

AMENDED AND RESTATED  
AGREEMENT  
BETWEEN THE CITY OF GRIDLEY  
AND  
USA WASTE OF CALIFORNIA INC.,  
FOR COLLECTION OF SOLID WASTE, RECYCLABLES,  
GREEN WASTE, AND  
TRANSFER STATION OPERATION SERVICES

DATED March 1, 2013

## Table of Contents

<b>FRANCHISE AGREEMENT .....</b>	<b>1</b>
<b>I. DEFINITIONS .....</b>	<b>1</b>
<b>II. GRANT OF EXCLUSIVE AGREEMENT.....</b>	<b>11</b>
<b>A. SCOPE OF EXCLUSIVE FRANCHISE .....</b>	<b>11</b>
<b>B. COMPANY RESPONSIBILITY .....</b>	<b>11</b>
<b>C. EXCEPTIONS TO FRANCHISE .....</b>	<b>12</b>
<b>D. TERM OF AGREEMENT.....</b>	<b>13</b>
<b>E. TITLE TO FRANCHISE MATERIALS .....</b>	<b>13</b>
<b>F. ANTI-SCAVENGING ENFORCEMENT .....</b>	<b>13</b>
<b>III. FRANCHISE FEE .....</b>	<b>14</b>
<b>A. CITY FRANCHISE FEE .....</b>	<b>14</b>
<b>B. UNDER AND OVER PAYMENTS .....</b>	<b>14</b>
<b>C. FINANCIAL REVIEW .....</b>	<b>14</b>
<b>IV. SERVICES OF COMPANY .....</b>	<b>14</b>
<b>A. SERVICES PROVIDED BY COMPANY .....</b>	<b>14</b>
<b>B. SOLID WASTE COLLECTION .....</b>	<b>15</b>
<b>C. RECYCLING .....</b>	<b>18</b>
<b>D. GREEN WASTE .....</b>	<b>20</b>
<b>V. OTHER COMPANY REQUIREMENTS .....</b>	<b>20</b>
<b>A. GENERAL .....</b>	<b>20</b>
<b>B. CHANGE IN OPERATIONS, ADMINISTRATION OR SCHEDULE.....</b>	<b>23</b>
<b>C. ADDITION OF NEW NON-FRANCHISE SERVICES .....</b>	<b>23</b>

<b>VI. TRANSFER STATION OPERATION SERVICES .....</b>	<b>23</b>
A. Transfer Station Operations. ....	23
B. Materials to Be Transferred and Disposed of at the Transfer Station. ....	25
C. Days and Hours of Operation. ....	25
D. City Use of Transfer Station.....	25
E. Company and Other Commercial Hauler Use of Transfer Station.....	25
F. Application and Permit. ....	26
G. Agreement with County. ....	26
H. Inspections.....	26
<b>VII. SERVICE RATES .....</b>	<b>26</b>
A. AMOUNT OF SERVICE RATES .....	26
B. CPI ADJUSTMENT.....	26
C. FUEL COST ADJUSTMENT.....	27
D. REDIRECTION OF FRANCHISE MATERIALS.....	28
E. DISCRETIONARY SERVICE RATE REVIEW REQUEST. ....	28
F. BILLING AND COLLECTION OF ACCOUNTS.....	29
<b>VIII. REPORTS.....</b>	<b>29</b>
<b>IX. INDEMNITY, INSURANCE.....</b>	<b>30</b>
A. INDEMNIFICATION OF THE CITY .....	30
B. INSURANCE SCOPE AND LIMITS .....	30
C. REVOCATION OF PREVIOUS AGREEMENTS. ....	31
D. COMPLIANCE WITH APPLICABLE LAW AND MUNICIPAL CODE.....	32
<b>X. INDEMNITY, INSURANCE.....</b>	<b>32</b>
A. EVENTS OF DEFAULT.....	32
B. CURE RIGHTS.....	32

C.	RIGHT TO TERMINATE UPON DEFAULT .....	33
D.	CUMULATIVE SPECIFIC PERFORMANCE .....	33
E.	EXCUSE FROM PERFORMANCE .....	33
F.	DISPUTE RESOLUTION.....	34
XI.	ASSIGNMENT .....	35
XII.	MISCELLANEOUS .....	37
A.	AMENDMENT .....	37
B.	INDEPENDENT COMPANY .....	37
C.	RIGHT OF ENTRY .....	37
D.	LAW TO GOVERN .....	37
E.	FEES AND GRATUITIES.....	38
F.	NOTICES .....	38
G.	SEVERABILITY.....	38
H.	GOOD FAITH AND EXERCISE OF OPTIONS .....	38
I.	ENTIRE AGREEMENT; PRIOR AGREEMENTS; WAIVER .....	39
J.	SECTION HEADINGS .....	39
K.	INTERPRETATION.....	39
L.	THIRD PARTIES .....	39
M.	AUTHORITY .....	39

AMENDED AND RESTATED  
AGREEMENT  
BETWEEN THE CITY OF GRIDLEY  
AND  
USA WASTE OF CALIFORNIA, INC.,  
FOR COLLECTION OF SOLID WASTE, GREEN WASTE, RECYCLABLES, AND  
TRANSFER STATION OPERATION SERVICES  
FRANCHISE AGREEMENT

THIS AMENDED AND RESTATED FRANCHISE AGREEMENT (this "Franchise Agreement") is made and entered into effective as of March 1, 2013, between the City of Gridley (the "City"), and USA Waste of California Inc. (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 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. Bins.

Bins shall mean those containers provided by the Company for Commercial Customers and 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).

4. 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.

5. City Representative.

City Representative means the City Administrator, or designee.

6. Cart.

Cart means an industry standard receptacle for disposal of Franchise Materials, in a range of sizes including approximately 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.

7. CCR.

CCR has the meaning provided in Section I.1.

8. 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.

9. Commercial Customer.

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

10. 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.

11. 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.

12. 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.

13. 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.

14. Company Service Fee.

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

15. 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.

16. CPI Adjustment.

CPI Adjustment means the annual Rate adjustment as specified in Section VII.B.

17. 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.

18. Customer.

Customer means an individual or entity that 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.

19. Debris Box/Temporary Bins.

- a. Debris Box means a receptacle for Solid Waste and C&D having a capacity of twenty (20) cubic yards or greater 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.
- b. Temporary Bins or “temp bins” will be containers with a capacity greater than a 96 gallon cart and less than the twenty cubic yard debris box.

20. Discretionary Adjustment

Discretionary Adjustment is defined in Section VII.E.

21. Disposal.

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

22. Disposal Fees.

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

23. 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.

24. Effective Date.

Effective Date means March 1, , 2013, the date that Franchise Services shall commence under this Franchise Agreement, as amended.

25. Electronic Waste or E-Waste.

Electronic Waste or E-Waste means waste containing or consisting of electronic devices and components, such as computers, monitors, terminals, computer cards and components, computer peripheral devices, main frame computers, keyboards, mice, printers and scanners, mini-systems, power supply units, servers, connectors/cables, storage discs, consumer electronics, printed circuit boards, televisions, chips and components, cellular and other phones, telecommunications equipment, and fax machines and copiers, but not including Excluded Waste.

26. 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.

27. Franchise.

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

28. 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.

29. 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.

30. Franchise Services.

Franchise Services means all of the duties and obligations of the Company hereunder as stated in this Franchise Agreement. Company shall notify the City should there be more than a 24-hour delay in the service schedules included in this agreement or as amended to this agreement.

31. Fuel Cost Adjustment.

Fuel Cost Adjustment is defined in Section VII.C.

32. 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.

33. 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.

34. 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.

35. Gross Revenues.

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

36. 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.

37. Household Hazardous Waste (or HHW).

Household Hazardous Waste shall have the meaning set forth in California Health and Safety Code Section 25218 and in Title 14, CCR, Section 18502 or successor laws and regulations as may be amended from time to time, but not including any Excluded Waste.

38. 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.

39. 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.

40. 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.

41. Multiple-Family Dwellings.

Multiple-Family Dwellings means any building or structure, or portion thereof used for residential purposes and having four (4) 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.

42. 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.

43. Parties.

Parties mean the City and the Company.

44. PRC.

PRC has the meaning provided in Section I.1.

45. Private Drive(s).

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

46. 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.

47. Processing or Process.

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

48. Public Street(s).

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

49. "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.

50. 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.

51. 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.

52. 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.

53. Recyclables Processing Facility.

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

54. Recycling Program

Recycling Program shall mean an effort by the City to offer convenient and affordable recycling opportunities to all residents of City.

55. 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.

56. Residential Customer.

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

57. 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.

58. 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.

59. 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.

60. 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.

61. 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 VII. The Service Rates include the Franchise Fee.

62. Signature Date.

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

63. 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.

64. 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.

65. Special Services.

Special Services are specific service-related activities, including without limitation lock, gate, and long walk services, or other services for which no Rate is established by the City, that is provided by the Company to Customers for which the Company may charge an additional Fee.

66. 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.

67. State.

State means the State of California.

68. Ton.

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

69. Transfer Station Operations/Transfer Station Operation Services.

Transfer Station Operations/Transfer Station Operation Services means all of the services associated with the operation of the Ord Ranch Road Transfer Station, as provided in this Agreement.

70. Transport.

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

71. 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. Participation in the Company's Solid Waste, Recycling and Green Waste programs shall be mandatory for Residential Customers.
2. The Company shall have the exclusive right and responsibility for the operation of the Ord Ranch Road Transfer Station, in accordance with the provisions of this Agreement, for the term of this Agreement and any extensions thereof.
3. The Company shall dispose of all Solid Waste collected under this Agreement at the designated Disposal Site. The Disposal Site the Company has designated shall be the Neal Road Landfill owned by the County of Butte. The Company reserves the right to direct the Company to dispose of Solid Waste at a particular licensed Disposal Site (which must be a Class III disposal site) suitable for municipal waste.

**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 Sections II.C.2 and 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 for which the Generator receives payment.

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 initial term of this Franchise Agreement shall be for the period commencing on the Effective Date and ending on the last day of the month in which the third anniversary of the Effective Date occurs (the "Initial Term"). Thereafter, this Agreement will be automatically extended by the City beyond the Initial Term for eight successive additional periods of one year (each a "Renewal Term"). The City reserves the right to give the Company written notice to terminate the Agreement at any time past the end of the Initial Term. If the City delivers a termination notice, the Agreement will terminate after the existing term plus one additional year. By way of example, if the city delivers a termination notice 100 days before the end of the current Renewal Term, then the Contract will terminate one year plus the 100 days later (465 days in this example).

**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, five percent (5%) of all revenues collected by the Company resulting from all revenue or compensation to the Company from rates established pursuant to Article VII for Collection of Solid Waste, including for operation of the Ord Ranch Road Transfer Station service and without subtracting the other cost of doing business, 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. 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 VII.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. The Company shall remit the Franchise Fee as part of the quarterly remittance.

#### **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 receive 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 64-gallon Cart. The Company may also collect Solid Waste at Single-Family Residences within the Service Area at additional times or in excess volumes for an additional fee as agreed upon in separate contracts between Company and each customer requesting such service.

### **3. City Facilities' Collection.**

The Company shall collect, transport and dispose of all Solid Waste generated at public facilities identified in Exhibit 3 according to the specified service levels and collection frequency. The Company shall make collections from containers Monday through Friday or on Saturdays following non-working holidays. Collections from bins and debris boxes shall be scheduled at a time mutually agreed upon by the Company and City.

The Company shall provide, at City's direction, additional Solid Waste services entailing:

A. Collection of Solid Waste, Recyclable Materials and Green Waste from City facilities and parks;

B. Provision of debris box service as directed by City; and,

C. Review of plans for land use or property developments with regard to Solid Waste service issues.

At the option of the City, exercised in writing, these additional services may be provided at no charge to the City but shall be reimbursed to the Company through the rates charged other service recipients.

4. Permanent Containers/Debris Box Service.

Company shall provide permanent /debris box Containers for the purpose of Collection of Solid Waste. Company shall deliver to and Collect debris boxes from the location identified by the service recipient. Containers shall be free of graffiti and in good repair. Containers must be clearly marked and identifiable as belonging to Company. Special consideration shall be given when determining the pick-up area for temporary Containers to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated pick up area, if disputed by service recipient or Company, shall be determined by City. Additionally, if in City's opinion the location of an existing pick-up area is inappropriate, City may require the service recipient or Company to relocate the pick-up area.

5. Roll-Off Boxes.

The Company will provide 10 roll-off boxes to the City at no additional charge for the purpose of code enforcement and blight abatement within the City. The Company will deliver the boxes within the City as requested by the City. The Company will provide information for code enforcement to discourage the placement of hazardous materials in these abatement boxes. Should the City decide not to implement this program, it may use the 10 roll-off boxes for other clean-up programs or for the City's use.

6. 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.

7. 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.

8. 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.

9. Cart Replacement.

The Company, without expense to the City or Customer, and within seventy-two hours after notice, shall replace Solid Waste Carts that are lost, stolen or damaged, unless due to customer neglect such as putting hot ashes in the Cart in which case the Company may charge the Customer for the retail costs of the replacement Cart. In addition, the Company will replace Solid Waste Carts damaged due to normal wear and tear and provide free replacements 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.

10. Clean-Up Event.

The Company shall hold one clean-up event per year for the collection of Solid Waste, which shall be open to Residential Customers of the Company in the Service Area. The actual date and time will be set by the Company in coordination with the City at least ninety (90) days in advance. The Company shall reasonably inform Residential Customers within the Service Area, at least two weeks in advance of the clean-up event, of the date, time, location and other information pertinent to the clean-up event.

11. Senior Residential Service.

Senior citizens may receive a 35-gallon Solid Waste Cart at the rate provided in Exhibit 2. In order to qualify for the reduced senior rate no more than two inhabitants may reside at the property, one of whom is shown by driver's license or other identification acceptable to Company to be sixty-five (65) years of age and older.

## 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 receive 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 64-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 free replacements of Recycling Carts that are lost, stolen or damaged, unless due to customer neglect such as putting hot ashes in the Cart in which case the Company may charge the Customer for the retail costs of the replacement Cart. In addition, the Company will replace Recycling Carts damaged due to normal wear and tear and provide free replacements for graffiti on Recycling Carts without charge. 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.

### 4. 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 receiving 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.

5. 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.

6. Collection Days and Times.

To the maximum extent possible, Collection of Recyclables from all Residential Customers shall be made bi-weekly and will be scheduled on the same day as Solid Waste collection. Collection from Commercial Premises shall be made on a regular schedule as negotiated between the Commercial Business and the Company. .

7. 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.

8. Materials to be Recycled.

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

**D. GREEN WASTE**

1. Green Waste Program.

Residential Customers and Commercial Customers will participate in a Green Waste Program.

2. Green Waste Collection.

The Company shall, once every other week, Collect and Transport Green Waste set out in Carts.. 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. For residences with lots less than 7,000 square feet, the Company will provide one additional Green Waste cart upon the request of the customer. For residential lots at or above 7,000 square feet, the Company, will provide three additional Green Waste Carts upon the request of the customer.

3. Cart Replacement.

The Company, without expense to the City or Customer, and within seventy-two hours after notice, shall provide free replacements of Green Waste Carts that are lost, stolen or damaged, unless due to customer neglect such as putting hot ashes in the Cart in which case the Company may charge the Customer for the retail costs of the replacement Cart. In addition, the Company will replace Green Waste Carts damaged due to normal wear and tear and provide free replacements 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 six 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. Additional Green Waste Carts.

During leaf season (beginning October 1<sup>st</sup> of each year and ending November 30<sup>th</sup> of each year), the Company, at the request of a residential customer and at no additional cost to the customer, will provide three additional Green Waste Carts.

**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, 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. 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.

4. 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.

5. 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.

6. Service Schedule.

In January of each calendar year, the Company shall provide all customers with 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.

7. 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.

8. 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.

## **B. CHANGE IN OPERATIONS, ADMINISTRATION OR SCHEDULE**

The Company shall 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. TRANSFER STATION OPERATION SERVICES**

### **A. TRANSFER STATION OPERATIONS.**

The Company shall, with the consent of the County of Butte, operate the Ord Ranch Road Transfer Station for the receipt of self-haul waste from residences and businesses of the City and surrounding areas of Butte County (including the area of the City and adjacent territory).

The Company shall furnish all labor, tools and equipment necessary for the operation of the Ord Ranch Road Transfer Station and shall be responsible for all required station, building and grounds clean up and maintenance. Supervision by an experienced and qualified person shall be provided to effect clean, courteous and safe operation. Except for household hazardous waste, the Company shall not sub-contract with any other commercial or other solid waste collecting or hauling companies, corporation or individuals to accept and transfer waste without specific written consent from the City.

1. Transfer Operations. Transfer operations to be performed by the Company include, but are not necessarily limited to: the screening of incoming loads for hazardous waste, or other unacceptable material at a level consistent with or greater than that required by the applicable regulations; receipt of acceptable Solid Waste; the transfer of Solid Waste from the designated tipping area to the Company provided (40) to sixty five (65) yard transfer containers; and transport of Solid Waste to the Disposal Site.

2. Residential Household Hazardous Waste Program. Company agrees to conduct a Residential Customer household hazardous waste program at the Ord Ranch Road Transfer Station free of charge to City residents. As a part of this program, the Company shall conduct appropriate public awareness and education programs concerning the need to separately dispose of certain hazardous wastes

used commonly for residential use. Company shall further institute a once a month collection of household hazardous waste at the Ord Ranch Road Transfer Station, including a load check program at the landfill site. Materials to be accepted shall include, at a minimum, antifreeze, batteries, oil, paint and materials containing chlorofluorocarbon (CFC).

3. Transfer Station Voucher. City will provide each dwelling unit receiving residential services with one "Transfer Station Voucher" on a schedule and on a form to be approved by the Company. Each voucher will entitle a resident of that dwelling unit to dispose at no cost of up to two (2) cubic yards of refuse at the Ord Ranch Road Transfer Station during the term of this Agreement. To be valid, the voucher must be presented upon entrance to the transfer station. Notwithstanding the foregoing, the voucher shall not permit the disposal of commercial waste or any materials that under current or future statute, ordinance or regulation require the application of special treatment, handling, or disposal practices beyond those normally required for solid waste, including without limitation dirt, concrete, tires, liquids, toxic or hazardous materials, cathode ray tubes (CRT), materials containing CFC's, and large or heavy metal objects such as auto bodies, engines, transmissions, refrigerators, and air-conditioners; provided, however, that Company may, in its discretion, accept such waste and materials for an additional charge to be determined by Company.

4. Senior Bulky Waste Collection. Upon request by the City, the Company will provide at no additional charge curbside collection of Bulky Waste for Residential Customers who request such service, are over 65 years of age and do not have a vehicle to use the voucher at the transfer station; provided that the Company's obligation shall be limited to collecting Bulky Waste consisting of no more than four cubic yards in aggregate per household per year. The Company's obligations shall be limited to the first 25 qualifying individuals requesting service during each calendar year. Such services will be provided on a schedule mutually agreed upon by City and the Company. The Company may charge an additional charge of \$35 for special handling items, such as a refrigerator requiring refrigerant evacuation. Should the City decide not to implement this program, the City may utilize the 25 four cubic yard cleanup bins for code enforcement, other clean-up programs or for the City's use. For purposes of this paragraph "Bulky Waste" excludes Hazardous Waste, items larger than four cubic yards and items of excessive size or density, such as engine blocks, spas, boats and trailers.

5. Drop-Off Recycling Center. As part of the Transfer Station Operation Services the Company agrees to provide and maintain a drop-off recycling center at the Ord Ranch Road Transfer Station. Materials to be accepted are to include, but are not necessarily limited to: aluminum cans, glass bottles and jars, e-waste, metal cans and narrow neck plastic containers (plastic 1 & 2), and newspaper, mixed paper (including but not limited to magazines, junk mail, brown paper bags, and white and colored paper), and corrugated cardboard.

**B. MATERIALS TO BE TRANSFERRED AND DISPOSED OF AT THE TRANSFER STATION.**

The Company shall accept and transfer all self-hauled solid waste within the jurisdiction of the City and in the Gridley-Biggs County areas and delivered to the Ord Ranch Road Transfer Station with the exception of the following materials:

- Car bodies
- Agricultural Pesticides and
- Special Class 1 waste

Company shall have sufficient bins on hand such that no one be turned away who presents acceptable waste during the hours the transfer station is open. Delivery of Solid Waste, Recyclable Materials, Green Waste or any other materials to the Ord Ranch Road Transfer Station by the Company or any other commercial hauler or collector is not permitted without the written authorization of the City.

**C. DAYS AND HOURS OF OPERATION.**

The Station will be open to the public, at a minimum, every Saturday and Sunday unless Saturday or Sunday falls on a recognized holiday, between the hours of 9:00 a.m. and 5:00 p.m. Company may remain open additional days and additional hours if the volume of solid waste is such that additional time is warranted. In the event that Company does desire to operate on additional days, Company shall give the City thirty (30) days' notice of its intention to do so.

**D. CITY USE OF TRANSFER STATION.**

The City reserves the right to enter the Ord Ranch Road Transfer Station at any time, including non-operating hours, for its own use for the purpose of dumping street sweepings and refuse. There shall be no charge to the City for this material.

**E. COMPANY AND OTHER COMMERCIAL HAULER USE OF TRANSFER STATION.**

1. Company Use of Transfer Station. The Company shall have the right to use the Ord Ranch Road Transfer Station for the transfer of Solid Waste and Recyclable Materials. Should the Company not be able to use the Ord Ranch Road Transfer Station for this intended purpose due to regulatory prohibitions or inability to effectively operate the transfer station as proposed due to lack of effective due diligence or other factors within its control, it shall make alternative arrangements for handling of this material at no additional cost to the City.

Company shall notify the City in writing of any proposed changes to the use of the Ord Ranch Road Transfer Station from that described in its Proposal. Approval of any such proposed changes shall be entirely at the discretion of the City, and shall be provided to the Company in writing.

2. Commercial Hauler Use of Transfer Station. The City reserves the right to authorize the use of the Ord Ranch Road Transfer Station for receipt of Solid Waste, Recyclable Materials, Plant Materials or any other materials by other commercial haulers or collectors. Any such use will be subject to a separate Agreement between the Company and the City.

#### **F. APPLICATION AND PERMIT.**

Attached hereto and made a part hereof is a copy of the Solid Waste Facilities Permit for the Ord Ranch Road Transfer Station (Attachment A). The requirements and the provisions of said Permit are incorporated herein and made a part of this Agreement, and Company agrees to abide in all respects by the requirements of said Permit.

#### **G. AGREEMENT WITH COUNTY.**

Attached hereto (Attachment B) and made a part hereof is a copy of the "Agreement Between the County of Butte and the City of Gridley for the City's Use of Certain Premises" (City/County Transfer Station Agreement). The requirements and the provisions of said City/County Transfer Station Agreement are incorporated herein and made a part of this Agreement, and Company agrees to abide in all respects by the requirements of said City/County Transfer Station Agreement. The City shall make a good faith effort to extend the term of the City/County Transfer Station Agreement for an additional period ending no earlier than eight years following the end of the Initial Term. Should the County decline to extend or renew the Transfer Station Agreement, the City and Company will meet to determine impacts and options.

#### **H. INSPECTIONS.**

To ensure that the regulations and laws for the operation of the Ord Ranch Road Transfer Station are met, the site and operation may be inspected during the term of this Agreement by a representative of the City, State or other authorized agency to assure compliance.

### **VII. 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.

#### **B. CPI ADJUSTMENT**

The Service Rates and Transfer Station rates set forth in Exhibit 2 shall be adjusted on March 1<sup>st</sup> of each year, beginning March 1<sup>st</sup> 2014, and annually thereafter to reflect ninety-five percent (95%) of the annual change in the U.S. City Average, Consumer Price Index (CPI), All Items, 1982-84 100 for All Urban Consumers (CPI-U), compiled and published by the United States Department of Labor; Bureau of Labor Statistics. This annual adjustment to the rates will be based on 95-percent of the annual percentage change in the Consumer Price Index for July of the

current year as compared to July of the prior year (CPI 95% Rate Adjustment Factor). This adjustment shall not apply to that portion of the rates related to Processing Facility Tip Fees (Processing Fees) and Solid Waste Disposal fees (Landfill Tip Fees) that are not regulated by the Company or an affiliate of the Company but shall apply to any such fees that are regulated by the Company or an affiliate of the Company (e.g., Processing Fees for Recyclable Materials processed at the Company's North Valley Disposal and Recycling Material Recovery Facility). Any Processing Fees and Landfill Tip Fees that are not regulated by the Company or an affiliate of the Company shall be adjusted in proportion to any changes in said fees, if and when such changes occur. No other adjustment to this portion of the rates will occur.

The Company shall submit a formal Request for Rate Adjustment to the City on an annual basis no later than September 1<sup>st</sup> of the current year.

### **C. FUEL COST ADJUSTMENT.**

1. Entitlement to Fuel Cost Adjustment. The Service Rates set by this Agreement are calculated to pay certain expenses and costs that are of a contingent and uncertain nature. Therefore, in addition to the CPI Adjustment and other rate adjustments provided by this Article VII, the Service Rates shall be further adjusted for changes in fuel costs associated with performance of the services hereunder in the manner provided below.
2. Procedural Requirements. The Fuel Cost Adjustment shall be made annually concurrently with and using the same time frames as the adjustment for changes in the Consumer Price Index as contemplated by Section VII.B.
3. Formula for Fuel Cost Adjustments. The fuel cost adjustment shall be calculated by the following formula:

$$(1 + [(Fuel\ Cost\ Change - CPI\ Change) \times Fuel\ Percentage]) \times Old\ Rate = New\ Rate$$

The terms used in the preceding formula shall have the following meanings:

"Fuel Cost Change" means, for No. 2 diesel fuel, the average price for California No. 2 diesel fuel for the most recently completed calendar year divided by such average price for the calendar year preceding the most recent calendar year. The price used to compute the Fuel Cost Change shall be the price reported by the United States Department of Energy, Energy Information Administration. In the event that price is no longer reported, the parties will designate a new methodology for determining the price based on comparable data. For fuels other than No. 2 diesel, the Company shall calculate the change in fuel cost using the same time periods and a reasonably comparable fuel price index.

"CPI Change" means the average CPI index for the U.S. City Average, All Items, 1982-84 = 100, for All Urban Consumers, for the most recently completed calendar year divided by such average price for the calendar year preceding the most recent calendar year.

“Fuel Percentage” means the Company’s total cost for diesel fuel (or such other fuel as is employed by Company) incurred during the most recent calendar year divided by Company’s total operating revenue for such calendar year, in both cases calculated for Company’s operations district that includes the City.

“Old Rate” means each of the rates for services as they may have been previously adjusted or amended.

“New Rate” means the new rate calculated pursuant to the preceding formula that will replace the Old Rate.

4. Fuel Cost Floor. This rate adjustment for fuel costs shall be in addition to, and not in lieu of, any other rate increase to which Company may be entitled under this Agreement. Under no circumstances may an adjustment for fuel costs reduce a rate below the initial rates as of the Effective Date, as increased thereafter pursuant to this Article VII or other provisions of this Agreement. Adjustments for fuel costs shall only be made to increase or reduce (but not below zero) prior adjustments for fuel costs.

#### **D. REDIRECTION OF FRANCHISE MATERIALS**

In the event that the Company redirects Solid Waste, Recyclable Materials and/or Green Waste to a facility other than the Ord Ranch Road Transfer Station and such changes result in a material increase or decrease in costs and/or increase or decrease in revenues to the Company, the Company and the City shall have the right to receive an adjustment in the Service Rates sufficient to offset in full such increase or decrease, and in no event shall the Company be required to implement any redirection until such time as adjustments in the Service Rates have been made in order to compensate the Company for such increase in costs and/or decrease in revenues.

#### **E. DISCRETIONARY SERVICE RATE REVIEW REQUEST.**

Company may request, in writing, in addition to the CPI Adjustment and the Fuel Cost 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 and the Fuel Cost 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 and Fuel Cost Adjustments.



## **F. 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 three (3) 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. If the bill is not within 60-days of billing, and after notice of delinquency has been sent to the Customer by Company, the Company may discontinue service and may charge interest not to exceed the interest rate for judgments in California for such time as the bill remains unpaid after the due date.

### **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 the Company may discontinue service and may charge interest not to exceed the interest rate for judgments in California 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.

## **VIII. 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. The frequency and content of the reports shall be determined by agreement of the City and the Company.

## **IX. INDEMNITY, INSURANCE**

### **A. INDEMNIFICATION OF THE CITY**

#### **1. General Indemnity.**

The Company agrees to and shall indemnify, defend, with counsel acceptable to the City, and hold harmless City, its officers, officials, employees, volunteers, agents and assigns from and against any and all damages (whether special, general or punitive), loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, ( including, but not limited to, injury to and death of any person and damage to property, strict liability, product liability, or for contribution or indemnity claimed by third parties) arising or resulting from or in any way connected with: (i) the operation of the Company, its agents, employees, affiliates and subcontractors, in performing or failing to perform this Franchise Agreement; (ii) the failure of the Company, its agents, employees, affiliates and subcontractors to comply in all respects with the provisions of this Franchise Agreement, Applicable Laws; (iii) the acts of Company, its officers, employees, agents, affiliates and subcontractors in performing services under this Franchise Agreement (whether or not third parties may also be contributorily negligent); (iv) the acts of the Company, its officers, employees, agents, affiliates and/or subcontractors in performing services under this Franchise Agreement for which strict liability is imposed by law (including without limitation strict liability under environmental laws), subject to the Company's right of contribution, if any, against the City; and (v) the processing, marketing, and end use of Recyclable Materials and Green Waste. The foregoing indemnity shall only apply to the extent such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is not caused by the negligence or willful misconduct of the City, its officers, employees, agents or volunteers.

### **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: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

(b) Automobile Liability: \$5,000,000 combined single limit per accident for bodily injury and property damage.

(c) Worker's Compensation and Employer's Liability: \$3,000,000 each accident, \$1,000,000 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 Gridley 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.

**X. 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 the Agreement to the contrary, the City shall provide the Company with reasonable notice of and a reasonable opportunity to cure any breach of this Agreement during the time periods set forth below or such longer period as may otherwise be provided in the Agreement (the "Cure Period"). Any breach that is timely cured by the Company shall not be determined to constitute an event of default or give rise to the City's right to terminate or suspend the Agreement or pursue its other remedies for breach. 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. In the event of labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action, the Company shall not be required to adhere strictly to the specific requirements of this 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 one day, and (iii) all customers shall receive at least 24 hours' notice of deviations from collection routes or times.

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 Butte 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.

## **XI. 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 XI. 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 Gridley 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 coverage 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 XI (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.

## **XII. MISCELLANEOUS**

### **A. AMENDMENT**

Except for rate and fee adjustments made pursuant to Section VII 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, or a nationally recognized overnight delivery service (receipt requested), addressed to the respective party as follows:

To CITY:	City of Gridley City Hall 685 Kentucky Street Gridley, CA 95948 Attn: City Administrator
To COMPANY:	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 and Attachments 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.

#### **ML 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.

CITY OF GRIDLEY

USA WASTE OF CALIFORNIA, INC.

By \_\_\_\_\_  
Jeff Draper  
its Mayor

By  \_\_\_\_\_  
Barry Skolnick  
its President

**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

**Exhibit 2**  
**First Year Service Rates**

CITY OF GRIDLEY  
EFFECTIVE THROUGH FEBRUARY 28, 2014  
RESIDENTIAL RATES

Residential Carts	ServiceMonthly Rate
-------------------	---------------------

35 gallon - Senior	\$15.86
--------------------	---------

35 gallon	\$18.86
-----------	---------

64 gallon	\$21.80
-----------	---------

95 gallon	\$25.50
-----------	---------

Additional 35 gallon trash container \$9.43

Additional 64 gallon trash container \$10.90

Additional 90 gallon trash container \$12.75

Customers may request 1 additional Recycle and/or  
Yard Waste can for no  
additional fee

Extra Pickup Charges	ServiceMonthly Rate
----------------------	---------------------

35 gallon	\$7.73
-----------	--------

64 gallon	\$8.88
-----------	--------

95 gallon	\$8.88
-----------	--------

Bag	\$4.14
-----	--------

**Commercial Rates:**

**CITY OF GRIDLEY**  
**EFFECTIVE THROUGH FEBRUARY 28, 2014**  
**COMMERCIAL RATES**

Commercial Carts	Service	Monthly Rate
	35 gallon	\$ 25.28
	64 gallon	\$ 36.97
	95 gallon	\$ 63.94
	Add'l 35 gallon	\$ 12.64
	Add'l 64 gallon	\$ 18.49
	Add'l 90 gallon	\$ 31.97

**Commercial Bins**

Quantity 1	1 x Week	2 x Week	3 x Week	4 x Week	5 x Week	6 x Week
1 yd.	\$ 110.50	\$ 178.48	\$ 246.49	\$ 314.48	\$ 382.48	\$ 487.02
1.5 yd.	\$ 135.81	\$ 220.22	\$ 304.66	\$ 389.09	\$ 473.54	\$ 603.43
2 yd.	\$ 177.97	\$ 289.83	\$ 401.65	\$ 513.52	\$ 625.34	\$ 797.42
3 yd.	\$ 220.15	\$ 359.40	\$ 498.65	\$ 637.94	\$ 777.19	\$ 991.42
4 yd.	\$ 262.32	\$ 428.97	\$ 595.70	\$ 762.31	\$ 928.96	\$ 1,185.41
5 yd.	\$ 304.51	\$ 498.58	\$ 692.65	\$ 886.72	\$ 1,080.82	\$ 1,379.41
6 yd.	\$ 346.68	\$ 568.15	\$ 789.65	\$ 1,011.15	\$ 1,232.63	\$ 1,573.42
7 yd.	\$ 388.84	\$ 637.75	\$ 885.43	\$ 1,135.55	\$ 1,384.47	\$ 1,767.42
8 yd.	\$ 431.02	\$ 707.32	\$ 983.63	\$ 1,259.96	\$ 1,536.25	\$ 1,961.40

Quantity 2	1 x Week	2 x Week	3 x Week	4 x Week	5 x Week	6 x Week
1 yd.	\$ 215.43	\$ 351.39	\$ 487.40	\$ 623.39	\$ 759.38	\$ 968.46
1.5 yd.	\$ 266.04	\$ 434.86	\$ 603.74	\$ 772.61	\$ 941.51	\$ 1,201.29
2 yd.	\$ 350.37	\$ 574.09	\$ 797.74	\$ 1,021.48	\$ 1,245.11	\$ 1,589.28
3 yd.	\$ 434.74	\$ 713.23	\$ 991.74	\$ 1,270.31	\$ 1,548.81	\$ 1,977.27
4 yd.	\$ 519.07	\$ 852.37	\$ 1,185.83	\$ 1,519.05	\$ 1,852.35	\$ 2,365.26
5 yd.	\$ 603.46	\$ 991.59	\$ 1,379.73	\$ 1,767.88	\$ 2,156.08	\$ 2,753.25
6 yd.	\$ 687.79	\$ 1,130.73	\$ 1,573.72	\$ 2,016.73	\$ 2,459.70	\$ 3,141.26
7 yd.	\$ 772.11	\$ 1,269.94	\$ 1,765.28	\$ 2,265.54	\$ 2,763.36	\$ 3,529.28
8 yd.	\$ 856.46	\$ 1,409.08	\$ 1,961.69	\$ 2,514.35	\$ 3,066.93	\$ 3,917.23

Quantity 3	1 x Week	2 x Week	3 x Week	4 x Week	5 x Week	6 x Week
1 yd.	\$ 320.35	\$ 524.31	\$ 728.32	\$ 932.31	\$ 1,136.29	\$ 1,449.91
1.5 yd.	\$ 396.28	\$ 649.51	\$ 902.83	\$ 1,156.12	\$ 1,409.48	\$ 1,799.15
2 yd.	\$ 522.77	\$ 858.35	\$ 1,193.83	\$ 1,529.43	\$ 1,864.88	\$ 2,381.13
3 yd.	\$ 649.33	\$ 1,067.06	\$ 1,484.82	\$ 1,902.67	\$ 2,320.44	\$ 2,963.12
4 yd.	\$ 775.82	\$ 1,275.77	\$ 1,775.97	\$ 2,275.80	\$ 2,775.75	\$ 3,545.11
5 yd.	\$ 902.40	\$ 1,484.61	\$ 2,066.81	\$ 2,649.04	\$ 3,231.33	\$ 4,127.10
6 yd.	\$ 1,028.90	\$ 1,693.32	\$ 2,357.80	\$ 3,022.32	\$ 3,686.77	\$ 4,709.11
7 yd.	\$ 1,155.39	\$ 1,902.12	\$ 2,645.14	\$ 3,395.53	\$ 4,142.26	\$ 5,291.13
8 yd.	\$ 1,281.91	\$ 2,110.83	\$ 2,939.76	\$ 3,768.74	\$ 4,597.60	\$ 5,873.06

Multi-unit residential Bin Rates	1 x Week	2 x Week	3 x Week	4 x Week	5 x Week	6 x Week
1 yd.	\$ 97.88	\$ 157.68	\$ 217.48	\$ 277.27	\$ 337.06	\$ 426.92
1.5 yd.	\$ 120.15	\$ 194.38	\$ 268.65	\$ 342.88	\$ 417.15	\$ 528.78
2 yd.	\$ 157.22	\$ 255.59	\$ 353.95	\$ 452.32	\$ 550.67	\$ 698.58
3 yd.	\$ 194.31	\$ 316.78	\$ 439.25	\$ 561.73	\$ 684.19	\$ 868.33
4 yd.	\$ 231.39	\$ 377.97	\$ 524.57	\$ 671.12	\$ 817.68	\$ 1,038.12
5 yd.	\$ 268.51	\$ 439.19	\$ 609.84	\$ 780.53	\$ 951.22	\$ 1,207.90
6 yd.	\$ 305.59	\$ 500.36	\$ 695.16	\$ 889.95	\$ 1,084.72	\$ 1,377.67
7 yd.	\$ 342.68	\$ 561.57	\$ 779.37	\$ 999.37	\$ 1,218.26	\$ 1,547.45
8 yd.	\$ 379.76	\$ 622.76	\$ 865.75	\$ 1,108.75	\$ 1,351.74	\$ 1,717.22

Extra Pickup Charges	Service	Monthly Rate
	35 gallon	\$ 7.93
	64 gallon	\$ 9.11
	95 gallon	\$ 9.11
	Bag	\$ 4.25
	1 yd.	\$ 48.04
	1.5 yd.	\$ 57.16
	2 yd.	\$ 71.17
	3 yd.	\$ 93.66
	4 yd.	\$ 110.71
	5 yd.	\$ 128.95
	6 yd.	\$ 147.20
	7 yd.	\$ 165.47
	8 yd.	\$ 183.68

**Exhibit 3**  
**CITY FACILITIES / SPECIAL EVENTS**

Company shall provide the following services at no charge to the City.

**CITY FACILITIES\***

City Hall/Police Facility	4-cubic yard container
Electric Warehouse	2 cubic yard container
Fire Station	2 cubic yard container

\* Containers shall be emptied weekly or more often if necessary.

**SPECIAL EVENTS**

Solid waste containers and recycling containers for up to 4 community events, per year.

- A total of 20 solid waste containers ranging from 2-cubic yards to 4-cubic yards shall be provided on an annual basis.
- Recycling containers are to be provided as directed by the City.



**ATTACHMENT A**

Solid Waste Facilities Permit for the Ord Ranch Road Transfer Station

## **ATTACHMENT B**

**Agreement Between the County of Butte and the City of Gridley for the City's Use of Certain  
Premises**