

FRANCHISE AGREEMENT

between

THE CITY OF FORT BRAGG

and

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

January 8 .2007

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

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

RECITALS

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

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

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

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

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

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

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

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

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

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

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

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

SECTION 2 – DEFINITIONS

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

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

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

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

not be considered "Green Waste."

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

in the production or accumulation of Solid Waste.

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

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

SECTION 3 - COMPLIANCE WITH LAWS AND REGULATIONS

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

SECTION 4 - TERM AND SCOPE OF AGREEMENT

A. Term of Agreement

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

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

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

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

B. Scope of Agreement

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

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

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

Disposing of said materials.

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

C. Limitations to Scope

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

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

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

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

D. Subcontracting

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

E. Franchise Area Defined

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

F. Franchise Area Limits

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

SECTION 5 - SERVICES PROVIDED BY GRANTEE

A. City to Approve All Services

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

B. Collection Service

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Hours of Collection

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

D. Collection on Holidays

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

SECTION 6 - SPECIAL PROGRAMS AND SERVICES PROVIDED BY GRANTEE

A. Source Reduction and Waste Diversion Programs

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

B. Public Education

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

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

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

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

C. Billing

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

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

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

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

order, for five years for inspection and verification by City at any reasonable time upon request. The Grantee may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

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

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

D. Recycling Center

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

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

E. Other Special Services

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

F. Containers - Refusal to Pick Up

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

G. Containers - Noticing Violators

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

H. Residential Bulky Waste Pickup

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

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

A. Manner of Collection

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

B. Vehicles and Equipment - Standards

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

C. Vehicles - Identification

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

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

D. Vehicles and Equipment - Inspection

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

E. Vehicles - Shovel, Broom and Fire Extinguisher Required

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

F. Container Requirements

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

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

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

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

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

G. Personnel

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

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

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

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

SECTION 8 - PUBLIC ACCESS TO GRANTEE

A. Name and Office Hours

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

B. Service Complaints

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

C. Overcharge

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

SECTION 9 - SERVICE EXCEPTIONS; HAZARDOUS WASTE NOTIFICATIONS

A. Responsibility to Identify Hazardous Waste

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

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

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

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

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

C. Notification for Hazardous Waste

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

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

D. Rights Reserved as to Hazardous Wastes

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

SECTION 10 - DISPOSAL AND PROCESSING

A. Solid Waste Disposal

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

B. Recyclable Materials Processing and Marketing

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

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

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

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

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

C. Green Waste Processing and Marketing

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

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

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

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

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

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

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

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

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

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

F. Invalidation of City Flow Control Voids Franchise

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

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

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

SECTION 12 - PRIVACY

A. Customers Rights of Privacy

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

B. Use of Customer Lists

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

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

A. Customer List and Routes

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

B. Record-keeping and Inspection

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

C. Financial and Operational Records

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

D. Collection Service Records

Records shall be maintained by Grantee for City relating to:

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

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

E. Transfer, Processing, and Disposal Records

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

F. Customer Service Records

Records shall be maintained by Grantee for City related to:

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

G. CERCLA Defense Records

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

H. Monthly Reports

Reports shall present the following information:

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

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

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

I. Annual Financial Report

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

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

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

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

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

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

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

J. Annual Operations Report

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

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

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

K. Annual Disclosure Statement

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

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

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

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

L. Reporting Requirements

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

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

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

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

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

M. Failure to Report

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

SECTION 14 - GRANTEE'S RATES

A. City's Powers

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

B. Rate Requirements

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

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

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

SECTION 15 - RATE ADJUSTMENT PROCEDURES

A. Pass-through Rate Adjustment

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

B. Cost-of-Living Rate Adjustment

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

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

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

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

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

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

The sum of the above equals the New Rate.

C. Extraordinary Rate Adjustment

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

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

SECTION 16 - FEES

A. Franchise Fee & Caspar Closure Fee - Amount

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

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

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

B. Franchise Fee - Quarterly Payments and Revenue Statements

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

C. Franchise Fee - Deposit

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

D. Franchise Fee - Delinquency Penalty

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

E. Refund of Franchise Fees

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

SECTION 17 - BONDS, INSURANCE, AND INDEMNIFICATION

A. Bonds

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

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

B. Insurance

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

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

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

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

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

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

C. Indemnification

(1) Indemnification of City.

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

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

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

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

SECTION 18 - FRANCHISE TRANSFER, ISSUANCE, AND RENEWAL

A. Franchise Transfer

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

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

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

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

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

B. General Standards of Responsibility

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

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

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

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

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

C. Opportunity to Demonstrate Rehabilitation

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

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

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

SECTION 19 - TERMINATION

A. Events of Default

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

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

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

B. Right to Suspend, Amend, or Terminate

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

C. Procedures

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

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

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

D. Agreement - Revocation - Equipment Use by City

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

E. Liquidated Damages

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

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

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

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

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

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

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

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

For example:

Current Liquidated Damage Amount = \$150.00

Most recently published index (May 2004) = 193.5

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

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

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

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

SECTION 20 - RIGHTS OF CITY TO PERFORM DURING EMERGENCY

A. Provision of Emergency Services

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

B. Franchise Revocation - Emergency Actions

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

C. Labor Dispute - City Assumption of Duties - Authorized

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

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

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

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

E. Labor Dispute - City Assumption of Duties – Employees

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

SECTION 21 - GENERAL PROVISIONS

A. Entire Agreement

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

B. Force Majeure

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

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

C. Notice Procedures

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

(1) If to City:

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

(2) If to Grantee:

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

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

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

D. Independent Contractor

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

E. Roadway Damage

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

F. Property Damage

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

G. Compliance with City Code

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

H. Severability

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

I. Waiver or Modification

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

J. Forum Selection

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

K. Court Costs and Attorney Fees

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

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

GRANTEE:

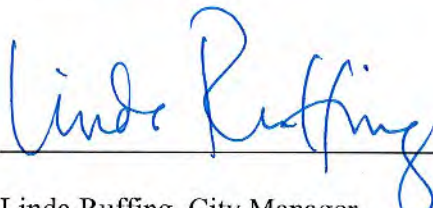
Date: 1/3/07



USA Waste of California, Inc. dba Empire
Waste Management

CITY OF FORT BRAGG

Date: 1.17.07



Linda Ruffing, City Manager

ATTEST:
City Clerk of the City Council



By: Cynthia M. VanWormer, CMC

APPROVED AS TO FORM:
City Attorney



By: Michael Gogna

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

COLLECTION QUALITY

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

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

CUSTOMER SERVICE RESPONSIVENESS

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

REPORTING AND NOTICING

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

PUBLIC EDUCATION

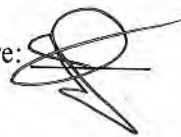
26.	Failure to distribute within 30 days of due date any public education item required in Exhibit C	\$125/ day for each day until item is sent
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OTHER

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

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

Grantee

Initial Here: 

City

Initial Here: 

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AUG - 3 2006



August 2, 2006

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

Dear Ms. VanWormer:

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

Sincerely,

A handwritten signature in black ink, appearing to read "J. Devlin", with a large, stylized flourish extending from the end of the signature.

James Devlin
Bay Area Vice President

Enclosures (2)
Vb

Cc: Linda Ruffing

From everyday collection to environmental protection, Think Green®. Think Waste Management.

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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Dated: August 2, 2006

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City of Fort Bragg

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Linda Ruffing, City Manager

Attest:

Cynthia M. VanWormer, CMC
City Clerk