our employees live. The management team is local, and our customers are our neighbors.
- **Experienced.** With over 20 years of servicing cities and counties in two states, we have the experience necessary to provide collection service, regulatory compliance and outstanding customer service to Fort Bragg. When transitioning service providers, it's necessary to work with a company that has both the strategy and expertise to perform a seamless transition.
- **Inclusive.** Our employees join and stay with our company due to our competitive pay, generous benefits and our 'customer-first' culture. When working in a new jurisdiction, we offer a comparable pay package to existing employees and honor seniority in employee benefits.
- **Present.** It is important to be accessible, so we enjoy being a proactive and responsive partner to our jurisdictions. We encourage you to contact the City Manager or Public Works Director in the communities we serve for more feedback on our commitment and performance.
- **Fair.** Most people want to do the right thing at the curb with their waste. Our outreach to customers is dynamic and frequent where we favor ongoing education over fines, only using penalties as a last resort.
- **Progressive.** Safety and education are our top priorities, so we invest in new, state-of-the-art equipment for the collection and processing of waste. Our outreach efforts are friendly and forward-thinking, including access to online tools to increase diversion and reduce landfill disposal (visit [UkiahRecycles.com](http://UkiahRecycles.com)).

C&S Waste Solutions of California, Inc.

P.O. Box 60 / Ukiah, CA 95482

Phone 707-234-6400 / Fax 707-234-6404 / [www.candswaste.com](http://www.candswaste.com)



- **Diligent.** With the ongoing and future challenges facing the waste industry, it's critical to have a service provider who is committed to communication and compliance. C&S partners with our jurisdictions to share information on trends, regulations and market challenges before they become problems.

- **Involved.** We invest our time and money in the communities we serve – since our team lives here, so do their children and grandchildren. Whether it's contributing at a non-profit event or buying animals from 4H kids, our commitment to giving back is steadfast today and tomorrow.

I've included some materials related to our work and our team for your reference. If I can provide more information or answer any additional questions, please let me know.

I look forward to your reply, thank you.

Bruce McCracken

Encl. C&S Employee Benefits Package for current Waste Management employees  
News Articles featuring C&S

Links provided via email (due to file size):

[C&S Clearlake Customer Newsletter](#)

[C&S Lake County Customer Newsletter](#)

[C&S Photo Book](#)



## Employee Benefit Package

- ❖ C&S Waste Solutions, Inc. will honor current WM wages and seniority dates
  - 401K – Matching up to 50% of 5% of Gross
  - Paid Vacation based on seniority date
  - Paid Sick Leave, Paid Holidays, Bereavement Pay
  - Weekly Pay – Friday Pay Date
- ❖ Insurance Benefits:
  - Health Insurance – Blue Shield of California Active Choice 750 80/60
  - Health Reimbursement Arrangement (HRA) – ASI (Administrative Solutions Inc.)
    - **Company Pre-Paid Debit Card (Annually):** Single \$500, Employee/Children \$1,000, Employee/Spouse \$750, Family \$1,250
  - Dental Insurance – Blue Shield of California Smile Spectrum Premier 50/2000/Ortho/U90
  - Life Insurance – Blue Shield of California Group Life and AD&D \$25,000
  - Vision Insurance – VSP
  - AirMedCare Network – Emergency air ambulance
  - **Employee Monthly Cost:** Single \$75, Employee/Children \$175, Employee/Spouse \$225, Family \$300
- ❖ Reimbursement Benefits:
  - AAA – Reimbursement of Classic Coverage
  - Costco – Reimbursement of Gold Membership
  - Boot Allowance
- ❖ Company Apparel
- ❖ Safety Incentive Program
- ❖ Thanksgiving Turkey for your Family
- ❖ Summer Family Picnic and Year End Employee Appreciation Party



Friday, 29 November 2019



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**LAKE COUNTY NEWS**   (1)

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# Coastal Cleanup Day volunteers remove tons of trash from Lake County waterways

ELIZABETH LARSON POSTED ON FRIDAY, 04 OCTOBER 2019 04:45  
04 OCTOBER 2019







**Upward Bound volunteers from Lower Lake High School in Lower Lake, Calif. and their site captain, Barbara Christwitz of Citizens Caring For Clearlake at Austin Park in Clearlake, Calif., taking part in the 35th annual Coastal Cleanup Day on Saturday, September 21, 2019. Photo courtesy of Lake County Water Resources.**

LAKE COUNTY, Calif. – Volunteers taking part in the annual Coastal Cleanup Day removed thousands of pounds of trash in Lake County – far surpassing last year’s totals – and were part of a larger statewide effort that included tens of thousands of participants.

The 35th annual Coastal Cleanup Day took place Saturday, Sept. 21.

Begun by the California Coastal Commission in 1983, it isn’t limited to coastal areas, but also includes creeks, rivers and lakes.

This year, statewide there were 68,152 volunteers, 812,121 pounds of debris removed and 1,428 miles of shoreline cleaned, according to Eben Schwartz, a California Coastal Commission spokesperson.

That’s compared to more than 53,000 volunteers, 698,931 pounds of trash and an additional 35,674 pounds of recyclable materials, for a total of 734,606 pounds or 367 tons removed in 2018.

The Coastal Commission reported that, besides every day garbage and debris, including plastics, volunteers picked up a number of “unusual” items during this year’s cleanup.

The winners of the 2019 Most Unusual Item contest are a volunteer at Middle Harbor Shoreline Park in

Oakland who found a beautiful statue of Vishnu, and a volunteer at Swami's State Beach in Encinitas who found a message in a bottle.



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**Edgar Ketchum and his volunteer team removed more than 3,000 pounds of trash from around Borax Lake off Sulfur Bank Drive in Clearlake, Calif., as part of the 35th annual Coastal Cleanup Day on Saturday, September 21, 2019. Photo courtesy of Lake County Water Resources.**

This year, volunteers in Lake County gathered at Keeling Park in Nice, Rodman Slough in Lakeport, the Nice-Lucerne Cutoff and Highlands Springs, and in Clearlake at the Clear Lake Campground, Austin Park and Borax Lake.

Angela De Palma-Dow, Lake County Water Resources' invasive species coordinator and an organizer of the local event, said the local cleanup went really well.

This year, she said there were a total of 57 volunteers, compared to the 39 reported to have participated last year.

Those 57 volunteers collected 6,457 pounds of trash and 55 pounds of recyclables, filled 147 bags and cleaned 15.5 miles, De Palma-Dow said.

Of the total pounds of trash picked up, De Palma-Dow said 2,400 pounds came from the Austin Park area in Clearlake.

The amount of trash picked up this year was more than 10 times greater than the amount reported



last year, when 500 pounds were removed.



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De Palma-Dow said it was “not too shabby for a single morning!”

It also was a busy morning, with a number of other events going on around the county the same day.

DePalma-Dow offered thanks and recognition to C&S Waste Solutions and Lake County Public Services for sponsoring the event. “We could not have done this event without them and their dumpster donations.”



**Trash volunteers removed from a dump site at Borax Lake in Clearlake, Calif., as part of the 35th annual Coastal Cleanup Day on Saturday, September 21, 2019. Photo courtesy of Lake County Water Resources.**

She said Lower Lake High School Upward Bound volunteers helped Barbara Christwitz and Citizens Caring for Clearlake pick up the 2,400 pounds of trash from the Austin Park area.

County Supervisors Eddie Crandall and Tina Scott picked up trash on the Nice-Lucerne Cutoff, where Thomas Aceves and his adopt-a-road volunteer team regularly also meet to clean up the roadway.

DePalma-Dow said Edgar Ketchum and his volunteer team removed more than 3,000 pounds of trash

from around Borax Lake off Sulfur Bank Drive in Clearlake.



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Lisa Wilson and her dedicated kayakers and boaters at Clear Lake Campground also participated, as did Highland Springs caretaker James Davis and his volunteers, DePalma-Dow said.

On the Northshore, Water Resources staffers and site captains Marina Deligiannis and Yuliya Osetrova helped volunteers. In that area, DePalma-Dow said lots of tires were picked up.

In addition to the Coastal Cleanup Day volunteers, DePalma-Dow said there were a lot of volunteers on Highway 20 in the Upper Lake and Lucerne area that weren't officially a part of Coastal Clean Up Day, but she thanked them for their efforts to keep Lake County Clean.

If anyone wants to sponsor this event or be a site captain for next year's Coastal Clean Up Day, they can contact De Palma-Dow at Water Resources at 707-263-2344.

***Email Elizabeth Larson at [elarson@lakeconews.com](mailto:elarson@lakeconews.com) (mailto:elarson@lakeconews.com). Follow her on Twitter, @ERLarson, or Lake County News, @LakeCoNews.***

## LIFESTYLE

## C&S Waste Solutions joined Boys and Girls Club to discuss recycling



Linsey McCollough, Community Outreach and Education and Iri Espinosa Outreach Coordinator interacting with Club Members, sparking interesting conversations. Photo contributed

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By **UKIAH DAILY JOURNAL** | [udj@ukiahdj.com](mailto:udj@ukiahdj.com) |

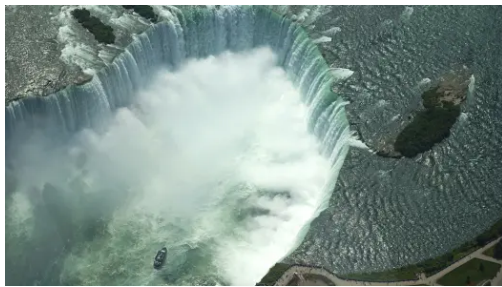
PUBLISHED: January 15, 2018 at 12:00 am | UPDATED: August 23, 2018 at 12:00 am

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Recently Linsey McCollough from C&S Waste Solutions joined Boys & Girls Club to discuss the value of recycling with Club members. Her points of emphasis were, what happens to our trash when it goes to a landfill? What should people recycle and what does it become? How they should separate, wash, dry and sort their recyclables? McCollough brought pencils, pens and written information to share with Club Members and their families. If you would like to share with the Club call Liz Elmore at 467-4900 or 489-2050

## Ukiah Daily Journal

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## In the Spotlight: C&S Waste Solutions: Building a Business on Family, Friendship and Trust

May 13, 2015

*Embraced by the communities they serve, C&S Waste Solutions is committed delivering environmentally sound, technologically advanced and cost-effective solutions, embracing innovation and implementing forward-thinking, sustainable programs designed to achieve maximum diversion from landfills.*

C&S Waste Solutions (Ukiah, CA) is a family of companies with decades of experience operating in all aspects of solid waste management. Operating divisions exist in various locales in California and southern Nevada. The company offers fully integrated services including waste collection, transfer and disposal, recyclable collection and processing, green and wood waste collection and processing, landfill operations, portable sanitation services, and scrap metal purchasing and marketing.

In 1997, childhood friends, Dave Carroll and John Shea formed a business partnership that developed from years of literally “growing up” in the business. Not only did Carroll and Shea grow up living across the street from one another, but their respective families owned and operated solid waste collection, recycling and landfill companies in the northern and central regions of California. Both Carroll and Shea spent their school summers working in various aspects of the family enterprises. This experience was invaluable as they developed an appreciation for every job in the industry and gained a mutual respect for one another. Upon graduation from college, they were prepared to assume managerial positions in the industry. Their ultimate goal was to create and build their own business. In 1997, they received that opportunity and purchased Mammoth Disposal in Mammoth Lakes, CA.

### **Growing a Business**

Soon after, they acquired Pahrump Valley Disposal, Beatty Disposal and Amargosa Disposal in the state of Nevada, as well as hauling contracts in Inyo County, CA. In 2004, Carroll and Shea were selected by Nye County, NV to operate the county-owned landfill, transfer and recycling operations.



More than 60,000 tons of waste per year are hauled and processed by these companies.

In 2008, Carroll and Shea branched into northern California and commenced operating companies in Ukiah, Lake County and Clearlake. These businesses operate fully integrated services including solid waste collection and transfer, recyclable collection and processing, green and wood waste collection services as well as scrap metal processing. In 2011, C&S Waste Solutions was selected by Lassen County, CA to be their solid waste recycling and green waste service provider.



2014 saw the company add Selma Disposal and Recycling to their portfolio. This company offers the full array of solid waste collection services, recyclable collection and processing, green and wood waste processing, and transfer operations to the community of Selma, CA and adjacent areas in Fresno County.

### **Building on Family, Friendship and Trust**

As their business grew, so did the need for more talented individuals. Damon Shea initially pursued success in the accounting field before returning to the solid waste industry, which he had learned so well growing up. Damon was the best choice to join his brother, John, in growing and managing businesses in Nevada. Nevada was a familiar place for Damon since he attended college at the University of Nevada. As a result, Damon began managing all company operations in Lassen County, CA in 2012.

In 2008 when C&S Waste expanded into Ukiah, Lake County and Clearlake, CA, Carroll and Shea acquired companies managed by Bruce McCracken, who had been a childhood friend and neighbor of Carroll and Shea and through the years McCracken established a long career in managing solid waste companies, and, in partnership, McCracken now heads up operations in Ukiah, Lake County and Clearlake, CA.

It is rare to find four individuals that have known each other since childhood, lived on the same street growing up, followed separate but similar paths, and ultimately ended up together. Carroll, John and Damon Shea, and McCracken have formed a partnership that is based on long-standing trust, friendship, profound respect and admiration for one another. They consider each other and their employees as family members. The operations of C&S Waste Solutions place high value on the trust placed in them by franchising agencies and customers. “We share a common goal to improve our company every day,” adds Carroll. “The goal to be the best at what we do runs throughout the entire company.”



## Current Operations

In California, the firm operates within the cities of Ukiah, Clear Lake, Selma, Susanville and unincorporated areas of Lake County, Lassen County, Fresno County and Inyo County. In Nevada, operations include the Town of Pahrump, and the unincorporated areas of Beatty and Amargosa Valley. Combined, the company serves more than 35,000 residential customers and over 3,600 commercial customers.

C&S Waste Solutions uses a fleet of 16 standard front-loading trucks, 19 automated side loaders (predominately split bodies), 17 roll-offs and a variety of secondary vehicles such as bin trucks, roadside service trucks and flatbed trucks common to the industry. These vehicles collect solid waste, recyclables, green waste, wood waste, construction and demolition materials and scrap metals. A fleet of 24 trailers are used to transfer materials. The firm employs 204 people to handle all activities.

The company also operates a large Material Recovery Facility (MRF) in Ukiah. This state-of-the-art facility is capable of processing more than 15 tons per hour of commingled newsprint, mixed paper, aluminum, PET, LDPE, HDPE plastics (1 to 7), food and beverage glass, food cans and cardboard. This MRF processes materials from both company operations and non-company recyclables collected by other entities in the region. A similar MRF is in the planning stage at the firm's Selma operation.

Full-scale transfer operations exist in Ukiah, Lake County and Selma. Commercial waste collectors and individual users deposit materials on "tipping" floors where these materials are "floor-sorted" and recyclables extracted. The remaining solid waste is then placed in trailers and transshipped to regional landfills. Some 67,000 tons of solid waste are handled by these transfer sites. In rural areas of Nevada, small-scale transfer stations using bins and roll-off boxes are available for public drop off of solid waste and recyclables. The firm also operates a county-owned landfill in Pahrump, NV that handles approximately 65,000 tons per year of solid waste.

## The Challenge of the Economy

The sluggish economic conditions since 2009 have caused a "leveling off" of solid waste generated and collected. However, given the host of governmental policies that require minimization of landfilling, the company has been able to offset the loss of traditional solid waste by increasing the focus on capturing materials for recycling. Not only has the business increased its public information campaigns to encourage recycling, but operations at transfer stations have been changed. All loads tipped on transfer floors now undergo aggressive "sorting" to capture



recyclables. This has helped communities achieve diversion goals of up to 70 percent and, for the most part, is positive in terms of compensating for the loss of revenue from less generation of traditional waste. In addition, the organization has scrutinized the routing of collection vehicles to assure maximum efficiencies in these operations. “The use of split body automated side loaders has really made a difference on our routes,” says Shea. “Not only did the routes become more efficient, the new collection system resulted in fewer truck trips through residential neighborhoods.”

### **Safety and Training**

C&S Waste Solutions recognizes that safety and training are critical to successful operations. A comprehensive written Injury and Illness Prevention Program (IIPP) is in place, which is intended to identify and fix hazards before they cause an injury. This is given to each employee. Management at all levels is committed to worker safety and training and expectations are thoroughly communicated. Weekly safety meetings are held with all employees and everyone in the organization is expected to do daily inspections of their work areas. Managers conduct the safety meetings and inspections and report to the company’s Safety and Compliance Manager. A “code of safe practices” is maintained which covers matters from personal protective devices to use of equipment vehicles and tools. The company’s culture encourages a free-flow of information, without any threat of recrimination. All safety meetings and discussions, and corrective actions are documented.

The company also maintains a thorough Employee Safe Driving Practices Handbook, which is distributed to each employee. This Handbook covers virtually all aspects of safe driving from drug testing to vehicle inspections. All persons operating vehicles must successfully pass a road test and be certified by a company supervisor or manager. Supervisors review this Handbook with all drivers twice each year.

C&S Waste Solutions established a rewards program in 2012, wherein each employee working in a defined “work unit” can receive cash awards if that particular unit has no lost-time injuries for a quarter. The amount of the award increases with each consecutive quarter that the work unit remains accident free. This program has encouraged members of the various units to “look out for one another” and has resulted in a decline in injuries throughout the entire company and a safer environment for all employees.

### **Outreach**

The company also operates an energetic community outreach program designed to fully inform all customers as to services available, recent company activities and, most importantly, opportunities for participating in recycling. A variety of means are used to foster this communication. Among these are billing inserts, periodic newsletters, social media (Facebook), clear and colorful recycling guides, and the company’s Web site at [www.candswaste.com](http://www.candswaste.com). They also schedule visits to schools, businesses and neighborhood groups, as well as participate in fairs, parades and

festivals, which are an integral part of the company's community outreach program.

In addition, the business offers tours of its facilities to civic organizations, schools or other interested groups. "Waste assessments" are provided to commercial generators, which are designed to show customers which discarded materials might be recycled and explain the collection methods available to accomplish this.

### **Challenges and Achievements**

Given that the company operates in a number of different locales, it is necessary to focus on a regional approach to solid waste management in order to optimize efficiencies use of various facilities. This often requires coordination and cooperation between multiple collectors and processors. "Looking beyond one's own company and striking a win-win model for all systems within a region can be a challenge," says Shea. Additionally, keeping abreast of new regulations and policies present constant challenges. The firm strives to anticipate changes and find comprehensive solutions for the communities it serves. Finally, there is the constant challenge of finding the right people to manage new operations. The company has been successful in recruiting managers from the ranks of people that they have previously worked with. This familiarity has allowed newly hired personnel to assimilate quickly and seamlessly. Keeping current on new regulations, new policy directions and emerging technologies are the primary challenges of the future. In each case, the organization strives to develop cost-effective and sustainable solutions designed for the specific needs of each community.

### **Future Goals**

For now, C&S Waste Solutions is committed to continue filling the promise of its mission statement, which includes delivering environmentally sound, technologically advanced and cost-effective solutions, embracing innovation and forward-thinking, sustainable programs designed to achieve maximum diversion from landfills, valuing and rewarding employees for their contributions and remaining flexible and responsive to the needs of customers and the communities served while delivering superior customer service.

The company is proud to have been embraced by the communities they serve and credits its hard working and dedicated employees for any and all accomplishments. Says Carroll, "We particularly enjoy working in rural communities because it gives us the opportunity to develop personal relationships with our customers and franchisors. We are also gratified that they have been able to help communities meet state and local waste diversion goals while developing infrastructure to meet future demands."

*For more information, visit [www.candswaste.com](http://www.candswaste.com).*



January 22, 2021

City of Fort Bragg  
Attn: Tabatha Miller  
416 North Franklin Street  
Fort Bragg, CA 95437

RE: C&S Waste Solutions

Dear City Manager Miller:

It is my understanding that C&S Waste Solutions, (C&S), is responding to a request for services in the area of solid waste services for the City of Fort Bragg. I provide the following for your consideration in response to your request for information for your due diligence and reference check.

Ukiah Waste Solutions, an affiliate of C&S, has been the franchised solid waste, recycling, and green waste hauler for the City of Ukiah since 2008. Since that time, C&S has also been contracted with the City to operate the Ukiah Transfer Station. Our community's experience with Ukiah Waste Solutions as our solid waste franchise provider has been excellent. C&S invests locally in operational infrastructure and manages services from offices within Mendocino County. The company has clearly demonstrated their commitment to the City, the ratepayers, and the community over the course of our franchise experience.

For instance, in 2008, when the City was threatened with a Non-Compliance Order by CalRecycle against the former service provider, C&S staff worked with CalRecycle, providing them with data and information. These efforts resulted in CalRecycle finding that the City was in compliance with AB939, and that the company's diversion activities had raised the City's diversion rate above the mandated 50 percent to a new level of 58 percent at that time. C&S has continued to offer and implement new programs that have increased our diversion rate to a high of 72 percent in 2011, and despite the massive downturn in the recycling market, our diversion rate remains high at approximately 68 percent.

C&S staff have a positive working relationship with CalRecycle staff, contribute and lead the process for the preparation of the City's Electronic Annual Report, participate in CalRecycle meetings and site visits, and provide the agency with requested information on the City's behalf. C&S took the lead on implementation of AB341, preparing our Mandatory Commercial Recycling Plan, writing letters to businesses, and conducting outreach and waste assessments. C&S worked with the school district to adopt recycling policies to help reduce their costs. C&S' government liaison, meets with our Public Works Director every month to make sure the City's needs are being met and provide updates on recent activities, new regulations and emerging trends in the industry.

In 2015, C&S developed and implemented a food waste program at the request of the Ukiah City Council. In addition to the obvious environmental benefits, the program has positioned the City to be well ahead of emerging regulatory issues including compliance with SB 1383. In addition, C&S is investing in our local economy by establishing an organic waste facility on their existing property. This will provide redundancy for organic waste handling and create a stable rate base for all Mendocino County jurisdictions.

Our city staff is pleased with C&S' responsiveness to our questions and requests. C&S is proactive and responsive to the needs of our community and customer service is a high priority for the company at all levels. Principals are directly accessible at all hours and readily available by cell phone and for in-person meetings. City staff members rarely encounter complaints about C&S services, and confidently refer issues back to C&S for resolution when they do occur.

If you have any questions, please feel free to contact me.

Sincerely,

Sage Sangiacomo  
City Manager

## Miller, Tabatha

---

**From:** Alan Flora <aflora@clearlake.ca.us>  
**Sent:** Wednesday, January 20, 2021 12:57 PM  
**To:** Miller, Tabatha  
**Subject:** RE: C&S Waste

Hi Tabitha,

I hope you are doing well!

I am happy to have a phone conversation, but I will provide my general thoughts via email and we can follow up if you would like from there.

We really like C&S. Bruce and Linsey are extremely professional and responsive. Pre-COVID, if we had an issue we wanted to meet about, they would jump right in the car and head over. They have quality equipment, an innovative system and complex at their Ukiah plant (They persisted in inviting me and some staff over for a tour and showed us through their processing facility). We have very few complaints about them from the public and if I forward a complaint along they address it immediately. They are always willing to help with staff and dumpsters if we do a cleanup day, support community initiatives, etc. As a pretty impoverished community overall, costs are important and when the City went to mandatory garbage service a few years back, there were concerns about how it would go. We believe their rates are good, cost increases are minimal and I think the value is high. Overall, I just think they are a good, personable, professional, and fairly innovative company that I would recommend to anyone.

Please let me know if you need anything else and good luck!

Alan

**From:** Miller, Tabatha <TMiller@fortbragg.com>  
**Sent:** Wednesday, January 20, 2021 12:26 PM  
**To:** Alan Flora <aflora@clearlake.ca.us>  
**Subject:** C&S Waste

Hi Alan,

I hope all is well in Clearlake. We are looking at possibly switching from Waste Management to C&S Waste when our Franchise Agreement expires at the end of June. Bruce McCracken listed you and Clearlake as a reference and I wanted to get your input on services, the city's relationship with C&S and anything else you might be willing to share.

If it is easier for you, I am happy to have a phone conversation at your convenience.

Thanks,

*Tabatha Miller*  
City Manager  
City of Fort Bragg  
(707) 961-2829  
[TMiller@FortBragg.com](mailto:TMiller@FortBragg.com)

**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 <sup>June</sup> ~~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.

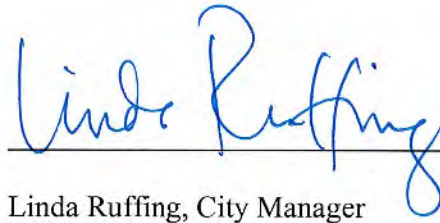
GRANTEE:

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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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.

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GRANTEE:

Date: \_\_\_\_\_

\_\_\_\_\_  
USA Waste of California, Inc. dba Empire  
Waste Management

CITY OF FORT BRAGG

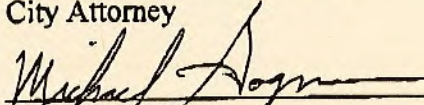
Date: \_\_\_\_\_

\_\_\_\_\_  
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.	<b>Maintain Collection Schedule.</b> 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.	<b>Start New Customer.</b> 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.	<b>Missed Pick-Ups.</b> 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.	<b>Consecutive Missed Pick-Ups.</b> 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.	<b>Leaks, Litter or Spills.</b> 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.	<b>Improper Container Placement.</b> 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.	<b>Care of Private Property.</b> 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.	<b>Repair of Private Property.</b> 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.	<b>Unauthorized Collection or Sweeping Hours.</b> For each occurrence over 5 the during Rate Period of Collecting Solid Waste and Recyclable Materials during unauthorized hours	\$150/ event
10.	<b>Excessive Noise.</b> For each occurrence over 12 during the Rate Period of excessive noise	\$150/ event

11.	<b>Non-Collection Tags.</b> 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.	<b>Cleaning Collection Vehicles.</b> For each occurrence over 5 during the Rate Period of failure to clean Collection vehicles at least one time per week	\$75/ event
13.	<b>Discourteous Behavior.</b> For each occurrence of discourteous behavior by Collection vehicle personnel, Customer service personnel, or other employees of Grantee	\$250/ event
14.	<b>Injuries to Others.</b> 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.	<b>Call Responsiveness.</b> 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.	<b>30-Second Call Hold Time.</b> Failure to answer 90 percent of calls received during office hours within 30 seconds	\$500/ quarter
17.	<b>3-Minute Call Hold Time.</b> Failure to answer 100 percent of calls received during office hours within 3 minutes	\$500/ quarter
18.	<b>After-Hours Call Returns.</b> Failure to return 100 percent of calls received on Grantee's answering machine before noon of the following business day	\$500/ quarter
19.	<b>Complaint Level.</b> 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.	<b>Respond to Complaint or Service Request.</b> 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.	<b>Resolve Complaint or Service Request.</b> 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.	<b>Collection of Missed Pick-Ups.</b> For each failure to Collect missed Containers within 25 hours of receipt of the complaint	\$150/ event



### REPORTING AND NOTICING

23.	<b>Monthly Reports.</b> 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.	<b>Annual Reports.</b> 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.	<b>Report Hazardous Waste.</b> 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.	<b>Disposal of Recyclables or Green Waste.</b> For each ton of Recyclable Materials or Green Waste Disposed of without written approval of the City	\$250/ ton
28.	<b>Use of Unauthorized Facilities.</b> 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.	<b>Failure of Other Obligations.</b> 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 and is positioned above the printed name.

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

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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 23<sup>rd</sup> 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

Linda Ruffing  
Linda Ruffing, City Manager

ATTEST:

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

GRANTEE:

Bruce Steinhilber  
USA Waste of California, Inc. dba Empire Waste Management  
Bruce Steinhilber as Vice President

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 (“2<sup>nd</sup> 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 23<sup>rd</sup> 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 2<sup>nd</sup> Amendment;

WHEREAS, the Parties hereto agree that notwithstanding any terms and/or conditions set forth herein, this 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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.

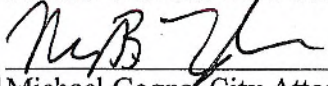
By: \_\_\_\_\_  
Linda Ruffing, City Manager

\_\_\_\_\_

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

USA WASTE OF CALIFORNIA, INC.

By: Linda Ruffing  
Linda Ruffing, City Manager

Barry Skolnick  
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 13<sup>th</sup> 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

By:

Linda Ruffing, City Manager

9/13/11

USA WASTE OF CALIFORNIA, INC.

Barry Skolnick, Area Vice President

8/28/11

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 14<sup>th</sup> 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

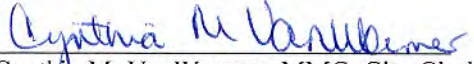
USA WASTE OF CALIFORNIA, INC.

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]

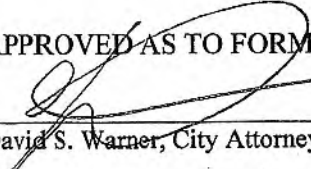
ATTEST:

\_\_\_\_\_  
Cynthia M. VanWormer, MMC, City Clerk

\_\_\_\_\_  
[Print Name]

Date: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David S. Warner, City Attorney

**AMENDMENT NO. 5 TO FRANCHISE AGREEMENT BETWEEN THE CITY OF  
FORT BRAGG AND USA WASTE OF CALIFORNIA INC. DBA EMPIRE WASTE  
MANAGEMENT**

This Fifth Amendment to Franchise Agreement Between the City of Fort Bragg and USA Waste of California, Inc. DBA Empire Waste Management (hereinafter, the "Fifth Amendment") is by and between USA Waste of California, Inc., dba Empire Waste Management, hereinafter called "GRANTEE", and the City of Fort Bragg, hereinafter called "CITY," and is made this 10 day of October, 2018 at Fort Bragg, California.

WHEREAS, CITY and GRANTEE entered into a Franchise Agreement (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, a third amendment in 2011, and a fourth amendment in 2013; and

WHEREAS, the parties wish to further modify the Agreement to add certain service levels and customer rates;

NOW THEREFORE, it is agreed as follows:

1. The following service levels and rates are hereby added to Exhibit A of the Agreement:

2/CY x 4/WK	\$ 934.24
3/CY x 3/WK	\$ 1,019.26
3/CY x 4/WK	\$ 1,329.34
3/CY x 5/WK	\$ 1,639.42
4/CY x 4/WK	\$ 1,920.26
4/CY x 5/WK	\$ 2,414.81

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:

Title:

Zabotko Miller  
City Manager

By:

Title:

[Signature]  
Barry Skolnick, President

ATTEST:

By: Jane Lemos  
Title: CITY CLERK

APPROVED AS TO FORM:

By: Russell A. Ho  
Title: City Attorney



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

This Sixth Amendment To Franchise Agreement Between the City of Fort Bragg and USA Waste of California, Inc. dba Empire Waste Management (hereinafter, the "Sixth Amendment") is by and 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 \_\_\_\_ day of \_\_\_\_\_, 2021 at Fort Bragg, California.

WHEREAS, CITY and GRANTEE entered into a Franchise Agreement (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, a third amendment in 2011, a fourth amendment in 2013, and a fifth amendment in 2018; and

WHEREAS, the parties wish to further modify the Agreement to add certain service levels and customer rates;

NOW THEREFORE, it is agreed as follows:

1. The following service levels and rates are hereby added to Exhibit A of the Agreement:

Lock Sale or Replacement (WM provided lock) <sup>2</sup>	\$15.00
Monthly Lock Service Charge (per bin or gate/per month)	\$7.00

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: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by [REDACTED] ("**Landlord**"), and C&S Waste Solutions of California, Inc., having a mailing address of P. O. Box 630, Ukiah, CA 95482 ("**Tenant**").

### BACKGROUND

Landlord owns that certain plot, parcel or tract of land, as described on **Exhibit A**, and depicted in **Exhibit B**, together with all rights and privileges arising in connection therewith, located at [REDACTED] (the "**Property**"). Tenant desires to use a portion of the Property in connection with its waste management business. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

#### 1. OPTION TO LEASE.

(a) Landlord grants to Tenant an option (the "**Option**") to lease a certain portion of the Property as described on attached **Exhibit A**, containing approximately five (5) acres and depicted in **Exhibit B** (the "**Premises**"), and a single bay of the existing structure on the premises (the "**Building**") for the waste management operations (as defined in Section 3 below).

(b) During the Option Term (as defined in Section 1(c) below), and during the Term (as defined in Section 4(d) below) of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "**Tests**"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate for its use of the Premises and include, without limitation, applications for special use permits, and construction permits (collectively, the "**Government Approvals**"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that to determine the physical condition of the Property, the environmental history of the Property, Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted Use (as defined in Section 3 below), all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Option Term, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted.



(c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum of [REDACTED] within ten (10) business days of the Effective Date. The Option will be for a term of six (6) months commencing on the Effective Date (the "**Option Term**")

(d) The Option may not be sold, assigned, or transferred without the written consent of Landlord.

(e) During the Option Term, Tenant may exercise the Option by notifying Landlord in writing. If Tenant exercises the Option then Landlord leases the Premises to Tenant subject to the terms and conditions of this Agreement. If Tenant does not exercise the Option during the Initial Option Term or any extension thereof, this Agreement will terminate and the parties will have no further liability to each other.

(f) If Tenant exercises the Option within thirty (30) business days of the Effective Date, the option payment shall be credited towards the first month's lease payment.

(g) If during the Option Term, or during the Term of this Agreement the Option is exercised, Landlord decides to subdivide, sell, or change the status of the zoning of the Premises, Property or any of Landlord's contiguous, adjoining or surrounding property (the "**Surrounding Property**"), or in the event of foreclosure, Landlord shall immediately notify Tenant in writing. Landlord agrees that during the Option Term, or during the Term of this Agreement if the Option is exercised, Landlord shall not initiate or consent to any change in the zoning of the Premises, Property or Surrounding Property or impose or consent to any other use or restriction that would prevent or limit Tenant from using the Premises for the Permitted Use. Any and all terms and conditions of this Agreement that by their sense and context are intended to be applicable during the Option Term shall be so applicable.

**2. EXPANSION OPTION.** In the event Tenant desires to expand the Waste Transfer Facility, in a manner that requires an additional portion of the Property (the "Additional Premises"), Landlord agrees to lease to Tenant the Additional Premises, of approximately to six (6) acres immediately adjacent to the Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by the amount indicated in Section 5d. If the Landlord vacates its portion of the Building Landlord agrees to lease to Tenant the entire Building upon the same terms and conditions set forth herein, except that the Rent shall increase by the amount indicated in Section 5e.

**3. PERMITTED USE.** Tenant may use the Premises for fleet parking, mechanic shop, equipment/material storage, direct transfer of waste streams (between trucks), recycling center (open to the public) and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "**Waste Transfer Facility**"), as well as the right to test, survey and review title on the Property (collectively, the "**Permitted Use**"). Tenant will be allowed to make such alterations to the Property in order to ensure that Tenant's waste transfer facility complies with all applicable federal, state or local laws, rules or regulations, upon written consent and approval by Landlord. Tenant's use of the Premises shall not interfere with any groundwater monitoring and remediation programs currently existing or required in the future and Landlord reserves the right to access the monitoring infrastructure at any time.

4. **TERM.**

(a) The initial lease term will be five (5) years (the "**Initial Term**"), commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of the Option (the "**Term Commencement Date**"). The Initial Term will terminate on the fifth (5<sup>th</sup>) anniversary of the Term Commencement Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year term(s) (each five (5) year term shall be defined as an "**Extension Term**"), upon the same terms and conditions unless Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or then-existing Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, then upon the expiration of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter ("**Annual Term**") until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly rental during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the Term (the "**Term**").

5. **RENT.**

[REDACTED]



**6. APPROVALS.**

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for Tenant's Permitted Use and Tenant's ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

**7. TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Waste Management Facility as now or hereafter intended by Tenant.

**8. INSURANCE.**

(a) During the Term, Tenant will carry, at its own cost and expense, the following insurance: (i) workers' compensation insurance as required by law; and (ii) commercial general liability (CGL) insurance with respect to its activities on the Property, such insurance to afford protection of up to Two Million Dollars (\$2,000,000) per occurrence and Six Million Dollars (\$6,000,000) general aggregate, based on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing substantially equivalent coverage. Tenant's CGL insurance shall contain a provision including Landlord as an additional insured. Such additional insured coverage:

(i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Tenant, its employees, agents or independent contractors;

(ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Landlord, its employees, agents or independent contractors or where such coverage is prohibited by law or



to claims arising out of the gross negligence of Landlord, its employees, agents or independent contractors; and

(iii) shall not exceed Tenant's indemnification obligation under this Agreement, if any.

(b) Notwithstanding the foregoing, Tenant shall have the right to self-insure the coverages required in subsection (a). In the event Tenant elects to self-insure its obligation to include Landlord as an additional insured, the following provisions shall apply (in addition to those set forth in subsection (a)):

(i) Landlord shall promptly and no later than thirty (30) days after notice thereof provide Tenant with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Tenant with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) Landlord shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Tenant; and

(iii) Landlord shall fully cooperate with Tenant in the defense of the claim, demand, lawsuit, or the like.

## **9. INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Waste Management Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord, its employees or agents, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

## **10. WARRANTIES.**

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises without hindrance or ejection by any persons lawfully claiming under Landlord; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will use commercially reasonable best efforts to provide to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest.

#### **11. ENVIRONMENTAL.**

(a) Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the effective date of this Agreement or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought and or released onto the Property by Tenant.

(b) The indemnifications of this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 11 will survive the expiration or termination of this Agreement.

(c) In the event Tenant becomes aware of any hazardous substances on the Property, or any environmental, health or safety condition or matter relating to the Property, that renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or other third party, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

**12. ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("**Access**") to and over the Property, from an open and improved public road

to the Premises, for the installation, maintenance and operation of the Waste Management Facility and any utilities serving the Premises. As may be described more fully in **Exhibit A**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access at no additional cost to Tenant.

**13. REMOVAL/RESTORATION.** Any property that Tenant does not remove within forty-five (45) days after the later of the end of the Term and cessation of Tenant's operations at the Premises shall be deemed abandoned and owned by Landlord. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

**14. MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises.

**15. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure will be deemed a default by Landlord. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

**16. ASSIGNMENT/SUBLEASE.** Tenant will not have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, without Landlord's consent, which consent may be withheld at its discretion. Upon approval by Landlord



of such assignment, Tenant will not be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment.

**17. NOTICES.** All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Tenant: C&S Waste Solutions of California, Inc.  
PO Box 630  
Ukiah, CA 95482

If to Landlord:



Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other as provided herein.

**18. CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds.

**19. CASUALTY.** Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within forty-eight (48) hours of the casualty or other harm. If any part of the Waste Management Facility or Property is damaged by casualty or other harm as to render the Premises unsuitable, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Waste Management Facility, as applicable, Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary facilities on the Property.

**20. WAIVER OF LANDLORD'S LIENS.** Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Waste Management Facility or any portion thereof.

**21. TAXES.**

(a) Landlord shall be responsible for timely payment of all taxes and assessments levied upon the lands, improvements and other property of Landlord, including any such taxes that may be calculated by the taxing authority using any

method, including the income method. Tenant shall be responsible for any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord.

(c) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17.

## **22. MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(c) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Tenant's use of the Waste Management Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(d) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(e) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(f) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(g) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in this Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(h) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(i) **Attorneys' Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(j) **WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**



**IN WITNESS WHEREOF**, the parties have caused this Agreement to be effective as of the last date written below.

**"LANDLORD"**

[REDACTED]

[REDACTED]

**"TENANT"**

C&S Waste Solutions of California, Inc.

By: *Dave Carroll*  
Dave Carroll, President

Date: 1-6, 2021

**From:** [Julia Rhoads](#)  
**To:** [Lemos, June](#)  
**Subject:** comment on 1/27 decision for waste agreement  
**Date:** Tuesday, January 26, 2021 9:44:49 PM

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Hello Ms. June Lemos and Fort Bragg City Council,

I have a few questions regarding your proposed adoption of a new Solid Waste Franchise Agreement on tomorrow's Special City Council Meeting agenda (1/27/2021).

- 1.) If the proposed contract from C&S Waste Solutions is so similar to the current agreement provided by WM as stated in the Financial Impact Item, what is the benefit to the city or clients in changing providers?
- 2.) Why is the city considering a 10-year contract when a 5 year (or less) contract with the current provider was considered unacceptable?
- 3.) Aside from WM allegedly delaying contract negotiations, were there issues or faults with services provided?
- 4.) Was WM given notice that bids were being taken regardless of their "uninterest" in bidding on current contracts? If it was decided by the County Board of Supervisors on December 8 to bid out the contract, why did this process not occur? Why not put the contract out publicly and allow both (or more) parties the opportunity to bid on the franchise?
- 5.) Where is the facility proposed by C&S Waste located?

Although the proposal looks fine and well referenced, I question granting this contract with only a brief decision period for the council to consider, given no other proposals presented or accepted from the current contractor or other interested parties. Thank you for your consideration and work providing services to our community.

Respectfully,  
Julie Rhoads  
Fort Bragg, CA

**From:** [Alfred Postler](#)  
**To:** [Lemos, June](#)  
**Subject:** Keep current waste management provider  
**Date:** Tuesday, January 26, 2021 6:34:20 PM

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Hi,

I just found out that there is a meeting tomorrow about awarding the waste management contract to a new outfit. Please reconsider and at a minimum allow a bid process for the contract to take place. Jobs are on the line and I don't see a need to change providers.

I appreciate your consideration.

Sincerely,

Fred Postler  
Country Road resident in Fort Bragg



**From:** [Joy](#)  
**To:** [Lemos, June](#)  
**Subject:** Object to awarding a contract to C&S without going out to bid  
**Date:** Tuesday, January 26, 2021 6:34:26 PM

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I'm against awarding the garbage contract to C&S without a full RFP process. I have a number of questions:

- 1) why this demand from C&S to make a decision within 30 days?
- 2) why award a contract to C&S for 10 years instead of extending with WM for 5 if the RFP process is such an issue?
- 3) where will their physical location here be? That info seems to be redacted
- 4) appears C&S will offer current employees jobs, but at what salaries/benefits?
- 5) will there still be a buy back recycle center starting on July 1? I believe the terms I read said that C&S didn't have to have anything available for 6 months after current service (WM) ceases?

Joy Korstjens

**From:** [jlemos@mcn.org](mailto:jlemos@mcn.org)  
**To:** "Michelle Deering"  
**Cc:** [Lemos, June](#)  
**Subject:** RE: City of Fort Bragg Garbage Contract  
**Date:** Wednesday, January 27, 2021 7:56:55 AM

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Hi Michelle,

I believe you meant this email to go to my sister, June Lemos, who is the Fort Bragg City Clerk. I am not involved in the City's contracting decisions. I have forwarded this email to June.

Kindly,

Jone Lemos, Esq.  
237 E. Laurel Street  
Fort Bragg, CA 95437  
(707) 962-0322  
[jlemos@mcn.org](mailto:jlemos@mcn.org)

-----Original Message-----

From: Michelle Deering <[deering@mcn.org](mailto:deering@mcn.org)>  
Sent: Tuesday, January 26, 2021 5:31 PM  
To: [jlemos@mcn.org](mailto:jlemos@mcn.org)  
Subject: City of Fort Bragg Garbage Contract

Hi Jone,

I just heard that the City is considering awarding a 10 year garbage contract with C&S instead of renewing with Waste Management.  
Waste Management has always done a great job and kept our rates low.

It would be better to allow the contract to be put out for bid, rather than allow a unilateral decision.  
Please consider my objection at tomorrow's special City Council meeting.

Thank-you,

Michelle Deering

Associate Broker, CRS, ABR, CREM  
Century 21 Fort Bragg Realty  
Lic# 01436398  
[deering@mcn.org](mailto:deering@mcn.org)  
Office: (707) 964-2196  
Cell: (707) 357-1061  
Website  
Facebook CENTURY 21 "CENTURION" AWARD Recipient since 2015

**From:** [Sonia Castro](#)  
**To:** [Lemos, June](#)  
**Subject:** C&S vs Waste Management  
**Date:** Wednesday, January 27, 2021 9:06:32 AM

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I'm against the contract with C&S without knowing more information:

- 1) why award a contract to C&S for 10 years instead of extending with WM for 5?
- 2) What will be current employees salaries/benefits?
- 3) Where will they be located and how will this change for current customers?

I would like more information in this matter and I hope my concerns are taken into consideration.

**From:** [Tori Norville](#)  
**To:** [Lemos, June](#)  
**Subject:** Garbage Contract  
**Date:** Wednesday, January 27, 2021 9:37:03 AM

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To Whom it May Concern,

I am writing to express concern about awarding the garbage contract to C&S without a full RFP process. I have a few questions:

1. How is awarding C&S (essentially a new entity to the community) a contract for 10 years better than extending with WM (the known entity for the community) for 5 years if the RFP process such an issue and "during non-pandemic times takes months to develop, issue, review and award" (Letter from Bruce McCracken to Howard Dshiell and Tabatha Miller).
2. While I understand working with local companies, how is this change in service providers going to affect the customers? Will the locations for recycling still be available? What will the transition between the two service providers look like if this contract is awarded to C&S?
3. C&S appears to offer current employers jobs, but at what salaries and benefits? Would these be competitive with their current salaries and benefits?
4. Why does C&S demanding a decision be made within 30 days? I understand that it takes time to move infrastructure around and get ramped up to take on a new community. However, the timing and nature of the "demand" from C&S about a response is disconcerting to me and I feel the City of Fort Bragg is being pressured into something.  
Thank you for your time and concern in this matter.

Respectfully,  
Tori Norville

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Resident of Fort Bragg  
[torinorville16@gmail.com](mailto:torinorville16@gmail.com)