

RESOLUTION NO. 2012- 69

**A RESOLUTION OF THE CITY COUNCIL OF GRASS VALLEY
AMENDING THE FRANCHISE WITH USA WASTE OF CALIFORNIA
INC. DBA WASTE MANAGMENT OF GRASS VALLEY FOR THE
PURPOSES OF COLLECTION OF SOLID WASTE, RECYCLABLES
AND GREEN WASTE (AMENDMENT #1)**

WHEREAS, the City's existing franchise agreement for the collection of solid waste and recyclables with USA Waste of California Inc. DBA Waste Management of Grass Valley (Company) may be amended by resolution; and

WHEREAS, the proposed amendment does not change the substance of the franchise agreements including the setting of exclusive service rights and the term of the agreement; and

WHEREAS, the proposed amendment will simplify the administration and implementation of the agreement; and

WHEREAS, the amendment allows for a transition to the new franchise fee of 10% of gross revenue as defined through the payment of a lump sum as the initial increase in the fee; and

WHEREAS, the amendment clarifies the process used to determine future rate increased based on defined thresholds tied to the consumer price index; and

WHEREAS, the amendment provides for additional definitions and clarity of language within the agreement; and

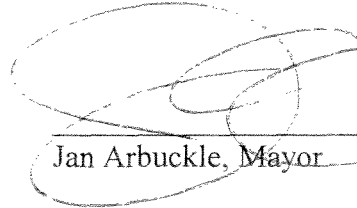
WHEREAS, the City and Company agree that an amendment to the current franchise agreement is beneficial to both parties.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRASS VALLEY, as follows:

1. That the foregoing is true and correct.
2. That the Council finds and determines that to benefit the health and welfare of the community there is a need to amend the exclusive franchise agreement for the collection of solid waste and recyclables including green waste (solid waste) with USA Waste of California Inc. DBA Waste Management of Grass Valley.
3. The effective date of the amended Franchise Agreement is September 1, 2012.
4. The franchise agreement as amended is incorporated by reference as Exhibit A.


ADOPTED as a Resolution of the Council of the City of Grass Valley at a meeting thereof held on the 23rd day of October, 2012, by the following vote:

AYES: Council Member *Cookson, Folley, Miller & Mayor Arbuckle*
NOES: Council Member *NONE*
ABSENT: Council Member *SWARTHOUT*
ABSTAINING: Council Member *NONE*




Jan Arbuckle, Mayor

ATTEST:



Kristi K. Bashor, City Clerk

APPROVED AS TO FORM:



Michael G. Colantuono, City Attorney
DAVID J. RUDERMAN ASSISTANT

AMENDED AND RESTATED
AGREEMENT
BETWEEN THE CITY OF GRASS VALLEY
AND
USA WASTE OF CALIFORNIA INC.,
DBA WASTE MANAGEMENT OF GRASS VALLEY
FOR COLLECTION OF SOLID WASTE, RECYCLABLES, AND
GREEN WASTE

DATED July 17, 2012

Effective September 1, 2012

AMENDED October 23, 2012

TABLE OF CONTENTS

FRANCHISE AGREEMENT..... 1

I. DEFINITIONS 1

1. Act..... 1

2. Applicable Law..... 1

3. Bagster®..... 2

4. Bins..... 2

5. Bulky Waste..... 2

6. City Representative..... 2

7. Cart..... 2

8. CCR..... 2

9. Collection or Collection Service..... 2

10. Commercial Customer..... 2

11. Commercial Premises..... 3

12. Commercial Recycling..... 3

13. Commercial Service..... 3

14. Compactor..... 3

15. Company Service Fee..... 3

16. Construction and Demolition Debris or C&D..... 3

17. CPI Adjustment..... 3

18. CPI Change..... 3

19. Curb or Curbside..... 3

20. Customer..... 4

21. Debris Box..... 4

22. Disabled Customer..... 4

23. Discretionary Adjustment..... 4

24. Disposal..... 4

25. Disposal Fees..... 4

26. Disposal Site..... 4

27. Effective Date..... 4

28. Environmental Law..... 5

29. Excluded Waste..... 5

30. Franchise..... 5

31. Franchise Fee..... 5

32. Franchise Materials..... 5

33. Franchise Services..... 5

34. Generator..... 6

35. Green Waste..... 6

36. Green Waste Processing Facility..... 6

37. Gross Revenues..... 6

38. Hazardous Waste..... 6

39. Inaccessible Area..... 6

40. Medical and Infectious Waste..... 6

41. Mobile Home Parks..... 6

42. Multiple-Family Dwellings..... 7

43. Owner..... 7

44. Parties..... 7

45.	PRC.....	7
46.	Private Drive(s).....	7
47.	Private Road(s).....	7
48.	Processing or Process.....	7
49.	Public Street(s).....	7
50.	Quarterly Remittance.....	7
51.	“Recyclable Construction and Demolition Debris” or “Recyclable C&D”.....	7
52.	Recycle, Recycling.....	8
53.	Recycling Carts.....	8
54.	Recyclable Materials, Recyclables.....	8
55.	Recyclables Processing Facility.....	8
56.	Recycling Program.....	8
57.	Recycling Revenues.....	8
58.	Residential Customer.....	9
59.	Residential Recycling.....	9
60.	Residential Service.....	9
61.	Self Haul.....	9
62.	Service Area.....	9
63.	Service Rates.....	9
64.	Signature Date.....	9
65.	Single-Family Residence(s).....	9
66.	Solid Waste.....	10
67.	Special Services.....	10
68.	Special Waste.....	10
69.	State.....	10
70.	Ton.....	10
71.	Transport.....	10
72.	Uncontrollable Circumstances.....	10
 II. GRANT OF EXCLUSIVE AGREEMENT.....		11
A. SCOPE OF EXCLUSIVE FRANCHISE.....		11
B. COMPANY RESPONSIBILITY.....		11
C. EXCEPTIONS TO FRANCHISE.....		11
1.	Compactors for Recyclables.....	12
2.	Self-Hauling.....	12
3.	Incidental Hauling.....	12
4.	Construction and Demolition Debris.....	12
5.	Recyclable C&D.....	12
6.	Residential Recyclables.....	12
7.	Commercial Recyclables.....	12
8.	Governmental Entities.....	13
 D. TERM OF AGREEMENT.....		13
E. TITLE TO FRANCHISE MATERIALS.....		13
F. ANTI-SCAVENGING ENFORCEMENT.....		13

III.	FRANCHISE FEE.....	13
A.	CITY FRANCHISE FEE.....	13
B.	UNDER AND OVER PAYMENTS	14
C.	FINANCIAL REVIEW.....	14
IV.	SERVICES OF COMPANY	14
A.	SERVICES PROVIDED BY COMPANY.....	14
B.	SOLID WASTE COLLECTION.....	14
	1. Bin Service.....	14
	2. Curbside Single-Family Residence.....	15
	3. City Solid Waste Service.....	15
	4. Hours of Collection.....	15
	5. Multiple-Family Dwellings.....	15
	6. Commercial Customers.....	15
	7. Cart Replacement.....	16
	8. Company Assisted Service.....	16
	9. Bagster®.....	16
C.	RECYCLING.....	16
	1. Residential Recycling.....	16
	2. Residential Recycling Carts Provided.....	17
	3. Residential Recycling Carts Replaced.....	17
	4. Company Assisted Service.....	17
	5. Commercial and Multiple-Family Dwelling Recycling.....	17
	6. Commercial Recycling Carts Provided.....	18
	7. Collection Days and Times.....	18
	8. Construction and Demolition.....	18
	9. Materials to be Recycled.....	18
D.	GREEN WASTE.....	18
	1. Subscription Green Waste Program.....	18
	2. Green Waste Collection.....	19
	3. Cart Replacement.....	19
	4. Company Assisted Service.....	19
	5. Christmas Trees.....	19
V.	OTHER COMPANY REQUIREMENTS.....	20
A.	GENERAL.....	20
	1. Company Provided Equipment and Vehicles.....	20
	2. Collection on Holidays.....	20
	3. Disabled Special Service.....	20
	4. Private Drives and Inaccessible Areas.....	20
	5. Employees.....	20
	6. Manner of Collection.....	21

7.	Service Schedule.....	21
8.	Inclement Weather.....	21
9.	Code Revisions.....	21
10.	Service Complaints.....	21
B.	CHANGE IN OPERATIONS, ADMINISTRATION OR SCHEDULE	22
C.	ADDITION OF NEW NON-FRANCHISE SERVICES	23
VI.	SERVICE RATES.....	23
A.	AMOUNT OF SERVICE RATES	23
B.	CPI ADJUSTMENT	23
C.	DISCRETIONARY SERVICE RATE REVIEW REQUEST.....	24
D.	DISPOSAL FEE ADJUSTMENT.....	24
E.	BILLING AND COLLECTION OF ACCOUNTS	24
1.	Residential.....	24
2.	Non-Residential.....	24
3.	Special Services.....	25
VII.	REPORTS	25
VIII.	INDEMNITY, INSURANCE.....	26
A.	INDEMNIFICATION OF THE CITY	26
B.	INSURANCE SCOPE AND LIMITS	27
C.	REVOCAION OF PREVIOUS AGREEMENTS.....	28
D.	COMPLIANCE WITH APPLICABLE LAW AND MUNICIPAL CODE.....	29
IX.	INDEMNITY, INSURANCE.....	29
A.	EVENTS OF DEFAULT	29
B.	CURE RIGHTS.....	29
C.	RIGHT TO TERMINATE UPON DEFAULT.....	30
D.	CUMULATIVE SPECIFIC PERFORMANCE.....	30
E.	EXCUSE FROM PERFORMANCE.....	30
1.	Excuse from Performance.....	30
2.	Notice.....	30

F.	DISPUTE RESOLUTION	31
1.	Reference of dispute	31
2.	Dispute Resolution Procedures.....	31
3.	Interim Measures.....	32
4.	Costs and Attorney’s Fees.....	32
5.	Punitive Damages.....	32
X.	ASSIGNMENT	32
XI.	MISCELLANEOUS	34
A.	AMENDMENT	34
B.	INDEPENDENT COMPANY	34
C.	RIGHT OF ENTRY	34
D.	LAW TO GOVERN	34
E.	FEES AND GRATUITIES	35
F.	NOTICES	35
G.	SEVERABILITY	35
H.	GOOD FAITH AND EXERCISE OF OPTIONS	36
I.	ENTIRE AGREEMENT; PRIOR AGREEMENTS; WAIVER	36
J.	SECTION HEADINGS	36
K.	INTERPRETATION	36
L.	THIRD PARTIES	36
M.	AUTHORITY	36

AMENDED AND RESTATED
AGREEMENT
BETWEEN THE CITY OF GRASS VALLEY
AND
USA WASTE OF CALIFORNIA, INC.,
DBA WASTE MANAGEMENT OF GRASS VALLEY,
FOR COLLECTION OF SOLID WASTE, GREEN WASTE, AND
RECYCLABLES
FRANCHISE AGREEMENT

THIS AMENDED AND RESTATED FRANCHISE AGREEMENT (this “Franchise Agreement”) is made and entered into effective as of the July 17, 2012, between the City of Grass Valley (the “City”), and USA Waste of California Inc., dba Waste Management of Grass Valley (the “Company”). Unless otherwise specified in this Franchise Agreement, any action authorized, or required to be taken by the City may be taken by the City Council (the “Council”) or by the City Administrator.

In consideration of the mutual covenants in this Franchise Agreement, as amended, October 23, 2012 and restated and intending to be legally bound, the parties agree as follows:

I. DEFINITIONS

For purposes of this Franchise Agreement the following words or phrases shall have the following meanings.

1. Act.

Act means the California Integrated Waste Management Act of 1989, California Public Resources Code (“PRC”) sections 40000 et seq., as amended, supplemented, superseded, and replaced by the California legislature from time to time. All state code references are to the PRC unless otherwise noted. In the event of any inconsistency between the definitions set forth below and those in the PRC or the California Code of Regulations (“CCR”) related to solid waste, the PRC and/or the CCR shall prevail.

2. Applicable Law.

Applicable Law means all laws, ordinances, municipal code, resolutions, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the collection, handling, processing, and disposition of Franchise Materials that are in force on the Effective Date and as they may be enacted, issued or amended during the term of this Franchise Agreement.

3. Bagster®.

A Bagster® is a portable dumpster made of woven material that is approximately 8' long by 4' wide by 2'6" high that will hold up to 3 cubic yards of debris, and up to 3,300 pounds.

4. Bins.

Bins shall mean those containers provided by the Company for Commercial Customers and subscribing Multiple-Family Dwellings. The Bins are of two types: (i) Bins which are picked up by trucks designed for Solid Waste, C&D and Recycling by means of front loading apparatus; and (ii) roll-off Bins (also known as a Debris Box or Drop Box) (which are usually much larger in size).

5. Bulky Waste.

Bulky Waste means large items such as appliances, furniture, branches, items larger than three cubic yards, items of excessive weight, size or density, such as engine blocks, spas, boats and trailers, and other oversize wastes whose large size precludes or complicates their placement in containers or handling by normal collection, processing or disposal methods.

6. City Representative.

City Representative means the City Administrator, or designee.

7. Cart.

Cart means an industry standard receptacle for disposal of Franchise Materials, in a range of sizes including approximately 20, 35, 64, or 96 gallons. A Cart will have wheels, a handle for ease of movement and a fitted, attached lid, and is designed to be dumped mechanically into a Solid Waste or Recycling collection vehicle.

8. CCR.

CCR has the meaning provided in Section I.1.

9. Collection or Collection Service.

Collection or Collection Service shall mean all or any part of the activities involved in the Collection of Franchise Materials specified in this Franchise Agreement and its transportation to and disposal at a Disposal Site or Recycling facility.

10. Commercial Customer.

Commercial Customer is a Customer that subscribes for and receives Commercial Service including, but not limited to, those Multiple-Family Dwellings and Mobile Home Park Customers that use Bin service.

11. Commercial Premises.

Commercial Premises shall mean all industrial, manufacturing, warehouse, wholesale or retail stores, service establishments, professional offices, other business establishments, and government facilities and schools and construction sites, and Multiple-Family Dwellings.

12. Commercial Recycling.

Commercial Recycling means the collection, processing and marketing of those Recyclable Materials that are collected from Commercial Customers under this Franchise on an exclusive basis.

13. Commercial Service.

Commercial Service means Bin or Cart service provided under this Franchise to Commercial Premises and Bin service provided to Multiple-Family Dwellings and Mobile Home Parks.

14. Compactor.

Compactor means a compacting unit that loads a detachable or non-detachable Bin or Debris Box. The detachable or non-detachable Bin or Debris Box serves as a receptacle of Solid Waste, and has a capacity of one (1) cubic yard or larger. The Bin or Debris Box is picked up by a collection vehicle for emptying at a separate location.

15. Company Service Fee.

Company Service Fee means the compensation provided to the Company for services performed pursuant to this Franchise Agreement.

16. Construction and Demolition Debris or C&D.

Construction and Demolition Debris or C&D has the meaning provided in Title 14, Division 7, Section 17388(c) of the CCR or successor laws and regulations as may be amended from time to time, but not including any Excluded Waste.

17. CPI Adjustment.

CPI Adjustment means the annual Rate adjustment as specified in Section VI.A.

18. CPI Change.

CPI Change is defined in Section VI.A.

19. Curb or Curbside.

Curb or Curbside shall mean that part of the homeowner's property, within five feet of the Public Street or alley without blocking sidewalks, driveways or on-street parking. If

extraordinary circumstances preclude such a location, Curbside shall be considered a placement suitable to the resident, convenient to the Company's equipment, and mutually agreed to by the homeowner and the Company.

20. Customer.

Customer means an individual or entity that subscribes for and receives Franchise Services provided by the Company. Customer shall also mean the person, organization or corporation receiving Disposal service for Franchise Materials to which billing statements are sent. Customer also means those Generators of Recyclable Materials in the Service Area to whom the Company provides and the Customer pays for Collection Service under this Franchise Agreement.

21. Debris Box.

Debris Box means a receptacle for Solid Waste and C&D having a capacity of greater than six (6) cubic yards that is picked up in its entirety by a dedicated truck for emptying at a separate location. Also known as a roll-off box or drop box.

22. Disabled Customer.

Disabled Customer means a Residential Customer who is disabled as verified by a doctor's certification that is no more than 12 months old certifying he or she is eligible for a California Disabled Person Parking Placard or Disabled Person License Plate, and who provides a signed affidavit stating that no able-bodied person resides on the premises.

23. Discretionary Adjustment

Discretionary Adjustment is defined in Section VI.C.

24. Disposal.

Disposal has the meaning provided in PRC Section 40120.1 or successor laws and regulations as may be amended from time to time.

25. Disposal Fees.

Disposal Fees shall mean the charges imposed by the Disposal Site.

26. Disposal Site.

Disposal Site has the meaning provided in PRC Section 40122 or successor laws and regulations as may be amended from time to time.

27. Effective Date.

Effective Date means September 1, 2012, the date that Franchise Services shall commence under this Franchise Agreement, as amended.

28. Environmental Law.

Environmental Law means any statute, ordinance or regulation relating to pollution or protection of human health or the environment (including ambient air, surface water, ground water, land surface or subsurface strata).

29. Excluded Waste.

Excluded Waste means Hazardous Waste, Medical and Infectious Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Company reasonably believes would, as a result of or upon disposal, be a violation of Applicable Law, including land use restrictions or conditions, waste that cannot be disposed of in Class III landfills, waste that in Company's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Company or City to potential liability, and Special Waste; not including de minimis volumes or concentrations of waste of a type and amount normally found in residential solid waste after implementation of programs for the safe collection, recycling, treatment and disposal of batteries and paint in compliance with PRC 41500 and 41802.

30. Franchise.

Franchise means the rights granted to the Company under the terms and conditions of this Franchise Agreement.

31. Franchise Fee.

Franchise Fee means an amount paid to the City by Company for the right to provide Collection Services, as further agreed in Section III A of this Franchise Agreement.

32. Franchise Materials.

Franchise Materials means all Solid Waste, Recyclable Materials, Construction & Demolition Debris and Green Waste generated in the Service Area and included within the Franchise. At the Company's option, "Franchise Materials" shall also include any other materials that can now or in the future be disposed of in Class III landfills. It is the intention of the Parties to maximize the scope of the Company's exclusive franchise within the Service Area by including within the definition of "Franchise Materials" those materials that can be safely Collected, Transported, Disposed of or Recycled using commercially reasonable methods.

33. Franchise Services.

Franchise Services means all of the duties and obligations of the Company hereunder as stated in this Franchise Agreement.

34. Generator.

Generator has the meaning used in the laws governing Hazardous Waste, but applies in this Agreement not only to Hazardous Waste but also to all other materials. City is not a “generator” or “arranger” as those terms are used in the context of CERCLA Section 107(a)(3), and that it is Company, not City, which is “arranging for” the collection, transport, recycling and disposal of Franchise Materials.

35. Green Waste.

Green Waste means all tree and plant trimmings, grass cuttings, dead plants, weeds, leaves, branches, and similar materials that fit into a Green Waste Cart, but not including Excluded Waste or items with a diameter greater than 10 inches.

36. Green Waste Processing Facility.

Green Waste Processing Facility means the facility(ies) used by the Company for handling, processing, and preparing collected Green Waste for marketing.

37. Gross Revenues.

Gross Revenues has the meaning provided in Section III.A.

38. Hazardous Waste.

Hazardous Waste has the meaning provided in PRC Section 40141 or successor laws and regulations as may be amended from time to time.

39. Inaccessible Area.

Inaccessible Area shall mean any road, alley or property that does not allow safe access, turn-around, or clearance for standard collection vehicles.

40. Medical and Infectious Waste.

Medical and Infectious Waste means biomedical waste generated at residences in excess of legal limits or at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments.

41. Mobile Home Parks.

Mobile Home Parks means a site at which mobile home spaces are rented for residential use. Mobile Home Parks, at the Owner’s request, may be provided with Residential Service using Carts or Commercial Service using Bins.

42. Multiple-Family Dwellings.

Multiple-Family Dwellings means any building or structure, or portion thereof used for residential purposes and having three (3) or more distinct living units. Multiple-Family Dwellings, at the Owner's request, may be provided with Residential Service using Carts or Commercial Service using Bins.

43. Owner.

Owner shall mean the person, organization or corporation holding legal title to the real property constituting the Residential Premises to which Collection Service for Franchise Materials is provided. For the purposes of provisions in this Franchise Agreement pertaining to the sending of notices, billings or other communications by Company to an Owner, Company may regard as Owner the person, organization, corporation or other entity shown in the records of the assessor of Nevada County or as may be indicated by documents recorded in the Nevada County Clerk-Recorder's Office.

44. Parties.

Parties mean the City and the Company.

45. PRC.

PRC has the meaning provided in Section I.1.

46. Private Drive(s).

Private Drive(s) shall mean a privately owned or maintained way serving less than one Residence for every 100 yards distance.

47. Private Road(s).

Private Road(s) shall mean a privately owned or maintained way that allows for access by a small wheel base service truck and which serves four or more Residences.

48. Processing or Process.

Processing or Process shall mean treatment, sorting, or other activities intended to improve the market value of a Recyclable.

49. Public Street(s).

Public Street(s) shall mean a public way used for public travel.

50. Quarterly Remittance.

Quarterly Remittance is defined in Section III.A.

51. "Recyclable Construction and Demolition Debris" or "Recyclable C&D"

“Recyclable Construction and Demolition Debris” or “Recyclable C&D” means Construction and Demolition Debris or C&D that is disposed of in a Cart or Debris Box or other receptacle that contains no more than 5% non-Recyclables.

52. Recycle, Recycling.

Recycle, Recycling has the meaning provided in PRC Section 40180 or successor laws and regulations as may be amended from time to time.

53. Recycling Carts.

Recycling Carts shall mean a Recycling Cart or other wheeled Cart, front-loader bin, Commercial Cart or other Cart owned by the Company, suitable for on-site collection, storage, and set-out of Recyclables.

54. Recyclable Materials, Recyclables.

Recyclable Materials or Recyclables means that portion of Solid Waste which is material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace, but not including Excluded Waste. Recyclable means that portion of Franchise Materials which may be separated on a commercially reasonable basis from other Franchise Materials and returned to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. As of the Effective Date, the Recyclable Materials are as provided in Exhibit 1.

55. Recyclables Processing Facility.

Recycling Processing Facility means the facility(ies) used by the Company for handling, processing, and preparing collected Recyclable Materials for marketing.

56. Recycling Program

Recycling Program shall mean an effort by the City to offer convenient and affordable recycling opportunities to all residents and commercial establishments of City and shall include single-stream recycling of the Recyclable Materials provided for in Exhibit 1.

57. Recycling Revenues.

Recycling Revenues means all revenues, net of transportation or processing costs, resulting from the sale of Recyclable Materials, Construction and Demolition Debris and Green Waste collected through provision of Franchise Services.

58. Residential Customer.

Residential Customer is a Customer that chooses to subscribe to Residential Service including those Multiple-Family Dwellings and Mobile Home Park Customers that use Solid Waste Cart Service.

59. Residential Recycling.

Residential Recycling means the collection, processing and marketing of those Recyclable Materials that are collected from Residential Customers under this Franchise on an exclusive basis.

60. Residential Service.

Residential Service means Collection Service for Franchise Materials normally provided under this Franchise to all Single-Family Residences and those Multiple-Family Dwellings and Mobile Home Parks that receive Solid Waste Cart Service.

61. Self Haul.

Self Haul means the transport of Franchise Materials from a residence or Commercial Premises, where the materials being generated are taken directly to an authorized landfill or transfer station. The transport must be accomplished by the resident, Owner or commercial/business/industrial entity that generates the Franchise Materials and may not be transported by a company, agent or other third-party hired for such use except as provided in Section II.C. of this Franchise Agreement.

62. Service Area.

Service Area shall mean the jurisdictional boundary of the City including all areas hereafter annexed or otherwise added to the territorial limits of the City.

63. Service Rates.

Service Rates means the Company Service Fees for Franchise Service billed and collected by the Company from each Customer receiving service under this Franchise as provided in Section VI. The Service Rates include the Franchise Fee.

64. Signature Date.

Signature Date means the date of execution of this Franchise Agreement by both Parties.

65. Single-Family Residence(s).

Single-Family Residence(s) shall mean all one unit houses and mobile homes, any building or structure, or portion thereof, that is used for residential housing purposes and has two (2) or fewer distinct living units.

66. Solid Waste.

Solid Waste shall mean and include all Solid Waste as defined in PRC Section 40191 and regulations or successor laws and regulations as may be amended from time to time generated within the Service Area that can be disposed of in Class III landfills. Excluded from the definition of Solid Waste are Excluded Waste, Bulky Wastes, Special Wastes, Recyclable Materials, Green Waste, and Construction and Demolition Debris. Notwithstanding any provision to the contrary, "Solid Waste" may include de minimis volumes or concentrations of waste of a type and amount normally found in residential solid waste after implementation of programs for the safe collection, recycling, treatment and disposal of batteries and paint in compliance with PRC Sections 41500 and 41802.

67. Special Services.

Special Services are specific service-related activities, including without limitation lock, gate, and long walk services, or other services that is provided by the Company to Customers for which the Company may charge an additional Fee, with prior notice to the City.

68. Special Waste.

Special Wastes include flammable waste, waste transported in a bulk tanker, liquid waste, sewage sludge, pollution control process waste, residue and debris from the cleanup of a hazardous material spill or release of chemical substances, commercial products or any other Special Wastes; contaminated soil, waste, residue, debris and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, Recycling, reclamation, or Disposal of any other Special Wastes; dead animals, manure, waste water, explosive substances, and radioactive substances.

69. State.

State means the State of California.

70. Ton.

Ton means a "short ton" of 2,000 pounds.

71. Transport.

Transport means the hauling of Franchise Materials to a Disposal Site.

72. Uncontrollable Circumstances.

Uncontrollable Circumstances are any acts of God, such as landslides, lightning, fires, storms, floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a public enemy, wars, blockades, riots, labor unrest, eminent domain, condemnation or other taking, or other events of a similar nature, not caused or maintained by the City or Company, which event is not reasonably within the control of

the party claiming the excuse from its obligations due to such event, to the extent such event has a material adverse effect on the ability of a Party to perform its obligations thereunder. Events which could have been prevented by reasonable precautions, including compliance with agreements and applicable laws, shall not be considered an Uncontrollable Circumstance. Labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action lawfully conducted by the Company's employees or lawfully directed at the Company, or a subsidiary, are not considered Uncontrollable Circumstances, but shall excuse performance to the extent provided in Section IX.E.

II. GRANT OF EXCLUSIVE AGREEMENT

A. SCOPE OF EXCLUSIVE FRANCHISE

1. City hereby grants to Company, for the term hereinafter set forth, the exclusive right and privilege to collect and transport to any legally authorized Disposal Site all Franchise Materials and, to the extent permitted by applicable law, Commercial Recycling generated, kept and/or accumulated within the Service Area, unless otherwise exempt from Collection pursuant to the terms and conditions of Section II.C of this Franchise Agreement.

2. The Company shall have the right to select the transfer station and Disposal Site (which must be a Class III disposal site) suitable for municipal waste. The Company may change the Disposal Site at any time, with ninety (90) days' written notice to City. As of the Effective Date, Franchise Materials will be transported to the McCourtney Road Transfer Station for initial sorting and processing.

B. COMPANY RESPONSIBILITY

The Company hereby accepts and assumes responsibility to perform and fulfill all the terms, covenants, conditions, and obligations required under this Franchise Agreement. Company agrees to perform all of its obligations under this Franchise Agreement for the term hereof. Company shall furnish all the labor and equipment necessary for the Collection, Processing, Transport and Disposal of all Franchise Materials, subject to the terms, conditions and provisions of this Franchise Agreement.

C. EXCEPTIONS TO FRANCHISE

The following services and materials are expressly excluded from this Franchise Agreement. However, the granting of this Franchise shall not preclude an Owner or Customer from contracting for the categories of services and materials described below to be delivered to, collected and/or transported by the Company or others, provided that nothing in this Franchise is intended to or shall be construed to excuse any person from any authorization from the City which is otherwise required by law.

1. Compactors for Recyclables.

Rental, lease or sale of Compactors, provided that the Company shall have the exclusive right to provide hauling services for Compactors unless used exclusively for the collection of Recyclable Materials, including Recyclable C&D, in which at least ninety-five percent (95%) of each load is actually Recycled and for which the Generator receives payment.

2. Self-Hauling.

Self-Haul materials, which are delivered by a person or entity directly to a disposal facility. Persons or entities cannot subcontract any portion of the Self-Haul to any entity other than the Company. This provision does not allow persons or entities to purchase, borrow or rent Bins or Carts or other containers and have them collected by a third-party.

3. Incidental Hauling.

Materials which would otherwise constitute Franchise Materials that are removed from a premise by a company as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, construction, handyman, tractor or similar service offered by that company rather than as a waste hauling service. This provision does not allow the hauling of materials by any business hired solely for the purposes of hauling and/or removal of debris.

4. Construction and Demolition Debris.

Construction and Demolition Debris materials removed from a work or construction/demolition site by a company or business generating the C&D and Self Hauled or incidentally hauled as provided in Section II.C.3.

5. Recyclable C&D.

Recyclable C&D, in which at least ninety-five percent (95%) of each load is actually Recycled and for which the Generator receives payment.

6. Residential Recyclables.

Recyclable Materials donated or sold by Residential Customers from Single-Family Residences or Multiple-Family Dwellings, or from Mobile Home Parks, to any party of their choice, in which at least ninety-five percent (95%) of each load is actually Recycled and that the Generator donated or for which the Generator receives payment.

7. Commercial Recyclables.

Commercial Recyclable Materials, in which at least ninety-five percent (95%) of each load is actually Recycled, and not disposed of. Participation by Commercial

businesses in Recyclables Collection is currently voluntary, in which at least ninety-five percent (95%) of each load is actually Recycled and for which the Generator receives payment. Programs for Commercial Recyclables shall comply with the requirements of AB 341.

8. Governmental Entities.

The Company's exclusive Franchise in this Franchise Agreement shall not include governmental entities if and to the extent the City has no legal power to include them in the exclusive Franchise.

D. TERM OF AGREEMENT

The term of this Franchise Agreement shall be twenty (20) years commencing on the effective date, and ending on June 30, 2032.

E. TITLE TO FRANCHISE MATERIALS

It is expressly understood that all Franchise Materials collected under this Franchise shall remain the property of the resident or commercial Owner until such time as they are collected for Disposal, Transport or Recycling. That ownership shall transfer to Company once the Franchise Materials are collected. The Company is hereby granted the right to retain, dispose of, and otherwise use such Franchise Materials, or any part thereof, in any fashion or for any lawful purpose desired by the Company, and to retain any benefit or profit resulting therefrom.

F. ANTI-SCAVENGING ENFORCEMENT

The City will cooperate with the Company in the Company's enforcement of the exclusive rights granted to the Company in this Franchise Agreement and anti-scavenging laws, including without limitation the institution of civil actions against a person or entity alleged to have violated the exclusive rights created in Section IV A of this Franchise Agreement or the anti-scavenging provisions of PRC Section 41950 (which provides for treble damages, as measured by the value of the material removed, or a civil penalty of not more than \$2,000.00, whichever is greater, for each unauthorized removal, in accordance with PRC Section 41953). If City is required to take administrative, law enforcement, or other legal action against any person who infringes on the Company's exclusive rights, the Company shall reimburse the City for all reasonable costs, staff time and legal costs related to any such action. Nothing herein precludes the Company from taking such legal action against third parties as it deems appropriate to protect the exclusive nature of its franchise.

III. FRANCHISE FEE

A. CITY FRANCHISE FEE

As of the Effective Date of this Franchise Agreement, the company will transition to a payment of ten percent (10%) of all revenues collected by the Company resulting from the full amount of the Service Rates for the exclusive Collection Services provided by the Company on or after the Effective Date of this Franchise Agreement within the Service Area, but excluding revenue for

services provided by the Company prior to the Effective Date and from services other than Collection Services, non-exclusive or excepted services, exempt materials, or sales of recycled materials (collectively, "Gross Revenues"), shall be paid by the Company to the City as a Franchise Fee effective January 1, 2014. If the Franchise Fee is increased after the date of this Franchise Agreement, the Service Rates shall be adjusted in the same manner as adjustments for increases in Disposal Fees as provided in Section VI D.

The Franchise Fee shall be computed and paid on the basis of the Company's cash receipts from Gross Revenues after the Effective Date of this Franchise Agreement. Company shall make payments to City on a quarterly basis within 30 days following the completion of each calendar quarter ("Quarterly Remittance"). The Company shall remit the Franchise Fee as part of the Quarterly Remittance.

Franchise fee transition will be made as follows:

In addition to a 2% franchise fee a payment of \$260,000 will be made by June 30, 2013. The 10% franchise fee will be effective January 1, 2014, and paid as provided herein.

B. UNDER AND OVER PAYMENTS

If the Company fails to pay the entire amount of compensation due the City through error or otherwise, the difference due the City shall be paid by the Company within thirty (30) days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be offset against the next payment due from the Company.

C. FINANCIAL REVIEW

The relevant books and records of the Company shall be subject to review and inspection for the purpose of reviewing billing operations, accounts receivable and customer service, by either party, its auditors or other agents, at any reasonable time upon reasonable notice.

IV. SERVICES OF COMPANY

A. SERVICES PROVIDED BY COMPANY

The Company shall, in accordance with the terms of this Franchise Agreement, Applicable Law and best industry practices, provide all labor, materials, facilities, services and equipment necessary to Collect, Process, Recycle or Dispose of (as appropriate), market and transport all set out Franchise Materials.

B. SOLID WASTE COLLECTION

1. Bin Service.

Company shall furnish or provide Carts to all Residences and Bins or Carts for collection use, as appropriate, to all Multiple-Family Dwellings that subscribe to Bin service and Commercial Premises that generate Solid Waste within City. The size of the Bins and the frequency of their collection (which shall not be less than

once a week) shall be determined between the Customer and Company. Bins shall be placed on hard surface locations which are accessible to Company and consistent with applicable municipal code and development approvals. Bins supplied by Company shall, at all times, be maintained by Company in a well-kept appearance. Front load bins must be maintained with lids. Customers shall be responsible for sanitation and deodorizing of such Bins; provided, however, Company shall provide in its Bin rental contracts for a Bin cleaning service to be performed at the request of the Customer for a fee specified in such contract. The initial delivery of such Bins and Carts shall occur as provided in accordance with the implementation schedule agreed upon by the Parties.

2. Curbside Single-Family Residence.

Company shall, once per week, collect the Solid Waste that has been placed, kept or accumulated in a Cart (other than a Bin) at Single-Family Residences within the Service Area and placed at curbside or roadside prior to Company's normal weekly collection time, provided that in no event shall Company be required to collect any additional Solid Waste placed at curbside which is not placed in the Cart. The standard service level for a Single-Family Residence shall be a 35-gallon Cart. For the Service Rate in Exhibit 3 (as adjusted in accordance with this Franchise Agreement), the Company shall provide a 20-gallon Cart if requested by Customer. For an additional service charge, the Company shall provide a 64-gallon or 96-gallon Cart upon request.

3. City Solid Waste Service.

Company will provide the City solid waste services as provided for in Exhibit 4.

4. Hours of Collection.

Collection Service of all Bins and Carts shall not start before 5:00 a.m. for commercial and 6:00 a.m. for residential or continue after 6:00 p.m., subject to change by action of the City Council.

5. Multiple-Family Dwellings.

Multiple-Family Dwellings, at the Owner's request, may be provided with Solid Waste Service as frequently as negotiated with the Customer but in no event less than once per week, to collect the Solid Waste that has been placed, kept or accumulated in Bins. Waste Management will work with each complex to customize the appropriate level of service. Multiple-Family Dwellings will have the option to select the appropriate cart size or 2, 3, 4, and 6-cubic yard bins for Solid Waste collection. The 6-cubic yard bins will not have wheels.

6. Commercial Customers.

Commercial Customers, on request, may be provided with Solid Waste service as frequently as negotiated with the Commercial Customer but in no event less than

once per week, to collect the Solid Waste that has been placed, kept or accumulated in Bins. Waste Management will work with each Commercial Customer to customize the appropriate level of service. Commercial Customers will have the option to select the appropriate cart size or 2, 3, 4, and 6-cubic yard bins for Solid Waste collection. The 6-cubic yard bins will not have wheels.

7. Cart Replacement.

The Company, without expense to the City or Customer, and within seventy-two hours after notice, shall provide one free replacement every four years of Solid Waste Carts that are lost, stolen or damaged (regardless of cause). The Company may charge for additional replacement Solid Waste Carts based on the actual cost of the Carts and their delivery. In addition, the Company will replace Solid Waste Carts damaged due to normal wear and tear and provide one free replacement per year for graffiti on Solid Waste Carts without charge within 14 days of the Customer's or City's request. Customers will be able to make a change in Cart size or number of Carts once every twelve months at no additional replacement cost. The Company, without expense to the City or the Customer, and within five working days after notice, shall provide a Solid Waste Cart to a new Residential Customer that has no such Cart or to a new Multi-Family Customer who elects Cart service. The Company shall own and maintain all Solid Waste Carts at its expense, except as provided in this paragraph.

8. Company Assisted Service.

For a Disabled Customer who subscribes for Collection Services, the Company will provide backyard service at the existing Cart service rate. The Company will have no obligation to provide service for a drive way that is longer than 50 feet or for more than a single Cart.

9. Bagster®.

For an additional charge to be agreed upon by the Company and a Customer, the Company will collect a Bagster® from the Customer by appointment. The Customer will need to purchase a Bagster® for an additional charge.

C. RECYCLING

1. Residential Recycling.

The Company shall, once every other week, Collect, Process, Recycle, and Transport all Recyclables from all Residential Customers. Recycling Carts shall be collected using an automated collection system. The Company will only provide Recycling services to Residential Customers that subscribe and pay for Solid Waste services.

2. Residential Recycling Carts Provided.

Company shall provide Residential Customers with Recycling Carts and promotional information within fourteen (14) days of notice of, or request for, Solid Waste service. Customer may co-mingle all Recyclables listed on Exhibit 1 in the Recycling Cart. The Company shall provide and distribute to each Residential Customer one (1) Recycling Cart, but, upon request of the Customer and as needed, will provide no more than one additional Recycling Cart at no additional charge. The standard service level for a Single-Family Residence shall be a 96-gallon Recycling Cart.

3. Residential Recycling Carts Replaced.

The Company, without expense to the City or the Customer, and within seventy-two hours after notice, shall provide one free replacement every four years of Recycling Carts that are lost, stolen or damaged (regardless of cause). The Company may charge for additional replacement Recycling Carts based on the actual cost of the Recycling Carts and their delivery. In addition, the Company will replace Recycling Carts damaged due to normal wear and tear and provide one free replacement per year for graffiti on Recycling Carts without charge within 14 days of a valid request. The Company, without expense to the City or Customer, and within five working days after notice from the City or the Customer, shall provide a Recycling Cart to a new Residential Customer that has no such Recycling Cart. The Company shall own and maintain all Recycling Carts at its expense, except as provided in this paragraph.

4. Company Assisted Service.

For a Disabled Customer who subscribes for Collection Services, the Company will provide backyard Recycling service as included in the existing Cart Service Rate. The Company will have no obligation to provide Recycling service for a drive way that is longer than 50 feet or for more than a single Recycling Cart. A Customer who does not use the Recycling service is not entitled to any off-set in the price of the Collection Service.

5. Commercial and Multiple-Family Dwelling Recycling.

The Company shall Collect, Process, and Transport all Recyclables from all Commercial Premises in which the Owner or Customer and the Company have agreed to participate. Recycling collection will be for Commercial Customers subscribing to Solid Waste collection from the Company. In the event any Recycling Cart contains more than 5% non-recyclables, the Cart will be treated as containing Solid Waste and the Customer will be charged at the applicable rate for Solid Waste. The Commercial Premises on-site Recycling Program will be available to Multiple-Family Dwellings with five (5) units or more. Servicing Commercial Premises will be dependent upon the Owner's and property manager's willingness to participate, and upon provision of a proper site to locate

Recycling Carts. The Company shall notify City of locations where Recycling services are not selected by customer or not possible to provide. Multiple-Family Dwellings will have the option at varying Service Rates to select the appropriate cart size or 2, 3, 4, and 6-cubic yard bins for Recycling collection. The 6-cubic yard bins will not have wheels. AB 341 provides for recycling program for multi-family with five (5) or more units. The Company will only provide Recycling services to Commercial Customers and Multiple-Family Dwellings that elect and pay for Solid Waste services. Customers will be charged an additional fee for recycling service. The Parties acknowledge that AB 341, adopted in 2011 by the California Assembly, requires Commercial Customers generating more than 4 cubic yards of Solid Waste and Multiple-Family Dwellings to recycle; however, the City has not yet developed or adopted an implementing revision to the municipal code to address this requirement. Company and City will cooperate in developing measures related to implementation of AB 341 and agree to modify these Commercial and Multi-Family Recycling requirements as necessary to assure successful implementation of AB 341.

6. Commercial Recycling Carts Provided.

The Company shall provide recycling Carts to each participating Commercial Premises. Recycling Carts shall be provided within fifteen (15) working days of sign-up and Owner's, Customer's or property manager's permission and provision of a proper site. Recycling Carts shall be sited in accordance with all policies and regulations of the City.

7. Collection Days and Times.

To the maximum extent possible, Collection of Recyclables from all Residential Customers shall be made on a regular schedule on the same day as Solid Waste collection. Collection from Commercial Premises shall be made on a regular schedule.

8. Construction and Demolition.

The Company shall encourage builders and demolition companies to source-separate their C&D for future recycling. Prior to disposal, Company shall have the right to salvage C&D collected pursuant to this Franchise Agreement and to retain funds derived therefrom.

9. Materials to be Recycled.

Company shall collect and Recycle all of the materials listed in Exhibit 1.

D. GREEN WASTE

1. Subscription Green Waste Program.

Residential Customers and Commercial Customers will be able to voluntarily subscribe to a Green Waste Program.

2. Green Waste Collection.

For subscribing Customers, Company shall, once every other week, Collect, Transport and Recycle Green Waste set out in Carts. Company shall notify the City within twenty-four (24) hours when Green Waste Services have been delayed. Green Waste Carts shall be collected using an automated collection system. The standard service level for a Single-Family Residence shall be a 96-gallon Cart. A Customer who does not use the Green Waste Collection service is not entitled to any off-set in the price of the Collection Service.

3. Cart Replacement.

The Company, without expense to the City or Customer, and within seventy-two hours after notice, shall provide one free replacement every four years of Green Waste Carts that are lost, stolen or damaged (regardless of cause). The Company may charge for additional replacement Green Waste Carts based on the actual cost of the Carts and their delivery. In addition, the Company will replace Green Waste Carts damaged due to normal wear and tear and provide one free replacement per year for graffiti on Green Waste Carts without charge to the City or Customer within 14 days of request by the City or the Customer. Customers will be able to make a change in Green Waste Cart size or number of Carts once every twelve months at no additional replacement cost. The Company, without expense to the City or the Customer, and within five working days after notice, shall provide a Green Waste Cart to a new Residential Customer that has no Green Waste Cart. The Company shall own and maintain all Green Waste Carts at its expense, except as provided in this paragraph.

4. Company Assisted Service.

For a Disabled Customer who subscribes for Collection Services, the Company will provide backyard Green Waste service at the existing Cart service rate. The Company will have no obligation to provide Green Waste service for a drive way that is longer than 50 feet or for more than a single Green Waste Cart.

5. Christmas Trees.

Company shall collect un-flocked Christmas trees at the curbside cut up and placed in their Green Waste cart on the regular day of Collection Service on a schedule mutually agreed upon with the City. Customers will also have the option to drop off trees at a central location at no cost to the City or Customers on a schedule mutually agreed upon with the City.

V. OTHER COMPANY REQUIREMENTS

A. GENERAL

1. Company Provided Equipment and Vehicles.

Company shall provide an adequate number of vehicles and equipment for the Collection, Disposal and Transportation services for which it is responsible under this Franchise Agreement. All vehicles used by Company under this Franchise Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean and in good repair, shall be, uniformly painted and shall be washed at least once every seven (7) calendar days during good weather. Company's name, phone number and vehicle number shall be prominently displayed on its vehicles. Company shall furnish a listing of equipment utilized to perform all services included in this Franchise Agreement upon request by City.

2. Collection on Holidays.

If the day of Collection on any given route falls on Christmas Day, New Year's Day or Thanksgiving Day or a holiday observed by the Disposal Site to which the City's Franchise Materials are disposed, Company shall provide Collection Service for such route on the next workday following such holiday, thereby adjusting subsequent workdays that week.

3. Disabled Special Service.

At no additional cost, the Company shall provide special service to Disabled Customers. Collection shall be from the back porch, carport, or other outside storage location. The Company shall screen applicants (must be name shown on bill or rental agreement) and provide service only in cases of legitimate need. Eligibility for this Special Service shall be on an annual basis.

4. Private Drives and Inaccessible Areas.

For Residential Customers on Private Drives or other inaccessible areas, the Company shall Collect Solid Waste, Green Waste and Recyclables on the nearest Public Street or Private Road connecting to the Private Drive or other inaccessible area.

5. Employees.

Company shall exercise reasonable care to hire responsible Employees, to supervise the work of such Employees, and to discipline and, if necessary and consistent with Company's legal and contractual obligations, discharge an Employee failing to meet reasonable standards for performance of work under this Franchise Agreement. Company shall comply with applicable state and

federal law pertaining to employment including, but not limited to, applicable equal opportunity employment and affirmative action requirements.

6. Manner of Collection.

The Company shall perform all Collection Services in a quiet and courteous manner and ensure that all Carts and Bins are placed on the premises from which they were removed in an upright position, with lids closed, and within five (5) feet of where they were originally placed before collection.

7. Service Schedule.

In January of each calendar year, the Company shall provide calendars (which may be in "pdf" or other similar format) identifying the schedule for Solid Waste, Recyclables, and Green Waste Collection for that calendar year. The calendar shall provide adequate detail for customers to identify specific service days for specific service areas. Hard copies of the calendars shall be made available to Customers upon request.

8. Inclement Weather.

In the event of inclement or severe weather that makes it unsafe for Collection vehicles or personnel to perform Collection Services, the Company will be excused from performing services in accordance with the normal Collection schedule and will make commercially reasonable efforts to provide Collection Services within a one-week time period (or earlier if reasonably practicable) provided the roads are safely accessible and may double-up on Collections at no additional charge. The Company will provide a notice on its website and telephone answering service of all changes in the Company's regular Collection schedule.

9. Code Revisions.

The City shall use reasonable efforts to update the municipal code to be consistent with the terms of this Franchise Agreement and to reflect new program requirements if requested by the Company and deemed necessary by the City Council.

10. Service Complaints.

All service complaints shall be directed to Company. Company shall record all complaints duly received and Company agrees to use its best efforts to resolve all such complaints within the two (2) business days next following the date on which such complaint is received.

- (a) Complaint. The Company agrees to maintain a written log of all oral and written service complaints registered with the Company from Customers, service recipients, or the public within Franchise area

("Complaint Log"). The Company shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all complaints. Complaints that cannot be reasonably resolved may be appealed to the City Administrator or designee for final resolution. The Company shall record in the Complaint Log all written and oral complaints, noting the name and address of complainant, date and time of complaint, nature of complaint, and nature and date of resolution. Such log shall be kept so that representatives of the City, upon request, may conveniently inspect it.

(b) Complaint Response. The Company shall respond to all complaints, other than missed pickups, within twenty-four (24) hours if the complaint is received during a weekday or by the next business day if the complaint is received on a Saturday, Sunday or a holiday.

(c) Missed Pickups. In the event of a missed pickup, the Company shall complete the pickup the same day if the complaint is received by 12:00 p.m. or by 12:00 p.m. the following day if the complaint is received after 12:00 p.m.

(d) Telephone. The Company shall maintain a toll-free telephone system during office hours (8:00 a.m. to 5:00 p.m.), which will have available service representatives sufficient to handle the volume of calls typically experienced by the Company. Customers must be able, with reasonable convenience, to reach the Company's office by phone during office hours. The Company shall also maintain an after-hours toll-free telephone number for use during other than normal business hours. The Company shall have a representative, answering service or voicemail system available at said after-hours toll-free telephone number during all hours other than normal office hours. Any recording shall advise callers to call 911 in the event of an emergency. The Company shall provide the City the means to contact the Company directly by telephone on a 24-hour basis in the event of an emergency.

B. CHANGE IN OPERATIONS, ADMINISTRATION OR SCHEDULE

The Company shall provide a route map with pick up schedules and notify the City in writing of any material changes in, or to the operation to provide Franchise Services (e.g. vehicle routes, equipment type, crew size), administration (e.g., management), and schedule five (5) days in advance of the time such material change is implemented. Any changes to the Company's Collections operation shall meet the service requirements and performance standards and all other terms of this Franchise Agreement. In the case of changes to the Collection schedule the Company must notify all affected Customers at least (14) days prior to any change in the Collection day. The Company shall not permit any Customer to go more than seven (7) days without Solid Waste Collection Service in connection with a Collection schedule change other than in the event of an Uncontrollable Circumstance.

C. ADDITION OF NEW NON-FRANCHISE SERVICES

Upon receiving a written request from the City, the Company shall provide any other exclusive or non-exclusive services not covered by this Franchise, and that it is qualified to provide, including, but not limited to, assistance to the City in the event of natural disasters, subject to establishment of appropriate and mutually agreed upon compensation for providing the service.

VI. SERVICE RATES

A. AMOUNT OF SERVICE RATES

As of the Effective date of this Agreement, Company may not charge rates in excess of those set forth in Exhibit "2."

The Company may establish charges for Special Services that are not specified in Exhibit 2, subject to notification of the City, at least 30 days prior to implementation. The City may consider making such charges a part of the rates and charges provided for in Exhibit 2 as part of the annual review provided for herein.

B. CPI ADJUSTMENT

The Service Rates shall be increased annually on July 1st, beginning July 1, 2013, as described below in this Section VI.B (the "CPI Adjustment"). Each year, the Company shall calculate and submit to the City Representative the percentage increase in the U.S. City Average Consumer Price Index for "All Urban Consumers" ("CPI") during the 12 month period ending the preceding March (the "CPI Change").

- (1) If the CPI Change is more than 1% and less than or equal to 3.5%, then the service portion (meaning that portion of the maximum Service Rates other than Disposal charges) of the maximum Service Rates shall be increased by 2.5%.
- (2) If the CPI Change is greater than 3.5%, then the service portion of the maximum Service Rates shall be increased by 2.5%, plus an amount equal to 75% of the difference between the CPI Change and 3.5%.
- (3) If the CPI Change is less than or equal to 1%, then the service portion of the maximum Service Rates shall be increased by the amount equal to the Change in CPI, but not less than 0%.
- (4) The CPI Adjustment to the maximum rates will not exceed 10% in any single year.

Provided that adequate supporting information has been submitted to the City by the Company, any requested CPI Adjustment shall be deemed approved and shall take effect on the following July 1st. Changes in the maximum Service Rate as provided for herein will be filed with the City Administrator by June 15 of each year.

*

C. DISCRETIONARY SERVICE RATE REVIEW REQUEST.

Company may request, in writing, in addition to the CPI Adjustment an increase to the maximum rates based on a change in law, rule, regulation ordinance, order or requirement of any federal, state or local government including the levy of an additional special tax, fee, surcharge or assessment upon the collection or disposal of Franchise Materials that is effective after the date of this franchise agreement. The impact must be demonstrated to increase costs beyond the allowed CPI Adjustment. "Significant impact" does not include requirements agreed to under other franchise agreements with jurisdiction outside of the City. The modification request to the maximum rate will be considered by the City Council within 90 days of receipt of the request. The City Council may approve or deny, in its reasonable discretion, any Discretionary Adjustment. The City Council may, in its sole discretion, select the effective date of any Discretionary Adjustment. To the extent reasonably possible, a Discretionary Fee Adjustment shall take effect on July 1st to correspond with the effective date for CPI Adjustments.

D. DISPOSAL FEE ADJUSTMENT.

Service Rates shall be increased or decreased following an adjustment in the Disposal Fees. Such adjustments shall be equal to the amount derived by multiplying (A) the portion of the previous Service Rate representing Disposal Fees by (B) the percentage change in the Disposal Fees.

E. BILLING AND COLLECTION OF ACCOUNTS

Company shall bill Customers for all Collection Services (including Disposal) for Franchise Materials as part of a single all-inclusive Service Rate. Collection billing shall be itemized separately from Green Waste Services Such billings may cover the periods and be collected by the methods hereinafter set forth.

1. Residential.

Single-Family Residence and Multiple-Family Dwellings Customers may be billed for up to two (2) months in advance or based on arrears/advanced billing combinations implemented at the discretion of the Company. Payment shall be due within 30-days of the billing date. If not paid when due, the bill may thereafter bear a late charge to be determined by Company (subject to City approval) which shall be collectible along with the charge for service. Company shall diligently pursue collection of delinquent accounts by every means reasonably available to Company. If the bill is not paid within 70-days of billing, and after notice of delinquency has been sent to the Customer by Company, Company may request the City to initiate a lien procedure, under City's authority, which will result in placement of a lien on the property.

2. Non-Residential.

All non-residential Customers shall be billed monthly in advance, except for roll-off services, which may be billed in arrears. Payment with respect to each such bill shall be due on or before the 30th day following the end of the service period for which the bill is rendered; thereafter the bill shall be considered delinquent, and Company shall provide written notice to the business owner and, if different the property owner of the delinquent amount of City's intent to lien the

property. Company may charge interest not to exceed the maximum interest rate allowed by law for such time as the bill remains unpaid after the due date.

3. Special Services.

Company shall also receive fees for performance of special services as agreed upon in separate contracts between Company and each Customer requesting such special service. Company shall provide the City with notice of such special services and the fees charged.

VII. REPORTS

The Company will provide the City with reports that contain the information required by the City for compliance with AB 939 and for the City to measure the Company's performance of items in this Franchise Agreement, but limited to information directly attributable to the Collection Services provided under this Franchise Agreement:

- (1) Company shall keep an auditable journal recording each instance reported to Company that Solid Waste or Recyclable Materials are not collected in compliance with the terms of this Agreement or applicable ordinance or regulation. The journal shall include the reason for non-collection, including but not limited to instances of Hazardous Waste found in the Solid Waste or Recyclable Materials.
- (2) Company shall compile and keep the following information for each month and shall deliver a written report, signed by an officer of Company, to the City Administrator, within 10 days of the preceding month.
 - (a) Solid Waste weight tickets from landfill;
 - (b) Total tons of Recyclable Materials collected from residential and commercial premises, by type;
 - (c) The name, address and telephone number of each waste disposal facility used by Company during the reporting month;
 - (d) The name, address and telephone number of each facility where Solid Waste and Recyclable Materials were delivered by Company during the reporting month;
 - (e) Summaries of the net amount of all waste disposed during the reporting period and where the waste was disposed of, by residential and commercial/industrial service sectors or monthly report currently generated by the Company.
 - (f) City may review all supporting documentation (which Company shall retain for a period of 24 months) for Company's summaries on Company's business premises after giving 48 hours written notice of such a request.
 - (g) Company shall maintain relevant financial information consistent with generally accepted business practices regarding the operation of Company's waste collection business and annually provide financial information to the City in manner that allows for the review of the collection and payment of franchise fees. Other financial

information shall be available on Company's business premises upon reasonable written notice. All financial information provided to City must be held strictly confidential and not publicly disclosed, to the extent permitted by law.

- (3) Company shall submit an annual report, in such form and utilizing such media as approved by City, within ninety (90) days after the close of each calendar year. This report shall include, but is not limited to, the following information:
 - (a) A summary of the previous year's activities including, but not limited to, services begun or discontinued during the reporting year, and the number of customers for each service route;
 - (b) A list of Company's officers and members of its board of directors;
- (4) In order to verify reports of the amounts of Solid Waste and Recyclable Materials collected by Company from each designated route and disposed of, City shall be entitled to conduct an audit of any designated route upon demand. The audit demand will be made by City by telephone 48 hours prior to the regularly scheduled collection day of the designated route. Telephone notice shall be followed by written notice and facsimile transmission (Fax) to Company. The audit demand shall entitle City to conduct a physical route audit of any or all designated routes for the purposes of verifying customers served, disposal amounts collected, and any other information as may be deemed necessary and beneficial to City so long as the audit activity does not interfere with Company's personnel who are servicing the route being audited. The standard route audit will include, but is not limited to: (1) verification of the addresses which are served by the designated collection vehicle; (2) verification of the landfill or other facility to which the Solid Waste or Recyclable Materials are taken; and (3) the quantity of Solid Waste and Recyclable Materials in tons collected from the designated route.

VIII. INDEMNITY, INSURANCE

A. INDEMNIFICATION OF THE CITY

Company shall indemnify, defend (with counsel selected by City, from list of at least three provided by company) and hold harmless City, its officers, agents, and employees from any and all claims and losses whatsoever occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, any and all claims, lawsuits or actions arising from the awarding or execution of this Agreement, and from any and all claims and losses occurring or resulting to any person, firm, corporation or property for damage, injury or death arising out of or connected with Company's performance of its obligations pursuant to this Agreement or arising from or attributable to any alleged breach of warranty of merchantability or fitness of purpose or other laws relating to product liability for Recyclable Materials collected pursuant to this Agreement, or to the repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or Hazardous Wastes at any place where Company

transfers, stores or disposes of Solid Waste or Recyclable Materials pursuant to this Agreement, or its activities pursuant to this Agreement result in a release of hazardous substances into the environment. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA," 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify City, unless such claim is due to the sole negligence or willful acts of the City its elected officials, officers, employees, agents or contractors. Company's obligation to indemnify, defend and save harmless City as stated hereinabove shall include, but not be limited to, paying all legal fees and cost incurred by the legal counsel selected as provided above in representing City in connection with any such claims, losses, lawsuits or actions. In connection with claims, liability, lawsuits or actions arising out of the Environmental Law, this clause shall not restrict any rights City has against Company, including, but not limited to, the right of contribution, pursuant to the Environmental Law. Any action defended by the City's Insurance provider will be done so by selected attorney of the provider.

THIS PROVISION SHALL SURVIVE THE EXPIRATION OF THE PERIOD DURING WHICH SOLID WASTE AND RECYCLABLE MATERIALS COLLECTION, PROCESSING AND DISPOSAL SERVICES ARE TO BE PROVIDED UNDER THIS AGREEMENT.

B. INSURANCE SCOPE AND LIMITS

The Company shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Company, his agents, representatives, employees or subcommands. With respect to General Liability, Errors & Omissions and Pollution and/or Environmental Impairment Liability coverage shall be maintained for a minimum of five (5) years after contract completion, which continuing coverage may be maintained through continuous policy renewals. The maintenance of claims made against any insurance required of the Company shall not be considered a waiver by City of any claim or liabilities it may have against the Company.

1. Minimum Limits of Insurance. The Company shall maintain insurance coverage of the following type and with limits no less than:

- (a) General Liability: \$20,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- (b) Automobile Liability: \$10,000,000 combined single limit per accident for bodily injury and property damage.
- (c) Worker's Compensation and Employer's Liability: \$3,000,000 each accident, \$3,000,000 policy limit bodily injury or disease, \$3,000,000 each employee bodily injury by disease.
- (d) Pollution and/or Environmental Impairment Liability and/or Errors and Omissions: \$5,000,000 each occurrence/\$10,000,000 policy aggregate

covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants.

2. Deductible and Self-Insured Retentions. The deductibles or self-insured retentions for the General Liability and Auto Liability policies are for the account of the Company and shall be the sole responsibility of the Company.

3. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(a) Automobile liability and general liability: The City, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Company; and with respect to liability arising out of work or operations performed by or on behalf of the Company including materials, parts or equipment furnished in connection with such work or operations.

(b) Worker's Compensation and Employers Liability Coverage. The Insurance company shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Grantee for the City.

(c) All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

(d) Verification of Coverage. The Company shall furnish the City with endorsements effecting coverage required by this clause or certificates evidencing such coverage. The endorsements or certificates are to be signed by a person authorized by that Insurance Company to bind coverage on its behalf.

C. REVOCATION OF PREVIOUS AGREEMENTS.

This Franchise Agreement, rather than any preceding agreements between the City and Company, shall govern with respect to the Company and City' rights, duties and obligations relating to this Franchise. Upon execution of this Franchise Agreement, all previous Agreements shall terminate and be of no further force and effect except with respect to covenants therein for acts and omissions occurring prior to the date of termination.

D. COMPLIANCE WITH APPLICABLE LAW AND MUNICIPAL CODE.

Company agrees that it will comply with all Applicable Law and those provisions of the Grass Valley Municipal Code which are applicable to the work or business in which it is herein franchised, and with any and all amendments to such applicable provisions during the term hereof, but only to the extent they are not inconsistent with or do not conflict with the terms and conditions of this Franchise Agreement without regard to this Section.

IX. INDEMNITY, INSURANCE

A. EVENTS OF DEFAULT

Each of the following, if material, shall constitute an event of default (“Event of Default”) hereunder, in each case subject to any applicable cure rights, including without limitation the cure rights provided in Section IX.B:

1. Failure to correct breach. Failure to correct any breach of this Franchise Agreement within the applicable cure period (as defined below).
2. Company bankruptcy. The company files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents 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 the company or necessary for this Franchise Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the company for a part of the company’s operating assets or any substantial part of the company’s property, or shall make any general assignment for the benefit of the company’s creditors, or shall fail generally to pay the company’s debts as they become due.
3. Court order or decree. Any court having jurisdiction shall enter a decree or order for relief in respect of the company, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or the company 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 company or for any part of the company’s operating equipment or assets, or order the winding up or liquidation of the affairs of the company.

B. CURE RIGHTS.

Notwithstanding any other provision of this Section IX to the contrary, the City shall provide the Company with reasonable notice of and a reasonable opportunity to cure any breach of this Franchise Agreement during the time periods set forth below (the “Cure Period”). Any breach that is timely cured by Company shall not be determined to constitute an Event of Default. The Company shall begin cure of any breach or default as soon as it becomes aware of the breach or default, whether discovered by the Company or through notice from the City. Upon becoming cognizant of the default, the Company shall proceed to cure such default as follows:

1. Immediately, if the default is such that in the determination of the City, the health, safety, or welfare of the public is endangered thereby; or
2. Within thirty (30) days of giving or receiving notice of default; provided that if the nature of the default is such that it will reasonably require more than thirty (30) days to cure, the Company shall have such additional time as is reasonably needed to expeditiously complete a cure. During any default cure period, the Company shall provide the City weekly written status of progress in curing such default.

C. RIGHT TO TERMINATE UPON DEFAULT

Upon an Event of Default by the Company, the City shall have the right to terminate this Franchise Agreement, subject to review as provided in Section IX.F.

D. CUMULATIVE SPECIFIC PERFORMANCE

The City's right to terminate the Franchise Agreement under Section IX C is not exclusive, and the City's termination of the Franchise Agreement shall not constitute an election of remedies. Instead, all remedies provided for in this Franchise Agreement shall be in addition to any and all other non-duplicative legal and equitable rights and remedies which the City may have under law or as otherwise provided in this Franchise Agreement.

E. EXCUSE FROM PERFORMANCE

1. Excuse from Performance.

The Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by Uncontrollable Circumstances beyond the control of and not the fault of the Party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action lawfully conducted by the Company's employees or lawfully directed at the Company, or a subsidiary, shall not constitute an excuse from continuing to provide a reasonably satisfactory level of performance during the pendency thereof, but the Company shall not be required to adhere strictly to the specific requirements of this Franchise Agreement regarding routes, collection times or similar matters; provided, however, that: (i) in no event shall more than nine days elapse between pickups for Residential Customers, (ii) pickup delays for Commercial Customers shall not exceed three days, and (iii) all Customers shall receive at least 24 hours' notice of deviations from collection routes or times. The terms of this paragraph shall not excuse the Company's compliance with its obligations under applicable law, but the City will not claim or assert that the Company is in breach of this Franchise Agreement with respect to such labor unrest so long as it complies with the requirements of this paragraph.

2. Notice.

The Party claiming excuse from performance shall, within two (2) business days after such party has notice of such cause, give the other party notice of the facts constituting such cause, efforts undertaken by the Company to attempt to perform this Franchise Agreement, the estimated timelines for such performance, and asserting its claim to excuse under this Section; provided, that failure to give such notice shall not eliminate the excuse from performance except to the extent the other Party shall have been prejudiced by such failure.

F. DISPUTE RESOLUTION

1. Reference of dispute.

Any dispute seeking damages and any dispute seeking other legal or equitable relief, including but not limited to specific enforcement of any provision hereof, shall be heard and determined as provided below in this Section IX.F.

2. Dispute Resolution Procedures.

(a) Negotiations. In the event that any dispute may arise, the parties shall first seek to resolve any disputes by negotiations between a senior executive of the Company and the City Administrator (the “Senior Executives”).

(i) Notification. When a party believes there is a dispute relating to the Franchise Agreement, the party will give the other party written notice of the dispute.

(ii) Meeting among Senior Executives. The Senior Executives shall meet at a mutually acceptable time and place within thirty (30) days after the date of the notice to exchange relevant information and to attempt to resolve the dispute. If a Senior Executive intends to be accompanied at a meeting by an attorney, the other party’s Senior Executive shall be given at least three (3) business days’ notice of such intention and may also be accompanied by an attorney.

(iii) Confidentiality. All negotiations are confidential and shall be treated as compromise and settlement negotiations under the State of California Rules of Evidence.

(b) City Council. If the dispute has not been resolved within thirty (30) days after the date of the notice of a dispute, or if the party receiving such notice fails or refuses to meet within such time period, either party may submit the dispute to the City Council for resolution by making written request to the City Council. The City Council shall consider the dispute at a meeting to be held within thirty (30) days following receipt of such request.

(c) Litigation. If a dispute has not been resolved to the satisfaction of the parties within sixty (60) days after the written submission to the City Council, then either party may initiate litigation in the courts of the State of California, which shall have exclusive jurisdiction over such disputes. The exclusive venue for such disputes shall be Nevada County.

3. Interim Measures.

Notwithstanding the requirements for alternative dispute resolution procedures (such as negotiation and submission to the City Council), either party may apply to the courts of the State of California for equitable relief, including temporary restraining orders, injunctions, attachments and conservation orders in appropriate circumstances.

4. Costs and Attorney's Fees.

In the event of any action or litigation to enforce this Franchise Agreement, for interpretation or construction of this Franchise Agreement, or on account of any default under or breach of this Franchise Agreement, each party to such action, arbitration or litigation shall bear its own costs and expenses in connection with such action or litigation.

5. Punitive Damages.

Penal, punitive, treble, multiple, consequential, incidental or similar damages may not be recovered or awarded.

X. ASSIGNMENT

A. "Assignment" means: (i) a sale, exchange or other transfer of this Franchise Agreement, the Company's rights hereunder, or substantially all of the Company's assets dedicated to service under this Franchise Agreement to a third party; (ii) a sale, exchange or other transfer of thirty (30) percent or more of the outstanding common stock of the Company; (iii) any reorganization, consolidation, merger re-capitalization, stock issuance or re-issuance, voting trust, pooling Agreement, escrow arrangement, liquidation or other transaction to which the Company or any of its shareholders is a party which results in a change of ownership or control of thirty (30) percent or more of the value or voting rights in the stock of the Company; and (iv) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership; provided that the effect of such occurrence is to change control of the Company or responsibility for this Franchise Agreement to an entity that is not controlled by Company's ultimate parent entity (as defined on the effective date of this Contract in 16 CFR §801.1(a)(3)). For purposes of this Section, the term "proposed assignee" shall refer to the proposed assignee(s) or other successor(s) in interest pursuant to the assignment. If the Company is a subsidiary of another corporation or business entity, any "Assignment," as defined above, by the parent company or corporation shall be considered an Assignment by the Company; provided, however, that no such occurrence shall constitute an "Assignment" if, following such occurrence, the surviving ultimate parent entity is owned by a large, fluid aggregation of shareholders where no shareholder owns more than ten percent (10%) of the voting securities of the surviving

ultimate parent entity (excluding, however, any such shareholder that prior to such transaction owned 10% or more of the voting securities of the ultimate parent entity of Company). Notwithstanding any other provision of this Section X, reorganizations, mergers, consolidations, sales of equity or assets or similar transactions between or among entities owned by the same ultimate parent, including but not limited to Company and regardless of which entity is the survivor, do not constitute an Assignment.

B. In connection with any proposed Assignment, the Company shall furnish the City with satisfactory proof that any proposed assignee has the demonstrated technical and financial capability to perform all Franchise Services, including:

1. That the proposed assignee has at least 10 years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Company under this Franchise Agreement.
2. In the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any State, federal or local laws and the assignee has provided City with a complete list of such citations and censures.
3. The proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion.
4. The proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, State and local laws regulating the collection and Disposal of Solid Waste including hazardous substances.
5. Assignee has experience in billing Customers for a city of comparable size to City of Grass Valley in which the company has provided residential and Commercial Service, and has successfully performed the billing and collection services for a minimum of five years for Residential and Commercial Customers.
6. Financial assurances that confirm the assignee's financial ability to perform the Agreement, and the City may require changes to the insurance coverages provided in this Franchise Agreement (including without limitation insurance products, coverage limits, deductibles and self-insured retentions) as appropriate in view of the assignee's financial capability and to confirm the assignee's financial ability to perform all Franchise Services and its other responsibilities under this Franchise Agreement.
7. Any other information required by City to ensure the proposed assignee can fulfill the terms of this Franchise Agreement in a timely, safe and effective manner.

The City shall consent to such an assignment if such information reasonably demonstrates that the proposed assignee has the demonstrated technical and financial capability to perform all Franchise Services.

C. If the City consents to an Assignment at the point of transition, the Company shall cooperate with the City and subsequent Company(s) or subcontractor(s) to assist in an orderly transition which shall include the Company providing route lists and billing information. If any entity succeeds to the rights duties and obligations of the Company under this Franchise Agreement in conformity with the terms of this Section X (including with the City's consent, where required), then the City shall execute a novation whereby such new entity shall assume all of the rights, duties and obligations of the Company under this Franchise Agreement and the City shall release the Company of all obligation and liability under this Franchise Agreement.

D. The Company shall not delegate or subcontract its obligations under this Franchise Agreement to any other person or entity without the prior written consent of the City, other than a delegation or subcontract to an affiliate of the Company.

XI. MISCELLANEOUS

A. AMENDMENT

Except for rate and fee adjustments made pursuant to Section VI of this Franchise Agreement, this Franchise Agreement may be amended or modified only by a written agreement duly authorized and executed by both City and Company.

B. INDEPENDENT COMPANY

It is expressly understood and agreed that Company shall perform all work and services described herein as an independent Company and not as an officer, agent, servant or employee of City; that Company shall have the exclusive control over the details of the services and work performed hereunder and all persons performing the same; that Company shall be solely responsible for the acts and omissions of its officers, agents, employees, Company's and subcontractors, if any; and that nothing herein shall be construed as creating a partnership or joint venture between City and Company. Neither Company nor its officers, employees, agents or subcontractors shall obtain any rights to retirement benefits, workers' compensation benefits or any other benefits which accrue to City employees.

C. RIGHT OF ENTRY

Company shall have the right, until receipt of written notice revoking permission to pass is delivered to Company, to enter or drive on any private street, court, place, easement or other private property for the purpose of collecting or transporting Franchise Materials of the Owner of or Customer located on the private street, easement, or property, or its lawful occupant.

D. LAW TO GOVERN

It is understood and agreed by the parties hereto that the laws of the State of California, other than laws regarding choice of law, shall govern the rights, obligation, duties and liabilities of the parties to this Franchise Agreement and shall govern the interpretation of this Franchise Agreement.

E. FEES AND GRATUITIES

Company shall not, nor shall it permit any agent, employee or subcontractor employed by it to, request, solicit, demand or accept, either directly or indirectly, any compensation or gratuity for the collection of Franchise Materials otherwise required to be collected under this Franchise Agreement, other than acceptance by drivers of holiday gifts offered by customers of a reasonable value.

F. NOTICES

All notices, demands, requests, consents or other communications which this Franchise Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, telecopier (with written confirmation of receipt), or a nationally recognized overnight delivery service (receipt requested), addressed to the respective party as follows:

To CITY: City of Grass Valley
 Attn: City Administrator
 125 East Main Street
 Grass Valley, CA 95945

To COMPANY: Waste Management of Grass Valley
 Attn: District Manager
 13083 Grass Valley Ave.
 Grass Valley, CA 95945

With a required copy to:

USA Waste of California, Inc.
Attn: Area Vice President
11931 Foundation Place
Suite 200
Gold River, CA 95670

or to such address as either party may from time to time designate by notice to the other given in accordance with this Section. Such notice shall be deemed effective on the date personally served or, if mailed, three (3) business days from the date such notice is deposited in the mail.

G. SEVERABILITY

If any non-material provision of this Franchise Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Franchise Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

H. GOOD FAITH AND EXERCISE OF OPTIONS

Parties will exercise of any approval, disapproval, consent, option, discretion, election, opinion or choice under this Franchise Agreement, make a requirement under this Franchise Agreement or interpret this Franchise Agreement (“Discretionary Action”) reasonably. Parties will exercise their rights and remedies in good faith in accordance with Applicable Law. Any referee, court or other decision-maker must find the party’s exercise to be reasonable.

I. ENTIRE AGREEMENT; PRIOR AGREEMENTS; WAIVER

This Franchise Agreement, including all Exhibits attached hereto, constitutes the full and entire agreement between the parties with respect to the matters covered herein. All prior and contemporaneous agreements, understandings, negotiations, writings and other communications between the parties are hereby superseded and are no longer of any force and effect, except to the extent that the terms of such communications are expressly addressed in this Franchise Agreement. As of the Effective Date, this Franchise Agreement shall supersede any and all prior agreements between the parties. No waiver of any provision of this Franchise Agreement shall be deemed or shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver.

J. SECTION HEADINGS

The section and subsection headings in this Franchise Agreement are for convenience of reference only and are not intended to be used in the construction of this Franchise Agreement nor to alter or affect any of its provisions.

K. INTERPRETATION

The language of each and all paragraphs, terms and/or provisions of this Franchise Agreement, shall, in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Franchise Agreement.

L. THIRD PARTIES

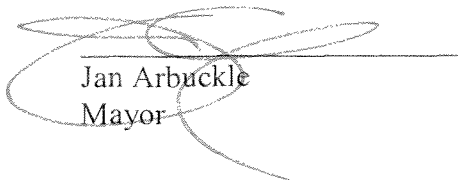
Nothing in this Franchise Agreement expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the Parties hereto and their successors and permitted assigns, any rights or remedies under or by reason of this Franchise Agreement.

M. AUTHORITY


All individuals executing this Franchise Agreement on behalf of the City or the Company represent and warrant that they are duly authorized to execute and deliver this Franchise Agreement to the other Party.

IN WITNESS WHEREOF, the parties hereto have caused this Franchise Agreement to be duly executed as of the day and year first above written.

For City


Jan Arbuckle
Mayor

For Company


Name: Alex Osqueva
Title: Vice President & General Mgr.

APPROVED AS TO FORM:



~~Michael G. Colantuono, City Attorney~~
DAVID J. RUDERMAN, ASSISTANT
CITY ATTORNEY

Exhibit 1
Recyclable Materials

- Aluminum cans
- Glass jars and bottles
- Paper junk mail
- Colored paper and bags
- Steel, bi-metal, and tin cans
- Mixed paper
- Brown paper bags
- Plastic bottles and jugs
- Chip board
- Catalogs
- Mixed plastic containers (#1-7)
- Clean foil containers
- Paper egg cartons
- Corrugated cardboard
- Small scrap and cast aluminum
- “Bagged in bag” film plastic
- Rigid plastics that fit in Recycling Cart

Biomass will be Recycled or otherwise processed or disposed of as provided in the requirements applicable to Green Waste.

Exhibit 2
Service Rates
City of Grass Valley – Maximum Rates

		2011	2012	2012
RESIDENTIAL	RENTAL	GATE FEE	SERVICE	RATE
1 CAN		\$ 3.65	\$12.99	\$ 16.64
2 CAN		\$ 7.29	\$16.50	\$ 23.79
3 CAN		\$ 10.93	\$20.05	\$ 30.98
EXTRA CAN		\$ 0.84	\$3.80	\$ 4.64
MINI CAN		\$ 2.80	\$9.63	\$ 12.43
96 GALLON WASTE WHEELER	\$ 3.82	\$ 10.93	\$20.16	\$ 34.91
1 HOPPER		\$ 10.61	\$23.08	\$ 33.69
2 HOPPER		\$ 21.22	\$46.16	\$ 67.38
64 GALLON GREENWASTE		\$ 0.84	\$3.64	\$ 4.48
96 GALLON GREENWASTE		\$ 0.89	\$3.83	\$ 4.72
COMMERCIAL	RENTAL	GATE FEE	SERVICE	RATE
1 CAN		\$ 3.87	\$13.34	\$ 17.21
2 CAN		\$ 7.76	\$26.66	\$ 34.42
3 CAN		\$ 11.62	\$39.98	\$ 51.60
4 CAN		\$ 15.49	\$53.92	\$ 69.41
5 CAN		\$ 19.37	\$68.12	\$ 87.49
6 CAN		\$ 23.24	\$79.96	\$ 103.20
EXTRA CAN		\$ 0.89	\$6.16	\$ 7.05
WASTE WHEELER	\$ 3.93	\$ 11.62	\$37.67	\$ 53.22
W/W x 2	\$ 4.05	\$ 23.24	\$77.60	\$ 104.89
W/W x 3	\$ 4.05	\$ 34.86	\$116.40	\$ 155.31
1 HOPPER = 2 YDS		\$ 11.27	\$53.42	\$ 64.69
2 HOPPER = 4 YDS		\$ 22.54	\$106.37	\$ 128.91
COMPACTOR - per cubic yard		\$ 16.91	\$24.60	\$ 41.51
20 YD DROP BOX			\$167.94	\$ 167.94
30 YD DROP BOX			\$167.94	\$ 167.94
20 - 30 YD GREEN WASTE			\$167.94	\$ 167.94
COMMERCIAL TRASH BINS:	No longer offered			
1.5 Yd x 1	\$ 8.27	\$ 36.64	\$137.78	\$ 182.69
2	\$ 8.27	\$ 73.27	\$247.26	\$ 328.80
1.5 Yd EXTRA PICKUP		\$ 2.82	\$40.07	\$ 42.89
2 Yd EOW	\$ 13.51	\$ 36.64	\$131.34	\$ 181.49
2 Yd x 1	\$ 11.03	\$ 48.85	\$182.03	\$ 241.91
2	\$ 11.03	\$ 97.68	\$304.40	\$ 413.11
3	\$ 11.03	\$ 146.54	\$423.18	\$ 580.75
4	\$ 11.03	\$ 195.38	\$573.99	\$ 780.40
5	\$ 11.03	\$ 244.23	\$708.05	\$ 963.31
6	\$ 11.03	\$ 293.07	\$844.59	\$1,148.69

2 Yd EXTRA PICKUP		\$ 11.27	\$53.42	\$ 64.69
3 Yd x 1	\$ 11.03	\$ 73.27	\$225.85	\$ 310.15
2	\$ 11.03	\$ 146.54	\$370.16	\$ 527.73
3	\$ 11.03	\$ 219.80	\$521.45	\$ 752.28
4	\$ 11.03	\$ 293.07	\$666.75	\$ 970.85
5	\$ 11.03	\$ 366.34	\$814.09	\$1,191.46
6	\$ 11.03	\$ 439.61	\$975.30	\$1,425.94
3 Yd EXTRA PICKUP		\$ 16.91	\$80.13	\$ 97.04
4 Yd x 1	\$ 11.03	\$ 97.68	\$287.65	\$ 396.36
2	\$ 11.03	\$ 195.38	\$478.60	\$ 685.01
3	\$ 11.03	\$ 293.07	\$706.51	\$1,010.61
4	\$ 11.03	\$ 390.76	\$927.41	\$1,329.20
5	\$ 11.03	\$ 488.45	\$1,152.32	\$1,651.80
6	\$ 11.03	\$ 586.13	\$1,359.33	\$1,956.49
4 Yd EXTRA PICKUP		\$ 22.54	\$106.82	\$ 129.36
6 Yd x 1	\$ 14.63	\$ 146.54	\$329.19	\$ 490.36
2	\$ 14.63	\$ 293.07	\$537.82	\$ 845.52
3	\$ 14.63	\$ 439.61	\$778.31	\$1,232.55
4	\$ 14.63	\$ 586.13	\$1,054.07	\$1,654.83
5	\$ 14.63	\$ 732.68	\$1,248.35	\$1,995.66
6	\$ 14.63	\$ 879.21	\$1,479.18	\$2,373.02
6 Yd EXTRA PICKUP		\$ 33.91	\$160.24	\$ 194.15
Temp 2 YARD BIN		\$ 11.27	\$55.97	\$ 67.24
Temp 3 YARD BIN		\$ 16.91	\$83.95	\$ 100.86
Temp 4 YARD BIN		\$ 22.54	\$86.49	\$ 109.03
Temp 6 YARD BIN		\$ 33.81	\$107.74	\$ 141.55
COMMERCIAL RECYCLE BINS:				
OCC 2 YD 1X WK - customer owned bin	\$ 11.03		\$68.53	\$ 79.56
OCC 2 YD 2X WK - customer owned bin	\$ 11.03		\$115.00	\$ 126.03
OCC 2 YD EOW - WM bin	\$ 11.03		\$27.84	\$ 38.87
PAPER 2 YD 1X WK - WM bin	\$ 11.03		\$33.66	\$ 44.69
SPECIAL SERVICE FEES			SERVICE	RATE
Bad/Return Check Fee			\$29.04	\$ 29.04
Activation/Delivery Fees - Residential			\$17.45	\$ 17.45
Activation/Delivery Fees - Commercial			\$29.04	\$ 29.04
Restart Fee w/o delivery			\$13.95	\$13.95
Restart Fee w/delivery			\$40.63	\$40.63
Replacement Fee			\$87.11	\$ 87.11
Early Retrieval - Residential - Service less than 1 yr			\$29.04	\$ 29.04

Exhibit 3 City Services

The following locations will be provided regular serviced by Waste Management for the disposal of solid waste, recyclables and green waste without charge to the City:

Mautino Park, 10609 Alta Street
Condon Park,
Condon Park LOVE Building
Condon Park large BBQ area
Memorial Park
E. Daniels Park
City Hall, 125 E. Main Street
Animal Control, 556 Freeman Lane
Streets/Public Works 556, Freeman Lane
Wastewater Treatment Facility, 556 Freeman Lane
Fire Station 1,
Fire Station 2,
Fire Station2, Training Facility,
Parking Lots located at 168 S. Auburn, S. Church, Richardson,
Mini Park
Bank Street Park
Downtown trash/recycling cans, Historic Downtown area, cans in excess of 30, will be charged the normal service fees.
The City reserves the right to designate up to 5 additional sites for solid waste disposal services.

City solid waste disposal services will not exceed a four yard bin, or equivalent, serviced not more than 2 times a week. Additional services may be provided for the incremental cost of service. Containers for Green Waste and Recyclable Materials will be such to meet the requirements of the City.

Special Services:

Three community clean up events each year not to exceed three, 3 yard bins for each event. The time and location of clean ups to be mutually agreed to by the City and Waste Management.

The following will be serviced by Waste management for the cost of gate fees only:

Streets 556 Freeman Lane – Debris Box
Green Waste Collection from City Parks and open spaces
Any other Debris Box used for City debris or C&D collection